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SENATE TRANSPORTATION COMMITTEE
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COMMITTEE BILL LOGS, 1985-86

ALASKA MARINE HIGHWAY OVERVIEW, 4/17/86

RS 2477 TASK FORCE REPORT

OVERVIEW, 1/15/86

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SB 39

SB 49

SB 82

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SB 103 (FILE 2)

SB 103 (FILE 3)

SB 103 (FILE 4)

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1985-86
SENATE TRANSPORTATION COMMITTEE
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1985-86
SENATE TRANSPORTATION COMMITTEE
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COMMITTEE AGENDAS, 1985-86

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

SENATE TRANSPORTATION	Butrovich Room	3:30pm
465-3715	Capitol Room 205	M-W-F

Monday, January 21, 1985
DOT Overview with Commissioner Knapp
State highway system, Capital project cleanup,
Alaska Marine Highway

Wednesday, January 23, 1985
Alaska Transportation Commission Repeal
**SB 38 Special Approp: Kenai River Bridge

Friday, January 25, 1985
ATC Repeal continued

Alaska State Legislature

SENATOR
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Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
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FILE
Committee

Senate Committee on Transportation

AGENDA

Wednesday, January 23, 1985

Commissioner Hesden Scougal, of the Alaska Transportation Commission

Senate Bill 38, Kenai River Bridge, Sponsor-Sen. Paul Fischer

Friday, January 25, 1985

Continuation of ATC issues

Monday, January 28, 1985

Continuation of ATC issues

Primary Transportation Committee Objectives for 1985

1. Legislative Response to Repeal of ATC

Problem: The ATC has been abolished, and the public perceives there will be safety problems left in the void. The administration will apparently propose a bill to transfer the embodiment of the ATC (including much of its economic regulatory authority) into DPS. Chairman Coghill, on the other hand, does not intend that the will of the electorate be violated, and proposes a bill to simply establish safety inspections for the trucking industry.

2. Highway maintenance and shoulder widening

Problem: General highway maintenance throughout the system is never enough; additionally, the lack of shoulders on extensive portions of highways in the Interior continues to be a leading cause of traffic accidents and fatalities. The chairman would like to examine DOT/PF highway projects now on the drawing boards, and determine with the department which could be delayed in order to free up funds for highway shoulders. This would be most successfully accomplished under the banner of highway safety upgrades.

3. Alaska Marine Highway

Problem: What place, if any, can high-speed ferries have within the marine highway system? DOT is satisfied that there is a need for economically-operated high speed ferries in Southeastern, although not necessarily jetfoils. Commissioner Knapp has isolated the biggest money loser to be the deep southeastern village runs with ferries of the Aurora class, carrying crews of about 27, and seldom fill. He would like to replace these slower ships on those runs with catamarans, surface-effect ships or other high speed, low crew alternatives.

Problem: To what extent will the Ketchikan Maintenance Facility be developed and put to use? The construction of the maintenance facility is progressing on schedule, however, DOT will be looking for funding for a ship-lift or drydocking apparatus in order to fully utilize the facility's potential. With such a devise, the maintenance facility would be capable of actually hauling-out the ferries, as well as other large commercial or coast guard vessels, if needed. Without it, the maintenance facility will not actually offer anything more than is already available in Ketchikan. Opposition to completion and use of the facility will come from Seattle interests who stand to lose business when the ferries pull their maintenance out of that port, as well as from crewmembers who prefer to spend the 2 or 3 months in Seattle, rather than Ketchikan.

Problem: Warehousing. It is DOT's intention to reduce to a minimum its warehouse space at Pier 48 in Seattle when the new maintenance facility comes on line, and thereafter warehouse most of its

spare parts in Ketchikan. Offices, waiting rooms and ferry access ways in Seattle would be renovated at that time.

Problem: Availability of ferry space during the tourist season. This problem would probably be alleviated somewhat if the LeConte and the Aurora are freed up from village runs by the inception of high speed service.

Problem: Labor. Ferry workers have taken a strike vote, and are authorized for an April 1 strike, if negotiations on their new 3-year contract break down. The State is in a position in these negotiations where the farm was given away long ago, and we are now having to recoup, and try to bring the wages and benefits in line with industry standards.

Problem: Westward expansion. Should ferry service from Southeastern to Southcentral be contemplated by the State? What problems and costs can be expected?

Problem: Haines-Juneau connection. Should Juneau become the northern terminus of the Southeast run, with the highway extended to Haines and Skagway, connected by a shuttle ferry across Lynn Canal? What costs and problems are involved, compared to continued mainline ferry service?

4. Alaska Railroad Oversight

Problem: The State has just established the Alaska Railroad Corporation, taking over ownership and control of the line on January 5. Should the committee contract to have the operation of the railroad monitored, as House Transportation is apparently going to do, or should we leave the board alone for an initial honeymoon period, simply monitoring it from here?

5. DOT/PF Capital Projects

Problem: DOT has a year-old Capital Projects Cleanup project, due to wrap up its activities this Spring. Its objective is to get under control all the CIPs with which DOT is charged, and, in the process, establish an accounting system designed to ensure that the morass is not allowed to grow again. We will need to receive the report and understand it; we will need to have a working knowledge of the new CIP tracking system in order to properly be able to put its information to use.

6. Jones Act

Problem: The Federal Merchant Marine Act has the undesirable effect in Alaska of raising the price of virtually everything shipped into the state. How active should be the committee's role in the effort to persuade Congress to repeal the Act? The Governor has been instructed by the electorate, through Ballot Measure 3, to do all he can

to get Congress to repeal it, and to report on his efforts and the effect of the Act annually until it is repealed. The committee, short of an active role itself, might at least monitor the Governor's activities in relation to the initiated law.

7. Oil export to the Far East

Problem: By Federal law, Alaskan oil cannot be exported, yet, economically, it doesn't make sense not to. Should the committee take an active lead in lobbying Congress to repeal the provision disallowing export, or should we merely monitor the situation, keeping members informed on the issue? Should oil export be viewed in context with other exportables - coal, timber, minerals, foodstuffs, etc?

8. Gas pipeline

Problem: To bring North Slope Gas south to tidewater for market to the Pacific Rim. How deeply involved should the committee become with the Hickel group promoting the pipeline? What realistic alternatives are there to it? Will the State get involved in its financing?

9. High Float Emulsion

Problem: Asphalt may not be the ideal material for roads located in nothern regions. DOT is experimenting with roadways surfaced with high float emulsion, a process developed in Yukon. Progress and conclusions regarding experimental surfaces ought to be monitored by staff to keep committee members informed. If the new materials are successful in maintaining a longer-lasting, lower cost road surface, the Legislature probably would want to use it throughout the system.

10. Overlapping road-building authorities

Problem: Road-building capabilities and authorities overlap among State agencies to the extent that ofter one agency doesn't know what the other may be doing, and proper maintenance is neglected as a result. For example, in DNR the division of parks builds trails and roads in parks, the division of forestry builds roads for timber sales and for fire-fighting, and the division of agriculture is responsible for putting roads into agricultural areas. To what standards these roads and trails are constructed apparently varies, and what may be required to upgrade them as public use demands remains a mystery, because there is no central clearing-house to keep track of them. Perhaps another category of road ought to be created, somewhere between a trail and a secondary highway; something like a "resource road". Some study ought to be given to how these roads ought to be managed, and by whom. For example, if there is a 1 mile long road connecting a village to an airstrip, perhaps the division of aviation ought to be responsible for it.

1/25/85

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

Senate Transportation
Agenda

Friday, January 25, 1985

Continuation of ATC Repeal
Rep. Andre Marrou, Initiative Prime Sponsor

Monday, January 28, 1985

Continuation of ATC Repeal
Department of Public Safety
Department of Commerce and Economic Development

Wednesday, January 30, 1985

SB 39-Totchaket Project
SB 49-Kantishna Road

Alaska State Legislature

SENATOR
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Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
465-4745

Butrovich Room 3:30
Capitol Room 205 M-W-F

Monday, February 4, 1985
**SB 103 Regulation of Safety on Motor and Air Carriers

Wednesday, February 6, 1985
Commissioner Knapp, Department of Transportation
Consolidation of Overlapping Road Building Authority

Friday, February 8, 1985
**SB 82 Relating to Weights and Measures
Overview on Highway Shoulder Widening

Alaska State Legislature

SENATOR
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Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
465-4921

Butrovich Room 3:30
Capitol Room 205 M-W-F

Monday, February 11, 1985
Alaska Railroad Overview
Frank Turpin, Railroad Corporation President

Wednesday, February 13, 1985
SB 103 Regulation of Safety on Motor and Air Carriers

Friday, February 15, 1985
Overview of Alaska Ferry System-Ferry Terminals

Alaska State Legislature

SENATOR
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Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
465-4921

Butrovich Room 3:30
Capitol Room 205 M-W

Monday, February 18, 1985
SB 115 Oil and Gas Rights of Ways
Airfare Overview
Professor Max Lavene, USC School of Law; Teleconferenced

Wednesday, February 20, 1985
**SB 141 Releasing Certain State Rights of Ways
Alaska Ferry System Overview
Joe Camp, Alaska Marine Highway
Homer Sarver, President, Inland Boatmans Union

Friday, February 22, 1985
No Meeting Scheduled

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE

Butrovich Room 3:30
Capitol Room 205

Monday, February 25, 1985
CS SB 82 Weights and Measures
Hearing on air fares, continued

Wednesday, February 27, 1985
SJR 11 Repeal of the Jones Act

Friday, March 1, 1985
No Meeting Scheduled.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

AGENDA

SENATE TRANSPORTATION

ROOM 205 CAPITOL BUILDING 3:30 p.m. M-W-F

WEEK OF MARCH FOURTH

Monday 3-4
SB 39 Roads and Bridges, Totchaket Resource Area
SB 49 Kantishna Road Study

Wednesday 3-6
SB 141 Releasing certain Rights of Ways

Friday 3-8
Bills previously heard

Alaska State Legislature

SENATOR
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Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Senate Transportation Committee

Weekly Agenda

Week of March 11, 1985

3:30 Monday and Friday Room 205 State Capitol

Monday, March 11, 1985

School Bus Overview

Wednesday, March 13, 1985

No meeting scheduled

Friday, March 15, 1985

SJR 10 Roads/Trails, 2477 roads and trails identification

SB 193 Relating to Eminent Domain

Alaska State Legislature

SENATOR
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Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Senate Transportation Committee

Weekly Agenda

Week of March 18, 1985

3:30 Monday and Wednesday Room 205 State Capitol

Monday, March 18, 1985

SB 114 Registration of Heavy Vehicles	Rules/Governor
HJR 16 Relating to Essential Air Service Subsidies	M.M. Miller

Wednesday, March 20, 1985

Bills and Resolutions Previously Heard

Friday, March 22, 1985

No Meeting Scheduled

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Senate Transporation Committee

Agenda for the Week of

March 25, 1985

There will be no Senate Transportation Committee meetings for the week of March 25 through March 29.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Weekly Agenda

Week of April 1, 1985

Monday and Wednesday, 3:30 p.m. Room 205

Monday, April 1, 1985

HB 133 Regulating safety of motor and air carriers.

SB 175 De Armoun-Rabbit Creek interchange

SB 180 Valdez harbor improvements

SB 202 Eagle River-Hiland Bridge

Wednesday, April 3, 1985

Three Year Budget Overview; The Alaska Railroad Corporation

Bills previously heard

Friday, April 5, 1985

Good Friday; No meeting

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Weekly Agenda

Week of April 8, 1985

Monday and Wednesday, 3:30 p.m. Room 205

Monday, April 8, 1985

The Alaska Air Carriers Association Aviation Safety Plan
Dr. Jerald Cockrell

CSHB 133 (Fin) Regulation of Safety and Air Carriers

Wednesday, April 10, 1985

SCR 6	Access to Shotgun Cove	Josephson
SB 193	Eminent Domain	Rules/Gov
CSHB 1 (Trans)	Free Transportation of Charitable Goods on Marine Highway	M.M. Miller

Friday, April 12, 1985

No Meeting Scheduled

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Weekly Agenda

Week of April 15, 1985

There Will Be No Transportation Meetings

For the Week of April 15 through April 19

Alaska State Legislature

SENATOR
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Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Submitted to Senate Secretary and Changed on 4/18

Senate Committee on Transportation

Weekly Agenda See Next Schedule

Week of April 22, 1985

Wednesday, April 24, 1985

Monday, April 22

No Meeting Scheduled

Wednesday, April 24

HB 201 — Taylor

Providing for weekly ferry service to Hyder

SB 240 — P. Fischer

Grant for Kenai Road Projects

Friday, April 26

No Meeting Scheduled

Alaska State Legislature

SENATOR
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Chairman

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Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Weekly Agenda

Week of April 22, 1985

Monday, April 22, 1985

Monday, April 22

HB 201	Weekly Ferry Service to Hyder	Taylor
SB 240	Grant for Kenai Road Projects	P. Fischer

Wednesday, April 24

No Meeting Scheduled

Friday, April 26

No Meeting Scheduled

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Weekly Agenda

Week of April 29, 1985

Wednesday May 1, 1985

Monday, April 29

No Meeting Scheduled

Wednesday, May 1

HB 223 Naming the gateway to Wood-Tikchik State Park Herrmann

Friday, May 3

No Meeting Scheduled

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Weekly Agenda

Week of April 29, 1985

Wednesday May 1, 1985

Monday, April 29

No Meeting Scheduled

Wednesday, May 1

HB 223 Naming the gateway to Wood-Tikchik State Park Herrmann

Friday, May 3

No Meeting Scheduled

Alaska State Legislature

SENATOR
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Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

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Senate Committee on Transportation

Weekly Agenda

Week of May 6, 1985

Monday, May 6, 1985

CSHB 111 (Transportation) Relating to Local Service Roads and Trails.

Wednesday, May 8, 1985

No Meeting Scheduled

Friday, May 10, 1985

No Meeting Scheduled

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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Juneau, Alaska 99811

SENATE TRANSPORTATION COMMITTEE SCHEDULE

WEEK OF FEBRUARY 3-7

3:30 p.m. Monday and Wednesday

Monday, Feb. 3

Joint meeting with Senate Resources Committee in the Senate Finance Room to hear a presentation by the Senate Transportation Committee interim RS 2477 task force.

Wednesday, Feb. 5 Room 205, State Capitol

Overview of the implementation of CCSHB 133 by the Departments of Public Safety and Commerce and Economic Development.

CSHB 111 am Relating to local service roads and trails.

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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Juneau, Alaska 99811

Weekly Agenda

SENATE TRANSPORTATION COMMITTEE

Week of February 10, 1986

3:30 p.m. Room 205

Monday, February 10, 1986

Review of Alaska Railroad Crossing Task Force Report.
To be teleconferenced to railbelt locations.
SB 240 Relating to overtaking and passing school buses.

Wednesday, February 12, 1986

No meeting

Friday, February 14, 1986

SB 373 Relating to Metropolitan Planning
SB 374 Relating to Toll Facilities

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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Juneau, Alaska 99811

Amended Weekly Agenda

SENATE TRANSPORTATION COMMITTEE

Week of February 10, 1986

3:30 p.m. Room 205

Monday, February 10, 1986

Review of Alaska Railroad Crossing Task Force Report.
To be teleconferenced to railbelt locations.
SB 240 Relating to overtaking and passing school buses.

Wednesday, February 12, 1986

SB 373 Relating to Metropolitan Planning
SB 374 Relating to Toll Facilities
(Moved From Friday the 14th)

Friday, February 14, 1986

Meeting Moved to Wednesday, February 12

Senator John B. (Jack) Coghill
Alaska State Legislature

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Juneau, Alaska 99811
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Box 55028
North Pole, Alaska 99705
(907) 488-7332

SENATE TRANSPORTATION COMMITTEE

WEEKLY AGENDA

WEEK OF FEBRUARY 17, 1986 BUTROVICH ROOM 3:30 P.M.

Monday 2/17/86

No Meeting

Wednesday 2/19/86

Hearing on Airfares to the Lower Fortyeight with Alaska Airlines
SB 373 Relating to Metropolitian Planning

Friday 2/19/86

No Meeting

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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Juneau, Alaska 99811

SENATE TRANSPORTATION COMMITTEE

WEEKLY AGENDA

WEEK OF FEBRUARY 17, 1986 BUTROVICH ROOM 3:30 P.M.

REVISED COMMITTEE SCHEDULE

Monday 2/17/86

No Meeting

Wednesday 2/19/86

Airfare Hearing, Alaska Airlines

Friday 2/19/86

No Meeting

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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SENATE TRANSPORTATION COMMITTEE

WEEKLY AGENDA

WEEK OF FEBRUARY 24-28

Monday, February 24

Capital Projects Cleanup Up-date
Commissioner Knapp

HB 240 Relating to passing school buses

Wednesday, February 26

Alaska Railroad Corporation Overview
Frank Turpin

Friday, February 28

No Meeting

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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Juneau, Alaska 99811

SENATE TRANSPORTATION COMMITTEE

WEEK AGENDA

WEEK OF MARCH 3-7

MONDAY AND WEDNESDAY 3:30 p.m. ROOM 205

Monday, March 3

Overview of the Alaska Marine Highway
Joe Camp

Overview of the Department of Transportation and Public Facilities

Wednesday, March 5

HJR 51 Relating to Coast Guard user fees

Air carriers work session with representatives of the Alaska Air Carriers Association

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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SENATE TRANSPORTATION

COMMITTEE SCHEDULE, WEEK OF MARCH 10

MONDAY AND WEDNESDAY, 3:30 p.m. Room 205

Monday, March 10

Overview of the Department of Transportation and Public Facilities,

Wednesday, March 12

SB 373 Relating to Metropolitan Planning

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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SENATE TRANSPORTATION

COMMITTEE SCHEDULE, WEEK OF MARCH 10

MONDAY AND WEDNESDAY, 3:30 p.m. Room 205

REVISED SCHEDULE

Monday, March 10

Overview of the Department of Transportation and Public Facilities,
The Six Year Plan

Wednesday, March 12

SB 373 Relating to Metropolitan Planning

HB 409 Relating to School Bus Driver Licensing

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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SENATE TRANSPORTATION

COMMITTEE SCHEDULE

WEEK OF MARCH 17, 1986 3:30 p.m. Room 205

Monday, March 17

Overview of International Airport planning
HB 409 Relating to liscencing of school buses

Wednesday, March 19

Overview of Bush Airport Planning and Funding

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

SENATE TRANSPORTATION

WEEKLY AGENDA, WEEK OF MARCH 26

MONDAY AND WEDNESDAY, 3:30 p.m. Room 205

Monday, March 24, 1986

SB 428 Relating to the powers of the Department of Transportation

Wednesday, March 26, 1986

SB 424 Relating to studded tires on rental cars

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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SENATE TRANSPORTATION COMMITTEE

WEEKLY AGENDA

WEEK OF APRIL 7, 1986

WEDNESDAY, April 9 3:30 p.m., The Butrovich Room, #205

SB 411 Road Maintenance Service Areas

SB 424 Winter Tires on Rented Vehicles

SB 461 Naming of the Robert J. Mitchell Expressway

SB 471 Relating to Drivers Licenses

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

SENATE TRANSPORTATION COMMITTEE

WEEKLY AGENDA

WEEK OF APRIL 14, 1986

MONDAY, WEDNESDAY AND FRIDAY ROOM 250, 3:30 p.m.

Monday, April 14

SB 424 Relating to snow tires on rental vehicles.

Wednesday, April 16

Overview of the Alaska Marine Highway System's Long Term Plan

SB 450 Appropriation for the Iliamna-NonDalton Intertie

Friday, April 18

HB 689 Required equipment on vehicles

HB 321 Relating to Adverse Claims and Boundry Disputes

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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Juneau, Alaska 99811

SENATE TRANSPORTATION

WEEKLY AGENDA, WEEK OF APRIL 21, 1986

MONDAY AND WEDNESDAY, 3:30 p.m. Room 205

Monday, April 21

HB 686 Required equipment on vehicles

HB 321 Adverse claims on boundary disputes

SB 424 Snow Tires

Wednesday, April 23

HB 552 Speed zones

HB 181 Relating to maintenance by the marine highway system

SCR 38 Centennial of the automobile

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

SENATE TRANSPORTATION COMMITTEE

WEEKLY AGENDAY

WFEK OF APRIL 28 Monday and Wednesday; 3:30, Room 205

Monday, April 28

HB 552 Neighborhood speed limits

Wednesday, April 30

HCR 36 Intrastate airline industry study

SB 416 Limited warranties for used vehicles

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

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Senate Transportation

Week of May 5, 1986

Monday, May 5

Monday, May 5 3:30 p.m. Room 205

HB 160

Utilities and encroachments

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephsen

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Senate Transportation

Amended Schedule, Week of April 28

FRIDAY, May 2, 1986

Friday, May 2, 3:30 p.m. Room 205

HB 436 The Caboose Bill

COMMITTEE BILL LOGS, 1985-86

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
1/14/85	SB 14	"AN ACT MAKING A SPECIAL APPROPRIATION TO DOT/PF FOR HIGHWAY CONSTRUCTION AND REPAIRS IN SOUTHCENTRAL ALASKA; E.D."	KERTTULA		
	SB 15	"AN ACT MAKING A SPECIAL APPROPRIATION FOR CONSTRUCTION OF A HIGHWAY FROM EKWUTNA TO THE WASILLA PALMER BY-PASS; E.D."	KERTTULA		
	SB 38	"AN ACT MAKING A SPECIAL APPROPRIATION TO DOT/PF FOR CONSTRUCTION OF A KENAI RIVER BRIDGE; E.D."	P. FISCHER	HEARING 1-23 PASSED CS	1-23
	SB 39	"AN ACT MAKING A SPECIAL APPROPRIATION TO DOT/PF FOR VARIOUS CONSTRUCTION PROJECTS IN THE TOTCHAKET RESOURCE AREA; E.D."	COGHILL	Heard 1-30	
	SB 49	"AN ACT MAKING A SPECIAL APPROPRIATION TO DOT/PF TO DETERMINE THE FEASIBILITY OF BUILDING KANTISHNA ROAD; E.D."	COGHILL	Heard 1-30	
1-22-85	SB 82	"An Act relating to weights and measures; and providing for an effective date"	governor	Heard 2-18 CS passed 2/25	2/25
1-29-85	SB 103	"AN ACT PROVIDING AUTHORITY FOR THE DEPARTMENT OF PUBLIC SAFETY TO REGULATE SAFETY OF MOTOR CARRIER & AIR CARRIER OPERATIONS; EFD"	RULES/GOV	HEARD 2/13 CS 2/20 CS AMENDED & PASSED 2/20	2/20

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
1/30	SB 112 V	"AN ACT RELATING TO CRIMINAL TRESPASS"	RULES/GOV	RETURNED TO SEC'TY FOR RE-ASSIGNMNT	1/31
2/11	SB 115 V	"AN ACT RELATING TO LAND USE AND DISPOSAL NEAR A HIGHWAY RIGHT-OF-WAY; EFD.	RESOURCES	HEARD 2/18 PASSED W/O AMENDMENT	2/18
2/08	SB 141 V	"AN ACT RELEASING CLAIMS OF THE STATE TO LAND WITHIN CERTAIN RIGHTS-OF-WAY; EFD.	COGHILL	Scheduled 2-AR Rescheduled 3-6	
2/21	SB 180 V	"AN Act Making Special Appropriation for Payment on Grant to the City of Valdez for phase II. construction of the commercial boat harbor & for Improvements to the small boat harbor; EFD	DeVries	Passed W/O AMENDMENT	4/1
2/21	SCR 6 V	"Relating to the Whittier-Shotgun Cove access"	Josephson	Passed w/o Amendment	4/1/85
2/21	SB 175 V	'An act making a special Appropriation to DOT/PF for design & construction of the DeArmoun-Rabbit Creek interchange; EFD	DeVries	Heard 4-1-85 Not Passed by Committee	
2/26	SB 193 V	"An act relating to the power of eminent domain; EFD"	Rules/Gov	Heard 3-20-85 Heard 3-15-85 Passed as CS 4-10	4-10-85

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
2/26	CSHJR 16 ✓	"Relating to essential air service."	House Transporter	Amended & Passed as CS 3-18	3/18/85
2/28	SB 202 ✓	"An Act making a special appropriation to the Dept. of Transportation and Public Facilities for construction of the Eagle River Hiland Bridge; PED."	Kelly, Halford	Passed w/o Amendments 4/10/85	4/1/85
3/4	CS HB 1 (Trans) ✓	"An Act authorizing the ferry system to transport certain items without charge."	House Trans.	Passed w/o Amendment 4/10	4/10
3/4/85 ?	SJR 10 ✓	"Requesting that the DNR & DOT/PF expedite the identification and establishment of rights-of-way for roads & trails on federal BLM plats which qualify under RS 2477."	Coghill, Abood Bennett, et al	Passed w/o Amendments 3/15	3/15/85
3/5/85	SB 114 ✓	"An Act relating to the registration of heavy vehicles; PED."	Rules/Gov	Passed as Amended 3/13/85	3/18
3/19/85	SB 240 ✓	"An Act making a special appropriation for payment as a grant to the Kenai Peninsula Borough for road projects; PED."	P. Fischer	Passed w/o Amends 4/24	4/24/85
3/26/85 ?	CSHB 133 (Finance)	"An Act relating to transportation safety and financial responsibility; PED."	House Finance	Passed as Amended 4/8/85.	4/8/85

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
2/8/85	SJR 11 ✓	"Urging the repeal of certain portions of the Merchant Marine Act of 1920"	Coghill	Heard-2-27-85 Passed w/Hand	3-8-85
4/11	HB 201 ✓	"An Act Making a Special Appropriation to DOT&PF to provide weekly summer Marine Hwy service to Hyder; PED"	Taylor, Sund, Gruenburg	Heard & Passed w/out Amendment 4-22.	4-22-85
4/29/85	SJR 26	Relating to the payment of just compensation to Landowners for certain rights-of-way across Land in Alaska.	Coghill	Heard & Passed out w/out amendment	5-02-85
4/29/85	SB 303	"An Act removing alimitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent Domain."	Coghill	Heard & Passed out 5-2-85	5-2-85
4/29/85	SCR 22	Relating to an alternative road system in Denali National Park	Coghill	" "	5-2-85
5/3/85	S B 308	"An Act providing for the issuance of General obligation bonds in the amount of $350,000,000 for the purpose of paying the cost of transportation projects; calling for a special election on the question; PED	Rodey & Ferguson		

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
5/9/85	SB 315	"An Act making special appropriations to the principle of the permanent fund, to the dividend fund, and for various capital projects of the State; And Providing for an effective date	Ferguson		
5/9/85	SB318	"Same Title as above"	Josephson & Ferguson		
5/11/85	HB 100	"An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition, Relating to discharge of hazardous substances; PED	Rules/Gov	Heard 1-23-86 Passed w/no Amend	1-23-86
6/13/85	SJR 29	"Relating to maintenance of air service to Cordova, Yakutat, Petersburg, Wrangell, and Gustavus, Alaska."	Ziegler and Eliason	Heard 1238 Passed w/no Amend	1-23-86
6/13/85	SJR 30	"Relating to passenger service by Korean Air Lines in Anchorage"	Ray	Heard 1-30-86 Passed w/no Amend	1-30-86
1/22/86	SB 357	"Elimination of the Working Capital fund	Rules/Gov.		
1/22/86	SB 358	"Transfer	Rules/Gov		

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
1/23/86	HB 240	"Passing or Overtaking school Buses"	Thompson	Meeting 2-10-86 CS 2-12-86	2-12-86
1/29/86	SB 373	"Relating to metroplitan planning"	Faiks	Meeting 2-12-86 CS 2-19-86	2-19-86
1/29/86	SB 374	"Relating to state toll facilities"	Devries, Faiks	Sponsor Sub 2/05/86 meeting 2-12-86 Passed w 2 technical amendments	2/12/86
2/14/86	SB 416	"Relating to warrantics for used Vehicles"	Yosephson	Heard 4-30-86 Held for interim	
2/14/86	SB 424	"An Act relating to studded tires & chains on rented motorvehicles"	Sackett	Heard 3-26 " 4-9 CS 4/14/86	bac 4/24/86 4/14/86
2/14/86	SB 428	"An act relating to acquisition of rights-of-way by the Dept. of Transportation & Public Facilities; efd."	Coghill	Heard 3-24 CS 3-27-86	3-27-86
2/18/86	SB 450	"An Act making a special appropriation to DOT/PF for completion of the Willow/Nonalton road intertie project; efd.	Halloff	Heard 4-16-86 Passed 4-16-86	4-16-86

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
3-14-86	SCR 38	"Relating to the centenial of the automobile"	Transportation (S)	Heard 4-24-86	4-24-86
4-4-86	HB 321	"An Act relating to adverse claims and boundry disputes; Efd"	Cotton	Heard 4-21-86	4-21-86
4-8-86	HB 689	"An Act relating to required equipment on, and the transportation of certain Loads by, motor vehicles"	Cotton	Heard 4-21-86	4-21-86
4-8-86	HCR 36	"Relating to Interstate airline travel"	Heermann	Heard 4/30/86	4-30-86
4-9-86	HB 936	"An Act requiring a properly equipped & staffed caboose on certain trains"	Cato	Heard 5-2-86 Held for further study	
4-8-86	HB 160	"An Act relation to utilities and encroachment in state airports, public facilities, and Highways; Relocation of utilities; Efd"	Rules/Gov.	Heard 5-7-86	5-7-86
4-10-86	HB 552	"An Act relating to setting speed limits and neighborhood speed zones"	Uchlring	Heard 4-21-86 Heard 4-24-86	4-24-86

DATE IN	BILL NO.	TITLE	PRIME SPONSOR	ACTION TAKEN	DATE OUT
4/15/86	HB 181	An Act relating to maintenance of vessels of the state; and providing for an expiration of the act	Taylor	Heard 4-23-86	4/23/86

ALASKA MARINE HIGHWAY OVERVIEW 4-17-86

Consultant's Project Review
ALASKA MARINE HIGHWAY SYSTEM
System Plan Development

being prepared for the
Department of Transportation and Public Facilities
Richard J. Knapp, Commissioner

Presented to the
Transportation Committee
Alaska State Senate
April 16, 1986

by
Boeing Computer Services Company
in association with
Arthur Young & Company
H.W. Lochner, Inc
Nickum & Spaulding Associates, Inc.
ETA:2000, Inc.

PRESENTATION OUTLINE

I. Purpose

II. Process Description

III. Products To Be Delivered

IV. Progress To Date

PURPOSE

- Develop a long-range plan for AMHS, as recommended by the Governor's Task Force
- Provide guidance for daily operations as well as for long-term system development
- Deliver a working document and specify ongoing process, not just "another study to occupy shelf space."

PRIMARY ISSUES

- General
  - Levels of service
  - Relationships between local and mainline service
  - Capital and operating funding needs & sources
- Specific
  - High speed ferry applications
    - Southern Panhandle
    - System-wide
  - Age of existing fleet
  - Private funding / contracting for services
  - Marketing

GIVENS

- Southeast Transportation Plan Recommendations
  - Implementation of high speed ferries in Southern Panhandle
  - Seattle service to be maintained
  - Definition of communities to be served in the Southeast
- Initiation of Service to Hyder
- Development of Ketchikan maintenance facility

PRESENTATION OUTLINE

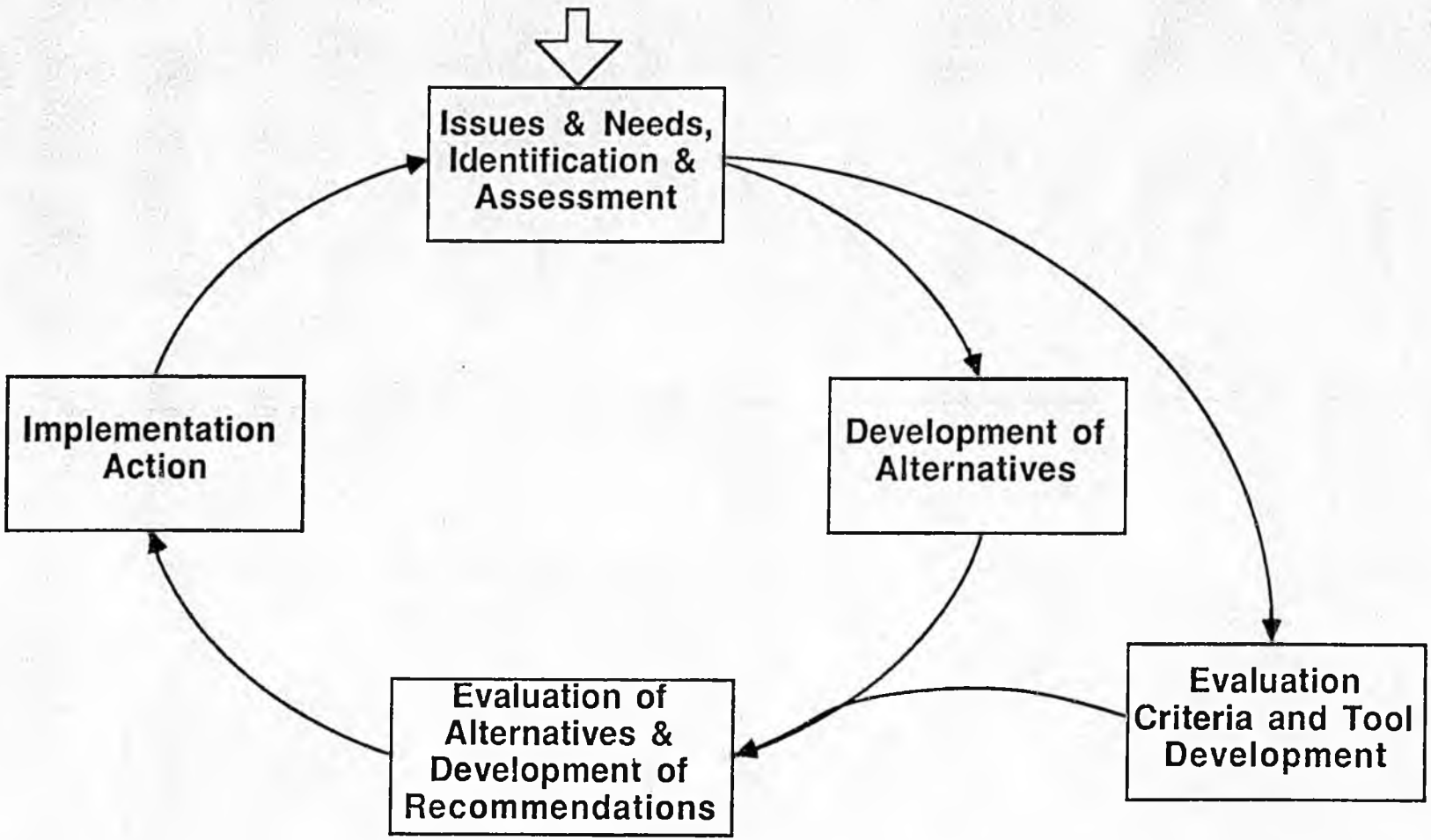
I. Purpose

→ II. Process Description

III. Products To Be Delivered

IV. Progress To Date

OVERALL PLANNING PROCESS



SPECIFIC TASKS IN THIS PROJECT

- Review Existing Plans
- Define Issues
- Collect Data
- Initiate Public Participation Program
- Develop Analytical Models
- Define Alternatives
- Analyze Alternatives

SPECIFIC TASKS IN THIS PROJECT (cont)

- Evaluate and Select System Plan
- Develop Implementation Plan
- Citizen and Agency Review
- Final Documentation and Presentations
- Training of DOT&PF Staff
  - Plan update process
  - Model Applications

PRESENTATION OUTLINE

I. Purpose

II. Process Description

→ III. Products To Be Delivered

IV. Progress To Date

GENERAL PRODUCTS TO BE DELIVERED

- Mission Statement for the System
  - Goals
  - Objectives
- Policy Summary and Evaluation Criteria / Standards
- Recommended Actions Regarding:
  - Vessels and shore facilities
  - Operations
  - Financing
- CIP
- Long-Range Operating Projections
- Implementation Plan
- Process Definition and Analytical Modeling Tools
  - To provide for ongoing analysis
  - To respond to changes in operating and/or funding environment

SPECIFIC PRODUCTS

BY JUNE 1986:

- High Speed Ferry (HSF) Evaluation and Recommendations for Southern Panhandle
- Analytical Models Operational
  - Vessel performance
  - Travel demand model prototype
  - Financial evaluation
- Financial Policy Evaluation and Recommendations
- Alternatives Defined

SPECIFIC PRODUCTS (cont.)

BY AUGUST 1986:

- System-wide Physical Alternative Evaluation and Recommendations
- 6-year CIP, 20-year Operating Projections
- Projected Funding Needs and Sources
- Analytical Models
- Follow-up Actions Defined
  - AMHS staff training in model application
  - Final documentation
  - Public and agency review

PRESENTATION OUTLINE

I. Purpose

II. Process Description

III. Products To Be Delivered

→ IV. Progress To Date

PROGRESS TO DATE

TASK	STATUS
• Review Existing Plans	• Completed March 31, 1986 (Work Memo A)
• Define Issues	• Correspondence and reports reviewed • Interviews of DOT&PF, transport industry, and others in progress

PROGRESS TO DATE (cont)

TASK	STATUS
• Collect Data	• Travel Survey Complete • Marine Data Collection Complete • Financial Data Identified • Manufacturer's Questionnaire Completed • Technical Resource Data Compiled
• Initiate Public Participation Program	• Design of Program Started
• Develop Analytical Models	• Transportation Demand Model Requirements Defined • Marine Planning, Vessel Operations Models Defined • Financial Analysis Models Defined • Routing and Scheduling Model Definition in Progress

HIGH SPEED FERRY SELECTION PROCESS

FOR

SERVICE IN THE SOUTHERN PANHANDLE

HSF SELECTION PROCESS

PRESENTATION OUTLINE

I. Purpose

II. Known Constraints

III. The Process

IV. The Product

V. Progress

HSF SELECTION PROCESS

PURPOSE

- To implement the Southeast Transportation Plan's recommendation for high speed ferry service in the Southern Panhandle region by using the emerging tools of the system planning process

- Subsequently, to apply the same planning methods to analyze establishment of high speed ferry service system-wide.

- To provide the Operation and Economic Comparison Model to the AMHS Staff for later alternative analysis using the same methods.

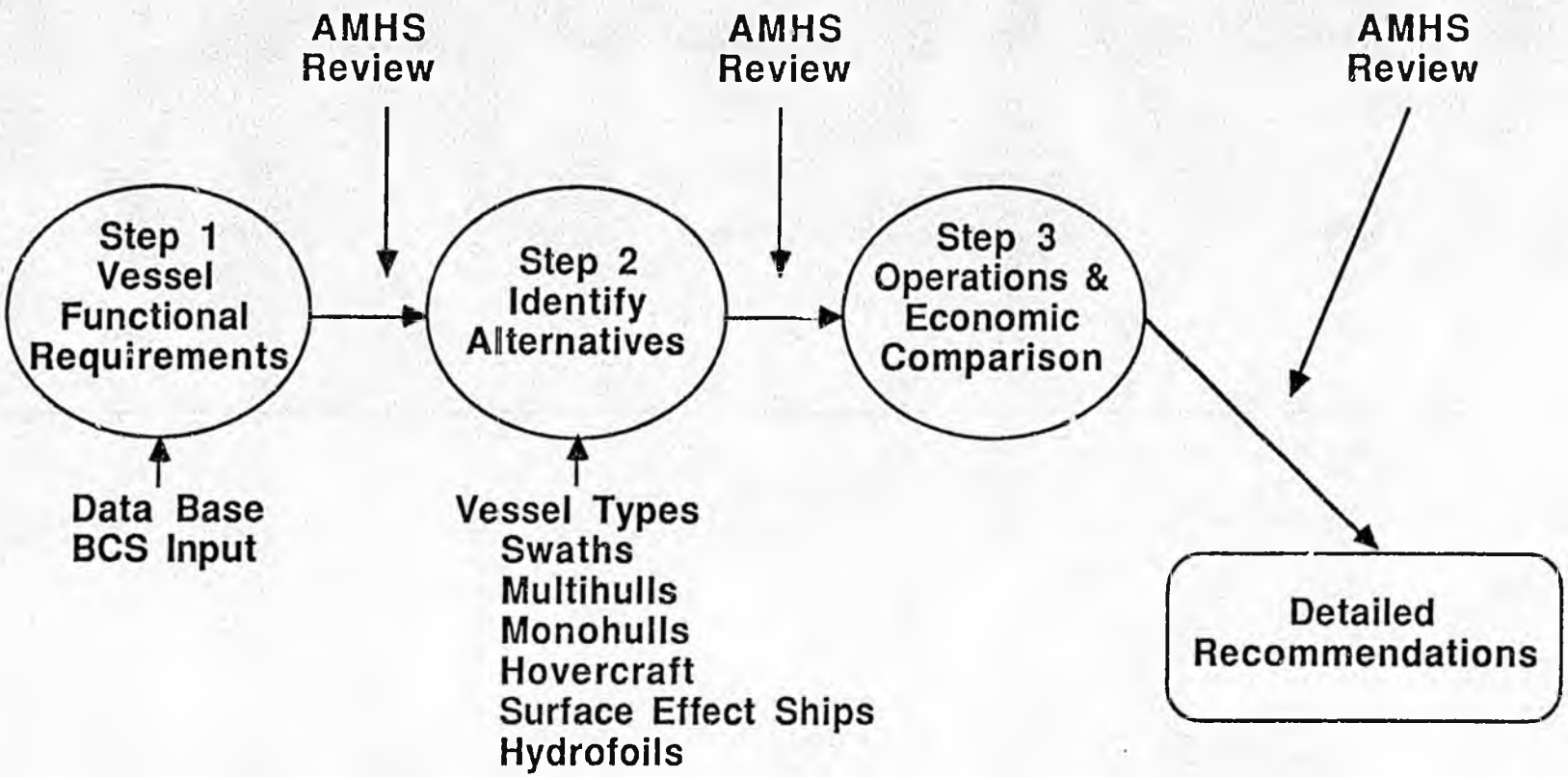
HSF SELECTION PROCESS

KNOWN CONSTRAINTS

- Few High Speed Ferries carry vehicles and/or cargo
- Ferry to be a Day Boat -— Crew to Home Port Nightly
- Maximize Crew Productivity
- Maintainable in Alaska
- Minimum or No Modifications to Existing Terminals
- Serve in the Southern Panhandle Environment
- Minimize Risk and Damage from Object Strikes
- Acceptable Ride Quality — Acceptable Availability
- "Get Home" Capability
- Acceptable Wake and Effect on Shorelines

HSF SELECTION PROCESS

THE PROCESS



HSF SELECTION PROCESS

THE PRODUCT

- **Requirements Review**
- **Review of Candidate Vessels to be Modeled**
- **Definition of Preferred Vessel(s) Characteristics:**
  - Vessel Type
  - Vehicle and Cargo Capacity
  - Passenger Capacity
  - Speed (at full load, engine at continuous rating)
  - Crew Size and Qualifications
  - Propulsion & Generator Engine Types
  - Loading & Unloading Configuration
  - Features to Accomodate Terminals
  - Features for Protection from Object Strikes
  - Vehicle & Cargo Deck Strength Requirements
  - Wake Limitations
  - Maximum G Forces on Passengers at Operating Speed in a Specified Sea State

HSF SELECTION PROCESS

PROGRESS

- **Developed Data Bases Including**

  UMTA Study
  Southeast Transportation Study
  Consultant's Files
  Questionnaire to Manufacturers

- **Preliminary Functional Requirements Definition Started**

HSF SELECTION PROCESS

PROGRESS (cont)

- Next Milestones

  By 5/15: Requirements Review

  By 6/6: Review of Candidate Vessels to be Modeled

  By 6/30: Definition of Preferred Vessel(s) Characteristics

- Subsequent Milestones

  System–Wide Evaluation of High Speed Alternatives

  Impact of High Speed Service on Other Routes, Schedules and Costs

RS 2477 TASK FORCE REPORT

Senate Transportation Committee
RS 2477 Task Force
Report

Submitted By
Malcolm B. Roberts
and
Valerie Taliman Chavez

January 17, 1986

Senate Transportation Committee
RS 2477 Task Force
Report

Submitted By
Malcolm B. Roberts
and
Valerie Taliman Chavez

January 17, 1986

Malcolm B. Roberts & Associates
Consultants - Community and Government Relations

MEMORANDUM

TO: Senator Jack Coghill, Chairman
Senate Transportation Committee

FROM: Malcolm Roberts/Valerie Taliman Chavez
RS 2477 Task Force

DATE: January 17, 1986

RE: Report on RS 2477 Contract
July 1 - December 31, 1985

Enclosed herewith is our report on the 1985 RS 2477 contract. Xerox copies of the eight (8) National Park Service maps and trail descriptions are included in Section I of this report. The nine (9) U.S. Fish and Wildlife Service maps and trail descriptions can be found in Section II. Correspondence highlighting the development of this project is also included in appropriate sections, as is the draft State policy paper on this issue, press reports, and other germaine materials.

We stand ready to provide an oral report on our work to you and members of the Transportation Committee(s) or any other forum you choose.

It has been a pleasure working on this issue, which promises to have great significance for our state.

With best regards,

Malcolm B. Roberts

Valerie Taliman Chavez

2001 Churchill Drive / Anchorage, Alaska 99503 / (907) 272-4541

RS 2477 TASK FORCE 1985 REPORT

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RS 2477 TASK FORCE
1985 REPORT

For contract period July 1, 1985 to December 31, 1985

EXECUTIVE SUMMARY

Revised Statute 2477 was an Act passed by Congress in 1866 which provided for rights-of-way for "highways" over unreserved public lands. Under Alaska statutes, the definition of a highway is very broad and includes roads, streets, trails and walks.

The RS 2477 issue has received more attention in recent months as federal agencies prepare management plans which will govern the use of park and refuge lands created by the Alaska National Interest Lands Conservation Act (ANILCA). See Appendix for news articles.

When the Alaska National Interest Lands Conservation Act (ANILCA) was passed in 1980, it conveyed millions of acres of land into 16 national wildlife refuges and 13 national parks, which now fall under federal management.

ANILCA also required, within five years of its passage, the preparation of conservation and management plans for each national park and refuge established. In 1985, the National Park Service (NPS) was in the process of completing 13 general management plans; the U.S. Fish and Wildlife Service (FWS) has issued draft comprehensive conservation plans for 8 of its 16 plans. These plans will be presented to Congress in 1986 and 1987.

In his role as Chairman of the Senate Transportation Committee, Senator Jack Coghill saw a need to assure that Alaska's people will not be prevented from using the roads and trails that historically have connected communities throughout the state. Where these trails cross a park or refuge, the State-owned rights-of-way prevail and should not be curtailed by federal regulations restricting or prohibiting access. Some observers had expressed the fear that if State ownership is not recognized in federal planning documents prior to adoption by Congress, only an act of Congress could grant a right-of-way in the future, as was the case when NANA secured a right-of-way for Red Dog Mine this year.

On July 1, 1985, Senator Coghill formed a task force, comprised of Malcolm Roberts and Valerie Taliman Chavez, to ensure that the federal management plans adequately recognize these historic trails. Working with the Alaska Departments of Natural Resources and Transportation/Public Facilities, the task force prepared maps and a list of possible RS 2477 rights-of-way that the State wants included in these federal plans. By December 31, 1985, the task force identified 159 trails in 9 national parks and 85 trails in 11 national wildlife refuges. Maps and trail descriptions for national parks are detailed in Section I of this report. Maps and trails descriptions for national wildlife refuges are contained in Section II.

Trail information was derived from the 1974 Alaska Trails System Inventory, an atlas developed by former Commissioner of Highways Bruce Campbell to catalog the state's 1,400 known trails. The inventory was sent to the Bureau of Land Management (BLM) in 1974, before that agency had any authorization to deal with RS 2477's. However, the inventory was shelved by BLM and no formal response was made to acknowledge the State's ownership of these trails.

Only now has an inter-agency effort begun to respond to the rising interest in RS 2477. The Department of Interior (DOI) formed a RS 2477 Task Force in September, 1985, under the leadership of Ric Davidge of the U.S. Fish & Wildlife Service. The members include representatives of the Fish & Wildlife Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Bureau of Indian Affairs, Alaska Federation of Natives, Alaska Native Land Managers Association, Alaska Department of Natural Resources, Alaska Department of Transportation/Public Facilities, the Office of Management & Budget/CSU Coordinator and the Senate Transportation Committee. Activities of this task force and a list of its membership are referred to in Section III, along with documentation of Interior Assistant Secretary Bill Horn's decision to include maps in the federal plans.

The State of Alaska has recently taken a positive posture by publishing draft policies and procedures governing RS 2477 trails. This well-written and well-researched document spells out the State's intent to deal with all the issues surrounding these trails in a fair manner. It includes the criteria used to determine a RS 2477, as well as issues relating to liability, maintenance and use. A copy is provided in Section IV. The deadline for public comments was January 6; a revised draft reflecting the input received will be published by March.

In the course of studying the RS 2477 question, the task force became aware of a significant issue that should be better understood by both state and federal officials. Section 103 (c) of ANILCA provides that only those lands that are "public lands" (not state) are subject to federal regulation. Pre-existing property rights of the State remain under state management. This includes R.S. 2477 roads and trails. (See page 102, memorandum by Ric Davidge and page 109, RS 2477 case law paper by Ted Bingham, Chief of Right-of-Way, Bureau of Land Management, Washington, D.C.)

This task force feels that it is essential for the State and its people to maintain their ownership rights to these trails. What's at stake is access for homesites, fishing, recreation, mineral development, forestry, agriculture and travel between villages, not only for the present, but for many generations in the future.

- -

This task force would like to thank the following individuals and agencies for their input and assistance: Assistant Secretary Bill Horn, Vern Wiggins, Ric Davidge, U.S. Department of Interior; U.S. FWS Regional Director Robert Gilmore; BLM Regional Director Mike Penfold; NPS Regional Director(s) Roger Contor and Boyd Evison; Commissioner Esther Wunnicke, Tom Hawkins, and Gary Gustafson, Alaska Department of Natural Resources; Commissioner Richard Knapp and Mark Hickey, Alaska Department of Transportation/Public Facilities; Sally Gibert, CSU Coordinator, Office of Management and Budget; Janie Leask and Lawrence Kimball, Alaska Federation of Natives; Representative Adelheid Herrman, who chaired a special AFN RS 2477 workshop; Ruth Packard of Senator Tim Kelly's staff, and the able staff of the Anchorage Legislative Information Office.

SECTION I - NATIONAL PARK SERVICE

Senator John B. (Jack) Coghill
Alaska State Legislature

Pouch V
Juneau, Alaska 99811
(907) 465-4745

Box 458
Nenana, Alaska 99760
(907) 832-5471

June 27, 1985

Mr. Roger Contor
Regional Director of Alaska Regional Office
National Park Service
2525 Gambell Street
Room 107
Anchorage, AK 99503

Dear Mr. Contor:

This letter is to inform you that I am in the process of preparing assertions on the RS 2477 rights-of-way that lie within and across the National Park Systems that your agency is studying at the present time. These systems include:

Cape Krusenstern National Monument
Kobuk Valley National Park
Noatak National Preserve
Bering Land Bridge National Preserve
Gates of the Arctic National Park and Preserve
Denali National Park and Preserve
Wrangell-St. Elias National Park and Preserve
Katmai National Park and Preserve
Aniakchak National Monument and Preserve

This action is pursuant to legislative action taken during the session in Senate Joint Resolution (SJR 10).

In the public interest, it is vital that all potential RS 2477 rights-of-way are included in these management plans. Specifically, I request that they be included on at least one of the maps in each plan.

As time is short, I would appreciate the cooperation of your staff in helping us prepare this information in a manner suitable to your agency.

Sincerly,

Senator John B. Coghill, Chairman
Senate Transportation Committee

cc: The Honorable Don Hodel, U.S. Secretary of the Interior
Michael Penfold, Alaska Regional Director, BLM

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

TO: Roger Contor, Regional Director
Michael Finley, Associate Director of Operations
National Park Service

FROM: Senator Jack Coghill

DATE: July 16, 1985

RE: Inclusion of the State of Alaska's R.S. 2477 assertions in the N.P.S.'s General Management Plans.

My sincere thanks for the meeting with you and your staff. So that we have a memo for our file--my understanding of the outcome of that meeting was as follows.

1. It is in the public interest to include the State of Alaska's R.S. 2477 right-of-way assertions in both list and map format in the nine General Management Plans (GMPs) currently being finalized. We understand from you that Assistant Secretary Bill Horn concurs with this decision.

2. By the middle of next week, you will inform us of any changes in the rewritten boilerplate statement on R.S. 2477's that I drafted and delivered. These paragraphs, which introduce the issue to the public will be included in all nine plans.

3. By July 29, Malcolm Roberts and Valerie Chavez of my Task Force, working with Sally Gilbert of OMB, Mark Hickey of DOT/PF and Gary Gustafson of DNR, will prepare a list of all of the state's R.S. 2477 assertions that may influence land management in the CSU's. These lists will be delivered to Linda Nebel.

4. By August 18, we will prepare one map for each GMP that indicates the location of each R.S. 2477 assertion listed.

5. We will work with you to write a clear caveat for inclusion on each map so that they are not misinterpreted by the public.

6. In time for the Alaska Land Use Council on September 18 (if possible), and certainly in time for actual final printing of the plans, we will prepare the R.S. 2477 maps in a style and quality that matches the maps in the draft publications.

After our meeting, Malcolm, Valerie and I met with Linda and her staff. As several artists, including some in Denver, were involved in production of the draft plans, Linda agreed to obtain copies of the original base maps and the mylar overlays that delineate each park or preserve. With these in hand, we can then complete the assignment of adding the R.S. 2477's in the appropriate artistic style within the tight time frame.

If it is an issue, we will be responsible for the costs of duplicating this art work and for shipping it here via rapid carrier. Please let us know as soon as possible about this matter.

If any of the points of agreement have been stated incorrectly, please let me know in Juneau at 465-4921 and send me your corrections in writing.

cc: The Honorable Don Hodel, Secretary of the Interior
Commissioner Richard Knapp, Alaska Department of Transportation and Public Facilities
Commissioner Ester Wunnicke, Alaska Department of Natural Resources
Sally Gilbert, State CSU Coordinator

SENATOR
B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

TO: Roger Contor, Regional Director
National Park Service

FROM: Senator John B. Coghill, Chairman
Senate Committee on Transportation

Date: July 29, 1985

RE: R.S. 2477 Rights-of-way- in CSU's

As we agreed in our meeting of July, I am submitting the following list of R.S. 2477 rights-of-way which have been asserted by the State of Alaska for inclusion in nine of the General Management Plans. The list, compiled for each Conservation System Unit, provides for name of each R.S. 2477 trail with a general description of the trail's course.

The corresponding maps which detail the trails within each park system will be delivered to your office on August 18 as planned so that they may be published in the General Management Plans for each Conservation System Unit.

I appreciate your assistance in making this opportunity available for the general public to become aware of these historic rights-of-way. I will be following the progress of the GMP's after your departure from the National Park Service and I am looking forward to seeing the finished product.

Again, thanks for your help and best wishes for an enjoyable retirement.

cc: The Honorable Don Hodel, Secretary of the Interior
Ric Davidge, Assistant Secretary's Office
Linda Nebel, NPS Planning Chief

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 9981
(907) 465-4921

Senate Committee on Transportation

TO: Bob Peterson, Acting Regional Director
National Park Service

FROM: Senator Jack Coghill, Chairman Valerie Abney for

DATE: August 28, 1985

RE: R.S. 2477's Right-of-way in CSU's

To follow up on the list of trails I submitted on July 31, I have attached a revised list of R.S. 2477 rights-of-way which have been asserted by the State of Alaska for inclusion in the General Management Plans. The list, compiled for each Conservation System Unit, provides the name of each R.S. 2477 trail with a general description of the trail's course.

The corresponding maps which detail the trails within each park system accompany this list so that they also may be published in the General Management Plans.

I appreciate your assistance in assuring that our agreement with Roger Contor is carried out and I am looking forward to seeing the finished product.

cc: The Honorable Don Hodel, Secretary of the Interior
Bill Horn, Assistant Secretary of the Interior
Ric Davidge, Assistant Secretary's Office
Linda Nebel, NPS Planning Chief

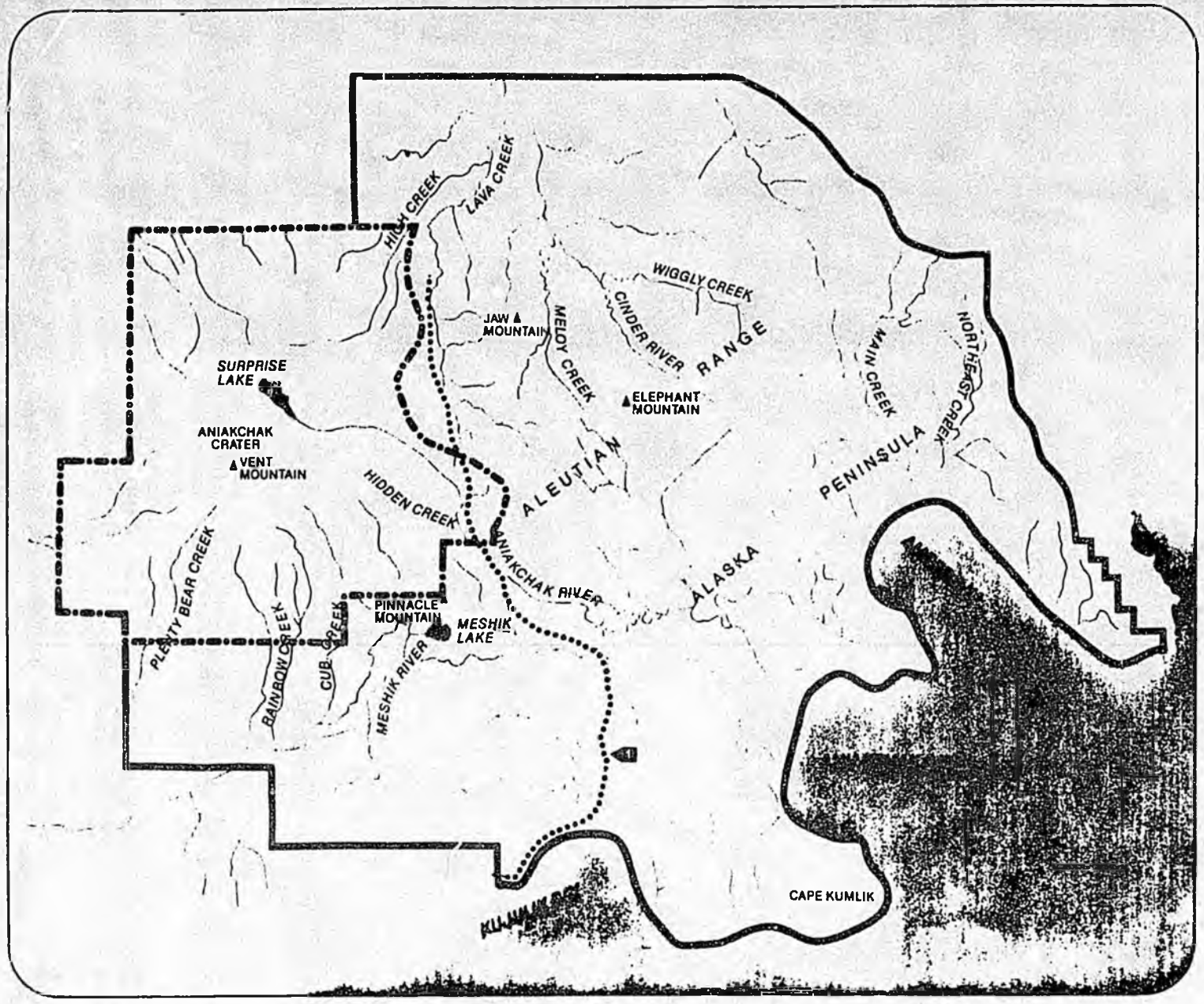
SUMMARY OF POSSIBLE RS 2477 RIGHTS-OF-WAY IN NATIONAL PARKS

Alaska's National Parks	# of trails
1. Aniakchak National Monument & Preserve	1
2. Bering Land Bridge National Preserve	13
3. Cape Krusenstern National Monument	2
4. Denali National Park & Preserve	28
5. Gates of the Arctic National Park & Preserve	7
6. Glacier Bay National Park & Preserve*	
7. Katmai National Park & Preserve	3
8. Kenai Fjords National Park*	
9. Kobuk Valley National Park	1
10. Lake Clark National Park & Preserve*	
11. Noatak National Preserve	0
12. Wrangell-St. Elias National Park & Preserve	104
13. Yukon-Charley Rivers National Preserve*	
Total trails	159

* The General Management Plans (GMP's) for these parks were completed before this task force began work.

Trail information was derived from the 1974 Alaska Existing Trails Inventory, however, it is not a complete compilation of all possible RS 2477 rights-of-way in the state.

The GMP's were scheduled to be presented to Congress in December, 1985. This deadline was postponed by NPS on November 20, 1985 and the nine draft plans listed above were released for an additional 60-day comment period which ends on February 9, 1986. The plans will be revised to include additional comments and information, including possible RS 2477 rights-of-way, before being sent to Congress in late spring.



POSSIBLE R.S. 2477 RIGHTS-OF-WAY

ANIAKCHAK

National Monument and Preserve

- MONUMENT BOUNDARY
- PRESERVE BOUNDARY
- POSSIBLE R.S. 2477 TRAIL
- R.S. 2477 TRAIL NO.

(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities. Submitted April 1974.)

0 2.5 5 MILES

N

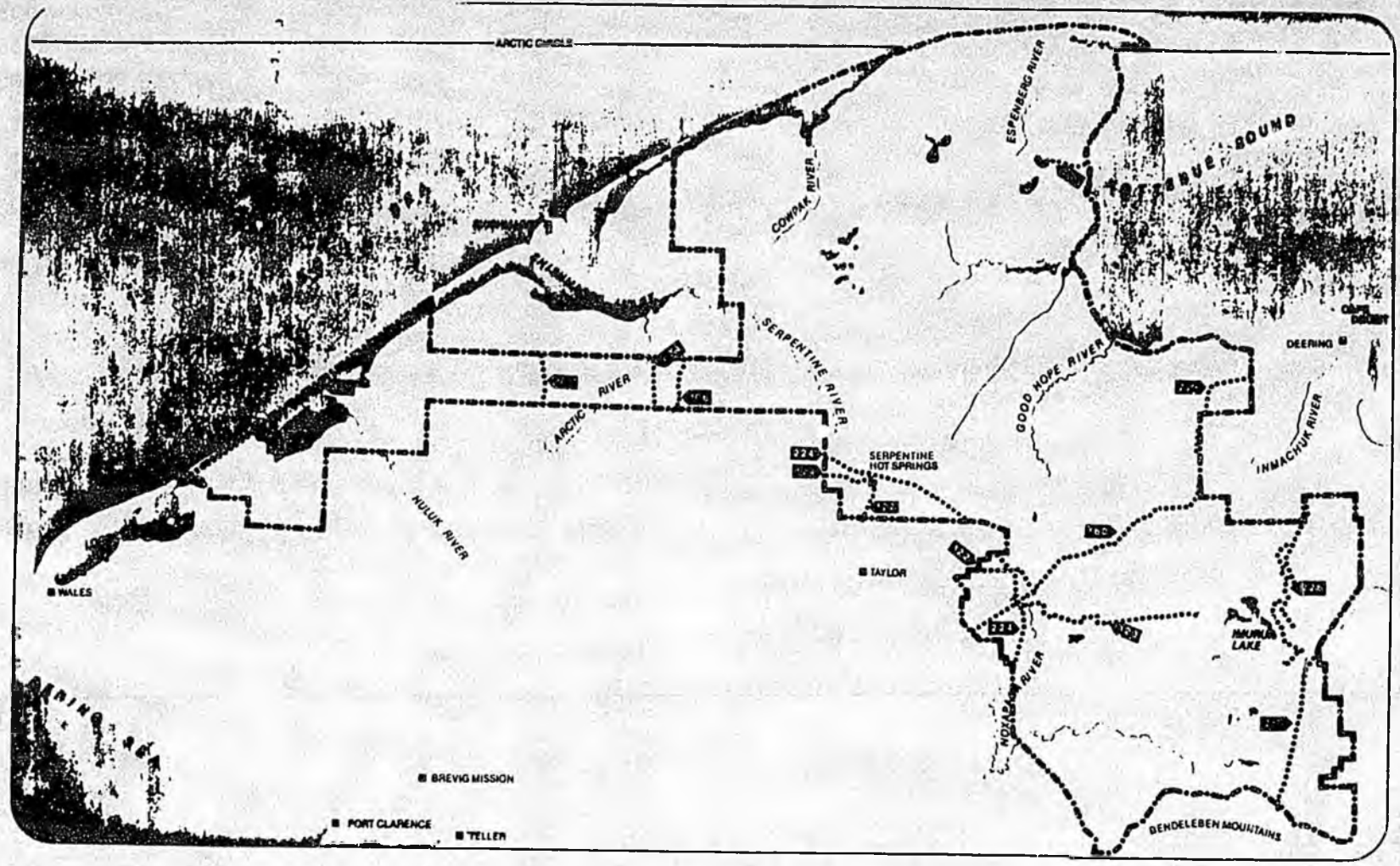
ANIAKCHAK NATIONAL MONUMENT

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of Aniakchak National Monument according to the 1974 Alaska Trails System inventory. The trails are listed by quadrangle corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 1 Chignik Lagoon Trail NE (Kujulik Bay south of High Creek)

Identification - Quad 31, at Chignik Lagoon (Indian Village)

Description: The trail runs northeast along coast of Chignik Bay, crosses land to Kujulik Bay, runs along coast northeast to north fork, runs north via Lava Creek.



POSSIBLE R.S. 2477 RIGHTS-OF-WAY

BERING LAND BRIDGE

National Preserve

13

PRESERVE BOUNDARY

POSSIBLE R.S. 2477 TRAIL

R.S. 2477 TRAIL NO.

(This number corresponds to the Alaska Existing State System Source Index of Alaska Segments of Rights-of-Ways/Public Easements Submitted April 1974)

0 5 10 15 20 25 Miles

0 5 10 15 20 25 Kilometers

N

BERING LAND BRIDGE NATIONAL PRESERVE

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of the Bering Land Bridge National Preserve, according to the Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 122 Kougarok River Winter Trail (east of Taylor)

Identification - Quad 110, T5N, R30W, KRM

Description: The trail is located in T5N, R29 & 29W, KRM, also eastern 2/3 of T5N, R30W, T4N, R28W, 29, 30W, T3N, R28, 29, 30W, T2N, R28, 29, & 30W, T1N, R28, 29, 30W.

Trail 123 Noxapaga River Trail (southeast area, near Imuruk Lake)

Identification - Quad 110, T1N, R27W

Description: Boulder Noxapaga River district; trail system located in T1N, R27W, T2N, R26, 27W, T3N, R26, 27W, T4N, R26, 27W, T5N, R25, 26W, KRM.

Trail 160 Dahl Creek/Candle Trail - 140 mile trail (near Inmachuk R.)

Identification - Quad 110, Candle to Kougarok River

Description: The trail runs in a northeasterly direction from Dahl Creek to the Kougarok River, following the east slope of the divide to the head of Boulder where it crosses into Aurora Creek. It follows to the mouth of Aurora Creek, crosses the Norapaga and goes up Berry Creek, crossing the divide to the mouth of the right fork of Good Hope, then up Cottonwood to Divide Creek then up Divide Creek, crossing the divide and following ridge to the Inmachuk River. Trail goes down the Inmachuk to Arizona Creek, then easterly over the divide to Wade Creek, then crossing Wade Creek in an easterly direction to the Kugruk Flats toward the Kugruk River, then easterly over the divide to the mouth of Paterson, then down the Candle. It continues from Candle Creek Road to Candle, with spur running from Camp 19 up Candle Creek about 2 miles.

Trail 213 White Mountain/Kugruk Lagoon Trail (below Imuruk Lake)

Identification - Quad 110, White Mountain to Kugruk Lagoon

Description: The trail runs from 6 miles northwest of White Mountain on Trail 97 going up Fish River thence across Kugruk River over continental divide to Kugruk River then down same to Kugruk Lagoon.

Trail 223 Sullivan Lake (west of Deering)

Identification - Quad 110, Sullivan Lake

Description: The trail runs from Sullivan Lake on Kotzebue Sound southwest to top of ridge, then along top of hill to the head of Hannum Creek and Trail 160.

Trail 224 Kuzitrim/Shishmaref Inlet (above Noxapaga River)

Identification - Quad 110, Shishmaref

Description: The trail goes from the mouth of Kuzitrin River at Mary's Igloo upstream to Noxapaga River up the Noxapaga River to divide, thence following the divide west to Serpentine Hot Springs, Lone Butte Creek, Serpentine Creek, Snowshoe Creek, Eldorado Creek, Bonanza Creek and down to Arctic and then to Shishmaref Inlet following Arctic River.

Trail 226 Fink Creek (east corner of map)

Identification - Quad 110, Fink Creek

Description: The trail is a series of loops and off-shoots from Fink Creek up Pinnell River and along Fairhaven Ditch to Kettle Dome and Imuruk Lake area.

Trail 100 Nome/Shishmaref Coastal Winter Trail (west border of map)

Identification - Quad 111, Nome/Teller/Shishmaref

Description: The trail begins in Nome and follows coastline north across Penny River, Sinuk River around Cape Douglas cutting across peninsula south of Port Clarence, around Cape Riley to Teller. Trail proceeds northwest along coast on both sides of Brevig Lagoon across Lost River through Tin City, around Cape Prince of Wales, along coast past Lopp Lagoon, Ikpek Lagoon and Arctic Lagoon and Shishmaref Inlet to Shishmaref village.

Trail 105 Shishmaref/Teller (near Arctic River)

Identification - Quad 111, Teller Winter Trail

Description: The trail runs from the village of Shishmaref southwest across Shishmaref Inlet to Tin Creek to Kreuger Creek near Ear Mountain down Kreuger Creek to Arctic River upstream to Idaho Gulch, crossing to the north fork of the Nuluk River and down the Nuluk to junction of south fork. Proceeds down south fork crossing a divide to Arctic Creek downstream to Short Creek, thence to the Agiapuk River, crossing that river and following upstream on Dese Creek to headwaters of Bay Creek and south to Teller.

Trail 106 Shishmaref/Teller - east route winter trail (near Arctic River)

Identification - Quad 111, Shishmaref

Description: The trail runs from the village of Shishmaref east across inlet to the mouth of the Savagvich River upstream to Bonanza Creek to headwaters crossing over to Portage Creek then downstream to cross and follow upstream on the west Agiapuk River turning south near Trail 105 to Bay Creek near Teller.

Trail 124 Serpentine Hot Springs/Budd Creek (near Serpentine Hot Springs)

Identification - Quad 111, T3, 4, 5N, R29, 30, 31, 32 & 35W, KRM

Description: The trail starts from Serpentine Hot Sprins and runs west across Mukluk Creek turning southwesterly to Bryan Creek following same past McKinley Creek across to south fork of Serpentine River dividing with one spur running south up Star Creek then across continental divide to tributary of Budd Creek. The other spur runs west to Quartz Creek and along same to its head and across continental divide to east Portage then south to mouth of Eldorado Creek at confluence of Budd Creek.

Trail 107 Killeak Lake/Otz Sound (near Kotzebue Sound)

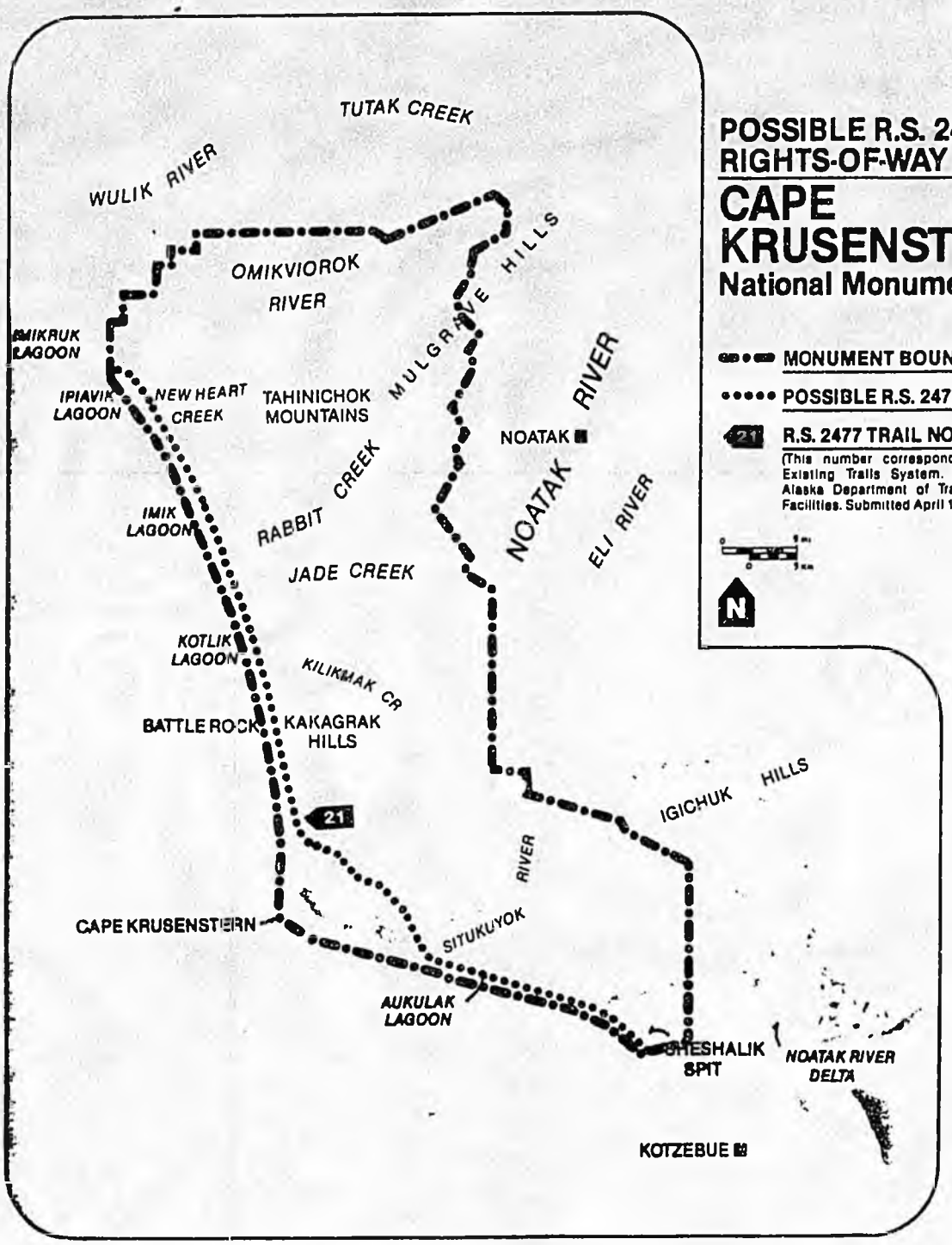
Identification - Quad 113, T11N, R24 & 25W KRM

Description: The trail runs in T11N, R24 & 25W KRM approximately 5 miles from North Killeak Lake to coast on Kotzebue Sound.

Trail 223 Kotzebue/Sullivan Lake (near Deering)

Identification - Quad 113, Sullivan Lake

Description: The trail runs from Sullivan Lake on Kotzebue Sound south to top of ridge, then along top of hill to head of Hannum Creek and Trail 160.


TUTAK CREEK
WULIK RIVER
OMIKVIOROK RIVER
MULGRAVE HILLS
IKRUK LAGOON
IPIAVIK LAGOON
NEW HEART CREEK
TAHINICHOK MOUNTAINS
NOATAK
NOATAK RIVER
ELI RIVER
RABBIT CREEK
IMIK LAGOON
JADE CREEK
KOTLIK LAGOON
KILIKMAK CR
BATTLE ROCK
KAKAGRAK HILLS
IGICHUK HILLS
21
RIVER
CAPE KRUSENSTERN
SITUKUYOK
AUKULAK LAGOON
SHESHALIK SPIT
NOATAK RIVER DELTA
KOTZEBUE
POSSIBLE R.S. 2477 RIGHTS-OF-WAY
CAPE KRUSENSTERN
National Monument
MONUMENT BOUNDARY
POSSIBLE R.S. 2477 TRAIL
21
R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing Trails System. Source: State of Alaska Department of Transportation/Public Facilities. Submitted April 1974.)
N

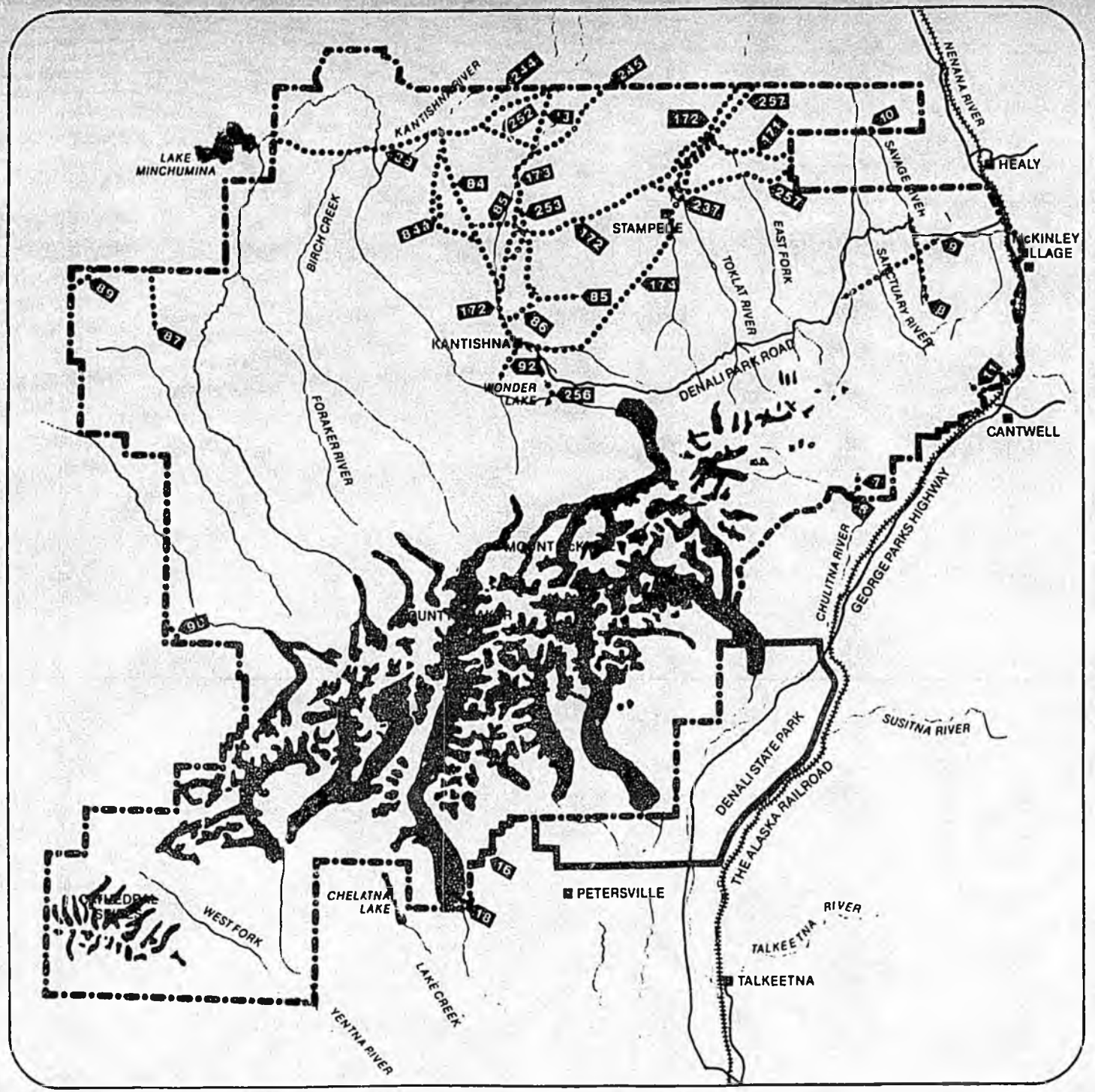
CAPE KRUSENSTERN NATIONAL MONUMENT

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of the Cape Krusenstern National Monument, according to the Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 21 Coastline Winter Trail (Sheshalik Spit to Imikruk Lagoon)

Identification - Quad 128, coastline winter trail

Description: Trail runs from the north end near mouth of Kurupuk Creek in T31N, R30W, KRM. Winter trail proceeds southeast along coast through Cape Seppings, Kivalina, Imikruk Lagoon, Imik Lagoon, Kiligmak Inlet, Tasaychek Lagoon, to Krusenstern Lagoon. Passes Kasik Lagoon on east side through Talikoot returning to shoreline at mouth of Tukrok River, following coast to Sheshalik, T18N, R19W, across to Kotzebue. T17N, R18W, KRM.



POSSIBLE R.S. 2477 RIGHTS-OF-WAY

DENALI

National Park and Preserve

- PARK BOUNDARY
- PRESERVE BOUNDARY
- GLACIERS
- POSSIBLE R.S. 2477 TRAIL
- R.S. 2477 TRAIL NO.

(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974.)

DENALI NATIONAL PARK AND PRESERVE

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of the Denali National Park & Preserve, according to the Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 16 (no name) winter trail (southcentral end of map)

Identification - Quad 81, T29N, R10 & 9W

Description: The trail runs northwest through Dutch Hills to Bear Creek taking a turn here and running parallel to Dutch Creek almost as far as Stony Creek.

Trail 18 (no name) (southcentral end of map)

Identification - Quad 81, T26N, R12-8W

Description: The trail leaves townsite of Peters Creek via Black Creek following up to cross Spruce Creek, Fox Gulch, going by Sunset up to Granite Creek then going down through the landing strip at Treasure Creek, crossing lake, Sunflower & Camp Creeks, through Collinsville cross land to Clearwater Creek ending at Youngstown bend on the Yentna River.

Trail 90 (no name) (west border of map)

Identification - Quad 81, Telida southeast to Little Mt. Mine

Description: The trail runs from Telida southeast to Slow Fork, southeast along Slow Fork to Slow Fork Hills, thence east along north side of Slow Fork Hills, thence southerly along base of hills to approximately T20S, R27W, FM thence southeast over Giles Lake and to edge of map at T22S, R25W, FM.

Trail 6 Bull River Road (near George Parks Highway)

Identification - Quad 87, T20S, R10W, FM

Description: The trail runs from Colorado on the Alaska RR across Bull River and on the west fork of the Chulitna River to the Golden Zone Mine.

Trail 7 Dunkle Mine Road (near George Parks Highway)

Identification - Quad 87, T19S, R10W

Description: The trail runs from Bull River up to the Dunkle Mine a distance of about 3.5 miles.

Trail 8 Savage River Trail (above Sanctuary River, east part of map)

Identification - Quad 87, T14S, R9W, FM

Description: The trail runs from Savage River campground up the Savage River about 8 miles.

Trail 9 Igloo Mt. Ranger Station Trail (near McKinley Village)

Identification - Quad 87, T14S, R9W, FM

Description: The trail runs from McKinley Park Road to ranger cabin.

Trail 10 Lignite to Clearwater Fork (west of Nenana River)

Identification - Quad 87, T12S, R12W

Description: The trail runs from Lignite Station (mile 363 on RR) west across Middle, Chisana & Toklat Rivers up Crooked Creek and down Bearpaw River to Glacier City and from there up Moose Creek terminating at Kantishna P.O.

Trail 11 Windy Creek Trail (above Cantwell)

Identification - Quad 87, T17S, R7W

Description: The trail runs from Cantwell - one branch goes up Windy Creek to a cabin just outside Denali National Park boundary. The other branch goes downstream to the Alaska RR about 4 miles from Cantwell.

Trail 13 Diamond/Bearpaw (sled road) (north end of map)

Identification - Quad 88, T11S, R17W, FM

Description: The trail runs from Bearpaw up the Bearpaw River to Diamond.

Trail 84 Kantishna/Moose Creek Trail (below Kantishna River)

Identification - Quad 88, Kantishna River, T11S, R19W, FM

Description: The trail runs from Jct. with Kantishna Trail (Rex/Eureka Creek) at the Kantishna River T11S, R19W, FM, southeast to Jct. with Kantishna Trail at lower canyon on Moose Creek, T15S, R18W, FM.

Trail 84A (loop trail) (loop off 84)

Identification - Quad 88, T14S, R19W, FM

Description: The trail runs from jct. with Trail 84 near Kantishna River due south for approximately 9 miles then southeast to connect with #84 in T14S, R19W, FM (loop & spur also).

Trail 85 Jct. of Trail 84 - Glacier/Caribou Creek (below Stampede)

Identification - Quad 88, Glacier/Caribou Creek, T13S, R19W, FM

Description: The trail runs from Jct. with 84 in T13S, R19W, FM due east for six miles, thence south to Glacier, from Glacier south on the divide between Glacier Creek and Caribou Creek to the base of Glacier Peak, thence north to Caribou Creek, thence upstream on Caribou Creek to a cabin about two miles east of Crevice Creek; T15S, R16W, FM.

Trail 86 Kantishna/Glacier Creek (above Kantishna)

Identification - Quad 88, Kantishna Trail to Glacier Creek

Description: The trail runs from Jct. with Kantishna Trail near Canyon Creek northeast across Flat Creek to a cabin on Glacier Creek.

Trail 87 Fish Lake to Deep Creek (northwest corner of map)

Identification - Quad 88, T14S, R26W, FM

Description: The trail runs from a cabin on Fish Lake T16S, R26W, FM north to Deep Creek T14S, R26W, FM.

Trail 89 Toklat River/Lake Minchumina/Telida (northwest corner of map)

Identification - Quad 88, T26S, R24E, KRM

Description: The trail begins on Kantishna Trail in T10S, R15E, FM and runs northwest to Bearpaw thence southwest to Kantishna River jct. with Kantishna trail at Kantishna River westerly to village of Lake Minchumina, thence southwesterly via Thirty Eight Mile Lake to Highpower Creek, thence down Highpower Creek to north shore of Lower Telida Lake, to west of lake and thence south to Telida, westerly across north fork crossing the southwest corner of T24S, R26E, thence southwest to Berry Lake and continues to end of trail in T26E, KRM.

Trail 92 Kantishna/Slate Creek (above Wonder Lake)

Identification - Quad 88, Kantishna/Slate Creek, T16S, R18W, FM

Description: The trail runs from Kantishna southwest on Eldorado Creek and Slate Creek ending at a mine; T16S, R18W, FM.

Trail 171 Lignite/Kantishna Trail - 85 mile trail (northeast corner)

Identification - Quad 88, Part of Trail 87-10

Description: The trail runs from Lignite Station (mile 363 on RR) west across middle Chisana and Toklet River up Crooked Creek and down Bearpaw River to Glacier City; from there up Moose Creek terminating at Kantishna P.O.

Trail 172 Kantishna Trail (above Kantishna)

Identification - Quad 88, Kantishna Trail

Description: The trail runs from Rex westerly across Teklanika River and Toklat River thence southwesterly along Toklat River to Little Bear Creek then up Little Bear Creek to head; then south to Crooked Creek, then westerly up to Crooked Creek and over Kantishna Hills to Bearpaw Creek, then down Bearpaw Creek to Glacier; then south to Lower Canyon; then along Lower Canyon to Kantishna.

Trail 173 Diamond/Glacier Trail (northcentral part of map)

Identification - Quad 88, Diamond/Glacier

Description: The trail runs from Diamond up Moose Creek and down to Glacier.

Trail 174 - part of Kantishna Trail (below Stampede)

Identification - Quad 88, Mt. McKinley Nat'l Park Point/Kantishna

Description: The trail begins from the jct. of Trail 237 on the west side of the Toklat River southerly along the foothills of the Kantishna Hills and west of the Clearwater Creek to the jct. of Trail 92 near Kantishna, 33 miles.

Trail 237 Rex/Kantishna Trail (above Stampede)

Identification - Quad 88, T13S, R14W, FM

Description: The trail runs from Rex westerly paralleling Bearpaw Trail (Kantishna Trail) to Toklat River gradually curving south to the Toklat River thence up the Toklat to Jct. of Trails 171 and 257 in T13S, R14W, FM.

Trail 244 Roosevelt - Unnamed lake (north border of map)

Identification - Quad 88, T10S, R18W

Description: The trail runs from Kantishna River at a point almost due south of Bearpaw Mountain T10S, R18W, to an unnamed lake T11S, R18W, approximately 4 miles.

Trail 245 Cutoff on Kantishna Trail (north border of map)

Identification - Quad 88, T10S, R15W

Description: The trail runs from jct. 237 and 172 at the Toklat River thence southwest to about 6 miles past Nineteen Mile in T10S, R15W; then south to a point between Nineteen Mile and Bearpaw; thence southwesterly to Diamond.

Trail 252 Diamond (winter trail) (northcentral part of map)

Identification - Quad 88, T11S, R18W

Description: The trail runs from Diamond northwesterly to intersect with winter trail (89) in T11S, R18W.

Trail 253 Kantishna/Glacier/Diamond Loop (northcentral area)

Identification - Quad 88, T13 & 14S, R18N, FM

Description: The trail is a loop bypassing Glacier off of Trail 172 (Kantishna) to Trail 173 (Diamond/Glacier); T13 & 14S, R18N, FM.

Trail 256 McKinley River/Wonder Lake (near Wonder Lake)

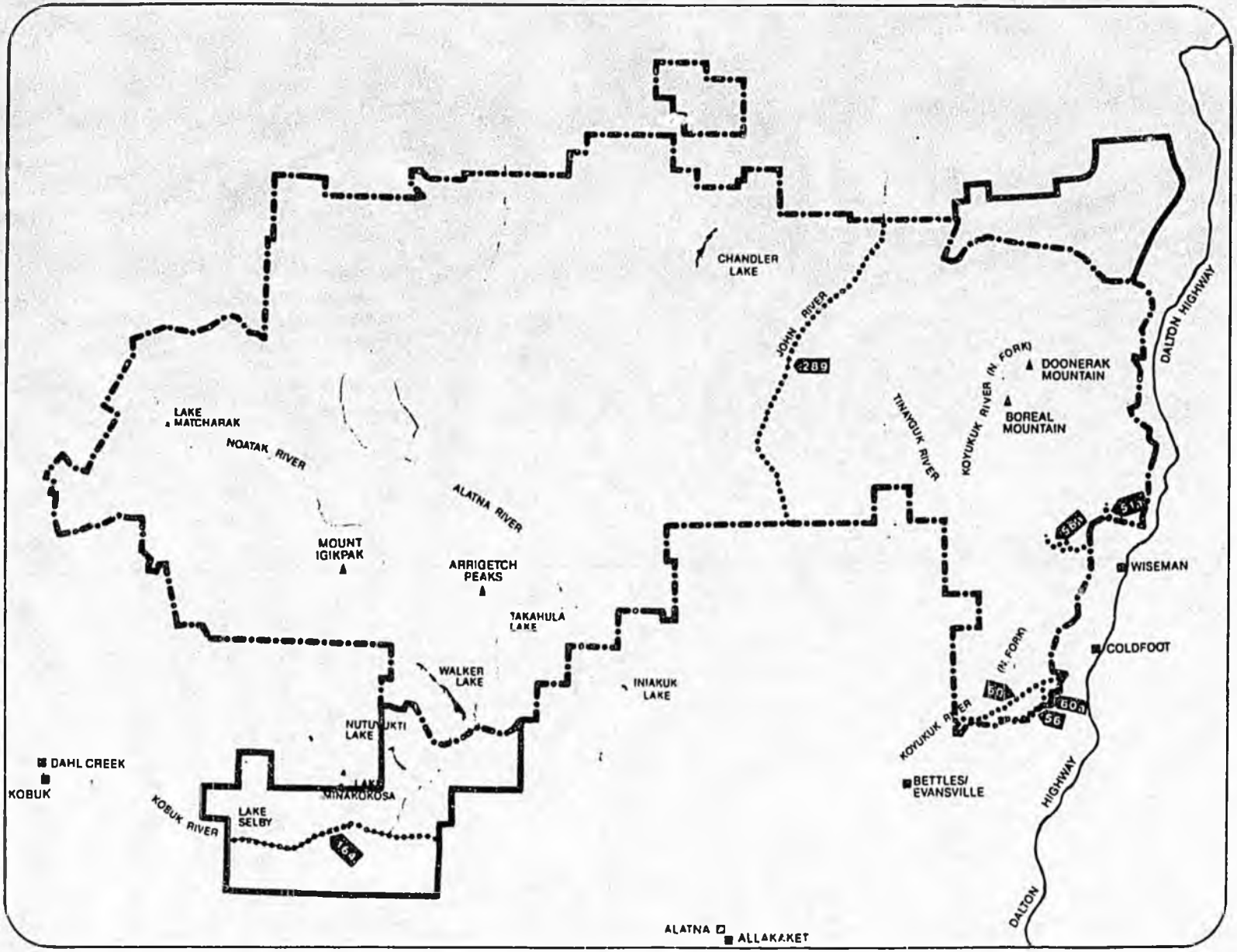
Identification - Quad 88, McKinley River/Wonder Lake

Description: The trail is a short independent trail between McKinley River and Wonder Lake beginning at McKinley River; thence north on a curve to the west to Wonder Lake.

Trail 257 10 mile branch from Trail 171 (northeast portion of map)

Identification - Quad 88, T13S, R14W, FM

Description: The trail begins on Trail 171 on the Toklat River at T13S, R14W; thence east 10 miles crossing the Wigand Creek; T12S, R13W.



25

POSSIBLE R.S. 2477 RIGHTS-OF-WAY

GATES OF THE ARCTIC

National Park and Preserve

- PARK BOUNDARY
- PRESERVE BOUNDARY
- POSSIBLE R.S. 2477 TRAIL
- 422 R.S. 2477 TRAIL NO.

(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)

N

GATES OF THE ARCTIC NATIONAL PARK AND PRESERVE

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of the Gates of the Arctic National Park and Preserve, according to the Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 51A (from jct. of Trail 51 Wiseman/Chandalar River Trail) (east side of map, above Wiseman)

Identification - Quad 124, T30N, R5W,FM

Description: Trail 51A runs from Jct. with Trail 51 west of confluence of north fork of Koyukok River and Hammond River northerly on west bank of Hammond River to Canyon Creek T31N, R12W.

Trail 56 Ned's Lake/Smith Creek Dome Trail (near Dalton Highway)

Identification - Quad 124, T20N, R23W, FM

Description: The trail begins at Ned's Lake and Jct. with 63 in T20N, R23W, FM, thence east and north along the Koyukuk River to Bettles, thence continuing along the Koyukuk and the middle fork of the Koyukuk on the south side through Tramway Bar and Coldfoot and onto Wiseman, thence up the Wiseman Creek to Nolan Creek and Nolan, thence up Nolan Creek to Smith Creek Dome.

Trail 56A Nolan/Mascot Creek Trail (near Wiseman)

Identification - Quad 124, T13N, R13W, FM

Description: The trail runs from Nolan westerly through Glacier Pass to Clacier River thence crossing Glacier River northwesterly to Mascot Creek, T31N, R13W.

Trail 60 Bettles/Quartz Creek (near Koyukuk River)

Identification - Quad 124, Bettles

Description: The trail begins at Bettles, thence east to Bettles field, thence south of Birch Hill, crossing the Koyukuk River and traveling north of the middle fork of the Koyukuk River; thence along the fork past 12 Mile Mountain to the fork of Porcupine and Quartz Creek.

Trail 60A Spur connecting Trails 60 & 56 (near Dalton Highway)

Identification - Quad 124, Bettles

Description: The trail begins on Trail 60 at Mailbox Creek thence south to Tramway Bar.

Trail 164 Alatna/Shungnak/Kotzebue (southwest corner of map)

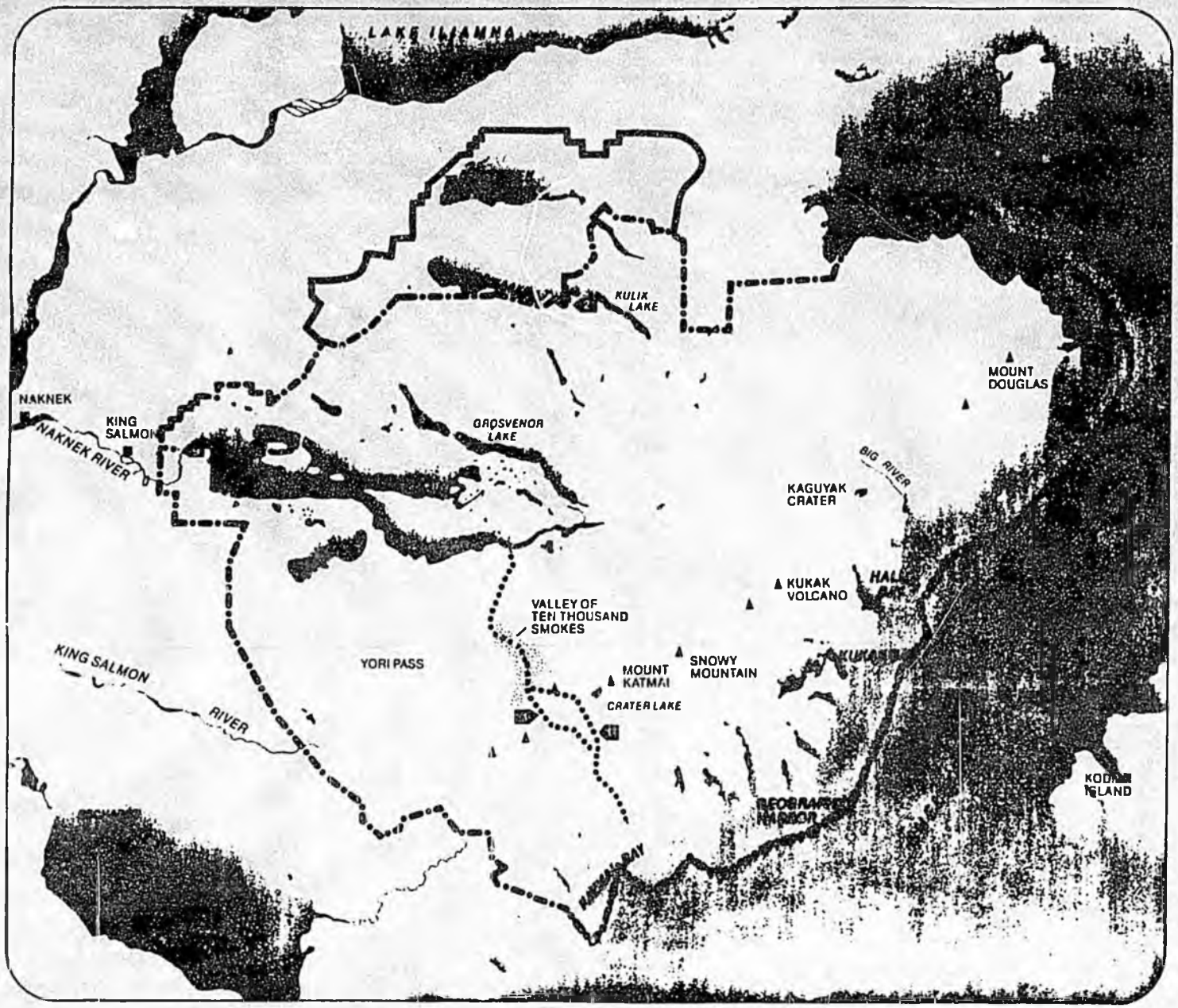
Identification: Quad 116, Hughes

Description: The trail extends up Alatna River to point east of Norutak Lake, then across to Lake, across Lake thence over to Kobuk River and up Kobuk River.

Trail 289 Hickel Highway (center of map)

Identification - Quad 124, Livengood - Sagwon

Description: The trail runs from Livengood northerly via Trails 49 to Bettles Field, 59A north to Ninemile Cabin, thence easterly around Ninemile Hills to Death Valley, thence 59 to Crevice Creek, thence northerly along John River to Anaktuvuk Pass, thence northerly along Anaktuvuk River to Schrar Bluff, thence northeasterly to the Itkillik River, thence easterly across the Kupuruk River to the Tookik River, thence northerly along Tookil for approximately 4 miles thence northeasterly and southeasterly around base of ridge, thence southerly on Sagavanirktok River to Sagwon.



POSSIBLE R.S. 2477 RIGHTS-OF-WAY

KATMAI

National Park and Preserve

- PARK BOUNDARY
- PRESERVE BOUNDARY
- POSSIBLE R.S. 2477 TRAIL
- 69 R.S. 2477 TRAIL NO.

(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)

N

KATMAI NATIONAL PARK AND PRESERVE

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of Katmai National Park & Preserve according to the 1974 Alaska Trails System inventory. The trails are listed by quadrangle corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 1 Dillingham to Naknek Winter Trail (Katmai Bay to Iliuk Arm)

Identification - Quad 42, Mt. Katmai

Description: The trail runs from Dillingham via Portage Creek, through Nakeen to Naknek.

Trail 2 Naknek to Egegik (near Kulik Lake)

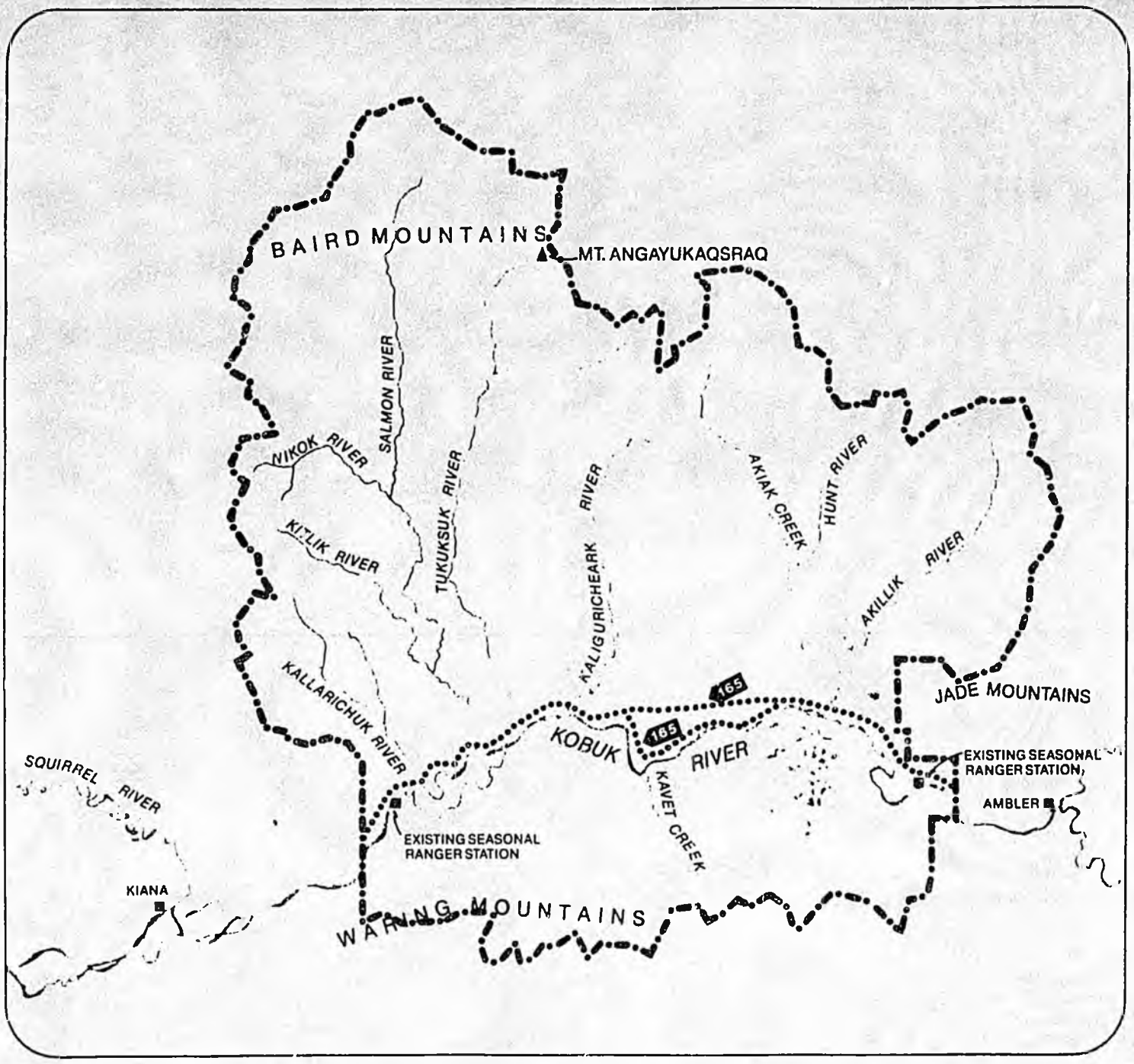
Identification - Quad 42, Mt. Katmai

Description: The trail runs from Naknek to Egegik.

Trail 9 (no name) (near Naknek Lake)

Identification - Quad 41, T17S, R44W

Description: The trail branches northeast from King Salmon Air Force Base to King Salmon Creek.



POSSIBLE R.S. 2477 RIGHTS-OF-WAY

KOBUK VALLEY

National Park

PARK BOUNDARY

POSSIBLE R.S. 2477 TRAIL

165 **R.S. 2477 TRAIL NO.**

(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)

N

KOBUK VALLEY NATIONAL PARK

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of the Kobuk Valley National Park, according to the Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 165 Kotzebue/Shungnak Trail (200 mile trail) (southwest corner of map)

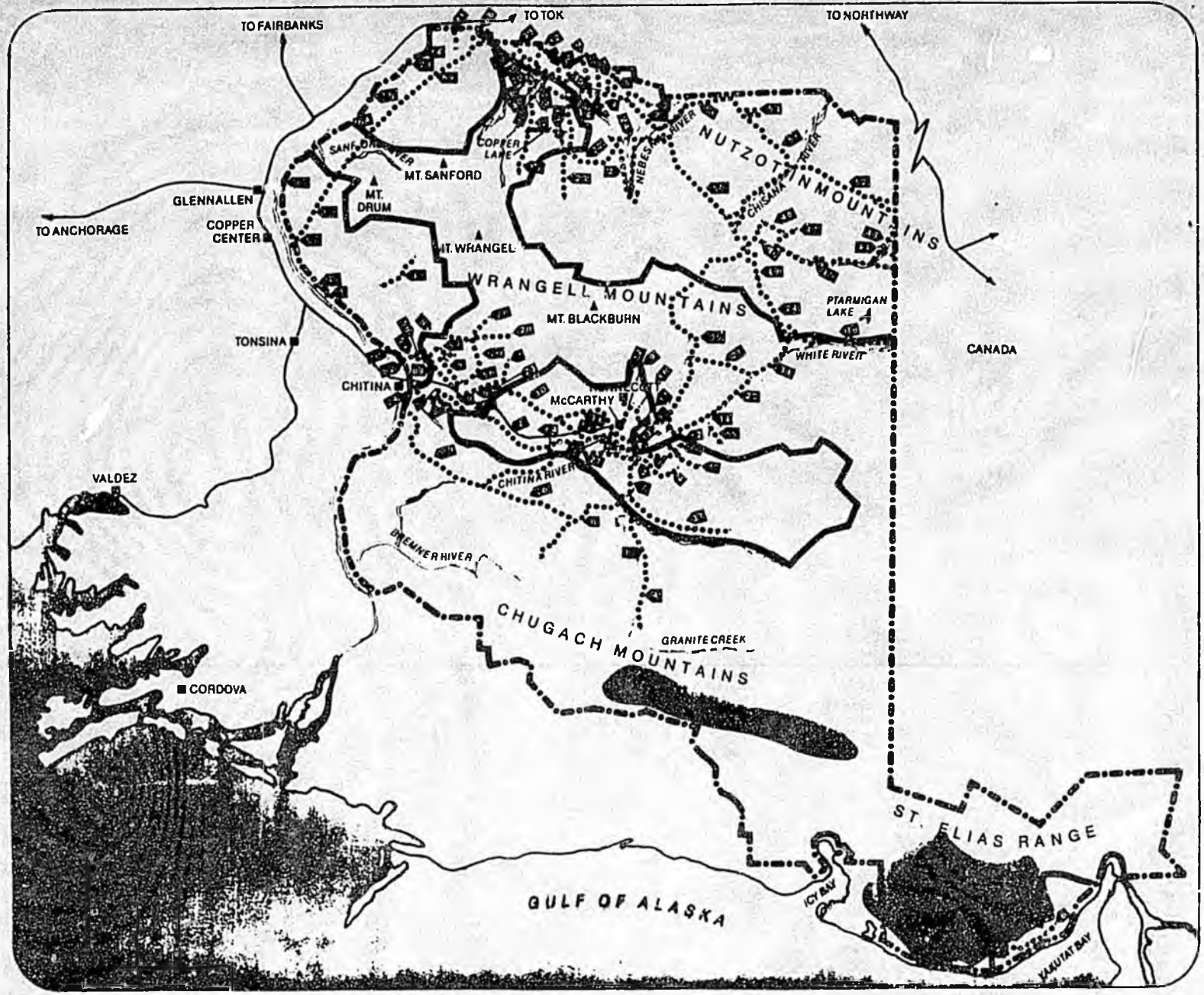
Identification - Quad 126, Ambler

Description: Winter trail extends from Kotzebue, across to mainland, up Kobuk River to Shungnak, ending in Trail System 95A.

Trail 165 Kotzebue/Shungnak Trail (200 mile trail) (same as above)

Identification - Quad 127, Baird Mountains

Description: Winter trail extends from Kotzebue, across to mainland, up Kobuk River to Shungnak, ending in Trail System 95A.



32

POSSIBLE R.S. 2477 RIGHTS-OF-WAY

WRANGELL ■ ST. ELIAS

National Park and Preserve

- PARK BOUNDARY
- PRESERVE BOUNDARY
- GLACIERS AND ICEFIELDS
- POSSIBLE R.S. 2477 TRAIL
- 256 R.S. 2477 TRAIL NO.

(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)

N

WRANGELL - ST. ELIAS NATIONAL PARK AND PRESERVE

The following possible R.S. 2477 rights-of-way have been identified within the boundaries of Wrangell-St. Elias National Park & Preserve according to the 1974 Alaska Trails System inventory. The trails are listed by quadrangle corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Trail 6 Malaspina Glacier Trail (above Yakutat Bay)

Identification - Quad 46, T24& 25S, R 30, 31, & 32E, CRM

Description: The trail runs from Grand Wash to Manby Stream.

Trail 4 Tana River Trail (above Chugach Mountains)

Identification - Quad 65, T10, 11,12S, R15E, CRM

Description: The trail connects to 87-33 at north edge of map on east side of Tana River. Ends on east side of Tana River at Tana Glacier.

Trail 1 Nugget Creek Extension (west of McCarthy)

Identification - Quad 67, T4S, R7, 8E, CRM

Description: The trail starts on Strelna-Kuskalana Road in Sec 12, T4S, R7E. CRM and ends in Sec 35, T2S, R9E, CRM.

Trail 2 Copper River/Chitina/McCarthy Jeep Trail (southeast of Chitina)

Identification - Quad 67, T4S, R5E to T5S, R14E

Description: The trail runs from town of Chitina in T4S, R5E to town of McCarthy in T5S, R14E.

Trail 3 Dan Creek (southeast of McCarthy)

Identification - Quad 67, T6S, R15, 16E, CRM

Description: The trail begins at May Creek in Sec 15 T6S, R15E and ends at Dan Creek Camp in Sec 4, T6S, R16E.

Trail 4 Rex Creek Trail (southeast of McCarthy)

Identification - Quad 67, T6S, R15, 16E, T7S, R16E, CRM

Description: The trail begins at May Creek in Sec 15, T6S, R15E and ends at 3500' elevation in Sec 27, R6S, R16E up Rex Creek.

Trail 5 Baultoff Lake Road (southeast of McCarthy)

Identification - Quad 67, T6S, R14, 15E, CRM

Description: The trail begins in McCarthy, Sec 19, T5S, R14E and ends in May Creek Sec 15, T6S, R15E. Connects to Trail 67-7 in Sec 7, T6S, R15E.

Trail 6 McCarthy/May Creek Road (south of McCarthy)

Identification - Quad 67, T5S, R14E, CRM

Description: The trail begins in McCarthy, Sec 19, T5S, R14E and ends in May Creek Sec 15, T6S, R15E. Connects to another trail 67-7.

Trail 7 Jake's Bar Trail (south of McCarthy)

Identification - Quad 67, T6S, R14, 15E, T7S, R14E, CRM

Description: The trail begins on McCarthy-May Creek Road in Sec 7, T6S, R15E, and ends at Jake's Bar landing strip in Sec 34, T7S, R14E, another trail continues southwest.

Trail 8 (no name) (south of McCarthy)

Identification - Quad 67, T7S, R14E, T8S, R12, 13, 14S, T9S, R11, 12S, (trail to mine).

Description: The trail begins at Jake's Bar landing strip in Sec 34, T7S, R14E and ends at Bremner Mine in Sec 10, T10S, R11E.

Trail 9 McCarthy/Kennicott Road (north of McCarthy)

Identification - Quad 67, T4, 5S, R14E, CRM

Description: The trail begins in McCarthy Sec 16, T5S, R14E and ends in Kennicott Sec 33, T4S, R14E, mine road.

Trail 10 (no name) (east of McCarthy)

Identification - Quad 67, T6S, R16, 17E, CRM

Description: The trail begins in Dan Creek Camp Sec 4, T6S, R16E, CRM and ends in SW 1/4, Sec 1M, T6S, R17E near the headwaters of Copper Creek.

Trail 11 (no name) (east of McCarthy)

Identification - Quad 67, T5, 6S, R16E, CRM

Description: The trail begins in Dan Creek Camp, Sec 4, T6S, R16E and ends up valley in Sec 34, T5S, R16E.

Trail 12 (no name) (east of McCarthy)

Identification - Quad 67, T6S, R11E, CRM

Description: The trail begins on Trail 67-3 in NW 1/4 Sec 12 and ends by cabin on Nizina River on wedge, Sec 1.

Trail 13 (no name) (east of McCarthy)

Identification - Quad 67, T6S, R14, 15E, T5S, R15E, CRM

Description: The trail begins on Trail 67-6 in wedge Sec 1, T6S, R14E, and ends by creek in Sawmill Gulch in Sec 34, T5S, R15E.

Trail 14 (no name) (southwest of McCarthy)

Identification - Quad 67, T6S, R11, 12E, CRM

Description: The trail begins on old railroad grade near west end of Long Lake in Sec 5, T6S, R12E and ends in SE 1/4 Sec 12 T6S, R11E.

Trail 15 (no name) (east of McCarthy)

Identification - Quad 67, T5S, R17E, CRM

Description: The trail begins by Glacier Creek landing area in Sec 9 and ends by mines in Sec 16 and east side of Sec 28.

Trail 16 (no name) (southeast of Kennecott)

Identification - Quad 67, T5S, R15, 15E, T4S, R14E, CRM

Description: The trail begins in McCarthy in Sec 16 T5S, R14E and ends at mine in Sec 14, T4S, R14E.

Trail 17 (no name) (east of McCarthy)

Identification - Quad 67, T5S, R15E, CRM

Description: The trail begins on Trail 67-16 in Sec 7 and ends at Nikolai Mine in Sec 2.

Trail 18 (no name) (west of McCarthy)

Identification - Quad 67, T5S, R13, 14, CRM

Description: Trail begins in McCarthy T5S, R14E and ends at cabins in northeast corner of Sec 24, T5S, R13E.

Trail 19 (no name) (west of McCarthy)

Identification - Quad 67, T5S, R13E, CRM

Description: Trail begins on Trail 67-2 in Sec 27 and ends at cabins in southwest corner of Sec 19.

Trail 20 Goat Trail (east of Kennecott)

Identification - Quad 67, T4S, R17, 18E, CRM

Description: The trail begins in Sec 13, T4S, R17E and ends on Skolai Creek in Sec 7, T3S, R19E.

Trail 21 (may be Skolai Creek Trail) (joina Trails 34 & 35)

Identification - Quad 67, T3S, R18, 19E, CRM

Description: Trail begins by landing area in Sec 5, T3S, R19E and ends at Tinplate Hill in Sec 24, T2S, R16E.

Trail 22 Mine Trail (Kennecott)

Identification - Quad 67, T4S, R14E, CRM

Description: Trail begins in Kennecott T4S, R14E and ends at mines in Sec 15, 22, and 23.

Trail 23 (no name) (east of Chitina)

Identification - Quad 67, T3S, R9E, CRM

Description: Trail begins by cabin on Kuskulena River in south 1/2 Sec 28 and ends by cabins up McDougal Creek near edge of Sec 34.

Trail 24 Geohenda Trail (See trail 84-49) (east of Chitina)

Identification - Quad 67, T1, 2N, R19, 20E, CRM

Description: Trail begins at landing area T1S, R20E and proceeds in a northwest direction ending in T2N, R19E. Trail between Chisana and headwaters of White River.

Trail 26 Hanagita Trail (See Trail 68-54) (south of Chitina River)

Identification - Quad 67, T7S, R8, 9, 10E, CRM

Description: Trail begins in Taral in Valdez Quad, McCarthy Quad - begins Hanagita River in T7S, R8E reported as far as Tana River 5 miles up from mouth.

Trail 27 Branch of Hanagita Trail (above Chitina River)

Identification - Quad 67, T7S, R9, 10E, T6S, R10 to 16E, CRM

Description: The trail begins on Hanagita Trail 67-26 near Hanagita Lake in T7S, R9E follows east bank of Nizina River in part to place called Nikolai house (may be near Dan Creek Camp T6S, R16E).

Trail 28 Kotsina Trail (See trail 68-8) (below Wrangell Mountains)

Identification - Quad 67, T1S, R8E, CRM

Description: Trail begins in Valdez Quad, follows Kotsina River and various branches to glaciers.

Trail 29 Part of Kotsina Trail (below Wrangell Mountains)

Identification - Quad 67, T3, 2S, R8E, CRM

Description: The trail begins on Trail 67-28 near Rock Creek; ties to Strelna Creek via Dixie Pass.

Trail 30 To Nikolai Mine (west of McCarthy)

Identification - Quad 67, T3S, R9E, CRM

Description: The trail begins or continues from Trail 67-11 in T3S, R9E, CRM and ends or continues on as Trail 67-19, 67-2, 67-16 and 67-17.

Trail 31 Old Trail to Nikolai Mine (near McCarthy)

Identification - Quad 67, McCarthy Quad

Description: Trail begins on 67-30 near Lakina River route via north side of Fireweed Mountain to Kennicott Glacier and down to present site of McCarthy.

Trail 32 (no name) (near McCarthy)

Identification - Quad 67, T5S, R15E, CRM

Description: Trail begins 6 miles up McCarthy River over low mountains to Nizina River.

Trail 33 Tana River Trail (See Trail 65-4) (above Chugach Mountains)

Identification - Quad 67, T8S, R14, 15E, CRM

Description: Trail begins on Chitina River, east of mouth of Tana River and continues beyond south edge of map on east side of Tana River, see 97-4.

Trail 34 Nizina/Chisana Trail (east of McCarthy)

Identification - Quad 67, T3N, R18E, CRM

Description: The trail begins in Nizina T6S, R16E through Dan Creek Camp and ends in Chisina.

Trail 35 Nizina/Chisana Trail (See Trail 67-21) (northeast of Kennecott

Identification - Quad 67, McCarthy

Description: Trail leaves Dan Creek Camp, going up Nizina Glacier through Chisana Pass, down Chisana Glacier to Chisana.

Trail 37 Nizina/Chitina River Trail (above Chugach Mountains, inside Preserve boundary)

Identification - Quad 67, T6, 7S, R15E, T8S, R15, 16, 17, 18, E, CRM

Description: The trail runs from the Nizina River approximately T6S, R15E, CRM up Chitina River near Hawkins Glacier.

Trail 38 White River Trail (along White River)

Identification - Quad 67, White River

Description: The trail leaves Trail 67-34 near Solo Creek, going west down White River to the Canadian border.

Trail 1 Copper River Bluff Trail (northeast of Tonsina)

Identification - Quad 68, T1N, R2E, CRM

Description: Trail begins on Edgerton Highway mile 3.9 in Sec 6, T1S, R2E, CRM and ends 1/2 mile northwest in Sec 31, T1N, R2E.

Trail 3 Short Lake Trail (east of Chitina)

Identification - Quad 68, T4S, R7E, CRM

Description: Trail begins at mile 9.6 Chitina/McCarthy Road in Sec 1, T4S, R7E and ends 1/4 mile south on Short Lake in Sec 18.

Trail 4 Ghost Lake Trail (east of Chitina)

Identification - Quad 68, T4S, R7E, CRM

Description: Trail begins at mile 10.2 Chitina/McCarth Road in Sec 17, T4S, R7E and ends on northwest end of Ghost Lake in Sec 17.

Trail 5 Strelna Lake Trail (east of Chitina)

Identification - Quad 68, T4S, R7E, CRM

Description: Trail begins at mile 9.7 Chitina/McCarthy Road in Sec 18, T4S, R7E and ends at southeast end Strelna Lake in Sec 18.

Trail 8 Kotsina Trail & Strelna Road (See Trail 67-28) (east of Chitina)

Identification - Quad 68, T4S, R7E, CRM

Description: Trail begins in Strelna in Sec 22, T4S, R7E; road ends. Trail begins in Sec 19, T3S, R7E trail ends at cabins in Sec 12, T2S, R7E.

Trail 9 (may be Elliot Creek Trail) (northeast of Chitina)

Identification - Quad 68, T4, 3, 2S, R7E, CRM

Description: Trai begins on Strelna/Kuskaluna Road in Sec 1, T4S, R7E and ends at cabins near Rainbow Creek Sec 34, T2S, R7E.

Trail 16 Liberty Creek Trail (north of Chitina)

Identification - Quad 68, T3S, R5E, CRM

Description: Trail begins approximately 10.4 miles north of Chitina, up north side of Liberty Creek 2 miles.

Trail 18 Chitina/McCarthy Jeep Trail (east of Chitina)

Identification - Quad 68, T4S, R5, CRM

Description: Trail begins in Chitina T4S, R5E ends on east maps edge in Sec 32, T4S, R8E, connects to 87-2.

Trail 24 Old Railroad Bed (winter river route to Taral) (south of Chitina)

Identification - Quad 68, T4S, R5E, CRM

Description: Trails runs from Chitina south on west side of Copper river in Woods Canyon to Whiting Falls.

Trail 35 Copper River Bluff Trail (south of Copper Center)

Identification - Quad 68, R1N, R1E, CRM

Description: Trail runs 3.9 miles down Edgerton cut-off from Richardson Highway along west bluff of Copper River above Lower Tonsina toward Copper Center.

Trail 49 (no name) (west of Wrangell Mountains)

Identification - Quad 68, T1N, R4E, CRM

Description: Trail begins by lake in Sec 14, T1N, R4E and ends in sec 14, T2N, R5E.

Trail 59 Hanagita Trail (See Trail 54 & 67-26) (southeast of Chitina)

Identification - Quad 68, T4S, R6E, CRM

Description: Trail begins in Taral in T4S, R5E goes off east map edge south of Hanagita in T7S, R8E, see 67-26.

Trail 56 (no name) (east of Chitina)

Identification - Quad 68, T4S, R7E, CRM

Description: Trail begins on Trail 68-8 approximately Sec 1, T4S, R7E ends on east map edge near Strelna Creek.

Trail 57 (no name) (northeast of Chitina)

Identification - Quad 68, T2S, R6E, CRM

Description: Trail begins on Trail 86-8 near Sec 28, T2S, R6E ends on 86-9 near Sec 29, T2S, R7E.

Trail 58 (no name) (north of Chitina)

Identification - Quad 68, T3S, R5E, CRM

Description: Trail begins on Copper River between Horse Creek and Kuslina Creek in T3S, R5E, ends on 86-8 near Sec 11, T3S, R6E.

Trail 59 (no name) (north of Chitina)

Identification - Quad 68, T2S, R6E, CRM

Description: Trail begins on 86-58 in Sec 31; ends on 86-8 in Sec 28.

Trail 82 Tonsina River to Taval (north of Chitina)

Identification - Quad 68, Valdez

Description: Trail runs from north bank of Copper River opposite Tonsina River mouth to Taval on Copper river and several miles south.

Trail 83 Millard Trail (See Trail 83-69) (east of Copper Center)

Identification - Quad 68, T2N, R1E, CRM

Description: Trail begins on Copper River opposite Klutina River mouth, continues off north edge of map in T3N, R1E, by Klawasi Road.

Trail 84 Trail to Elliot Pack-dog Sled (near Chitina)

Identification - Quad 68, T2S, R6E, CRM

Description: Trails begins on RR near mouth of Chitina River, ends at Elliot Creek.

Trail 87 Nugget Creek Extension (east of Chitina)

Identification - Quad 68, T4S, R7E, CRM

Description: Trail starts on Strelna/Kuskalana Road in Sec 1, T4S, R7E; ends in SEc 35, T2S, R9E.

Trail 11 Valley Overlook Jeep Trail (north border of map)

Identification - Quad 83, T11N, R6E, CRM

Description: Trail begins at milepost 52. Tok Cutoff Sec 23, T11N, R6E, CRM and ends 1/2 mile south in Sec 26 T11N, R6E, CRM.

Trail 14 (no name) (north border of map)

Identification - Quad 83, T10N, R5E, CRM

Description: Trail begins off Glenn Highway (Tok Cutoff) at milepost 40.1, Sec 17, T10N, R5E, CRM and ends approximately 1/4 mile south at or near Copper River.

Trail 29 (no name) (north border of map)

Identification - Quad 83, T10N, R4E, CRM

Description: Trail begins on Glenn Highway in east 1/2 Sec 34 and ends on Glenn Highway in north edge of Sec 25.

Trail 35 (no name) (near Glennallen)

Identification - Quad 83, T5N, R1W, CRM

Description: Trail runs from mile 120.8 on Richardson Highway to the bluff of the Copper River 2 miles.

Trail 58 (no name) (above Sanford River)

Identification - Quad 83, T8N, R3E, CRM

Description: Trail runs north from Slana to Tok to highway at milepost 21.7 parallels highway from milepost 21.7 to 24.3 3/4 mile.

Trail 64 (no name) (above Sanford River)

Identification - Quad 83, T7N, R2E, CRM

Description: Trail runs south from milepost 15.1 to mouth of Tulso Creek 3/4 mile.

Trail 66 (no name) (north border of map)

Identification - Quad 83, T11N, R7E, CRM

Description: Trail runs south from milepost 57.9 past east end of Cobb Lakes to a homestead on south side of Cobb Lake 2 miles.

Trail 69 Millard Trail (also #68-83) (near north border of map)

Identification - Quad 83, T3N, R1E, CRM

Description: The trail begins at map edge in T3N, R1E, CRM and ends eventually at Slana River in Mentasta Pass; probably leaves this map on east edge in T11N, R7E.

Trail 1 (no name) (near Nabesna River)

Identification - Quad 84, T5N, R14E

Description: Trail begins at Nabesna, Sec 21, T7N, R13E, shows continuation to Orange Hill, Sec 21, T5N, R14E.

Trail 2 Tanada Lake Trail (above Copper Lake)

Identification - Quad 84, T7N, R11E, CRM

Description: Trail begins from Nabesna Road in Sec 21, runs 15 miles and connects with Goat Creek and Pass Creek Trail south of Tanada Lake.

Trail 3 Soda Creek Trail (above Nabesna River)

Identification - Quad 84, T9N, R13E

Description: Trail begins on Platinum Creek Trail in Sec 34; ends on Tatschunda Creek in Sec 3, approximately 8 miles plotted.

Trail 4 Chalk Creek Trail (near north border)

Identification - Quad 84, T9N, R12E

Description: Trail begins at mile 31.8 Nabesna Road and ends at Platinum Creek Trail in Sec 30.

Trail 5 Platinum Creek Trail (near north border)

Identification - Quad 84, T8N, R13E

Description: Trail ties to Chalk Creek in Sec 30, continuing down Tetlin River and into T14N, R14E.

Trail 6 Lost Creek Trail (near north border)

Identification - Quad 84, T9N, R12E

Description: Trail begins identical to Chalk Creek Trail mile 31.5 Nabesna Road and ends at 5000' elevation in Sec 26.

Trail 7 Trail Creek Trail (near north border)

Identification - Quad 84, T9N, R11E, CRM

Description: Trail begins at Mile 29, Nabesna Road in Sec 31, T9N, R12E, ends above 5000' elevation in Sec 24.

Trail 8 (no name) (near north border)

Identification - Quad 84, T9N, R11E, CRM

Description: Trail begins on Nabesna Road near west edge of Sec 30 and ends at east end of Jack Lake in Sec 36.

Trail 9 Jack Lake Road (near north border)

Identification - Quad 84, T9N, R11E, CRM

Description: Trail begins on Nabesna Road at mile 26.1 in Sec 22 and ends on north shore of Jack Lake in Sec 35.

Trail 10 (no name) (near north border)

Identification - Quad 84, T9N, R10E, CRM

Description: Trail begins on unnamed trail paralleling Nabesna Road in Sec 11 and ends near 4000' elevation in Sec 25.

Trail 11 (no name) (near north border)

Identification - Quad 84, T9N, R10E, CRM

Description: Trail begins on unnamed trail paralleling Nabesna Road in Sec 11 and ends near 4000' elevation in Sec 25.

Trail 12 Suslota Creek Trail (near north border of map)

Identification - Quad 84, T11N, R10E, CRM

Description: Trail begins on Nabesna Road, Sec 26 crosses unnamed trail approximately 1 mile northeast and ends about 3100' elevation in Sec 34. May be connecting trail to Suslota Pass.

Trail 13 (no name) (near north border of map)

Identification - Quad 84, T9N, R10-11E, CRM

Description: Trail parallels Nabesna Road approximately 1 mile north in Sec 15 and ends on Nabesna Road near Rock Creek in Sec 18.

Trail 14 Copper River Trail (near Copper Lake)

Identification - Quad 84, R9N, R9E, CRM

Description: Trail accesses from Nabesna Road, Sec 17 & 21. Begins in Batzulnetas Village Sec 29 and ends in Sec 10.

Trail 22 Pass Creek Trail (near Nabesna River)

Identification - Quad 84, T6N, R11, 12, 13E, T7N, T13E, CRM

Description: The trail begins at Nabesna, Sec 21, T7N, R13E, and connects to Goat Creek Trail, Sec 34, T7N, R11E.

Trail 23 Goat Creek Trail (west of Nabesna River)

Identification - Quad 84, T5, 6, 7N, R11E, CRM

Description: The trail begins at south end of Tanada Lake, T7N, R11E, connects to Pass Creek Trail, Sec 34, T7N, R11E and ends approximately 1 mile south of Grizzly Lake, Sec 22, T5N, R11E.

Trail 24 (no name) (north of Nabesna River)

Identification - Quad 84, T5-7N, R14E, CRM

Description: Trail begins on Nabesna Road Sec 4, ties to Reeve Field, Sec 18 and ends at Orange Hill in Sec 17.

Trail 28 Platinum Creek Trail (near north border)

Identification - Quad 84, T8N, R13, 14E, T9, 10N, R13E, CRM

Description: The trail is on the floor of Platinum Creek Valley, running from the mouth of Platinum Creek on Nabesna River, northwest up Platinum Creek to trail system near Lost Lake, then north up Platinum Creek to Pass to Tetlin River Valley approximately 20 miles.

Trail 29 Twin Lakes Trail (northeast of Copper Lake)

Identification - Quad 84, T9N, R11E, CRM

Description: Trail runs from the road through campground and south 1/4 mile to Lake.

Trail 30 Big Grayling Lake Trail (near north border of map)

Identification - Quad 84, T9N, R11-13E, CRM

Description: Trail runs north of Nabesna Road, west of Devil's Mountain Range, from area near crossing of Little Jack Creek due east toward Big Grayling Lake approximately 10 miles.

Trail 33 Suslota Lake Trail (see 84-34) (near north border)

Identification - Quad 84, T11-12, R10E, CRM

Description: Trai runs north from milepost 72.8 to south corner of Suslota Lake, then up Suslota Creek north to Suslositna Creek toward Mable Creek.

Trail 36 Suslotna Pass Trail (near north border)

Identification - Quad 84 T10-12N, R9E, CRM

Description: Trail runs north of milepost 76 Nabesna Road past east side of Suslota Lake up Suslositna Creek into Little Tok drainage 15-20 miles.

Trail 38 Tanada Creek Trail (near north border)

Identification - Quad 84, T9-10N, R9E, CRM

Description: Trail runs 1/2 mile east of first bridge over Caribou Creek southwest of milepost 75.1 across Tanada Creek to connect with the Copper River Trail 3 miles.

Trail 40 (no name) (near north border)

Identification - Quad 84, T9N, R10E, CRM

Description: Trail runs north and west of milepost 81.3 Nabesna Road toward ridge of Mentasta Mountains 4-5 miles.

Trail 43 (no name) (near east border of map)

Identification - Quad 84, T3N, R23-24E, CRM

Description: Trail runs from south edge map Sec 32 from Chisana via Trail 78-45 east edge map Sec 21 into Canada.

Trail 44 (no name) (near east border of map)

Identification - Quad 84, T3N, R24E, CRM

Description: Trail leaves Trail 78-43 in Sec 8 off east edge map in Sec into Canada.

Trail 45 (no name) (near east border)

Identification - Quad 84, T3N, R20, 21E, CRM

Description: The trail runs southeast of town of Bonanza and branches off along Beaver and Carl Creeks.

Trail 46 (no name) (below Chisana River)

Identification - Quad 84, T3N, R18E, T4N, R19#, CRM

Description: The trail begins in Chisina, Sec 1, T3N, R18E. One end on trail 78, A245, in Sec 4, T3N, R19E. Second end near Big Eldorado Creek in Sec 16, T4N, R19E.

Trail 47 (no name) (below Chisana River)

Identification - Quad 84, A2, T4N, R20E, CRM

Description: The trail begins on Trail 78-A2-JK in Sec 31 and ends in Sec 22.

Trail 48 (no name) (below Chisana River)

Identification - Quad 84, T4N, R19, 20E, CRM

Description: The trail begins on Trail 78 A2-47 in Sec 29, T4N, R20E and ends in Sec 15, T4N, R19E. Spur up Bonanza Creek in Sec 25, T4N, R19E.

Trail 49 Geohenda Trail (continues as 67-24) (below Chisana River)

Identification - Quad 84, T3N, R18, 19E, CRM

Description: The trail begins in Chisina, Sec 1, T3N, R18E, ends i Sec 18, T3N, R19E and by Bow Creek in Sec 26, T3N, R18E. May proceed south up Geohenda Creek Trail between Chisana and headwaters of White River.

Trail 50 (no name) (south of Nabesna River)

Identification - Quad 84, T3-7N, R18E, CRM

Description: Trail begins in Chisana, Sec 1 and ends on south side of Nabesna River in two places.

Trail 51 Chisana/Shushanna (above Nutzotin Mountains)

Identification - Quad 84, T4N, R18E, T7N, R20E, NW to T9N, R17E, SW to R8N, R15E, CRM

Description: The trail begins on Trail 78-A3-50 in Sec 5 and Sec 17 T4N, R18E and ends at northwest end of 78-A3-50 in Sec 32, T8N, R15E.

Trail 52 (no name) (above Nutzotin Mountains)

Identificaton - Quad 84, T5N, R22, 23E, T6N, R20, 21, 22E, CRM

Description: The trail runs on south side of Chisana River, opposite King City in Sec 8, T6N, R20E and ends in Sec 14, T5N, R23E and Sec 30, T5N, R24E.

Trail 53 (no name) (near north border)

Identification - Quad 84, T8N, R18E, CRM

Description: The trail begins on Trail 78, B2-51 in Sec 7 and 17. Plot ends in Sec 4 and 13.

Trail 62 (no name) (northeast of Copper Lake)

Identification - Quad 84, T7N, R11E, CRM

Description: The trail begins on west shore of Tanada Lake and runs in a NW direction toward Copper Lake approximately 2-3 miles.

Trail 63 Copper River to the Nabesna River (north of Copper Lake)

Identification - Quad 84, T9N, R9-10E, CRM

Description: Trail begins in Batzulnetas in T10N, R9E proceeds generally southerly for 10 miles then splits into 3 routes to Nabesna River, possibly 78-2, 78-22, 78-30, 78-28

SECTION II - U.S. FISH & WILDLIFE SERVICE

Alaska State Legislature
Senate Transportation Committee

Sen. John B (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

November 26, 1985

Mr. Robert Gilmore
Regional Director
U.S. Fish & Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Gilmore:

As Chairman of the Senate Transportation Committee, I want to thank you and your staff for the outstanding support we have received in our efforts to include maps and trail lists in the National Wildlife Refuge System plans.
Valerie Chavez of my staff has been working with your planning team leaders, and she was impressed with the cooperation and assistance that they have contributed to our efforts.

I would like to take a few minutes to come by and visit with you the next time I am in Anchorage to discuss several key issues that are of importance to the people of Alaska. I will have my staff contact your office to arrange a firm date.

Again, my thanks for your help.

Sincerely,

Senator John B. Coghill

JC/slg

Senator John B. (Jack) Coghill
Alaska State Legislature

Box A
Juneau, Alaska 99811
(907) 465-4719

Box 158
Nenana, Alaska 99760
(907) 832-5471

January 13, 1985

Mr. Robert Gilmore
Regional Director
U.S. Fish & Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Gilmore:

I am pleased to submit nine (9) maps depicting routes of possible RS 2477 rights-of-way for inclusion in the Comprehensive Conservation Plans that are being prepared for Congress. Enclosed please find maps and trail descriptions for Arctic, Innoko, Kanuti, Nowitna, Selawik, Tetlin, Togiak, Yukon Delta and Yukon Flats National Wildlife Refuges. In two refuges, Kodiak and Koyukuk, no possible RS 2477 rights-of-way were found within refuge boundaries according to the Alaska Existing Trails Inventory.

On October 8, 1985, my staff submitted trail descriptions for Togiak National Wildlife Refuge to Pete Jerome, Team Leader for the Togiak plan. It is my understanding that these trails were incorporated in the draft plan by your graphics section in order to meet a pressing deadline. We are now providing the same map with additional graphics in the hopes that this version can be included in your revised draft.

Please note that the maps contain appropriate disclaimer language, as agreed to, which states, "The State of Alaska has identified these routes as possible rights-of-way under the grant authority of Revised Statute 2477 (RS 2477). Any questions regarding these routes should be directed to the refuge manager."

We have been working with your staff to complete as many maps as possible before the end of 1985 in order to meet deadlines for your draft plans. I would like to commend them, especially Leslie Kerr, on the assistance they have provided us.

Because a final decision on map size and styles for Alaska Maritime National Wildlife Refuge had not yet been made, my staff did not provide a map for that refuge. We hope to complete this map in early 1986, and we will submit it upon completion.

I want to thank you for your cooperation and assistance in this project, and I hope we will have a chance to meet in the near future.

Sincerely,

Senator John B. Coghill

JC/slg

Enclosures

SUMMARY OF POSSIBLE RS 2477 RIGHTS-OF-WAY IN NATIONAL WILDLIFE REFUGES

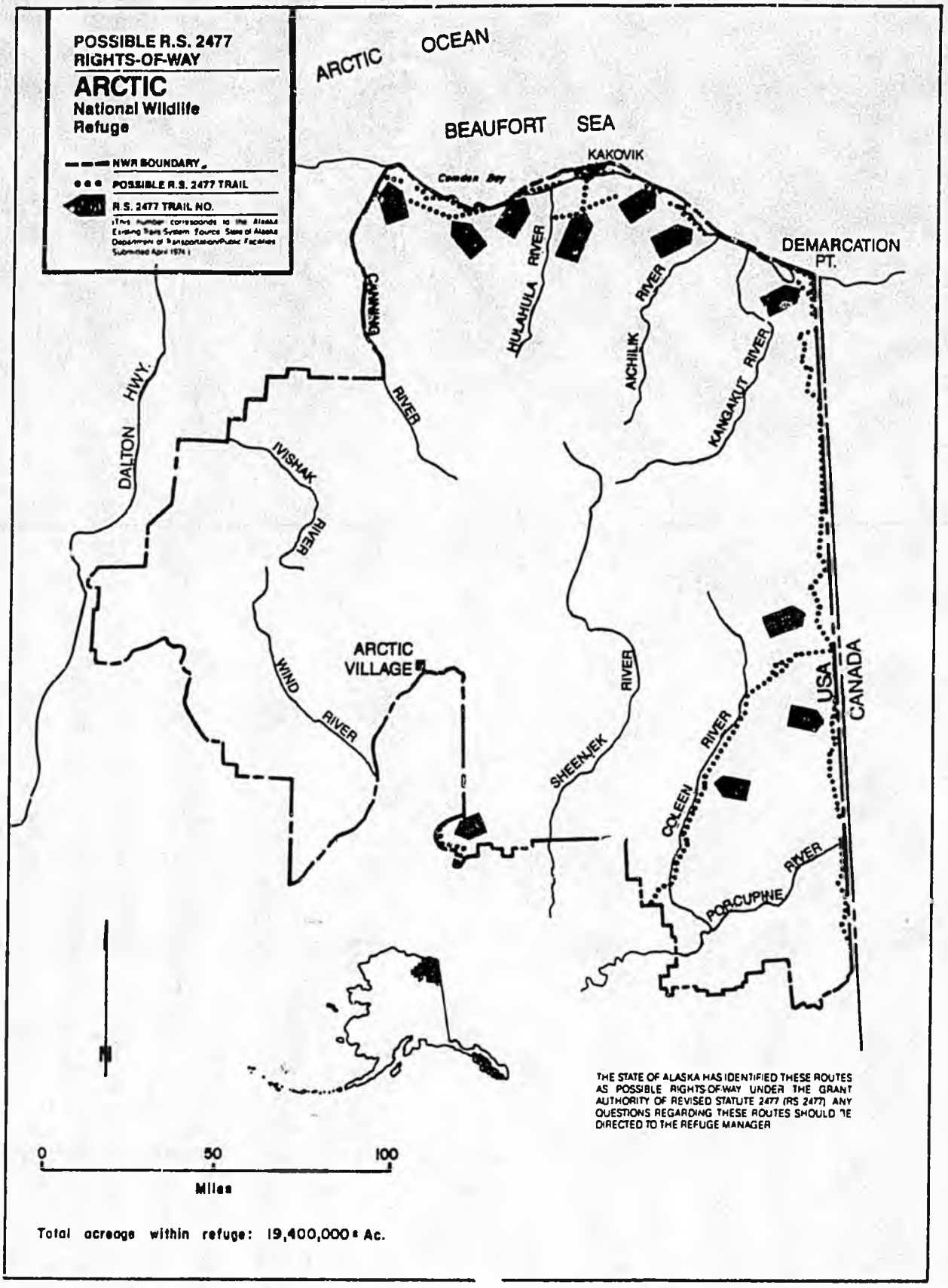
Alaska's National Wildlife Refuges	# of trails
1. Alaska Maritime National Wildlife Refuge**	
2. Alaska Peninsula National Wildlife Refuge*	
3. Arctic National Wildlife Refuge	11
4. Becharof National Wildlife Refuge*	
5. Innoko National Wildlife Refuge	12
6. Izembek National Wildlife Refuge*	
7. Kanuti National Wildlife Refuge	6
8. Kenai National Wildlife Refuge*	
9. Kodiak National Wildlife Refuge	0
10. Koyukuk National Wildlife Refuge	0
11. Nowitna National Wildlife Refuge	3
12. Selawik National Wildlife Refuge	3
13. Tetlin National Wildlife Refuge	3
14. Togiak National Wildlife Refuge	7
15. Yukon Delta National Wildlife Refuge	19
16. Yukon Flats National Wildlife Refuge	21
Total trails	85

*The Comprehensive Conservation Plans (CCP's) for these refuges were completed before this task force began work.

**Base maps for Alaska Maritime will be not available for reproduction until 1986.

Trail information was derived from the 1974 Alaska Existing Trails Inventory, however, it is not a complete compilation of all possible RS 2477 rights-of-way in the state.

CCP's will be presented to Congress in 1986 and 1987.



Total acreage within refuge: 19,400,000± Ac.

ARCTIC NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Arctic National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

QUAD 120 - Trail 196 Nation River to Rampart House (along U.S./Canada border)

Identification - Quad 120, Black River

Description: The trail runs from the Yukon River at mouth of Nation River up Nation over to boundary, thence back and forth across boundary up to Rampart House on Porcupine River.

QUAD 121 - Trail 32 (along east bank of Coleen River)

Identification - Northeast access through Chalkyitsik to Yukon border

Description: The trail crosses Yukon/Alaska border in T14S, R48E, UPM, follows Bilwaddy Creek west approximately 10 miles southwest on the east side of the Coleen River crossing to the southwest in T28N, R22E, FM from here southwest to crossing of the Porcupine River in T25N, R20E, FM thence southwest along Porcupine approximately 25 miles turning due south through Chalkyitsik to Ohtig Lake then southwest approximately 18 miles turning due south in T18N, R17E, FM proceeds due south to Yukon River at a point approximately 10 miles north of Circle south to Trail 202.

QUAD 121 - Trail 196 Nation River to Rampart House (along U.S./Canada border)

Identification - Quad 121, Black River

Description: The trail runs from the Yukon River at mouth of Nation River up Nation over to boundary, thence back and forth across boundary up to Rampart House on Porcupine River.

QUAD 121 - Trail 211 Rampart House to Beaufort Sea (along U.S. Canada border)

Identification - Quad 121, Coleen

Description: The trail runs from Rampart House, Canada on Porcupine River north criss-crossing boundary between Alaska and Canada to Beauford Sea.

QUAD 122 - Trail 33 Christian/Willow House (on southcentral border of refuge)

Identification - Quad 122, Christian

Description: The trail runs from Christian down Christian River then up Otter Creek and up unnamed tributary of Otter Creek to its head then northerly along high ground to Willow House.

QUAD 136 - Trail 33 Christian/Willow House (same as above)

Identification - Quad 136, Arctic

Description: The trail runs from Christian down Christian River then up Otter Creek and up unnamed tributary of Otter Creek to its head then northerly along high ground to Willow House.

QUAD 138 - Trail 25A (near Demarcation Point)

Identification - Quad 138, Arctic

Description: The trail and parallel arlternates cross the Alaska Yukon border in T3N, R45E, UPM. Trail approximately 6 miles long west along coast and parallel to Demarcation Bay.

QUAD 138 - Trail 25B (along Beaufort Coast)

Identification - Quad 138, Arctic

Description: The trail begins at landing strip proceeds southeast approximately 2 miles to mouth of Kogotpak River; entirely in T6N, R39E, UPM.

QUAD 138 - Trail 25C (along Beaufort Coast)

Identification - Quad 138, Arctic

Description: The trail begins at southeast end of Poker Lagoon to approximately 5 miles southeast at cabins. Located in T8N, R38E, UPM, down to Bokok Bay.

QUAD 138 - Trail 25D (along Beaufort Coast)

Identification - Quad 138, Arctic

Des ription: The trail begins at Kaktovik landing strip and proceeds through the village along coast approximately 2 miles; also south from village on wes side of Kaktoviak Lagoon proceeding approximately 6 miles then west to bank of Hulahula River.

QUAD 138 - Trail 211 (along Beaufort Coast)

Identification - Quad 138, Arctic

Description: The trail runs from Rampart House, Canada on Porcupine River north criss-crossing boudary between Alaska and Canada to Beaufort Sea.

QUAD 139 - Trail 25F system (along Beaufort Coast)

Identification - Quad 138, Arctic

Description: The trails begin on east bank of the Tamayariak River (near Canning River) T8N, R26E, UPM and also southwest of Said Point thence southeast along the coast across Konganavik Point, southeast across Katakturok River arund Simpson Cove ending on the west bank of Marsh Creek, 1/2 mile from shoreline at Camden Bay.

QUAD 151 - Trail 25E (southeast of Camden Bay)

Identification - Quad 151, Flaxman Island

Description: The trail begins on coast between Anderson Point and mouth of the Sadlerochit River T8N, R31E, UPM, proceeds east along coast approximately 10 miles, toward Hulahula River.

QUAD 151 - Trail 25F (south of Camden Bay)

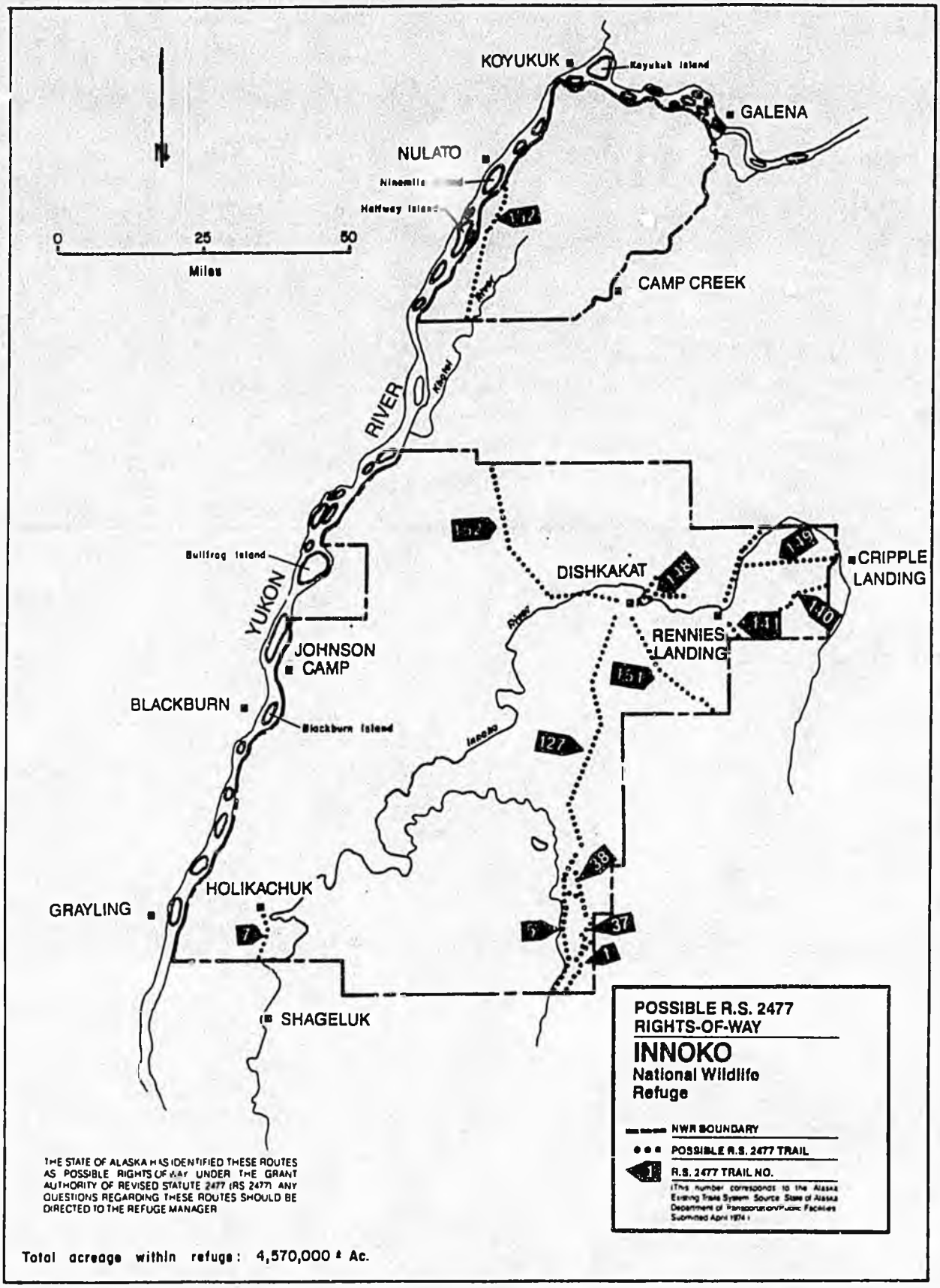
Identification - Quad 151, Flaxman Island

Description: The trail begins on east bank of the Tamayariak River T8N, R26E, UPM, and also 1 1/2 SW of Said Point thence southeast along the coast across Konganavik Point southeast on the west bank of Marsh Creek, 1/2 mile from shoreline at Camden Bay.

QUAD 151 - Trail 25G (southwest of Camden Bay)

Identification - Quad 151, Flaxman Island

Description: The trail begins at Bullen, T10N, R21E, UPM and proceeds along coast near Pt. Gordon, divides one leg along the coast through Thomson - the other approximately 3 miles inland, rejoins 2 miles east into T9N, R24E, thence 3 miles east across Staines River.


KOYUKUK
Koyukuk Island
GALENA
NULATO
Ninemile Island
Halfway Island
0
25
50
Miles
CAMP CREEK
RIVER
Kaiyuh
Bullfrog Island
YUKON
DISHKAKAT
CRIPPLE
LANDING
JOHNSON
CAMP
RENNIES
LANDING
BLACKBURN
Blackburn Island
Innoko
HOLIKACHUK
GRAYLING
SHAGELUK
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS OF WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477) ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER
POSSIBLE R.S. 2477 RIGHTS-OF-WAY
INNOKO
National Wildlife Refuge
NWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)
Total acreage within refuge: 4,570,000 ± Ac.

INNOKO NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Innoko National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

QUAD 78 - Trail 7 Shageluk/Holikachuk Winter Trail (below Holikachuk)

Identification - Quad 78, Holy Cross

Description: Trail is located approximately at T33N, R54W, SM, winter trail from Shageluk to Holikachuk.

QUAD 79 - Trail 1 Hunter Trail (see also Trail 90-1) (in southeast corner of refuge)

Identification - Hunter Trail, Ophir to Iditarod

Description: Trail runs from Ophir to Iditarod, approximately 79 miles long, T34N, R41W, SM.

QUAD 79 - Trail 5 Iditarod/Dishkakat (see also Trail 90-5) (in southeast corner of refuge)

Identification - Trail is located approximately T34N, R46W, SM, runs from Iditarod to Dishkakat, joins Hunter Trail about 12 miles north of Iditarod.

QUAD 79 - Trail 37 (southeast corner of refuge, near border)

Identification - Quad 79, Iditarod

Description: The trail connects tractor trail and runs northeast direction, T32N, R45W, SM.

QUAD 79 - Trail 38 Tractor Trail (southeast corner)

Identification - Quad 79, Iditarod, tractor trail

Description: The trail begins at First Chance Creek and runs north to northwest and ends at Dikemen, T31,32,33N, R45,46W, SM.

QUAD 90 - Trail 127 Dishkakat to Dikeman (eastern side of refuge, near Innoko River)

Identification - Trail from Dishkakat to Dikeman

Description: The trail begins at Dishkakat, then runs southwest along the edge of the lowground to the east of Six Mile Lake and onto Dikeman.

QUAD 90 - Trail 140 (west of Cripple Landing)

Identification - Cripple Landing West

Description: The trail runs from Cripple Landing in T21S, R13E, KRM west southwest across Two Mile, Four Mile and Scandinaran Creeks to a point in highlands in T22S, R11E, KRM.

QUAD 90 - Trail 141 (near Rennies Landing)

Identification - Dishkakat/Lewis Landing Trail to Ophir/Cripple Landing Trail

Description: The trail runs from Rennie's Landing on Innoko River T22S, R9E, KRM, southeasterly to Four Mile Creek on Ophir/Cripple Trail (#147) in T25S, R12E, KRM with alternate routes at various points along trail.

QUAD 90 - Trail 148 Lewis Landing/Dishkakat Trail (108 mi.)

Identification - Branch from Route 17 to Dishkakat

Description: The trail runs from Sandstom Bluff on north side of Yukon River in T9S, R13E then south to Yukon River then continuing almost due south across divide down Camp Creek to Innoko River then along Innoko River to Dishkakat.

QUAD 90 - Trail 149 Cripple to Trail 148 (near Cripple Landing)

Identification - Cripple to Trail 148

Description: The trail runs from Cripple Landing northwesterly to meet Trail 148 on Innoko River in T18S, R12E, KRM.

QUAD 90 - Trail 151 Ophir to Dishkakat (south of Dishkakat)

Identification - Quad 90, Ophir

Description: The trail runs from Ophir up Innoko River to American Creek, then up American Creek crossing ridge to Hurst Creek, then down Hurst across Boob Creek and into Tolsti, then across Dishna River and over to Dishkakat.

QUAD 90 - Trail 152 Nulato/Dishkakat Trail - north of Dishkakat)

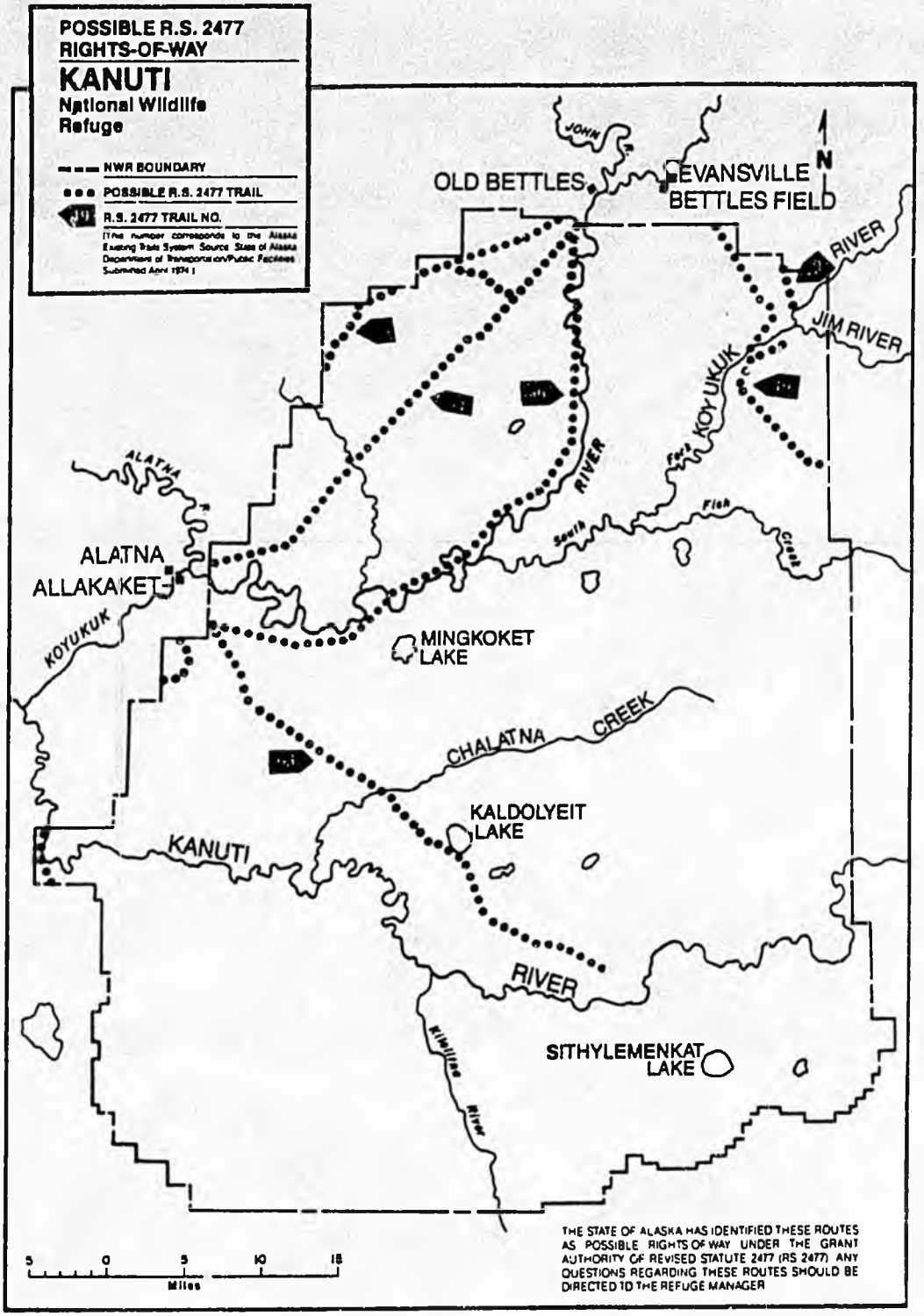
Identification - Nulato/Dishkakat Trail

Description: The trail runs from Nulato across the Yukon River, then along south bank of Yukon River to Center of T11S, R3E, KRM, then due south to west fork of Little Mud River, then along ridge between Little Mud River and Lonesome River to Innoko River, then along Innoko River easterly to Dishkakat.

QUAD 97 - Trail 152 Nulato/Dishkakat Trail (same as above)

Identification - Branch from Route 19 to Dishkakat

Description: The trail runs from Nulato across Yukon River then along south bank of Yukon River to center of T11S, R3E, KRM, then due south to west fork of Little Mud River, then along ridge between Little Mud River and Lonesome River to Innoko River, then along Innoko River, Ely to Dishkakat.


POSSIBLE R.S. 2477 RIGHTS-OF-WAY
KANUTI
National Wildlife Refuge
NWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing State System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)
N
JOHN R.
OLD BETTLES
EVANSVILLE
BETTLES FIELD
JIM RIVER
KOYUKUK
ALATNA R.
ALATNA
ALLAKAKET
KOYUKUK
MINGKOKET LAKE
CHALATNA CREEK
KALDOLYEIT LAKE
KANUTI
RIVER
SITHYLEMENKAT LAKE
5 0 5 10 15
Miles
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS OF WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477). ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER

KANUTI NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Kanuti National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

QUAD 117 - Trail 49 Winter Trail Bettles to Stevens Village (near east border of map)

Identification - Winter trail from Bettles Field to Stevens Village

Description: The trail starts in Bettles, T24N, R18W, FM and runs southeasterly across the south fork of Koyukuk River, Bonanza Creek, Fish Creek, to mouth, crosses divide to Kanuti River, crosses divide to west fork of Dall River across to Coal Creek downstream to Dall River through Dall River Flats east to Stevens Village T14N, R7W, FM, through Horseshoe Lake southeast across Yukon River via Jackson Island to Jackson Lake easterly to Ross Creek, up Ross Creek to divide into Rogers Creek south to Ely to Gatlena Gap, south to Hess Creek, southerly up south fork of Hess Creek to Hess Creek Dam, joining the highway system north out of Livengood, T9N, R4W, FM.

QUAD 117 - Trail 54 Bettles to Allakaket (below Old Bettles)

Identification - Bettles to Allakaket Trail

Description: The trail begins in T24N, R18W, FM at Bettles and runs southwesterly across Thicket Creek to head of Peavy Creek, on southwesterly across Henshaw Creek to Allakaket in T20N, R24W, FM.

QUAD 117 - Trail 55 Fort Gibbon/Koyukuk Trail (240 miles) (northwest corner of map)

Identification - Fort Gibbon/Koyukuk Trail #29 connects Fort Gibbon with Bettles in the Koyukuk Region

Description: The trail is notated in Alaska Road Commission annual reports as a 240 mile trail. It is the old mail trail from Fort Gibbon to Coldfoot Road. Distance of this trail formerly given as 100 miles, which included the trail only as far as Arctic City. Between Alatna and Bettles the trail has 3 variations.

QUAD 117 - Trail 56 (south of Old Bettles)

Identification - Trail from Ned's Lake in T20N, R23W, FM through Bettles and Coldfoot, onto Smith Creek Dome

Description: The trail begins at Ned's Lake and junction with 63, T20N, R23W, FM, thence east and north along the Koyukuk River to Bettles, thence continuing along the Koyukuk River and the middle fork of the Koyukuk on the south side through Tramway Bar and Coldfoot and onto Wiseman, thence up Wiseman Creek to Nolan Creek and Nolan, thence up Nolan Creek to Smith Creek Dome.

QUAD 117 - Trail 62 (northeast corner of map)

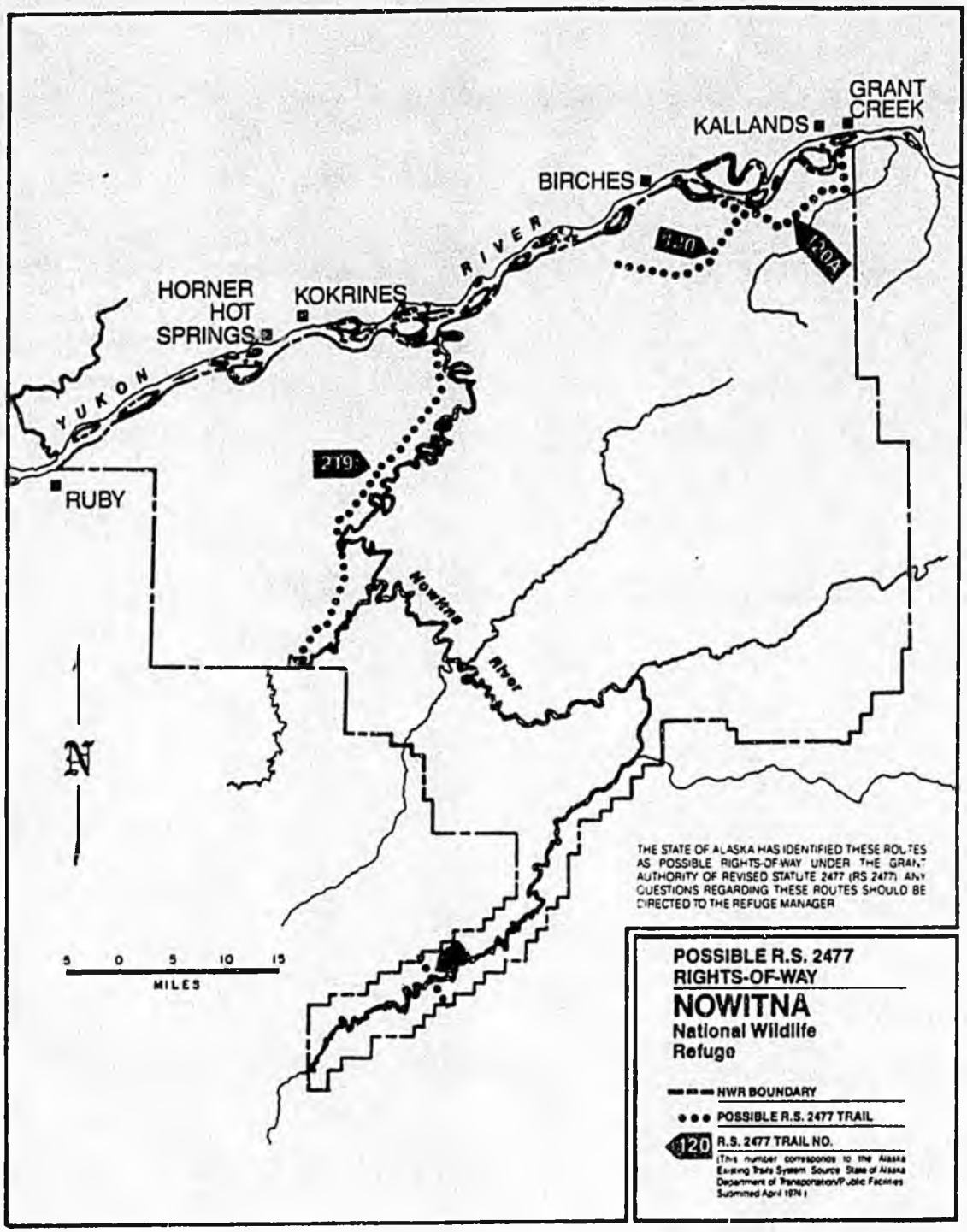
Identification - Bettles PO to south fork of Koyukuk River

Description: The trail runs from Bettles Post Office southeasterly to south fork of Koyukuk River, T23N, R17W.

QUAD 117 - Trail 63 (north of Kanuti River)

Identification - Winter trail from Allakaket southeast to a point 1 mile northwest of Taiholman Lake.

Description: The trail begins at Allakaket and travels southeast through Kadakina Lake to a mile northwest of Taiholman Lake.


GRANT CREEK
KALLANDS
BIRCHES
RIVER
120
120A
HORNER HOT SPRINGS
KOKRINES
YUKON
219
RUBY
Nowitna River
N
5 0 5 10 15
MILES
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS-OF-WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477) ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER
POSSIBLE R.S. 2477 RIGHTS-OF-WAY
NOWITNA
National Wildlife Refuge
NWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
120 R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)

NOWITNA NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Nowitna National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

QUAD 98 - Trail 219 Telida Trail (west of Nowitna River)

Identification - Indian Winter Trail, Quads 98 & 89

Description: The trail runs from Telida northwest through Paradise Pass west to Browns Fork and northerly across Sulakna River and Morutna River up around Monsonites Hills and down Sulatna River to Norvitna River then down Norvitna River to Novokaket on Yukon River.

QUAD 106 - Trail 120 (south of Yukon River)

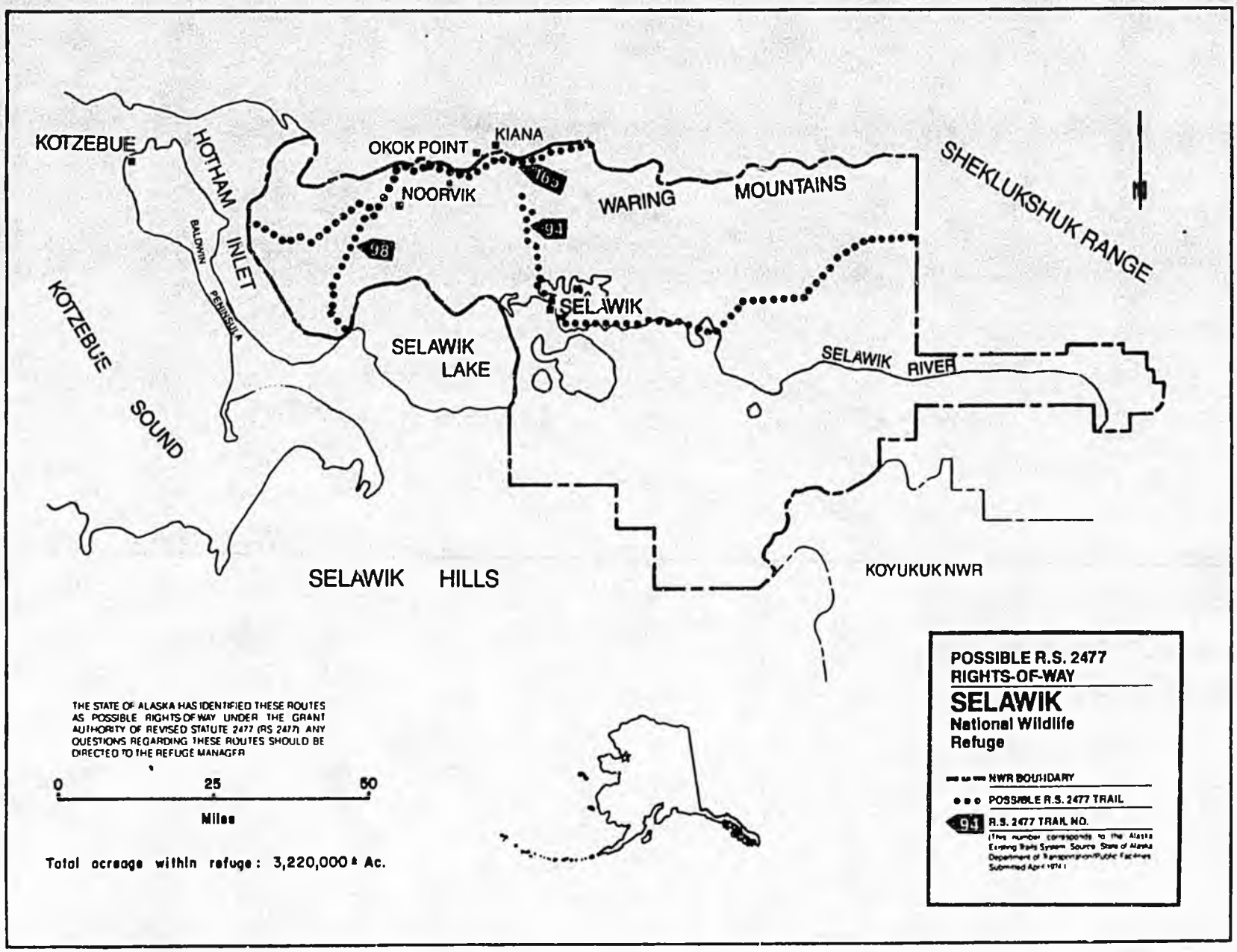
Identification - Trail from Klatsuta River to Yukon River

Description: The trail begins on the Klatsuta River south of birches, thence northeast to the Palisades, thence easterly and northerly to the Yukon River south of Grant Creek.

QUAD 107 - Trail 120A spur (same as above)

Identification - Trail from Klatsuta River to Yukon River

Description: The trail begins on the Klatsuta River south of birches, thence northeast to the Palisades, thence easterly and northerly to the Yukon River south of Grant Creek.


KOTZEBUE
HOTHAM INLET
BALDWIN PENINSULA
OKOK POINT
KIANA
NOORVIK
WARING MOUNTAINS
SHEKLUKSHUK RANGE
103
98
94
SELAWIK
SELAWIK LAKE
SELAWIK RIVER
KOTZEBUE SOUND
SELAWIK HILLS
KOYUKUK NWR
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS-OF-WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477) ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER
0
25
50
Miles
Total acreage within refuge: 3,220,000 ± Ac.
POSSIBLE R.S. 2477 RIGHTS-OF-WAY
SELAWIK
National Wildlife Refuge
NWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
94 R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing Trails System Source: State of Alaska Department of Transportation/Public Facilities Submitted April 1974)

SELAWIK NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Selawik National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

QUAD 114 - Trail 94 Shungnak, Selawik, Kiana Trail (above Selawik)

Identification - Shungnak, Selawik, Kiana Trail

Description: The trail begins in Shungnak in T17N, R8E, KRM and runs westerly across and up Black River, south of Shaleruckik Mountain, to Kerchurak Creek to Kugarak River downstream to Selawik River to Selawik on Niglaktak Lake, T14N, R6W, KRM, thence northerly across Shogvik Lake and Oblaron Creek, across divide Howkley Hills down Portage Creek to Kobuk River.

QUAD 114 - Trail 98 Noorvik to Kiwalik Easterly Route (south of Noorvik)

Identification - Noorvik to Kiwalik Route

Description: The trail begins in T17N, R11W, KRM, and runs along Nazuruk Channel southerly to Attiunik Channel, across outlet of Selwaik Lake southeasterly and south across Baldwin Peninsula to Eschscholtz Bay, around bay crossing Buckland River, westerly around edge of bay to Elephant Point, southeasterly to Kiwalik on coast at mouth of Kiwalik River, T7N, R15W, KRM.

QUAD 114 - Trail 165 Kotzebue to Shungnak (200 mile trail) (from Okok Point through Kiana)

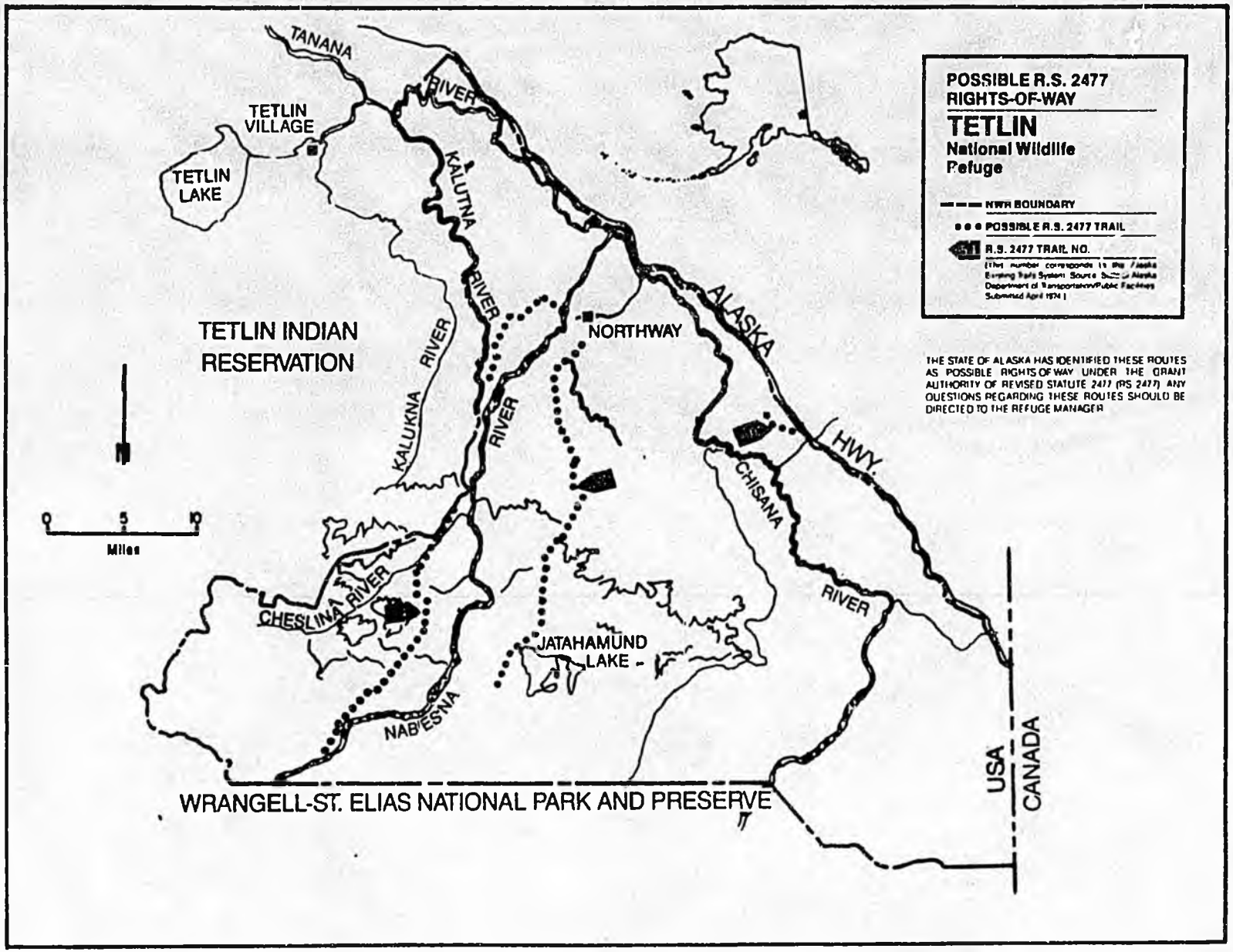
Identification - Kotzebue to Shungnak Trail

Description: Winter trail extending from Kotzebue across to mainland and up Kobuk River to Shungnak, ending in Trail System 95A.

QUAD 115 - Trail 94 Shungnak, Selawik, Kiana Trail (south of Kiana)

Identification - Shungnak, Selawik, Kiana Trail

Description: The trail begins in Shungnak in T17N, R8E, KRM and runs westerly across and up Black River, south of Shaleruckik Mountain, to Kerchurak Creek to Kugarak River downstream to Selawik River to Selawik on Niglaktak Lake, T14N, R6W, KRM, thence northerly across Shogvik Lake and Oblaron Creek, across divide Howkley Hills down Portage Creek to Kobuk River.


TANANA
RIVER
TETLIN VILLAGE
TETLIN LAKE
KALUTNA RIVER
KALUKNA RIVER
RIVER
TETLIN INDIAN RESERVATION
NORTHWAY
ALASKA
HWY.
CHISANA
RIVER
CHESLINA RIVER
JATAHAMUND LAKE
NAB ES'NA
WRANGELL-ST. ELIAS NATIONAL PARK AND PRESERVE
USA
CANADA
0 5 10
Miles
POSSIBLE R.S. 2477 RIGHTS-OF-WAY
TETLIN
National Wildlife Refuge
NWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing Trails System Source Book of Alaska Department of Transportation/Public Facilities Submitted April 1974.)
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS OF WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477) ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER

TETLIN NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Tetlin National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

QUAD 84 - Trail 54 (near Cheslina River)

Identification - Quad 84, Nabesna

Description: The trail begins in Sec 27, T9N, R15E and ends at Nabesna village in Sec 22, T14N, R18E.

QUAD 84 - Trail 57 (see center of map, south of Northway)

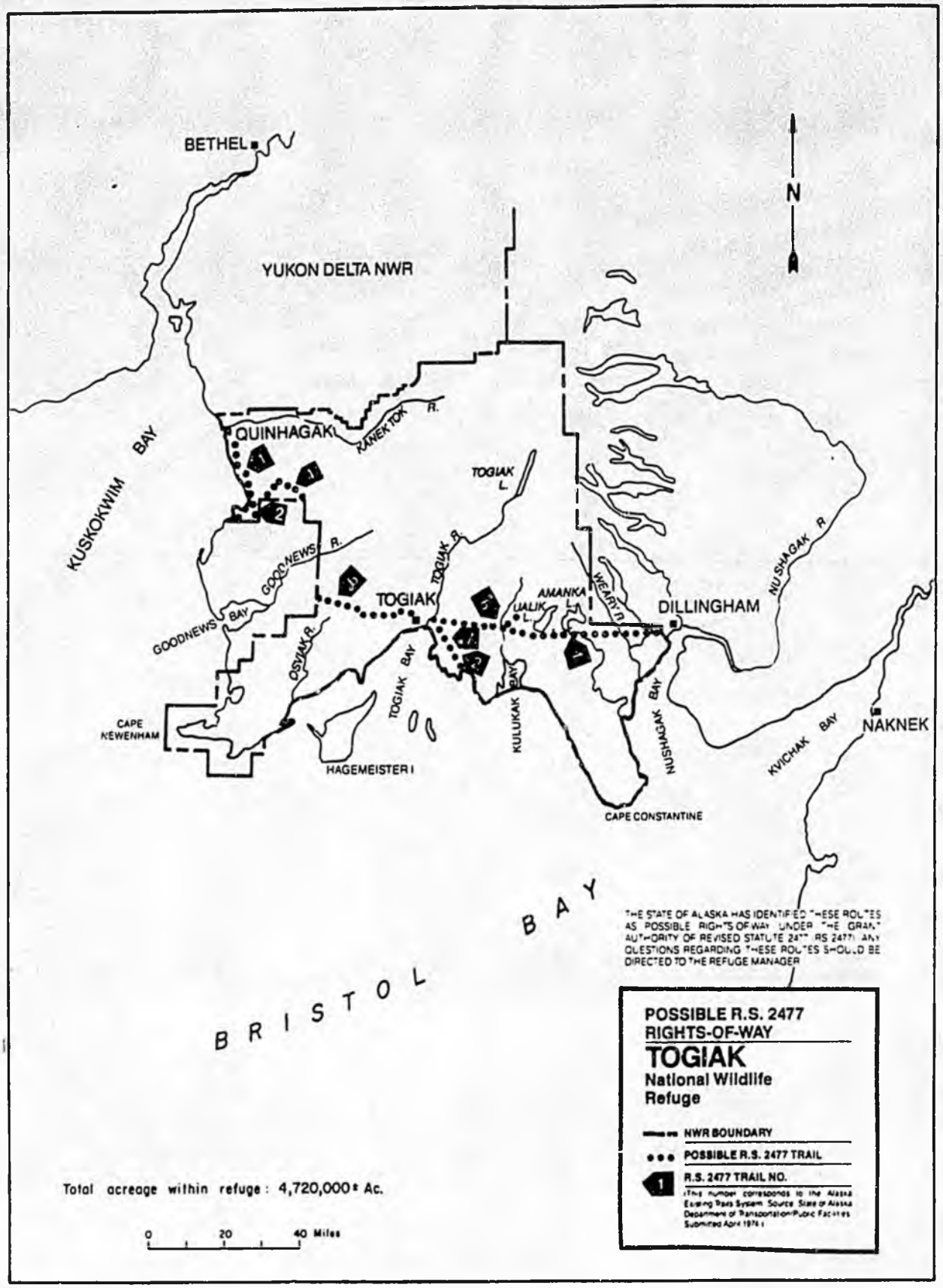
Identification - Quad 84, Nabesna

Description: The trail begins in Sec 30, T10N, R18E and ends in Northway, Sec 25, T14N, R18E (beside airport).

QUAD 84 - Trail 60 (near Alaska Highway)

Identification - Quad 84, Nabesna

Description: The trail begins on Alaska Highway in N 1/2 Sec 30, T13N, R21E and ends in campground on Deadman Lake in Sec 24, T13N, R20E.


BETHEL
N
YUKON DELTA NWR
QUINHAGAK
KANEKTOK R.
KUSKOKWIM BAY
TOGIAK L.
GOODNEWS R.
GOODNEWS BAY
TOGIAK
TOGIAK R.
OSVIAK R.
TOGIAK BAY
AMANKA L.
UALIK L.
WEARY R.
DILLINGHAM
NUSHAGAK R.
KULUKAK BAY
NUSHAGAK BAY
KVICHAK BAY
NAKNEK
CAPE NEWENHAM
HAGEMEISTER I
CAPE CONSTANTINE
BRISTOL BAY
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS OF WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477). ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER
POSSIBLE R.S. 2477 RIGHTS-OF-WAY
TOGIAK
National Wildlife Refuge
NWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing Trails System Source State of Alaska Department of Transportation/Public Facilities Submitted April 1974)
Total acreage within refuge: 4,720,000± Ac.
0
20
40 Miles

TOGIAK NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Togiak National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

QUAD 39 - Trail 2 Togiak to Ungalikthluk (east of Togiak Bay)

Identification - Quad 39, Hagemeister Island

Description: The trail is the winter trail between Togiak and Ungalikthluk. The trail continues in Quad 53 (Goodnews) as Trail 7.

QUAD 52 - Trail 1 Manokotak to Dillingham Winter Trail (west of Dillingham)

Identification - Quad 52, Dillingham

Description: The trail is the Manokotak to Dillingham Winter Trail. It continues as Trail 6 in Quad 53 (Goodnews).

QUAD 53 - Trail 1 Bethel to Goodnews Bay Winter Trail (below Quinhagak)

Identification - Quad 53, Goodnews

Description: The trail is the Bethel to Goodnews Bay Winter Trail which runs through Quinhagak to Goodnews. The trail continues as Trail 2 in Quad 54 (Kuskokwim Bay).

QUAD 53 - Trail 2 Jacksmith Bay/Goodnews Summer Trail (below Quinhagak)

Identification - Quad 53, Goodnews

Description: The trail runs from Jacksmith Bay via Twin Mountain to Goodnews Trail.

QUAD 53 - Trail 4 Goodnews to Arolik River Mining Area
(below Quinhagak)

Identification - Quad 53, Goodnews

Description: The trail runs from Goodnews to Barnum via Wagon Road and on to Arolik River Mining Area via summer and winter trails.

QUAD 53 - Trail 6 Goodnews/Togiak/Manokotak Winter Trail
(east/west of Togiak, marked twice)

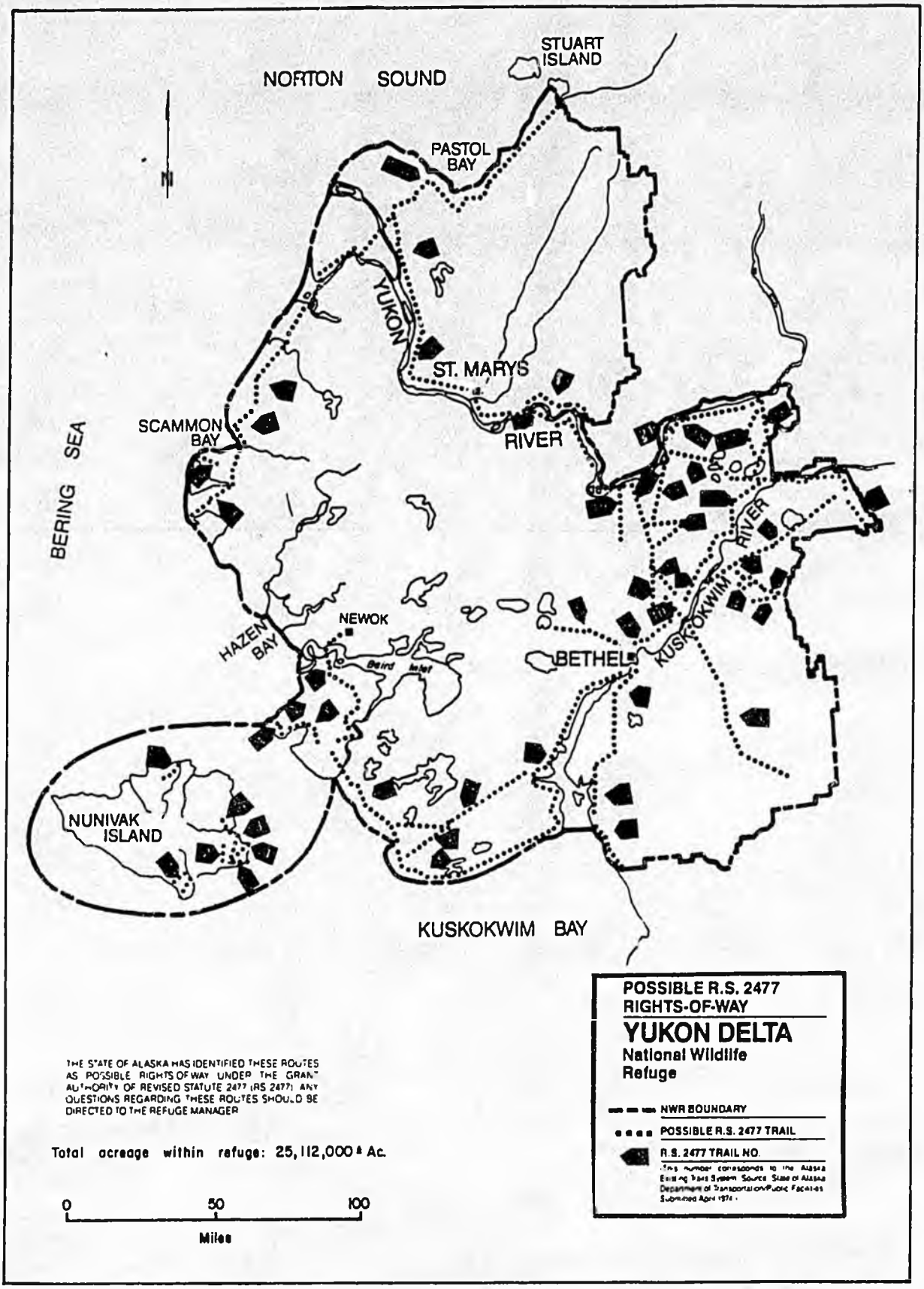
Identification - Quad 53, Goodnews

Description: The trail runs from Goodnews Bay via Togiak and Twin Hills to Dillingham with a spur to Manokotak. Trail continues as Trail 1 in Quad 52 (Dillingham).

QUAD 53 - Trail 7 Togiak to Ungalikthluk Winter Trail
(southeast of Togiak, lower part shown as Trail 2)

Identification - Quad 53, Goodnews

Description: The trail runs from Togiak to Ungalikthluk. It continues as Trail 2 in Quad 39 (Hagemeister Island).


STUART ISLAND
NORTON SOUND
PASTOL BAY
YUKON
ST. MARYS
SCAMMON BAY
RIVER
BERING SEA
KUSKOKWIM RIVER
NEWOK
HAZEN BAY
Baird Inlet
BETHEL
NUNIVAK ISLAND
KUSKOKWIM BAY
POSSIBLE R.S. 2477 RIGHTS-OF-WAY
YUKON DELTA
National Wildlife Refuge
NWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
R.S. 2477 TRAIL NO.
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS OF WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477) ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER
Total acreage within refuge: 25,112,000 ± Ac.
0
50
100
Miles

YUKON DELTA NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Yukon Delta National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Note: Several of the 19 trail systems in this refuge continue through several quads, therefore they have been cross-referenced to other trail numbers of the same origin, as identified as in the trails inventory.

QUAD 54 - Trail 1 Nightmute/Bethel (see #58-3, 58-4) (shoreline of Kuskokwim Bay)

Identification - Quad 54, Kuskokwim Bay

Description: The trail travels from Nightmute via Chefornak, Kipnuk, Kwigillingok, Kongiganak and Tuntutuliak to Bethel; winter trail.

QUAD 54 - Trail 2 Bethel/Goodnews Winter Trail (see #58-6, 53-1) (shoreline of Kuskokwim Bay)

Identification - Quad 54, Kuskokwim Bay

Description: The trail travels from Bethel to Goodnews Bay.

QUAD 55 - Trail 1 (south side of Nunivak Island)

Identification - Quad 55, Cape Mendenhall, T4,5S, R98W, SM

Description: The trail runs from Two Lakes, T5S, R98W, northeast to Duchikthluk Bay mouth then southwest to Marsh.

QUAD 55 - Trail 2 (south side of Nunivak Island)

Identification - Quad 55, Cape Mendenhall, T2,3S, R96W, SM

Description: The trail runs north-south direction between unnamed lakes and rivers.

QUAD 55 - Trail 3 (east side of Nunivak Island)

Identification - Quad 55, Cape Mendenhall, T3S, R96W, SM

Description: The trail runs north-south connecting unnamed lakes.

QUAD 55 - Trail 4 (southeast side of Nunivak Island)

Identification - Quad 55, Cape Mendenhall, T3S, R95,95W, SM

Description: The trail runs southwest to northeast connecting unnamed lakes in area.

QUAD 55 - Trail 5 (southeast side of Nunivak Island)

Identification - Quad 55, Cape Mendenhall, T3S, R96W, SM

Description: The trail runs east-west connecting unnamed lakes in area just north of Nakooytoolekmint site.

QUAD 57 - Trail 1 Tanunak to Toksook Bay (below Hazen Bay)

Identification - Quad 57, Nunivak Island, T6N, R89W, SM

Description: The trail runs from the village to Tanunak to the village of Toksook Bay, all season trail.

QUAD 57 - Trail 2 Toksook Bay to Nightmute (see #58-1)(below Hazen Bay)

Identification - Quad 57, Nunivak Island, T5N, R89W, SM

Description: The trail runs from Toksook Bay to Nighmute; summer and winter trail.

QUAD 57 - Trail 3 (north side of Nunivak Island)

Identification - Quad 57, Nunivak Island, T3N, R98,99W, SM

Description: The trail leads from landing area east by northeast to Shoal Bay.

QUAD 57 - Trail 4 (northeast side of Nunivak Island)

Identification - Quad 57, Nunivak Island, T1,2S, R95,96W, SM

Description: The trail begins at Ingrimiut camp site T1S, R96W and runs south past Twin Mountains then southeast to Etolin Strait ending in T2S, R95W.

QUAD 58 - Trail 1 Toksook Bay to Nightmute (see #57-2) (southwest of Baird Inlet)

Identification - Quad 58, Baird Inlet, T5N, R89W, SM

Description: The trail runs from Toksook Bay to Nightmute; summer and winter trail.

QUAD 58 - Trail 2 Nightmute to Newtok (below Newtok)

Identification - Quad 58, Baird Inlet, T5N, R86,87W, SM

Description: The trail begins at Nightmute and runs generally in northeast to northwest direction to Newtok crossing the Ninglick River.

QUAD 58 - Trail 3 Nightmute to Bethel (see #54-1) (south of Baird Inlet)

Identification - Quad 58, Baird Inlet

Description: The trail travels from Nightmute via Chefornak, Kipnuk, Kwigillingok, Kongiganak and Tuntutuliak to Bethel; winter trail.

QUAD 58 - Trail 4 Chefornak to Tuntutuliak with spur (see 54-1) (above Kuskokwim Bay)

Identification - Quad 58, Baird Inlet

Description: The trail is a 75 mile section from Tuntutuliak to Kipnuk; from Chefornak to Tuntutuliak with a spur to Kipnuk; winter trail.

QUAD 58 - Trail 5 Kasigluk to Bethel (see# 59-2) (west of Bethel)

Identification - T9N, R74W, SM

Description: The trail runs from Kasigluk via Nunapitchuk to Bethel; winter trail.

QUAD 58 - Trail 6 Bethel/Goodnews Bay Winter Trail (see #54-2, 59-3 (south of Bethel)

Identification - Quad 58, Baird Inlet

Description: The trail runs from Bethel via Naparskak, Eek and Quinhagak to Goodnews Bay.

QUAD 59 - Trail 1 Tuntutuliak to Bethel (see #58-3) (continuation of Trail 3 south of Baird Inlet; shown as #3)

Identification - T7N, R71W, SM

Description: The trail runs from Johnson River - Kinak Trail 92 from Tuntutuliak to Bethel; winter trail.

QUAD 59 - Trail 2 Bethel to Kasigluk (see #58-5)
(continuation of Trail 5 west of Bethel; shown as #5)

Identification - Quad 59, Bethel

Description: The trail runs from Bethel to Kasigluk.

QUAD 59 - Trail 3 Bethel/Goodnews Bay Winter Trail(see 58-6)
(continuation of Trail 6 south of Bethel; shown as #6)

Identification - Quad 59, Bethel

Description: The trail runs from Bethel to Goodnews.

QUAD 59 - Trail 4 Bethel/Tuluksak (see #73-1) 44 miles
(north of Bethel)

Identification - Quad 59, Bethel

Description: The trail runs from Bethel to Tuluksak.

QUAD 59 - Trail 5 Tuluksak/Bear Creek (see #73-5) (Trail 5
nearest east border of map)

Identification - Quad 59, Bethel

Description: The trail runs 9 miles east of Tuluksak on the
Tuluksak River (at the NYAC storage building) easterly to
NYAC, 32 miles.

QUAD 59 - Trail 6 Upper Landing Bear Creek (see #73-6)
(Trail system east of Kuskokwim River)

Identification - Quad 59, Bethel

Description: The trail runs 13 miles east, southeast of
Tuluksak on the Tuluksak River, up Tuluksak River to join #5
in T10N, R62W, SM.

QUAD 59 - Trail 8 Akiak/Canyon Creek (45 miles) (southeast
of Kuskokwim River)

Identification - Quad 59, Bethel

Description: The trail runs from Akiak to Canyon Creek; 45
miles.

QUAD 59 - Trail 9 Akiakchak/Ohogamute (see #73-9) (north of
Bethel)

Identification - Quad 59, Bethel

Description: Trail runs from Akiakchak to Ohogamute.

QUAD 59 - Trail 10 Akiak/Russian Mission (see #73-8) 75 miles (north of Bethel)

Identification - Quad 59, Bethel

Description: The trail runs from Akiak on Kuskokwim River to Russian Mission on Yukon River (assumed route went from Phillips Bros. to Tundra George to approximate mileage.)

QUAD 73 - Trail 1 Bethel/Tuluksak (see #59-4) 44 miles (above Kuskokwim River)

Identification - Quad 73, Russian Mission

Description: The trail runs from Bethel to Tuluksak.

QUAD 73 - Trail 2 Aniak/Tuluksak (60 miles) (east of Kuskokwim River)

Identification - Quad 73, Russian Mission

Description: The trail runs from Aniak to Tuluksak.

QUAD 73 - Trail 3 Yukon/Kuskokwim/Portage (120 miles) (north of Kuskokwim River)

Identification - Quad 73, Russian Mission

Description: The trail runs from Aniak to Russian Mission (on Yukon).

QUAD 73 - Trail 5 Tuluksak/Bear Creek (see #59-5) (east of Kuskokwim River)

Identification - Quad 73, Russian Mission

Description: The trail runs 9 miles east of Tuluksak on the Tuluksak River (at the NYAC storage building) easterly to NYAC, 32 miles.

QUAD 73 - Trail 6 Upper Landing Bear Creek (see #59-6) (Trail system east of Kuskokwim River)

Identification - Quad 73, Russian Mission

Description: The trail runs 13 miles east, southeast of Tuluksak on the Tuluksak River, up Tuluksak River to join #5 in T10N, R62W, SM.

QUAD 73 - Trail 7 Marvel Creek (east border of map)

Identification - Quad 73, Russian Mission

Description: The trail departs #2 five miles south of Aniak southerly to Marvel Creek in T9N, R58W, SM; 60 miles.

QUAD 73 -Trail 8 Akiak/Russian Mission (75 miles - see #59-10) (northeast of Bethel)

Identification - Quad 73, Russian Mission

Description: The trail runs from Akiak on Kuskokwim River via Big Fritz, Phillips Bros, Tundra George to Russian Mission on Yukon River (assumed route went from Phillips Bros. to Tundra George to approximate mileage.)

QUAD 73 - Trail 9 Akiakchak/Ohogamute (see #59-9) (north of Bethel)

Identification - Quad 73, Russian Mission

Description: Trail runs from Akiakchak to Ohogamute.

QUAD 73 - Trail 10 Bennett's Cutoff (18 miles) (southeast of Yukon River)

Identification - Quad 73, Russian Mission

Description: The trail leaves #8 near Tundra George, runs northwest to Yukon River to Toklik, Ohogamut, Kakamut, etc.

QUAD 73 - Trail 11 Phillips Bros/Phillips/Tundra George (southeast of Yukon River)

Identification - Quad 73, Russian Mission

Description: The trail runs from Phillips Bros. via Phillips to Tundra George.

QUAD 73 - Trail 13 Tuluksak/Kalskag (near Kuskokwim River)

Identification - Quad 73, Russian Mission

Description: The trail runs from Tuluksak to Kalskag.

QUAD 73 - Trail 16 Holy Cross/Kalskag (56 miles - see #78-1) (northeast corner of map)

Identification - Quad 73, Russian Mission

Description: The trail runs from Lower Kalskag on the Kuskokwim River, north via Paimiut on the Yukon River to Holy Cross.

QUAD 73 - Trail 17 Paimiut/Portage (alternate trail) (northeast corner of map)

Identification - Quad 73, Russian Mission

Description: The trail is an alternate trail; both trails terminate on the Paimiut Portage Trail. The southern end is at the south shore of a large lake (unnamed).

QUAD 73 - Trail 18 Paimiut/Marshall (see #74-2) (northeast corner of map)

Identification - Quad 73, Russian Mission

Description: The trail runs west along the north bank of the Yukon River from Paimiut via Russian Mission. At Russian Mission the trail goes overland, westward to Marshall also on the Yukon River. The eastern terminus of this trail is at Paimiut where it joins the Holy Cross/Kalskag Trail.

QUAD 73 - Trail 19 Toklik South Trail (south of Yukon River)

Identification - Quad 73, Russian Mission

Description: Toklik on the north bank of the Yukon is the point of which the trail crosses the river and heads south for about 10 miles into low hilly country.

QUAD 74 - Trail 1 Yukon River Winter Trail (see 73-18, 77-2) (winds along Yukon River)

Identification - Quad 74, Marshall

Description: The trail runs from Pilot Station to Kotlik via north bank of Yukon River with alternate routes in area of Pilot Station to Marshall.

QUAD 74 - Trail 2 Paimiut/Marshall (see #73-18) (north of Yukon River)

Identification - Quad 74, Marshall, T21N, R70W, SM

Description: Marshall on Poltes Slough is the western terminus of this trail. At Paimiut the trail joins the Holy Cross/Kalskag Trail.

QUAD 75 - Trail 1 Scammon Bay/Hooper Bay Winter Trail (south of Scammon Bay)

Identification - T17N, R90W, SM

Description: The trail runs from Scammon Bay southwest to Hooper Bay.

QUAD 75 - Trail 2 Scammon Bay/Hamilton/St. Michaels Winter Trail (see #76-1) (east of Scammon Bay)

Identification - Quad 75, Hooper Bay

Description: The trail runs from Scammon Bay via Black River crossing Alakanuk, Hamilton, Pastpolik to St. Michael and Stebbins.

QUAD 75 - Trail 3 (no name) (south of Scammon Bay)

Identification - Quad 75, Hooper Bay

Description: The trail runs from the mouth of Nilmut River northeast toward Towak Mountains.

QUAD 76 - Trail 1 Scammon Bay/Hamilton/St. Michael Winter Trail (see #75-2, 77-1) (north of Scammon Bay)

Identification - Quad 76, Black

Description: The trail runs from Scammon Bay via Black River crossing Alakanuk, Hamilton, Pastolik to St. Michael and Stebbins.

QUAD 77 - Trail 1 Scammon Bay /Hamilton/St. Michael Winter Trail (see #76-1, 92-154) (same as above - marked only once)

Identification - Quad 77, Kwiguk

Description: The trail runs from Scammon Bay via Black River crossing Alakanuk, Hamilton, Pastolik to St. Michael and Stebbins.

QUAD 77 - Trail 2 Yukon River Winter Trail (see #74-1) (lower part shown as Trail 8)

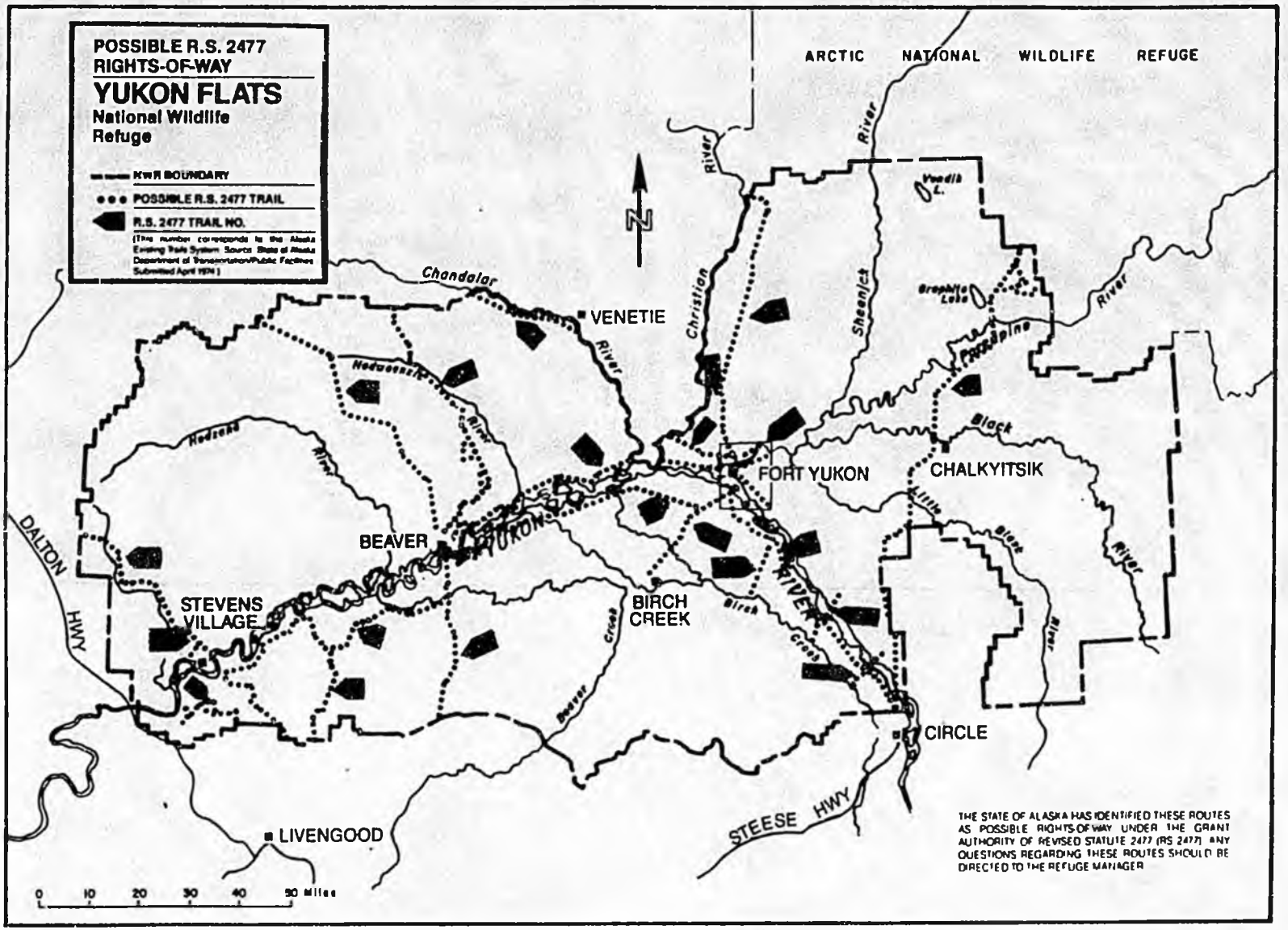
Identification - Quad 77, Kwiguk

Description: The trail runs from Hamilton via east bank and north bank of Yukon River to Pilot Station.

QUAD 92 - Trail 154 St. Michael/Kotlik (see #77-1) (west of Pastol Bay)

Identification - Quad 92, St. Michael, T28S, R26W, KRM

Description: The trail runs approximately 30 miles, traverses lake and inlets on Bering Sea coast or the sea ice itself. From St. Michaels it follows left bank of St. Michaels canal for 8 miles, then crosses the canal to mainland, thence in southwesterly direction of Pitmatalik Village, a distance of 27 miles, thence back to Pt. Romanof to beach 7 miles, thence to Coffee Point 12 miles, then by Pastolik to Kotlik 12 miles, thence southwest off the map.


POSSIBLE R.S. 2477 RIGHTS-OF-WAY
YUKON FLATS
National Wildlife Refuge
KWR BOUNDARY
POSSIBLE R.S. 2477 TRAIL
R.S. 2477 TRAIL NO.
(This number corresponds to the Alaska Existing Trails System Source: State of Alaska Department of Transportation/Public Facilities Submitted April 1974)
ARCTIC NATIONAL WILDLIFE REFUGE
N
Chandalar River
VENETIE
Christian River
Sheenjek River
Porcupine River
Hodzana River
Black River
FORT YUKON
CHALKYITSIK
Little Black River
DALTON HWY
BEAVER
YUKON RIVER
STEVENS VILLAGE
BIRCH CREEK
Birch Creek
Beaver Creek
CIRCLE
LIVENGOOD
STEESE HWY
0 10 20 30 40 50 Miles
THE STATE OF ALASKA HAS IDENTIFIED THESE ROUTES AS POSSIBLE RIGHTS-OF-WAY UNDER THE GRANT AUTHORITY OF REVISED STATUTE 2477 (RS 2477). ANY QUESTIONS REGARDING THESE ROUTES SHOULD BE DIRECTED TO THE REFUGE MANAGER

YUKON FLATS NATIONAL WILDLIFE REFUGE
POSSIBLE RS 2477 RIGHTS-OF-WAY

The following possible RS 2477 rights-of-way have been identified within the boundaries of Yukon Flats National Wildlife Refuge, according to the 1974 Alaska Existing Trails System inventory. The trails are listed by quadrangles corresponding to the U.S.G.S. 1:250,000 scale map series for Alaska.

Note: Several of the 21 trail systems in this refuge continue through several quads, therefore some trail numbers appear twice (different quad).

QUAD 104 - Trail 202 Circle to Fort Yukon (below Fort Yukon)

Identification - Winter trail from Circle to Fort Yukon

Description: The winter trail extends from Circle at end of Steese Road, parallels Yukon River on its LL to within 16 miles of Fort Yukon from which point it follows the river ice.

QUAD 104 - Trail 202A Circle/Fort Yukon, Spur #4 (above Circle)

Identification - Quad 104, Circle

Description: The trail is noted as Spur #4 which runs from Twenty-two Mile Village thence southwest to a point on Birch Creek.

QUAD 105 - Trail 49 Winter Trail Bettles to Stevens Village (west border of map, near Dalton Highway)

Identification - Winter trail from Bettles Field to Stevens Village

Description: The trail starts in Bettles, T24N, R18W, FM and runs southeasterly across the south fork of Koyukuk River, Bonanza Creek, Fish Creek, to mouth, crosses divide to Kanuti River, crosses divide to west fork of Dall River across to Coal Creek downstream to Dall River through Dall River Flats east to Stevens Village T14N, R7W, FM, through Horseshoe Lake southeast across Yukon River via Jackson Island to Jackson Lake easterly to Ross Creek, up Ross Creek to divide into Rogers Creek south to Ely to Gatlena Gap, south to Hess Creek, southerly up south fork of Hess Creek to Hess Creek Dam, joining the highway system north out of Livengood, T9N, R4W, FM.

QUAD 105 - Trail 61 (connecting Trails 49 and 57) (southwest corner of map)

Identification - Trail connecting Trails 49 and 57

Description: The trail runs from the junction with Trail 49 in T11N, R4W, FM north to Ely over highlands, north through T12-14N, R3W, FM in Livengood and Beaver quads to Trail 57.

QUAD 105 - Trail 64 (Livengood to Hamlin) (below Stevens Village)

Identification - Trail from Livengood to Fort Hamlin

Description: The trail runs north over Livengood Dome across headwaters of Lost Creek over divide to head of McHugh Creek, down creek to Hess Creek, across Hess Creek over divide to Fish Creek, across it over divide to Rogers Creek northwesterly to Fort Hamlin T12N, R8W, FM with alternate routes between Livengood and Hess Creek.

QUAD 105 - Trail 205 Chatanika/Yukon Trail (100 miles) (south of beaver)

Identification - Fairbanks to the Chandler Mining Region

Description: In 1913 the Alaska Road Commission noted the trail was referred to as the Chatanika/Beaver Trail; was used in 1922 as winter trail between Chatanika at end of branch of government railroad and town of Beaver in Yukon (120 miles.) In 1927, notation made to extend trail from Old Snowshoe Roadhouse, 14 miles from Olnes on Olnes - Livengood Trail down Wickersham and Beaver Creeks to T10N, R1W, then north to Victoria Creek then down creek to Bull Creek, then up west fork of creek across mountains to a creek in T13N, R1E, then north to Twin Lakes and intersection of Trail 57, then north across Yukon River to Beaver.

QUAD 118 Trail 37 (northcentral of Yukon River)

Identification - Beaver quad, trail from Fort Yukon along the Yukon River to Beaver

Description: The trail begins at Fort Yukon, thence westerly along the north bank of the Yukon River to Beaver.

QUAD 118 Trail 38 (south of Yukon River)

Identification - Beaver, Fort Yukon quads, trail from the Spur 202D of the Circle/Fort Yukon Trail 20 to Beaver.

Description: The trail begins at a point on the Circle/Fort Yukon spur 202D, which is 12 miles southwest of Fort Yukon, thence westerly along the south bank of the Yukon River to Beaver.

QUAD 118 - Trail 43 Beaver to Horse Creek (south of Hadweenzic River)

Identification - Beaver to Horse Creek Trail

Description: The trail runs from Beaver northwesterly along the ridge between Hadweenzic Creek and Hodzana Creek to Trout Creek, along Trout Creek over the divide into Trail Creek along Trail Creek to west fork of Chandalar River, thence northerly to north fork of Chandalar River, along the north fork to Horse Creek.

QUAD 118 - Trail 49 Winter Trail Bettles to Stevens Village (near Dalton Highway, above Stevens Village)

Identification - Winter trail from Bettles Field to Stevens Village

Description: The trail starts in Bettles, T24N, R18W, FM and runs southeasterly across the south fork of Koyukuk River, Bonanza Creek, Fish Creek, to mouth, crosses divide to Kanuti River, crosses divide to west fork of Dall River across to Coal Creek downstream to Dall River through Dall River Flats east to Stevens Village T14N, R7W, FM, through Horseshoe Lake southeast across Yukon River via Jackson Island to Jackson Lake easterly to Ross Creek, up Ross Creek to divide into Rogers Creek south to Ely to Gatlena Gap, south to Hess Creek, southerly up south fork of Hess Creek to Hess Creek Dam, joining the highway system north out of Livengood, T9N, R4W, FM.

QUAD 118 - Trail 49A (near Stevens Village)

Identification - Trail 49A is spur from Trail 49 to landing area at Stevens Village

Description: The trail starts from point on Trail 49 about 1 mile south & 1 1/2 miles east of T14N, R7W, FM running westerly to Island Lake thence turning and running southeasterly to landing area northwest of Stevens Village.

QUAD 118 - Trail 57 (southwest of Beaver)

Identification - Trail from Ross Creek and Jackson Lake to Beaver

Description: The trail begins in T14N, R6W, FM and runs approximately 6 miles east of Stevens Village, south of Yukon River northeasterly to Rogers Creek and Jacobs Point easterly to New Lake, Tincan Lake, Beaverdam Lake, Twin Lakes northerly on Chatanika/Beaver Trail, T16N, R1E.

QUAD 118 - Trail 61 (southwest part of map)

Identification - Connecting Trails 49 and 57

Description: Trail runs from junction with Trail 49 in T11N, R4W, FM Livengood quad northeasterly over highlands, north through T12,13,14, R3W, FM in Livengood and Beaver quads to Trail 57.

QUAD 118 - Trail 205 Chatanika/Yukon Trail (south of Beaver)

Identification - Trail from Fairbanks to the Chandler Mining Region, 100 mile trail

Description: In 1913 the Alaska Road Commission noted the trail was referred to as the Chatanika/Beaver Trail; was used in 1922 as winter trail between Chatanika at end of branch of government railroad and town of Beaver in Yukon (120 miles.) In 1927, notation made to extend trail from Old Snowshoe Roadhouse, 14 miles from Olnes on Olnes - Livengood Trail down Wickersham and Beaver Creeks to T10N, R1W, then north to Victoria Creek then down creek to Bull Creek, then up west fork of creek across mountains to a creek in T13N, R1E, then north to Twin Lakes and intersection of Trail 57, then north across Yukon River to Beaver.

QUAD 118 - Trail 208 Yukon/Chandalar Sled Road (75 miles) (north of Beaver)

Identification - Connects Chandalar mining region with Yukon River and by a circuit route with Fairbanks

Description: The trail was referenced in the Alaska Road Commission 1913 annual report as Beaver/Chandalar Sled Road, 75 mile sled road connecting Beaver and Caro, from Beaver northeasterly past George Lake, Nine Mile Lake, Twelve Mile Lake, Fourteen Mile Lake to cabin in T20N, R3E, FM then northwest with 2 loops to 56 mile cabin in T25N, R1W, FM then northerly to 61 Mountain and Schilling Creek and junction with Trail 41 then northwesterly to Caro.

QUAD 119 - Trail 32 (above Chalkyitsik)

Identification - Northeast access through Chalkyitsik to Yukon Border

Description: The trail crosses Yukon/Alaska border in T14S, R48E, UPM, follows Bilwaddy Creek west approximately 10 miles southwest on the east side of the Coleen River crossing to the southwest in T28N, R22E, FM from here southwest to crossing of the Porcupine River in T25N, R20E, FM thence southwest along Porcupine approximately 25 miles turning due south through Chalkyitsik to Ohtig Lake then southwest approximately 18 miles turning due south in T18N, R17E, FM proceeds due south to Yukon River at a point approximately 10 miles north of Circle south to Trail 202.

QUAD 119 - Trail 34 Fort Yukon to Christian (north of Fort Yukon)

Identification - Fort Yukon to Christian

Description: The trail runs from Fort Yukon northwest to Alexander's Village, thence northeast via Joint Lake to a point approximately three miles east of Christian thence due east to Christian.

QUAD 119 - Trail 34A (north of Fort Yukon)

Identification - Alexander's Village to Veh-Tenjerlow Lakes

Description: The trail runs from Alexander's Village westerly across Christian River, thence west-northwest to Tsukon, thence northwest to Veh-Tenjerlow Lakes area T25N, R8E, FM.

QUAD 119 - Trail 34B (system around Fort Yukon)

Identification - Trail system of Trail 34 extending out from Fort Yukon in T23N, R12E, FM

Description: The trail runs from trail system 34 easterly from Fort Yukon in T23N, R12E, FM.

QUAD 119 - Trail 37 (northcentral, above Yukon River)

Identification - Trail from Fort Yukon along the Yukon River to Beaver

Description: The trail begins at Fort Yukon thence runs westerly along the north bank of the Yukon River to Beaver.

QUAD 119 - Trail 38 (south of Yukon River)

Identification - Trail from the Spur 202D of the Circle/Fort Yukon Trail 202 to Beaver

Description: The trail begins at a point on the Circle/Fort Yukon spur 202D which is 12 miles southwest of Fort Yukon, thence westerly along the south bank of the Yukon River to Beaver.

QUAD 119 - Trail 202 Circle to Fort Yukon (near Ft. Yukon)

Identification - Circle to Fort Yukon Trail

Description: The winter trail extends from Circle at end of Steese Road parallel Yukon River on its LL to within 16 miles of Fort Yukon from which it follows the river ice.

QUAD 119 - Trail 202A Circle to Fort Yukon Spur #4 (above Circle)

Identification - Trail from Twenty-two Mile Village to Birch Creek

Description: The trail begins at Twenty-two Mile Village, thence southwest to a point on Birch Creek.

QUAD 119 - Trail 202B Circle to Fort Yukon Spur #3 (above Circle)

Identification - Trail from halfway whirlpool to Birch Creek

Description: The trail begins at halfway whirlpool on the Yukon River, thence southeast to a point on Birch Creek.

QUAD 119 - Trail 202C Circle/Fort Yukon Spur#2(above Circle)

Identification - Trail running from Birch Creek in T16N, R12E, FM to a cabin south of the Circle/Fort Yukon Trail.

Description: The trail begins at a point on Birch Creek in T16N, R12E, FM thence northeast to a cabin just south of the Circle/Fort Yukon Trail #202.

QUAD 119 - Trail 202D (south of Fort Yukon)

Identification - Spur of Circle/Fort Yukon Trail traveling southwest to Birch Creek

Description: The trail begins at a point on the Fort Yukon - Circle Trail 3 miles southeast of Fort Yukon, thence southwest through Twelve Mile Lake to the town of Birch Creek.

QUAD 119 - Trail 212 (northwest of Fort Yukon)

Identification - Trail from Fort Yukon to cabins cutoff

Description: The trail runs from Fort Yukon northwest to cabins cutoff on Chandalar River in T21N, R8E, FM.

QUAD 120 - Trail 32 (north of Chalkyitsik)

Identification - Northeast access through Chalkyitsik to Yukon border

Description: The trail crosses Yukon/Alaska border in T14S, R48E, UPM, follows Bilwaddy Creek west approximately 10 miles southwest on the east side of the Coleen River crossing to the southwest in T28N, R22E, FM from here southwest to crossing of the Porcupine River in T25N, R20E, FM thence southwest along Porcupine approximately 25 miles turning due south through Chalkyitsik to Ohtig Lake then southwest approximately 18 miles turning due south in T18N, R17E, FM proceeds due south to Yukon River at a point approximately 10 miles north of Circle south to Trail 202.

QUAD 121 - Trail 32 (braided) (same as above)

Identification - Northeast access through Chalkyitsik to Yukon border

Description: The trail crosses Yukon/Alaska border in T14S, R48E, UPM, follows Bilwaddy Creek west approximately 10 miles southwest on the east side of the Coleen River crossing to the southwest in T28N, R22E, FM from here southwest to crossing of the Porcupine River in T25N, R20E, FM thence southwest along Porcupine approximately 25 miles turning due south through Chalkyitsik to Ohtig Lake then southwest approximately 18 miles turning due south in T18N, R17E, FM proceeds due south to Yukon River at a point approximately 10 miles north of Circle south to Trail 202.

QUAD 122 - Trail 34 Fort Yukon to Christian (above Ft.Yukon)

Identification - Fort Yukon to Christian

Description: The trail runs from Fort Yukon northwest to Alexander's Village, thence northeast via Joint Lake to a point approximately three miles east of Christian thence due east to Christian.

QUAD 122 - Trail 41 Coldfoot to Venetie (near Venetie)

Identification - Coldfoot to Venetie Trail

Description: The trail runs from Coldfoot easterly along Slate Creek to Boulder Creek thence southeasterly through Boatman Pass to west fork of Chandalar River, along the west fork to a crossing of the middle fork near Mary Lake then south of Mary Lake and Kobuk Lake to Caro, thence on the Beaver Caro Trail to Schilling Creek along the south bank of the Chandalar River to Chuttoh Bluffs and Venetie.

QUAD 123 - Trail 41 Coldfoot to Venetie (same as above)

Identification - Coldfoot to Venetie Trail

Description: The trail runs from Coldfoot easterly along Slate Creek to Boulder Creek thence southeasterly through Boatman Pass to west fork of Chandalar River, along the west fork to a crossing of the middle fork near Mary Lake then south of Mary Lake and Kobuk Lake to Caro, thence on the Beaver Caro Trail to Schilling Creek along the south bank of the Chandalar River to Chuttoh Bluffs and Venetie.

QUAD 123 - Trail 208 Yukon/Chandalar Sled Road (75 miles) (along Hadweenzic River)

Identification - Connects Chandalar mining region with Yukon River and by a circuit route with Fairbanks

Description: The trail was referenced in the Alaska Road Commission 1913 annual report as Beaver/Chandalar Sled Road, 75 mile sled road connecting Beaver and Caro, from Beaver northeasterly past George Lake, Nine Mile Lake, Twelve Mile Lake, Fourteen Mile Lake to cabin in T20N, R3E, FM then northwest with 2 loops to 56 mile cabin in T25N, R1W, FM then northerly to 61 Mountain and Schilling Creek and junction with Trail 41 then northwesterly to Caro.

SECTION III - DEPARTMENT OF INTERIOR

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

October 23, 1985

Honorable John B. Coghill
Alaska State Senate
P.O. Box 268
Nenana, Alaska 99760

Dear Mr. Coghill:

As you know I recently visited Alaska and among other items of business I discussed the references to possible R.S. 2477 historic trails in the National Park Service general management plans with Regional Director Evison and Deputy Regional Director Peterson, as well as with the Citizens Advisory Commission on Federal Areas.

The National Park Service will include the R.S. 2477 identification maps supplied by the State of Alaska in the general management plans. Since these possible right-of-ways have, as yet, not been formally asserted or recognized, the National Park Service will include language on the maps to identify them as being included for informational purposes.

Recently, I requested Department of the Interior bureaus in Alaska, under the chairmanship of Ric Davidge, to work together as a task force in drafting guidelines for the receipt and processing of R.S. 2477 claim assertions in Alaska. This effort is in process now.

A copy of this letter will be forwarded to the Alaska Regional Directors; however, based on our August discussions in Anchorage, I am confident that those materials provided by the State will be included in the appropriate management plans.

Sincerely,

Bill Horn

Assistant Secretary for
Fish and Wildlife and Parks

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 12 1985

Memorandum

To: Director, Fish and Wildlife Service
Director, National Park Service

From: Assistant Secretary for Fish and Wildlife and Parks /s/ William P. Horn

Subject: Identification and Assertion of Rights-of-Way by the State of Alaska or Other Claimants Under RS2477 Grant

As you know, the State of Alaska has begun a program of identifying possible rights-of-ways within the Alaska units of the National Park Service and the Fish and Wildlife Service. Since my last visit to Alaska I have given this program some thought and requested my Special Assistant in Alaska to chair a task force on the matter.

Of immediate concern is how we respond to the efforts of the State, or any other party, in receiving claim assertions or maps that identify possible rights-of-ways. While in Alaska I made the decision that it was in the public interest to include the maps provided by the Chairman of the Alaska State Senate Transportation Committee as an appendix in the Park Service General Management Plans. The inclusion of these maps in the GMP's provides the public general notice that the State believes there are potential pre-existing rights-of-ways in the park units. I am informed that normally the claim assertion process does not afford public notice and therefore have insisted that we include these maps in the plans.

It is important to recognize the difference between the "identification" of possible rights-of-ways and the formal assertion of a right-of-way claim under the RS2477 grant. The inclusion of these "identification maps" in no way establishes or recognizes a right-of-way or relinquishes rights-of-ways not identified. The map simply alerts the public and unit managers that these rights-of-ways may exist within the park or refuge under the RS2477 grant. I believe the inclusion of the maps in our plans to be in the public interest.

The State is also providing "identification" maps for each of the refuges in Alaska. It is my decision that each Comprehensive Conservation Plan for the refuges include these maps at the earliest practicable opportunity.

Although I recognize that some of the CCP's are finished and others are close to being completed, I ask you to include the maps in the proper

areas of the plans. It would be most effective to have these maps available in the DRAFT CCP's presented for public review. Each of the maps must be properly titled to assist plan reviewers in understanding that the maps only "identify" "possible" rights-of-ways within the refuge.

My staff in Alaska is in the process of providing, for our review, DRAFT guidelines on the receipt and processing of formal RS2477 claim assertions. The Bureau of Land Management in Alaska and in Washington, D.C. has been most helpful in this effort and we are building on their experience in this area. It is my intent to have you review the DRAFT Guideline for the receipt and processing of RS2477 claim assertions by the Fish and Wildlife Service and the National Park Service in Alaska soon.

At present neither agency has guidelines in this area although BLM does. Given the very complex legal and land management questions involved, guidelines applicable to NPS and FWS lands will be needed. It is also my intention to formally publish these guidelines in the Federal Register

Please advise if you have any specific concerns regarding our approach to this problem. The principal contact in my office for the RS2477 issue is Ric Davidge (907) 786-3435.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MEMORANDUM

NOV 7 1985

TO: RS 2477 Task Force

FROM: Ric Davidge, Chairman
Office of Assistant Secretary
Fish, Wildife and Parks

Enclosed for your review and consideration are a host of materials regarding the issue we have been charged to address. Please carefully review these comments and provide back to me any questions or comments that you have. Please, I am not asking for official agency responses, only words-on-paper.

Following the panel at the AFN convention, which many of you attended (Thanks), a great deal of mis-information was left up in the air and has unfortunately fostered controversy that is not factually based. I have discussed my concerns with most of you and the senior agency officials of both Federal and State governments as well as AFN and have concluded that prior to issuing DRAFT RS 2477 Claim Asserting and Recognition Guidelines we must directly and publicly address some of the key fact/fiction questions now making the rumor circuit.

It is therefore my recommendation that during the second week of December, 1985 (Dec 8-14) we hold a one-day public workshop on RS 2477's - The Facts not Fictions. I have approached AFN and the Native Land Managers' Association as well as State and Federal agencies to seek co-sponsorship of the workshop. The response has been favorable. I have also requested that the top RS 2477 solicitors from the Washington DOI office participate in this workshop along with other experts from the ROW section of BLM in Washington, D.C.

In preparing for this workshop we need to decide the specific date, location, format and hand out materials.

I recommend the 11th of December (Wednesday) starting at 9 a.m. with a panel of experts presenting the FACTS. A break for lunch from 12:00-1:00, and the afternoon dedicated to question, answer and discussion.

To prepare for the presentations and following discussions I recommend you assimilate all appropriate factual materials and organize them in a presentable form. In as much as BLM has been directly responsible for the RS 2477 program for many years I am asking that they facilitate the workshop and be the receivers/organizers of your handouts or information.

The development of a 3-ring binder on RS 2477 ROW's Facts, not Fictions that is organized along subject lines should assist in our efforts initially and allow up dating at a later time if necessary.

One of the most important components of this workshop and its' "papers" is the Question and Answer presentation following lunch. In order to assist all those participating, I am asking that each agency or participant prepare a Question and Answer handout that identifies, asks, and answers every reasonable question you may anticipate. If you identify questions for which you have no answers they should be placed on seperate pages and will serve as a basis for discussion.

I do not anticipate we will be able to identify, ask or answer all the questions that may arise, but at least we can put FACT forward and establish a solid basis for proceeding on the guidelines.

If you have any questions please call 786-3374 or 786-3435.

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOV 2 2 1985

TO: RS2477 Task Force

FROM: Ric Davidge, Chairman

SUBJECT: Federal Regulation/Permitting of Uses on RS2477 Rights-of-Ways

In a recent meeting with senior regional officials of the National Park Service (NPS), a question of that agency's authority to regulate, via permit, the activities and/or uses of RS2477 Rights-of-Way (ROW) was discussed. Although no agreements were reached at that point, I think it important to keep you advised of significant concerns or issues in this area as they develop.

Basically, the NPS is arguing that RS2477 ROW's fall under their (36 CFR 13.14) regulations (copy enclosed); NPS and their Solicitor cite a recent statement from Federal Judge Fitzgerald as the basis for this contention.

As you recall at our meeting, prior to my last trip to Washington, D.C., I took the position that ROW granted by RS2477 were subject to reasonable Federal regulation. After meetings with the ROW office of the Bureau of Land Management (clearly the experts in the RS2477 area) and with other Department of Interior officials, I was convinced, without qualification, that ROW's granted by RS2477 are State highways and are not subject to Federal regulation. This conclusion evolved from two points of law that were discussed with the Assistant Secretary.

1. The nature of the 1866 grant by Congress, via enactment of RS2477, was unqualified. The grants' acceptance (claim) must have occurred, in Alaska, before 1968 (Secretary Udalls' withdrawl). Both events predate the creation of the Conservation System Units in the Alaska National Interest Lands Conservation Act (ANILCA) in 1981. The ROW's granted and accepted, regardless of whether federal agencies have noted them on the status plats, are pre-existing property rights given/granted/conveyed to the Territory/State of Alaska.

It is my interpretation of 36 CFR 13.14 that it applies only to the use of off-road vehicles on lands owned by the NPS. To find otherwise would be to claim that a ROW or other interests in property owned by governments (other than NPS) or individuals/corporations are subject to NPS regulations and management. Even if the Park Service has the authority to require a permit for use of the RS2477 Right of Way - what would the permit require? The NPS has no authority, according to my researched analysis, to limit a otherwise constrain public uses of the ROW so long as those uses are consistent with the ROW grant purpose which was transportation and applicalbe state law. In addition if NPS interpretation were correct (and I do not believe it is), the passage of ANILCA (section 103[c]) in 1981 directly addresses that issue.

2. Section 103(c) of ANILCA states clearly that only those lands (or interests therein) that are "public lands" (owned by the NPS) are subject to Federal regulation. A ROW granted and claimed under RS2477 is a (less-than-fee) property right/easement that belongs to the State and not to the NPS, and therefore, is not subject to NPS regulation or management. Clearly, where appropriate, NPS continues to own the land, subject to the ROW granted by Congress for transportation purposes. NPS management and regulation of the land can in no way impede the Congressionally granted ROW, so long as its use is consistent with the purposes of the grant.

Let's explore Section 103(c) of ANILCA further in light of some questions raised on the definition of some terms within that section of ANILCA.

Section 103(c)

Only those lands within the boundaries of any conservation system unit which are public lands (as such term is defined in this Act) shall be deemed to be included as a portion of such unit. No lands conveyed to the State, to any Native Corporation, or to any private party shall be subject to the regulations applicable solely to public lands within such units. If the State, a Native Corporation, or other owner desires to convey any such lands, the Secretary may acquire such lands in accordance with applicable law (including this Act), and any such lands shall become part of the unit, and be administered accordingly.

Reference is made by Section 103(c) to the definition of the term "public lands." Section 102(3)(A) states:

(3) The term "public lands" means land situated in Alaska, which after the date of enactment of this Act, are Federal lands, except-

(A) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law.

Following my review of these sections of ANILCA, it is clear to me that ROW's granted by RS2477 in 1866 and claimed by the State/Territory of Alaska by various acts are not subject to NPS management and/or regulation. I would appreciate your analysis of this interpretation and any comments you may wish to offer regarding any application of these concepts on your agencies' land management programs.

I have attached for your review a copy of the Judge's statement in which he presents his reasoning for granting the NPS a preliminary restraining order in the Vogler case. His granting the order has been appealed, I am informed, and the court may or may not agree with his stated reasoning.

According to some Federal officials who observed the Vogler case in court, the judge did not directly address the RS2477 issue but rather addressed the question of immediate harm and in "deference to administrative interpretation," granted the order.

Further, in my review of 36 CFR 13.14 (copy attached), I conclude that the application of the term "established roads and parking areas" addresses those roads and parking areas "established" by the NPS for specific uses and not private roads/State highways or ROW's granted by Congress prior to the creation of the park unit and prior to even the promulgation of 36 CFR 13.14.

I hope this discussion has stimulated some thinking regarding any implications to your agency or interest area. If so, it has served its purpose. Clearly, 36 CFR 13.14 applies only to the NPS but there are some general concepts/issues that come to mind in discussing this point and it is for that purpose that this memorandum has been provided. It has not been my intent to argue for or against a particular position but to academically explore the contention of NPS and its Solicitor on this important issue.

If you have any questions or comments, please forward them to me quickly.

Remember, the workshop is scheduled for the 11th of December and so far I have verbal agreements from the State (DNR/DOT) and the Alaska Federation of Natives, along with the Alaska Native Land Managers Association and appropriate Federal agencies to co-sponsor the workshop. I await your written questions and answers for consolidation and presentation PRIOR to our next meeting of the task force. I also need your FACT papers too.

Attachments

FOR THE MINING SECTION, IT PROBABLY ALSO AFFECTS THE TYPE OF SHOWING OF TYPES OF HARM. THE TREMENDOUS LANGUAGE CONGRESS USED DEALING WITH ACCESS FOR ECONOMIC OR OTHER PURPOSES STRANGELY IS DEVOID OF ANY TYPE OF INDICATION OF WHAT INTERESTS WERE TO PREVAIL OVER THESE INTERESTS. IT IS CLEARLY A UNIQUE SITUATION. I THINK IT COULD PROBABLY GO TO THE TYPE OF RELIEF, BECAUSE IF WE ARE STOPPED WITH THE INJUNCTION, THERE IS JUST NO WAY THAT ONE COULD AVAIL HIMSELF OF THAT PRESUMPTION OR THAT GRANT LANGUAGE.

THE COURT: I THINK YOU HAVE COVERED YOUR POSITION VERY WELL, MR. STEMP.

MR. STEMP: THANK YOU, YOUR HONOR.

THE COURT: I AM GOING TO HAVE TO GRANT THE PRELIMINARY INJUNCTION. I WILL STATE MY REASONS.

THERE IS NOT ANY QUESTION AT ALL ABOUT THE FACT THAT MR. VOGLER OR ANY OTHER MINER WITH HOLDINGS IN A NATIONAL PARK IS ENTITLED TO ACCESS, AND THAT IS ADEQUATE AND FEASIBLE ACCESS AS DEFINED BY THE SECRETARY'S REGULATION IN PART D. THAT IS BEYOND DISPUTE IN THIS CASE.

THE QUESTION HERE IS WHETHER OR NOT HIS REGULATIONS, WHICH DEFINE AND WHICH ESTABLISH THE REQUIREMENTS FOR PERMITS, ARE SUBJECT TO, AND I JUST GRANT DEFERENCE TO THE ADMINISTRATIVE INTERPRETATION, AND SINCE THE SECRETARY IS CHARGED WITH CARRYING OUT AT LEAST THIS PROVISION OF THE ACT, SO I HAVE START OFF WITH THE RECOGNITION THAT CONSIDERABLE DEFERENCE IS

AFFORDED OR MUST BE AFFORDED TO THE SECRETARY. IN LOOKING UP THE REGULATIONS, I MUST SAY THAT IT IS VERY DOUBTFUL AS TO WHETHER OR NOT THE ROAD THAT HAS BEEN DESCRIBED TO ME, AND I USE THAT TERM, WOULD FIT THE DEFINITION OF AN ESTABLISHED ROAD WITHIN THE REGULATIONS, AND THAT DOESN'T, OF COURSE, PRECLUDE THAT THERE MAY NOT BE ACCESS OVER SEVERAL OTHER RIGHTAWAYS, LESS THAN ESTABLISHED ROAD, BUT IF IT IS IT MUST BE BY PERMIT AND THE PERMIT CARRIES WITH IT A VERY IMPORTANT PURPOSE, AND THAT IS THAT EVEN THOUGH ACCESS MIGHT BE REQUIRED THE [illegible] BE USED TO MINIMIZE WHATEVER ENVIRONMENTAL INJURY MIGHT RESULT IN ORDER TO AFFORD THE REQUIRED ACCESS.

IT IS CLEAR HERE THAT THE VEHICLES WE ARE TALKING ABOUT WERE OFF-THE-ROAD VEHICLES. THE REGULATIONS ARE QUITE CLEAR THAT THE SECRETARY IS AUTHORIZED TO ISSUE PERMITS FOR THE USE OF OFF-ROAD VEHICLES ON EXISTING OFF-ROAD VEHICLE TRAILS, [illegible] BUT HE HAS TO MAKE A FINDING IN THAT CASE AND [illegible] THE ATTACHMENT OF SUCH STIPULATIONS AND CONDITIONS THAT ARE NECESSARY FOR PROTECTION OF PARKS.

I THINK IN THIS CASE THE SECRETARY WOULD HAVE TO, ONCE THE PERMIT IS APPLIED FOR, CONSIDER ANY INJURY THAT MIGHT OCCUR AND CONSIDER THAT IN CONJUNCTION WITH THE DEMONSTRATED NEED, THAT BALANCING IS SUBJECT TO CONSIDERABLE DISCRETION ON THE SECRETARY'S PART. BUT THERE IS NO DOUBT IN MY MIND THAT

HE MAY REQUIRE THE PERMIT TO ACHIEVE THE PURPOSE OF THE ACT AND MINIMIZE ANY INJURY THAT MIGHT RESULT FROM THE ACCESS, WHICH I THINK IS STANDARD AND CONCEDEDLY SO, UNDER HIS OWN REGULATIONS.

SO I AM FINDING THAT NO PERMIT WAS APPLIED FOR, AND THAT IT WAS NECESSARY THAT THE RESPONDENT APPLY FOR A PERMIT. I'D FIND THAT, ALTHOUGH SERIOUS QUESTIONS ARE RAISED, THAT THE GOVERNMENT SHOWS A STRONG LIKELIHOOD OF SUCCESS.

TURNING THEN TO THE QUESTION OF IRREPARABLE INJURY: I HAVE TO SAY THAT THE PUBLIC INTEREST IS INVOLVED IN THIS CASE, AND THERE'D BE SUBSTANTIAL INJURY TO THE PUBLIC INTEREST. A PRELIMINARY INJUNCTION WILL ISSUE PRECLUDING THE RESPONDENT AT THIS TIME FROM USING THE SO-CALLED WINTER TRAIL AS ACCESS TO THE MINING CLAIMS WITHOUT SEEKING A PERMIT.

SECOND, A PRELIMINARY INJUNCTION SHALL PRECLUDE HIM FROM THE MINING OPERATIONS ON UNPATENTED MINING CLAIMS ON WOODCHOPPER CREEK.

I SHALL MAKE THIS MATTER IMMEDIATELY APPEALABLE UPON THE ORIGINAL DOCUMENTS AND RECORDS.

I SHOULD ALSO LIKE TO, IMMEDIATELY UPON ADJOURNMENT, SEE COUNSEL IN MY CHAMBERS. SEE ME IN MY CHAMBERS, COUNSEL. WE SHALL DIRECT THE PREPARATION OF AN INJUNCTION, MAKE CERTAIN ITS LIMITATIONS, AND I ALSO WANT TO DISCUSS WITH COUNSEL WHAT SHOULD BE DONE, UNDER THE CIRCUMSTANCES, IN A VERY PRACTICAL SENSE. GOOD AFTERNOON.

[WHEREUPON COURT ADJOURNED AT 3:49 P.M.]

downed aircraft is otherwise impracticable or impossible.

(e) Salvaging, removing, posessing, or attempting to salvage, remove or possess any downed aircraft or component parts thereof is prohibited, except in accordance with a removal procedure established under paragraph (c) of this section. *Provided, however,* That the owner or an authorized representative thereof may remove valuable component parts from a downed aircraft at the time of rescue without a permit.

(f) The use of a helicopter in any park area, other than at designated landing areas (*see* Subpart C regulations for each park area) or pursuant to the terms and conditions of a permit issued by the Superintendent, is prohibited.

[46 FR 31854, June 17, 1981; 46 FR 35258, July 8, 1981]

§ 13.14 Off-road vehicles.

(a) The use of off-road vehicles in locations other than established roads and parking areas is prohibited, except on routes or in areas designated by the Superintendent or pursuant to a valid permit as prescribed in paragraph (c) of this section or in § 13.15 or § 13.16. Such designations shall be made in accordance with procedures in this section. Nothing in this section affects the use of off-road vehicles by local rural residents engaged in subsistence as authorized by § 13.46.

(b)(1) The Superintendent's determination of whether to designate a route or area for off-road vehicle use shall be governed by Executive Order 11644, as amended.

(2) Route or area designations shall be published in the "FEDERAL REGISTER."

(3) Notice of routes or areas on which off-road travel is permitted shall be in accordance with the provisions of § 13.30(f).

(4) The closure or restrictions on use of designated routes or areas to off-road vehicles use shall be in accordance with the provisions of § 13.30.

(c) The Superintendent is authorized to issue permits for the use of off-road vehicles on existing off-road vehicle trails located in park areas (other than areas designated as part of the National Wilderness Preservation System) upon a finding that such off-road vehicle use would be compatible with park purposes and values. The Superintendent shall include in any permit such stipulations and conditions as are necessary for the protection of park purposes and values.

§ 13.15 Access to inholdings.

(a) *Purpose.* A permit for access to inholdings pursuant to this section is required only where adequate and feasible access is not affirmatively provided without a permit under §§ 13.10 through 13.14 of these regulations. Thus, it is the purpose of this section to ensure adequate and feasible access across a park area for any person who has a valid property or occupancy interest in lands within or effectively surrounded by a park area or other lands listed in section 1110(b) of ANILCA.

(b) *Application and Administration.* (1) Applications for a permit designating methods and routes of access across park areas not affirmatively provided for in this part shall be submitted to the Superintendent having jurisdiction over the affected park area as specified under § 13.31.

(2) Except as provided in paragraph (c) of this section, the access permit application shall contain the name and address of the applicant, documentation of the relevant property or occupancy interest held by the applicant (including for 1872 Mining Law claimants a copy of the location notice and recordations required under the 1872 Mining Law and 43 U.S.C. 1744), a map or physical description of the relevant property or occupancy interest, a map or physical description of the desired route of access, a description of the desired method of access, and any other information necessary to determine the adequacy and feasibility of the route or method of access and its impact on the natural or other values of the park area.

(3) The Superintendent shall specify in a nontransferable permit, adequate and feasible routes and methods of access across park areas for any person who meets the criteria of paragraph (a) of this section. The Superin-

United States Department of the Interior

WASHINGTON, D.C. 20240

OFFICE OF THE
ASSISTANT SECRETARY

Senator Jack Coghill
Chairman
Senate Transportation Committee

Dec 30, 1985

Dear Senator,

Enclosed is what I am calling the definitive analysis of the case law and administrative law review of RS2477. You will note that it was prepared by Ted Bingham, Chief, Division of Right-of-Way, BLM. He is regarded as the expert in this area and I think you will find his paper of significance.

As you know we are still in the formation stage of the RS2477 workshop. I understand you and both the House and Senate Committee may request a presentation by the panel of experts we will have at the workshop and that you want that presentation to be in Juneau. If you make the decision to request this please do so as soon as possible allowing us the greatest lead time possible.

Best wishes on the comming legislative session.

Ric Davidge
Chairman
RS 2477 Task Force

RS 2477

Section 8 of the Act of July 26, 1866, 14 Stat. 253, Revised Statutes 2477, 43 U.S.C. 932, repealed October 31, 1976, 90 Stat. 2793, (RS 2477), provided:

> The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

- It was an outright grant of right-of-way by the United States if and when accepted.

Determining whether an RS 2477 highway has been validly established is a question of federal law.

The common law doctrine of adverse possession does not operate against the federal government. United States v. California, 332 U.S. 19, 39-40 (1947); Texas v. Louisiana, 410 U.S. 702, 714 (1973), rehearing denied, 411 U.S. 988 (1973); Drew v. Valentine, 18 F. 712 (5th Cir. 1883). The necessary corollary of this rule is that in order for a state or individual to gain an interest in land owned by the United States, there must be compliance with a federal statute which grants such interests.

The operative rule of construction applicable to such statutes is that grants by the federal government "must be construed favorable to the government and ... nothing passes but what is conveyed in clear and explicit language -- inferences being resolved not against but for the government." Caldwell v. United States, 250 U.S. 14, 20 (1918); Wisconsin Central R.R. Co. v. United States, 164 U.S. 190, 202 (1896); Great Northern Ry. Co. v. United States, 315 U.S. 262, 272 (1942); Andrus v. Charlestone Stone Products Co., 436 U.S. 604, 617 (1978); cf. Leo Sheep v. United States, 440 U.S. 688 (1979). This doctrine applies to grants to states as well as grants to private parties. Dubuque v. Pacific Ry. Co., 64 U.S. 66, 88 (1859).

In United States v. Gates of the Mountains Lakeshore Homes, Inc., 732 F.2d 1411 (9th Cir. 1984), the appeals court held that RS 2477 does not provide for the construction of the grant according to the law of the state in which the land subject to the grant is situated; rather, its construction is a question of Federal law. Citing Humboldt County v. United States, 68 F.2d 1276, 1280 (9th Cir. 1982), the court noted that any doubt as to the scope of the grant under RS 2477 must be resolved in favor of the Government.

To determine whether a valid RS 2477 highway exists, the several elements of the offer provided by the terms of the statute must be met. First, are the lands public lands? Second, were the public lands reserved for a public use? Third, was there actual construction? Fourth, was what was constructed a highway?

I. PUBLIC LANDS

These are the original lands ceded to the central Government by the original 13 States plus additional lands obtained by the United States through purchase (Louisiana purchase of 1803, Alaska purchase of 1867), by treaty with other Governments (with Great Britain in 1783, 1817, and 1846), etc. Lands 're-acquired' by the United States from patentees (Acquired Lands) are not public lands unless specific legislation so provided. The lands must not have been segregated from operation of the 'public land laws.'

Such lands must not have been settled upon, claimed, entered, etc., pursuant to appropriate public land or mineral laws of the United States. For example:

Entered by settlement under Homestead, Trade & Manufacturing Site, or Native Allotment laws.

Location of a mining claim under the 1872 Mining Laws.

Selected by the State under Statehood Act or other appropriate law.

Such settlement, entry, location, or selection removes such lands from public lands status.

Such entered lands may return to public lands status upon abandonment, relinquishment, invalidation, etc. prior to obtaining title from the United States. The date of returning to public lands status will vary with the individual case circumstances and whether the official land records required notation (the 'Tract Book Notation' rule).

The terms "public lands" and "public domain" are used in United States statutes and decisions to designate lands subject to sale or disposal under the general laws of the United States. Northern Pacific Ry. Co. v. Hirzel, 1916, 161 P. 854, 29 Idaho 438.

The words "public lands," if nothing be said to the contrary, relate to lands subject to disposition under the public land laws, and not those set apart and used for some special public purpose. Stearns v. United States, Minn 1907, 152 F. 900, 82 C.C.A. 48. See also United States v. Williams, C.C. Nev. 1886, 30 F. 309, affirmed 11 S.Ct. 457, 138 U.S. 514, 34 L.Ed. 1026.

"Public lands" does not include tidelands. Borax Consolidated v. City of Los Angeles, 1935, 56 S.Ct. 23, 296 U.S. 10, 80 L.Ed. 9, rehearing denied, 56 S.Ct. 304, 296 U.S. 664, 80 L.Ed. 473.

> When a valid entry has been made ... that portion of the public land covered by the entry is segregated from the public domain, ... and is not included in subsequent grants made by Congress. Atchison, etc., R. Co. v. Richter, 1815, 148 P. 478, 30 N.M. 278, L.R.A.1916F, 969.

II. NOT RESERVED FOR PUBLIC USES

RS 2477 only grants rights-of-way over public lands "not reserved for public uses."

Various actions may have been taken by the Congress, Administration, or managing agency which reserves the public lands for public uses:

> Establishment of Indian Reserves, Wildlife Refuges, National Parks, National Forests, Military Reservations, and other areas not under the jurisdiction of the BLM are clearly not open to the construction of highways.
>
> Segregation from settlement, location, disposal, etc., under the public land laws by Act of Congress or by Executive or Secretarial Order (including Public Land Orders (PLO)). The extent to which withdrawals of public lands constitute "reservations for public uses" is potential complicated -- see, e.g., Executive Order 6910 (54 I.D. 539) (1934); Wilderness Society v. Morton, 479 F.2d 842, 882, n.90 (D.C. Cir. 1973) -- however, the BLM's position is that most, if not all, reserved for public uses. Even if not reserved for public uses, such segregation may also remove the lands from the status of "public lands;" see I above.
>
> A classification under such as the Small Tract Act (repealed), the Classification and Multiple Use Act (repealed), or the Recreation and Public Purposes Act reserves for public uses.
>
> Such lands may revert to public lands, not reserved for public uses, status upon termination of the effecting Act, Order, or Classification; the specific time of return varying with the specific circumstances.

PLO 4582 of January 17, 1969, as amended, placed all public lands in Alaska in the status of public lands reserved for public uses. PLO 4582 was repealed by the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA) which also withdrew certain lands around named and unnamed towns and villages. A

series of PLOs 1/ withdrew lands in 1971 and 1972, in addition to those withdrawn by the ANCSA itself. RS 2477 was revoked by the Act of October 21, 1976, prior to any relative change in the withdrawal status of all of Alaska's public lands. Thus the offer by Congress of a right of way grant pursuant to RS 2477 effectively ceased to exist in Alaska on January 17, 1969 (a small window between December 18, 1971, and Marc 3, 1972, and some scattered areas not withdrawn by the 1971/72 series of PLOs were available for operation of RS 2477).

III. ACTUAL CONSTRUCTION

RS 2477 grants a right-of-way for the construction of highways. BLM believes that the plain meaning in RS 2477 is that there must have been actual building of a highway; without some actual construction the grant could not have been accepted.

"Construction" means the "[p]rocess or act of constructing; act of building; erection; act of devising and forming; fabrication; composition; also a thing constructed; a structure." Webster's New International Dictionary, second edition, 1941 (unabridged), p. 572.

Would an act of mapping a highway route and filing such in an appropriate office constitute construction? We think not. Construction contemplates some action such as grading, surfacing, flagging, or some other physical change or addition to the natural area as may be necessary for the customary or usual passage or use by horses, wagons, cars, tracked vehicles, or even foot traffic. A residence is not constructed simply by illustrating an architectural drawing and announcing intent to build the residence. It is constructed when the foundation is laid and the sides and roof erected.

Federal decisions (administrative and judicial) are not helpful in interpreting "construction" as most, if not all, involve roads actually constructed. For example, see Nick Dire, et al., IBLA 80-420 (June 8, 1981); Wilderness Society, supra; United States v. Dunn, C.A. Cal 1973, 478 F.2d 443.

"Construction" may possibly occur over time by the passage of vehicles, however, this may be insufficient for "construction" or may not have developed to the stage of being "constructed" while the servient estate was public lands not reserved for public uses. The BLM believes that a "road" originally created merely by the passage of vehicles could have become a highway within the meaning of RS 2477 if state or local government had subsequently improved and maintained it by taking measures which qualify as "construction," i.e., grading, paving, placing culverts, etc. 2/

1/ PLO 5150 withdrew the Transportation Corridor (the Trans Alaska Pipeline), PLO 5156 withdrew the former Native Reserves, PLOs 5169 through 5181 withdrew most of the balance of Alaska for various purposes under the ANCSA.

2/ Such subsequent improvement must have occurred while the lands were still public lands not reserved for public purposes.

Roads that simply came into existence by the passage of individuals may also meet the test of "construction" by the action of the individuals. Without "construction" by state or local governments, however, such roads are not likely to qualify as highways.

IV. HIGHWAYS

A highway is a road freely open to everyone; a main road or thoroughfare; a public road; a thoroughfare from place to place, as where the context shows an intention to distinguish it from a private way intended primarily for the use of inhabitants of a particular locality; in its general sense, however, it is used to include any way, of whatever nature, which the law makes open to the use of all who pass. See, e.g., Webster's, supra, p. 1179; Harris v. Hanson, 75 F. Supp. 481 (D. Idaho 1948); Karb v. City of Bellingham, 377 P.2d 984 (Wash. 1963). Because a private road is not a highway, no right of way for a private road could have been established under RS 2477.

Where a road is constructed and/or maintained by an appropriate public body, this highway criteria is probably met. Where this is the case, the BLM need look no further.

Where a road comes into existence through passage of vehicles over time, including "construction" by non-public entities, the question becomes whether there is sufficient "public use" to clearly indicate an intent by the public to accept dedication as a highway.

> Dedication is not an act or omission to assert a right; mere absence of objection is not sufficient *** Passive permission by a landowner is not initself evidence of intent to dedicate. *** Intention must be clearly and unequivocally manifested by acts that are decisive in character. [Footnotes omitted.] Hamerly v. Denton, 359 P.2d 121 at 125 (Alaska 1961).
>
> [T]he fact that at one time a road or trail may have been created by rolling the "big rocks out of the roadbed" does not establish any historical use. An entryman could have built the road one day and abandoned it the next. Mere existence of the road for 15 years does not necessarily establish any use of the road. Nick Dire, supra.
>
> Desultory use of dead-end road or trail running into wild, unenclosed, and uncultivated country, does not create a public highway. Evidence of public use of road during periods that land was not subject of homesteaders' claims was insufficient to justify finding that public highway was created across homestead. Party claiming that road became public highway under RS 2477 by virtue of public use had burden of proving that highway was located over public lands and that character of use was such to constitute acceptance by public of the grant under RS 2477. Hamerly, supra.

In action to establish a public highway, evidence sustained judgment for defendant on ground there were no positive acts on part of public authority clearly manifesting an intention to accept trail as a public highway as required by RS 2477, and that use of the trail by public was merely casual and was insufficient to establish the highway. Kirk v. Schultz, 1941, 119 P.2d 266, 63 Idaho 278.

Protective provisions of RS 2477 recognizing roads constructed over public lands by private persons was not applicable where defendants, who were asserting an easement for a road across public lands, had not readied claimed road for use. U.S. v. Dunn, supra.

Even though it has been held that a road may be a public highway when it provides access to only one land owner, Leah v. Manhart, 102 Colo. 129, 77 P.2d 652 (1938), courts look closely at the type of use which a road receives. Nick Dire, supra.

In summary, BLM's position is that RS 2477 was an offer by Congress that could have been accepted upon actual construction by the State, local government, or by an authorized private individual, of a highway open to and used by the public during a period when the servient lands were public lands not reserved for public uses. Insofar as highways meet this criteria, BLM will not question their validity.

State Laws Construing RS 2477

State court decisions and state statutes are in conflict with each other on the issue of how a right of way under RS 2477 is perfected. Generally, the approach of the states appears to fall into three general categories. First, some (Kansas, South Dakota, and Alaska) have held that state statutes which purport to establish such rights-of-way along all section lines are sufficient to perfect the grant upon enactment of the state statute, even if no highway had either been constructed or created by use. Tholl v. Koles, 70 P. 881 (Kan. 1902); Pederson v. Canton Twp., 34 N.W. 2d 172 (S.D. 1948); Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Alas. 1975), contra Warren v. Chouteau County, 265 P. 676 (Mont. 1928). Second, states such as Colorado, Oregon, Wyoming, New Mexico, and Utah have held that RS 2477 rights-of-way can be perfected solely by public use, without any construction or maintenance. Nicolas v. Grassle, 267 P. 196 (Colo. 1928); Montgomery v. Somers, 90 P. 674 (Ore. 1907); Hatch Bros Co. v. Black, 165 P. 518 (Wyo. 1917); Wilson v. Williams, 87 P.2d 683 (N.M. 1939); Lindsay Land & Livestock Co. v. Churnos, 285 P. 346 (Utah 1930). Third, Arizona courts have held that rights-of-way can be established only by a formal resolution of local government, after the highway has been constructed. Perfection by mere use is not recognized. Tucson Consol. Copper Co. v. Reese, 100 P. 777 (Ariz. 1900).

The term "construction" must be construed as an essential element of the grant offered by Congress; otherwise, Congress' use of the term is meaningless and superfluous. The states could accept only that which was offered by Congress

and not more. From the BLM's point of view, the Arizona interpretation is the only correct one; the positions taken by the other states do not meet the express requirements of the statute. For example, the Kansas, South Dakota, and Alaska approach based on section lines does not even require that there be a highway or access route, much less that it be constructed. The approach taken by the other states that RS 2477 rights-of-way may be perfected by access ways created by use alone, without any construction, also fails to meet the plain requirement of RS 2477 that such highways be "constructed."

Thus, rights-of-way which states purport to accept but on which highways were not actually constructed while the lands were public lands not reserved for public uses do not meet the requirements of RS 2477 and therefore no perfected right-of-way grant exists.

Assertions, Validity, Acceptance

BLM's regulations at 43 CFR 2802.5(b) provide that an entity which has constructed highways under RS 2477 may file with BLM a map showing the location of such a public highway. Further:

> The submission of such maps showing the location of RS 2477 highway(s) on public lands shall not be conclusive evidence as to their existence. Similiarly, a failure to show the location ... shall not preclude a later finding as to their existence.

A claim of an RS 2477 right-of-way is like a miner's location of a claim under the Mining Law of 1872, for which no application is required either. Like a mining claim, however, a claim to a RS 2477 right-of-way does not necessarily mean that a valid right exists. The United States has often successfully challenged the validity of mining claims because of the failure of the claimant to establish rights under that law. See, e.g., Cameron v. United States, 252 U.S. 450 (1920); United States v. Coleman, 390 U.S. 599 (1968); Hickel v. Oil Shale Corp., 400 U.S. 48 (1970). The BLM has not previously determined the validity of claimed rights under RS 2477 because it has had no land or resource management reason to do so; i.e., conflicts generally did not arise between the existence of claimed rights-of-way under RS 2477 and the management of the public lands affected by such claims. If there is a resource management reason to do so, claimed rights-of-way may be reviewed to determine their validity under RS 2477.

Under Sections 201 and 202 of the Federal Land Policy and Management Act (43 U.S.C. 1711 & 1712) (FLPMA), the BLM is required to prepare and maintain inventories of public lands and prepare land use plans.

In concert with this, the BLM has encouraged states and local governments to assert those state and local government highways they believe are RS 2477 highways. Where such asserted highways appear to meet the criteria of construction on public lands not reserved for public uses, the BLM will note the records. This is similar to the "acceptance" and noting of a mining claim notice filed pursuant to Section 314 of FLPMA (43 U.S.C. 1744).

Where the asserted RS 2477 highway involves land which is (was) not public lands not reserved for public uses, or construction does not appear to have been involved, the BLM will not note the records and should inform the asserter that the BLM does not believe the assertion is valid. The BLM will not adjudicate the validity of such assertions unless there is a conflicting land or resource management concern that cannot be resolved without determining the validity of the RS 2477 assertion.

BLM Regulation of Public Highways

A valid RS 2477 right-of-way consists of a grant of right of way from the United States. The right-of-way is for public highway use and only highway uses (see Gates of the Mountains, supra.).

If BLM is the manager of the servient estate, it may challenge the holder of the RS 2477 right-of-way whenever the holder seeks to do something beyond the rights granted. Uses other than highways within or adjacent to the RS 2477 highway may not be made except under appropriate federal law and, where required by such law, with authorization from the BLM.

Appropriate uses within the RS 2477 right-of-way generally will not be a concern of the BLM nor will the BLM seek to regulate such uses either administratively or through judicial proceedings. However, should the BLM believe that a proposed use/action within a RS 2477 right-of-way would have an adverse impact on adjacent BLM managed lands or resources, BLM will take appropriate steps to protect such lands or resources.

RS 2477 and Lands Conveyed from the United States

A RS 2477 right-of-way was a grant offered by the United States, was accepted by action of appropriate public officials, and required no approval by the administering federal agency. As such the existence of such a right-of-way is not included in the reservations or exceptions in the patent or other document conveying public lands to states, local governments, or private entities. The new owner takes the title to the land from the United States subject to any RS 2477 rights that may exist.

It is the responsibility of the entity claiming the RS 2477 right-of-way to protect its interest against the new owner, or, conversely, the responsibility of the new owner to protect his property against the assertions of others. The BLM has no role in any such disputes.

Prepared by: Theodore G. Bingham
Chief, Division of Rights-of-Way
Bureau of Land Management
Washington, D.C.

0124B

SECTION IV - STATE OF ALASKA

Alaska State Legislature

SENATOR
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Senator Mitch Abood
Senator Paul Fischer
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POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

TO: Commissioner Dick Knapp, DOT/PF
Commissioner Esther Wunnicke, DNR

FROM: Senator Jack Coghill, Chairman Jack

RE: R.S. 2477 Rights-of-Way

DATE: July 9, 1985

Thank you for the meeting yesterday on the R.S. 2477 issue. We were pleased to discover that, as in your words Commissioner Knapp, "We are all working for the same team," and that we share a common concern on behalf of the people of Alaska. We look forward to close cooperation during the ensuing weeks as we work together to meet a challenging deadline.

Our goal is to provide the National Park Service with the appropriate maps and documentation so that possible R.S. 2477 trails will be reflected in the draft General Management Plans that will be sent to Congress in December of this year.

I am grateful that you, Commissioner Knapp, have lent your full support and have set in motion the identification by your people of the R.S. 2477 rights-of-way that touch or cross the CSU's.

Likewise, the immediate response of your people, Commissioner Wunnicke, to help us locate the existing documentation and to help guide us in establishing priorities and how we should prepare this information is much appreciated.

I look forward to my task force meeting with Messrs. Hickey, Hawkins and Gustafsen on Friday morning, July 12th and joining us for our meeting with the National Park Service Area Director and his staff that afternoon. At that time, Mr. Contor has promised they will outline what they require in terms of receiving R.S. 2477 rights-of-way assertions.

Again, my thanks for your assistance. We look forward to accomplishing our mutual goals for Alaska's future.

cc: Mark Hickey
Gary Gustafson
Tom Hawkins
Malcolm Roberts
Valerie Chavez

BILL SHEFFIELD, GOVERNOR

November 6, 1985

Dear Reviewer:

Attached for your review and comment is a draft RS 2477 Rights-Of-Way (ROW) Policy and Procedures document cooperatively prepared by the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT/PF).

The purpose of this document is to provide comprehensive and uniform policy and procedures for addressing potential RS 2477 historical roads and trails in Alaska by the two state agencies primarily responsible for this issue. Included in this document is a brief discussion of the general background and history of RS 2477 roads and trails, followed by procedures for state decisions related to assertion, validation, disclaimer of interest, vacation and arrangements for ensuring adequate agency and public notice and review. The document also identifies the roles and responsibilities of DNR and DOT/PF during the process and outlines management responsibilities, legal considerations and other related issues.

In addition to review by the general public, we are submitting this document to numerous affected parties and interest groups for comment, including the Alaska Land Use Council, the Alaska Land Use Advisors Committee, the Alaska Miners Association, the Senate and House Transporation and Resources Committees, the Alaska Federation of Natives, the Alaska Native Land Managers Association, the Resource Development Council, the Citizens Advisory Commission on Federal Lands, and environmental groups. DNR and DOT/PF will sponsor informal meetings in Anchorage and Fairbanks to discuss this document. The Anchorage meeting is scheduled for 10:00 AM on Tuesday, December 3rd in the DNR Commissioner's Conference Room, 12th Floor, Frontier Building at 36th and C Streets. The Fairbanks meeting is scheduled for 10:00 AM, Wednesday, December 4th in the DOT/PF Conference Room, Suite D, 600 University Plaza.

The formal comment period will close on December 20, 1985. Thereafter, we expect to adopt policies and procedures and begin implementation. It may be necessary to follow this effort with formal regulations implementing portions of this proposal. If that proves necessary, every effort will be made to do so as expeditiously as possible.

DRAFT

NOVEMBER 6, 1985 DRAFT

ALASKA DEPARTMENT OF NATURAL RESOURCES
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

RS 2477 RIGHTS-OF-WAY POLICY AND PROCEDURES

I. Policy

The State of Alaska, acting through the Department of Natural Resources (DNR) and Department of Transportation and Public Facilities (DOT/PF), recognizes a need to develop and implement coordinated statewide procedures that better define and establish state goals and responsibilities pertaining to the identification and establishment of historical roads and trails in Alaska under federal Revised Statute (RS) 2477.

Therefore, it is the policy of the state, as implemented by the procedures contained herein, to help promote public access opportunities, provide guidance to public and private officials with land resource and transportation management and planning decisions, ensure adequate public and agency participation in the state decision making process, respect private property rights and help resolve uncertainty over possible valid existing RS 2477 rights-of-way (ROW's) on public and private lands.

In April of 1974, the Alaska Department of Highways submitted the 1974 Existing Trail System Inventory to the Bureau of Land Management (BLM). This submission was a further documentation by the state of its intent to accept the grant for approximately 1400 possible RS 2477 ROW's statewide. However, this inventory was not intended to represent a comprehensive listing of all possible statewide RS 2477's. There may be other historical roads and trails in Alaska which qualify under the grant and which may eventually be identified and asserted by the state or another party.

On September 28, 1984, DNR, DOT/PF and the BLM entered into a Memorandum of Understanding (MOU) which specified how the federal land status plats would be noted to identify the approximate location of possible RS 2477 ROW's in the Northern Region of Alaska. The MOU outlined a process whereby BLM would plot each possible RS 2477 ROW on federal master title plats, if in accord with specific criteria included in the BLM Manual (2801.24.B.1, Rel. 2-152). However, on November 28, 1984, BLM issued an Instructional Memorandum (No. 85-72) which stated that BLM would note RS 2477 assertions on its official land records only if it

municipalities under AS 29.18 and to private individuals under various state land disposal and lease programs.

For purposes of state RS 2477 ROW decisions, DNR shall be responsible for those claims not part of the designated state or federal-aid highway system (including trails where state management is considered likely or where alternative third-party management has been arranged through mutual agreement) or claims proposed as additions to the system. All proposed RS 2477 ROW decisions by DNR shall be reviewed in advance by DOT/PF.

B. Department of Transportation and Public Facilities

DOT/PF has broad statutory responsibilities to plan, design, construct and maintain modes of transportation and transportation facilities pursuant to AS 19.05.010, 19.05.030, 19.010.010-040, 44.42.020, and 44.42.050. This includes the specific responsibility to protect and preserve the rights-of-way and land holdings for the state's existing transportation systems (includes federal-aid highways) and to plan for and acquire rights-of-way for future state transportation needs. In addition, DOT/PF is the designated state agency responsible for rep-

DRAFT

NOVEMBER 6, 1985 DRAFT

ALASKA DEPARTMENT OF NATURAL RESOURCES
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

RS 2477 RIGHTS-OF-WAY POLICY AND PROCEDURES

I. Policy

The State of Alaska, acting through the Department of Natural Resources (DNR) and Department of Transportation and Public Facilities (DOT/PF), recognizes a need to develop and implement coordinated statewide procedures that better define and establish state goals and responsibilities pertaining to the identification and establishment of historical roads and trails in Alaska under federal Revised Statute (RS) 2477.

Therefore, it is the policy of the state, as implemented by the procedures contained herein, to help promote public access opportunities, provide guidance to public and private officials with land resource and transportation management and planning decisions, ensure adequate public and agency participation in the state decision making process, respect private property rights and help resolve uncertainty over possible valid existing RS 2477 rights-of-way (ROW's) on public and private lands.

II. Background

Revised Statute 2477 (43 U.S.C. 932) was a federal law in effect from 1866 to October 21, 1976. It provided that,

> "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

The Alaska Supreme Court held in Hamerly v. Denton, 359 P. 2d 121, 123 (1961) that before a RS 2477 ROW can be accepted as valid, there must be: a) proof that the route was located on unreserved public land; and b) either a positive act on the part of the appropriate public authorities (of the state or territory) clearly manifesting an intention to accept the grant, or public use for such period of time and under such conditions as to prove that the grant was accepted.

In Girves v. Kenai Peninsula Borough, 536 P. 2d 1221 (1975) the Alaska Supreme Court held that enactment of AS 19.10.010 by the territorial legislature was a positive act manifesting the legislature's intent to accept the federal grant of right-of-way for the construction and use of highways over unreserved public lands on section lines.

In April of 1974, the Alaska Department of Highways submitted the 1974 Existing Trail System Inventory to the Bureau of Land Management (BLM). This submission was a further documentation by the state of its intent to accept the grant for approximately 1400 possible RS 2477 ROW's statewide. However, this inventory was not intended to represent a comprehensive listing of all possible statewide RS 2477's. There may be other historical roads and trails in Alaska which qualify under the grant and which may eventually be identified and asserted by the state or another party.

On September 28, 1984, DNR, DOT/PF and the BLM entered into a Memorandum of Understanding (MOU) which specified how the federal land status plats would be noted to identify the approximate location of possible RS 2477 ROW's in the Northern Region of Alaska. The MOU outlined a process whereby BLM would plot each possible RS 2477 ROW on federal master title plats, if in accord with specific criteria included in the BLM Manual (2801.24.B.1, Rel. 2-152). However, on November 28, 1984, BLM issued an Instructional Memorandum (No. 85-72) which stated that BLM would note RS 2477 assertions on its official land records only if it

adminstered the affected land. This decision significantly altered the original intent of the parties with respect to this MOU.

III. Responsibilities

DNR and DOT/PF each have specific statewide public access responsibilities, which include RS 2477 ROW's. However, DNR and DOT/PF recognize a need to more precisely articulate respective responsiblities for RS 2477 ROW identification, recognition and management.

A. Department of Natural Resources

DNR has broad public access responsibilities for state land and water pursuant to AS 38.04.050, 38.04.055, 38.05.035, 38.05.850 and 38.35.020. In addition, DNR is the designated state agency responsible for recommending public easement reservations to BLM in land conveyances to Native corporations, pursuant to Section 17(b) of ANCSA. DNR is also responsible for the reservation of public access easements on state land conveyed to boroughs and

municipalities under AS 29.18 and to private individuals under various state land disposal and lease programs.

For purposes of state RS 2477 ROW decisions, DNR shall be responsible for those claims not part of the designated state or federal-aid highway system (including trails where state management is considered likely or where alternative third-party management has been arranged through mutual agreement) or claims proposed as additions to the system. All proposed RS 2477 ROW decisions by DNR shall be reviewed in advance by DOT/PF.

B. Department of Transportation and Public Facilities

DOT/PF has broad statutory responsibilities to plan, design, construct and maintain modes of transportation and transportation facilities pursuant to AS 19.05.010, 19.05.030, 19.010.010-040, 44.42.020, and 44.42.050. This includes the specific responsibility to protect and preserve the rights-of-way and land holdings for the state's existing transportation systems (includes federal-aid highways) and to plan for and acquire rights-of-way for future state transportation needs. In addition, DOT/PF is the designated state agency responsible for rep-

resenting state interests under the transportation and utility system application and approval process in Title XI of the Alaska National Interest Lands Conservation Act (ANILCA).

For purposes of state RS 2477 ROW decisions, DOT/PF shall be responsible for all existing and proposed state or federal-aid highway system ROW's and claims associated with future state transportation system needs, including realignment of existing state facilities. All proposed RS 2477 ROW decisions by DOT/PF shall be reviewed in advance by DNR.

C. Regional Offices

DNR and DOT/PF each maintain departmental regional offices located in Anchorage, Fairbanks and Juneau. Although the geographical responsiblities of these offices are not identical, they generally correspond to the Central/Southcentral, Northern and Southeast portions of the state.

For purposes of state RS 2477 ROW decisions, it is agreed by DNR and DOT/PF that their respective regional offices shall be responsible for receiving RS 2477 ROW claims and processing such claims in accord with the process specified in Section IV.

An RS 2477 ROW claim may be accepted by any DNR or DOT/PF regional office, which in accord with this section, will be responsible for processing a claim or forwarding such claim to the regional office having jurisdictional responsibility for the geographic area encompassing the potential RS 2477 ROW. If a claim should cross regional office jurisdictional boundaries, the regional office responsible for the area traversed by the majority of the route shall assume the lead role for purposes of subsequent state decisions.

Representatives from each DNR and DOT/PF regional office agree to meet as necessary with their counterparts to review all new RS 2477 ROW claims and clarify responsiblities for further processing in accord with this section and Section IV (below).

IV. Procedures

The State of Alaska, acting through DNR or DOT/PF, will use the following procedures to guide future state assertion, disclaimer of interest or vacation decisions relative to possible RS 2477

ROW's. The state may also decide to delay or postpone a final decision if it is determined that insufficient information or evidence exists to fully document what otherwise appears to be a valid claim. The procedure involves preliminary review, written state best interest finding, public notice, comment, and final decision. Nothing in this policy statement shall affect the right of private citizens or other parties from independently asserting ROW's under RS 2477. A decision by the state to undertake an RS 2477 claim review is contingent upon the availability of sufficient funds and resources.

The RS 2477 ROW assertion process is generally depicted on the flow chart attached as Figure 1 (page 9).

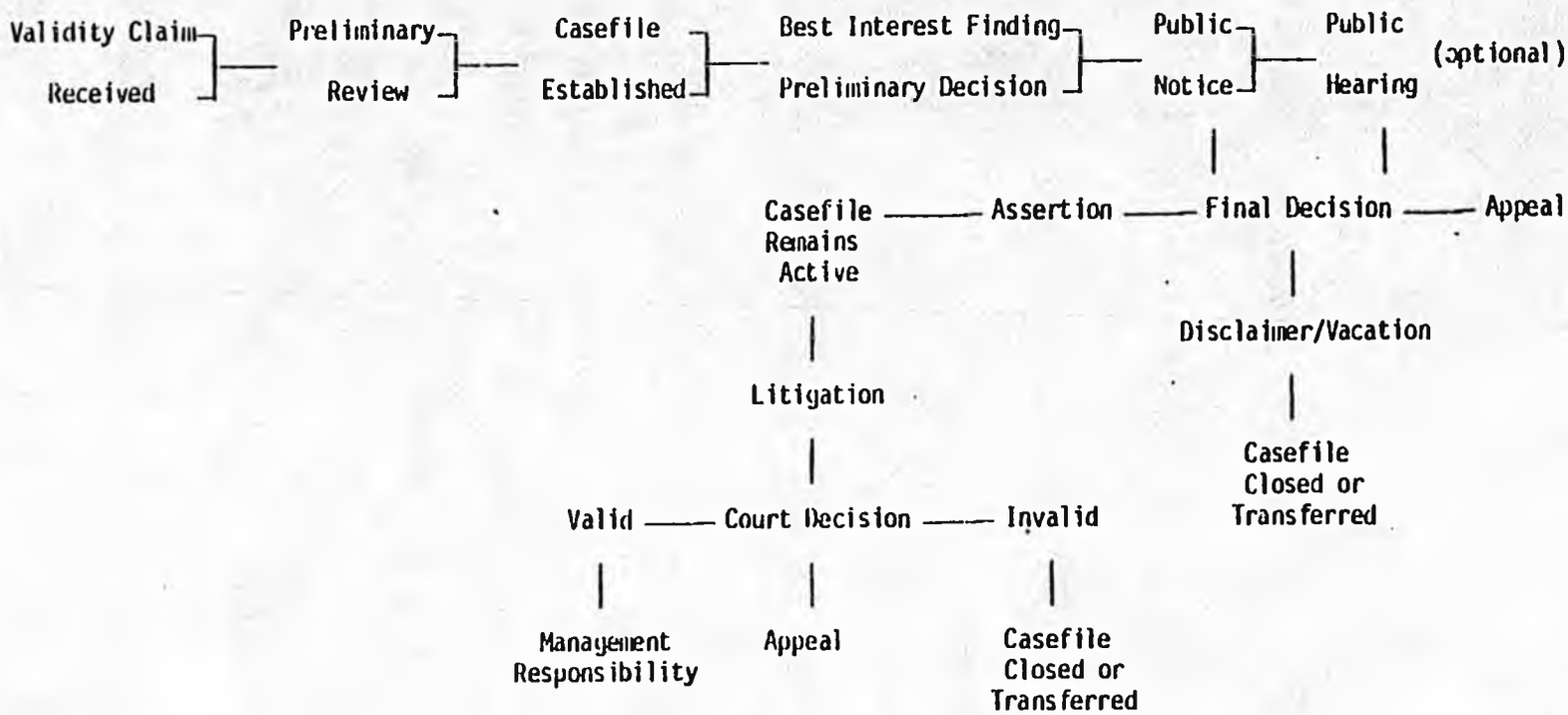
A. Preliminary Review

DNR and DOT/PF agree to comprehensively review and categorize the 1974 Existing Trail System Inventory and other available information regarding possible RS 2477 ROW's. The following steps will be used to perform this work:

FLOW CHART

STATE RS 2477 ROW ASSERTION PROCESS

(conducted by regional offices of DNR or DOT/PF)



1. Categorize all possible RS 2477 ROW's as "active" or "inactive" on the basis of historic purpose, evidence of prior public use, identification as section line easement, availability of documentation, land title conflicts, etc.

2. Assign responsibility to DNR or DOT/PF for potential RS 2477 ROW's included on the "active" list, in accord with Section III of this document.

3. Prioritize the "active" list for purposes of formal state assertion decisions, based upon documentation, public benefits and potential cost savings to the state.

A draft report will be issued and circulated by DNR and DOT/PF for public and agency review and comment. The report will then be finalized, and serve as the guide for subsequent DNR or DOT/PF actions pertaining to possible RS 2477 ROW's. DNR and DOT/PF agree to update this document as necessary, assuming the availability of sufficient funding and resources.

B. Assertions

The State of Alaska, acting through DNR or DOT/PF, may decide to formally assert the existence of RS 2477 ROW claims, using the results of the preliminary review process In Section IV.A. (above) as a guide. At least one of the following conditions must be present for the state to initiate a formal assertion review:

1. An RS 2477 ROW claim involves a portion of the designated state or federal-aid highway or trail system.

2. An RS 2477 ROW claim involves a portion of a right-of-way needed for future state transportation and access purposes, as identified in DNR's and DOT/PF's planning processes.

3. An RS 2477 ROW claim involves public access rights being curtailed or blocked by other parties.

4. A formal request has been made to pursue an RS 2477 assertion, or to vacate or disclaim an interest in a particular RS 2477 ROW claim.

5. An RS 2477 assertion is needed to preserve documentation of use and existence that might otherwise be lost.

6. An RS 2477 assertion enhances the state's legal position regarding RS 2477 ROW's.

Following a determination that one or more of the above conditions are present, and in accord with the responsibilities established in Section III (above), the DNR or DOT/PF regional office shall immediately establish a casefile for the claim. This casefile shall subsequently become the administrative record used by the state as the basis for any future decisions. The regional office, working in concert with the DNR and/or DOT/PF central offices, shall then proceed to gather all available information concerning the route and prepare a written best interest finding and preliminary decision which shall address the below referenced criteria.

1. Identification of the land involved and the periods of time when it was "unreserved public land". In addition, identification of any positive acts on the part of the appropriate public authorities clearly manifesting an intention to accept the grant, or evidence of public use for such time and conditions to prove that the grant was accepted.

2. Identification of any reasonable, practical and legal alternative access which may be available to serve the intended purpose of the RS 2477 ROW (i.e., Omnibus Act Roads, ANCSA Section 17(b) easements).

3. Suitability of the route (i.e., grade, location) for the existing or proposed road, trail or other highway use.

4. Whether an RS 2477 ROW assertion is necessary to establish or confirm state ownership of an existing or proposed state maintained highway or trail (including realignment or extension).

5. Identification of the public benefits of the potential RS 2477 ROW, including but not limited to preservation of transportation system options, enhanced public use access for economic or recreational purposes, cost savings through avoidance of condemnation, negotiated purchase, land exchange or other more costly acquisition method.

6. If the route will adversely affect the land management practices of the underlying and/or adjacent landowner, and

if so, what mitigating measures could be implemented to alleviate or eliminate any adverse impacts.

7. Identification of sufficient evidence to support a finding the the route qualifies as a valid RS 2477 ROW, such as the manner, type and frequency of public use, existence of the public records pertaining to the ROW, on-the-ground verification of the existence of the ROW and historical documentation (i.e., maps, newspaper/periodical references, Alaska Road Commission reports, treatises, etc.).

The best interest finding and preliminary decision shall then be referenced in a public notice to be issued by the regional office, consistent with the requirements of AS 38.05.945. This process entails distribution in newspapers of statewide circulation and notification of any parties known or likely to be affected by the action (including municipalities and ANCSA corporations). DNR and DOT/PF shall also compile and maintain a mailing list of interested parties which will receive notice of all RS 2477 ROW actions. The regional office also shall have the discretion to hold a public hearing on an action, if determined necessary. A written comment period of at least 30 days shall be

included in the process. Following completion of the public notice and written comment period, the regional office shall issue a final decision which may be subject to appeal. Affected parties including landowner(s) will be notified of the decision.

Once it is determined that an assertion is in the state's best interest, the route shall be identified as an RS 2477 ROW on state title plats. It is the position of the state that federal agencies should also note applicable federal title plats.

The final decision is an official state position regarding the validity of the RS 2477 ROW claim and constitutes a determination by the state that there is both sufficient evidence in the casefile to support an affirmative action on the claim by a court, and that the assertion is in the best interest of the state.

Unless otherwise included in the final decision, an assertion decision by the state does not constitute formal acceptance of management responsibility by the state or assumption of liability for the ROW over non-state land. The state contends that management responsibility over a potential RS 2477 ROW can only accrue

to the state following a validity determination by the court or if the state voluntarily accepts management authority and gives notice prior to such action. Specific state management responsibilities over valid RS 2477 ROW's are articulated in Section V.

C. Vacation/Disclaimer

In addition to a decision to assert an RS 2477 ROW, the assertion review process can result in a decision by the state to vacate or disclaim an interest in the ROW.

A decision to disclaim an interest/vacate an RS 2477 ROW claim is similiarly a determination that the claim will not be supported by the state. This decision does not preclude the right of the state or the public to again assert the claim at a later date. However, an effort to reassert a previously disclaimed/vacated RS 2477 ROW claim must be based upon significant new evidence or information which might be anticipated to influence and alter the original decision.

A vacation is appropriate where the route has already been determined by the court to be a valid RS 2477 ROW. In the case of

either a vacation or disclaimer of interest, the state casefile will be closed or remain inactive, depending upon circumstances. The state may provide another party with a copy of the casefile if such party decides to independently pursue the claim.

D. Validation

Once a decision is made to formally assert that a given RS 2477 ROW is valid, DNR or DOT/PF may also take steps to validate this interest.

A decision by the state to assert ownership of an RS 2477 ROW is also a determination that the state will defend the assertion from adverse claims, if necessary, in court and may proceed to initiate quiet title action or seek declaratory judgement from the court. In some cases, agreements may also be reached with affected landowners to address unresolved questions (such as width of the ROW).

E. Public Requests

Individual citizens may also assert and seek validation of RS 2477 ROW's. Additionally, the public may petition the state to assert, disclaim, or vacate its interest in a particular ROW. Procedures will be established providing the public single points of contact at DNR regional offices for this purpose. DNR will be responsible for coordinating the state's response with DOT/PF. Filing and processing fees may be charged to assist delivery of a timely response. All requests of the state by the public will be processed in accordance with the procedures contained in this section.

V. Management

A. State

Under Alaska Statutes, DOT/PF has management authority for RS 2477 ROW's on non-state land if recognized and accepted by the state and held to be valid by the courts. Where such recognized, accepted and valid ROW's occur on state land, DOT/PF and the state agency having management authority over the state land, usually DNR, have concurrent management authority over the ROW.

In the case where another state agency (other than DNR or DOT/PF) has management authority over the ROW, efforts may be made by DNR and/or DOT/PF to assume management responsibility.

Consistent with the responsibilities outlined in Section III, DOT/PF agrees to accept management authority for all RS 2477 ROW's asserted by the state and held to be valid, which are part of the designated state or federal-aid highway system. For those portions of the RS 2477 ROW's on the designated state highway system that occur on state land, concurrent management authority with DNR will continue, with DOT/PF as the lead agency. For all other RS 2477 ROW interests that have been held to be valid, DOT/PF agrees to transfer management responsibility to DNR. If a valid RS 2477 ROW is subsequently made part of the state or federal-aid highway system, management responsibility will be transferred from DNR to DOT/PF, consistent with this section.

B. Local Government

In the case of a preliminary decision by DNR or DOT/PF to disclaim or vacate an RS 2477 ROW, local governmental entities can petition the responsible state agency (either DNR or DOT/PF) to reverse that decision, pursue validation (if appropriate), and transfer management responsibility to the local government entity if the following conditions are met:

1. The local governmental entity agrees to pay all of the state's costs to complete the assertion and validation process;

2. The local governmental entity agrees to hold the state harmless and accept all maintenance and legal liabilities associated with management of the RS 2477 ROW;

3. The local governmental entity furnishes reasonable proof of an ability to meet these management and legal responsibilities.

VI. General Provisions

A. Highway Definition

The reference in RS 2477 to "right-of-way for the construction of highways" did not mean the construction of something akin to a modern public street. In its proper historical context, the "highways" language was used generically to include any public way, such as a path, wagon road, pack trail, street, alley, and so forth. The United States Department of the Interior, Office of the Solicitor, concurs that state law controls what constitutes a highway within each state. DNR and DOT&PF accept this view and recognize AS 19.45.001(8) as the governing definition for the term "highway." AS 19.45.001 (8) defines "highway" to include a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof.

B. Use

The state takes the position that once determined valid, an RS 2477 ROW may be used for any "highway" purpose as defined in Section VI.A. above. Such use may be limited, however, by the width of the ROW (see Section VI.C.) and be subject to specific management practices as applied by the state to the ROW.

C. Width

The width of an RS 2477 ROW depends on the way it was established. If established by statute or ordinance, or other formalized public agency dedication, then the language of such will control. For example, AS 19.10.010 was amended to specify 100 foot section line rights-of-way on land owned or acquired by the state. However, if the method for establishment of the RS 2477 ROW was by construction or use, width may be determined by the nature and extent of that construction or use, depending upon the date established.

Most RS 2477 ROW's fall into the public construction or use category. Accordingly, the width for each of these types of RS 2477 ROW's should be outlined by the state during the

assertion and validation process. The width is usually set as the distance from the farthest limit of backslope to the farthest limit of backslope on the opposite side. However, in the past, some courts have established the width for an RS 2477 ROW as that commonly established for highways designed for that particular mode of transportation (i.e., pedestrian trail, secondary road, etc.).

D. ANILCA Conservation System Units

Section 1109 of ANILCA specifically provides for the protection of valid existing rights. As valid existing rights may include RS 2477 ROW's, it is essential that these routes be identified and addressed through the federal Conservation System Unit (CSU) planning process.

In 1985, progress was made by the state to better coordinate RS 2477 efforts on a statewide basis with federal agencies, other affected landowners and the general public. State Senator Jack Coghill, his staff from the Senate Transportation Committee, and staff from the U.S. National Park Service, worked to ensure that possible RS 2477 roads and

trails will be noted and identified in the National Park Service General Management Plans. Similar efforts are also being taken, working with the U.S. Fish and Wildlife Service, to include similar material in future Fish and Wildlife Service Comprehensive Conservation Plans. The purpose of this effort is to heighten awareness on the part of land managing agencies, affected landowners and the public as to the existence of possible RS 2477 ROW's. This is not meant to imply that these roads and trails are necessarily available for public use prior to formal validation of the existence of the potential RS 2477 ROW's.

The following language was developed for inclusion in each federal CSU Plan:

> RS 2477 (formally codified as 43 U.S.C. 932; enacted in 1866) provides that: "The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." The Act was repealed by P.L. 94-579 as of October 21, 1976, subject to valid existing claims.
>
> The (name of CSU unit) is subject to valid existing rights, including rights-of-way established under RS 2477. The validity of these rights-of-way will be determined on a case by case basis. The following list identifies rights-of-way that the state contends may be valid under RS 2477:
>
> (list of potential RS 2477 ROW's)

A map illustrating the above list is found on page __. This list and map are not necessarily all inclusive. Private parties or the State of Alaska may identify and seek recognition of additional RS 2477 rights-of-way within the (CSU unit). Supporting material regarding those rights-of-way identified by the state may be obtained through the Alaska Department of Transportation and Public Facilities, or the Alaska Department of Natural Resources.

Identification of potential rights-of-way on the list and map does not establish the validity of these RS 2477 rights -of-way and does not necessarily provide the public the right to travel over them.

DNR and DOT/PF will continue to provide pertinent RS 2477 ROW information to appropriate federal agencies during the CSU plan review process. This information will include a list and description of those potential RS 2477 ROW's (as determined by the state) within the CSU plan area and a map generally depicting their location.

Any attempt by the state to assert or validate an RS 2477 ROW in a CSU will occur in accord with the procedures outlined in Section IV.

E. Legal Considerations

The policies and procedures in this document do not apply to any ROW held under Public Land Orders (PLO), the Omnibus Act

Quit Claim Deed, ROW grants under Title 23 of the United States Code, or ROW interests other than those under RS 2477.

If necessary to respond to a challenge of the state's interest in a possible RS 2477 ROW that has not yet been processed under the procedures under Section IV of this document, DNR and DOT/PF reserve the right to suspend those procedures and assert that a particular RS 2477 ROW is valid.

A map illustrating the above list is found on page __. This list and map are not necessarily all inclusive. Private parties or the State of Alaska may identify and seek recognition of additional RS 2477 rights-of-way within the (CSU unit). Supporting material regarding those rights-of-way identified by the state may be obtained through the Alaska Department of Transportation and Public Facilities, or the Alaska Department of Natural Resources.

Identification of potential rights-of-way on the list and map does not establish the validity of these RS 2477 rights -of-way and does not necessarily provide the public the right to travel over them.

DNR and DOT/PF will continue to provide pertinent RS 2477 ROW information to appropriate federal agencies during the CSU plan review process. This information will include a list and description of those potential RS 2477 ROW's (as determined by the state) within the CSU plan area and a map generally depicting their location.

Any attempt by the state to assert or validate an RS 2477 ROW in a CSU will occur in accord with the procedures outlined in Section IV.

E. Legal Considerations

The policies and procedures in this document do not apply to any ROW held under Public Land Orders (PLO), the Omnibus Act

Quit Claim Deed, ROW grants under Title 23 of the United States Code, or ROW interests other than those under RS 2477.

If necessary to respond to a challenge of the state's interest in a possible RS 2477 ROW that has not yet been processed under the procedures under Section IV of this document, DNR and DOT/PF reserve the right to suspend those procedures and assert that a particular RS 2477 ROW is valid.

The aforementioned RS 2477 ROW policy and procedures become effective upon the signature of both parties and will remain in effect unless terminated by mutual agreement.

Esther C. Wunnicke, Commissioner
Department of Natural Resources

Date

Richard J. Knapp, Commissioner
Department of Transportation
and Public Facilities

Date

APPENDIX

State lays claim to some park lands

by Mary Scarpinato
Times Writer

The 10-year management plans for Alaska's national parks may be changed to include the state's claim to 87 historic roads and trails scattered across the parks, a U.S. Interior Department spokesman announced Thursday.

Current draft versions of the plans are now in the public comment stage and final versions are due before Congress on Dec. 2. Alaska's nine national parks cover nearly 50 million acres.

A task force to study issues related to these historic transportation corridors has been ordered by Assistant Interior Secretary Bill Horn, according to Ric Davidge, a special assistant to Horn.

That task force, which is to prepare its report within 30 days, will be composed of representatives of federal agencies here, the Alaska Federation of Natives and state Sen. Jack Coghill, R-Nenana, who chairs the senate Transportation Committee.

Coghill has been pushing for the inclusion of this transportation network in the park plans and addressed Thursday's breakfast meeting of the Resource Development Council for Alaska Inc., on the topic.

According to Coghill, many of these transporation rights-of-way were allowed to be established under federal legislation during Alaska's territorial years. They were established by miners and other developers when no other access ways existed.

Coghill said an inventory of some 1,700 historic roads and trails was compiled by the state in the early 1970s. The state considers 87 of these corridors as potentially useful in the future.

"It is not (the state's) intention to activate any of these trails (in the near future) but we need to assert them because we may need them for resource development (at some later time)," Coghill said. "But we may not need them tomorrow."

Coghill added that if the state lays its claim for use of these corridors across federal lands it also might be required to assume any related liabilities. This is a matter the state is investigating, he said.

The Anchorage Times 8/23/85

Alaska must pursue historic trails access

Guest Opinion

By SEN. JACK COGHILL

Alaska's surface transportation system, or lack of it, is one of the most unique things about our vast state.

Add to that the fact that current events are putting any future road/highway expansion in jeopardy.

To demonstrate one "uniqueness" in our Alaskan surface transportation, consider this: Alaska has more than 225 communities, towns, and cities. Only a few of those are connected by road or highway. But, just about every community is, or has been, connected with one another by trails.

In the other 49 states, it's difficult to find *any* city, town, village or hamlet that cannot be reached by road.

These early Alaska trails were historically used by dog teams, wagons, automobiles, and people who walked. Many are still in use. Many of these trails and early roads could be the location of roads or highways we will be forced to build in the future.

Presently, we are facing the possible loss of Alaska's historic trails. The issue is surfacing as federal agencies prepare management plans which will govern the use of park lands created by the Alaska National Interest Lands Conservation Act.

Alaska has 13 national parks, 16 national wildlife refuges, 25 wild and scenic rivers, four national forests and two conservation/recreation areas, that were created by ANILCA.

The responsibilty for managing these vast areas lies with the National Park Service, U.S. Fish and Wildlife Service and the Bureau of Land Management. While I am generally in agreement with the idea that the parks and refuges need to be managed, I am always cautious when people in Washington start making decisions th ect p in A a (w trai rese hts- y th out appropriate public input). This is one of the reasons that the Senate Transportation Committee decided to focus attention on how these plans will affect Alaska's historic trails, otherwise known as RS 2477 trails.

The historic trails have been pegged as "RS 2477s" because the statute that established their existence is known as Revised Statute 2477, which was passed by an Act of Congress on July 26, 1866. The act provided for rights-of-way for "highways" over unreserved public lands. In Alaska, this established a network of public rights-of-way that were used for trade routes, homesteading, mining access and general transportation.

Along the western coast of Alaska, the 500-mile trail used by Eskimos from Kotzebue to Point Hope is classified as a RS 2477 trail. Many of the old mail trails in the Interior are probably RS 2477s that were used by dog teams—the Iditarod trail is a classic example.

In 1974, Commissioner of Highways Bruce Campbell compiled an inventory of 1,700 known historic trails. The state of Alaska asserted claim to these trails in April 1974 when documentation of the trails was delivered to the Bureau of Land Management.

Today, we use these trails for hunting, fishing, inter-village travel and for access to homesites, mineral development, forestry and agriculture. It is important for the state and its people to maintain ownership rights to these trails not only for the present but, more importantly, for the future. These may be needed in the future by our children and our grandchildren.

This issue was the focus of Senate hearings sponsored by Sen. Bettye Fahrenkamp last spring. We found that more emphasis was needed in the eyes of the public and in the federal planning processes to recognize Alaska's existing rights-of-way. As a result, the Senate Transportation Committee formed a task force to ensure that the federal management plans adequately recognizes these historic trails. This task force has been working since July 1 to prepare maps and a list of approximately 100 trails that exist within the National Parks lands.

There are two important elements to the assertions that must be understood.

First, in no way does the list of trails prevent future assertions by the state or any citizen under the provisions of RS 2477.

Second, it is important to understand that when a RS 2477 right-of-way is asserted, it must go through a validation process before it may be utilized. We are in the process of formulating such a process.

The Senate Transportation Committee is "re-asserting" because no acknowledgement by the federal government has been made for the 1974 assertions of 1,700 trails and roads which had been identified and documented by the state of Alaska. Seems that the issue may have fallen through some crack somewhere on the Potomac.

We in Alaska have to identify and create the means for a workable planning process and a validation process. Our Transportation Committee will be re-asserting these 1,700 roads and trails the state has documented years ago. We will be asking for acknowledgement of those assertions.

We're in a serious time crunch. The land plans must be submitted to Congress soon with the first (the iatic arks Dec

In the future, when we wish to activate one of these "assertions," we will go through a process of "validation." I anticipate a long, detailed procedure before we can use the road or trail as a public right-of-way. Long as it may be, it's got to be done. The alternative is a complete land lockup where only an Act of Congress could recognize our traditional historic roads and trails.

When Assistant Secretary of the Interior Bill Horn was in Alaska in mid-August, he indicated that a task force within the Depar ment of Interior will be set up to issue a report on this issue within 30 days. The group will include representatives from affected landowners.

I personally have been meeting with various interested groups on this issue to hear individual concerns relating to management, liability, weight restrictions, seasonal use, etc. I feel that we must include all the various interests in order to come up with good public policy.

The bottom line of my effort as chairman of the Senate Transportation Committee is to insure that these historic roads and trails are not forgotten. Our citizens have the right to know that these trails exist and on the basis of knowledge, all of us—environmentalists, developers, Natives, homesteaders, hikers, hunters and fishermen—can work together to determine how to provide for the needs of our people and our state.

Jack Coghill is a Republican state senator from Nenana. He is chairman of the Senate Transportation Committee.

9/85 Fairbanks Daily News Miner

Finding ways to protect our historic system of trails

By Sen. Jack Coghill

ALASKA'S SURFACE transportation system, or lack of it, is one of the most unique things about our vast state.

Add to that the fact that current events are putting any future road/highway expansion in jeopardy.

To demonstrate one "uniqueness" in our Alaskan surface transportation, consider this: Alaska has more than 225 communities. Only a few of those are connected by road or highway. But, just about every community is, or has been, connected with one another by trails.

In the other 49 states, it's difficult to find any city, town, village or hamlet that can not reached by road.

These early Alaska trails historically were used by dog teams, wagons, automobiles, and people who walked. Many are still in use. Many of these trails and early roads could be the location of roads or highways we will be forced to build in the future.

Presently, we are facing the possible loss of Alaska's historic trails. The issue is surfacing as federal agencies prepare management plans which will govern the use of park lands created by the Alaska National Interests Lands Conservation Act (ANILCA).

Alaska has 13 national parks, 16 national wildlife refuges, 25 wild and scenic rivers, four national forests and two conservation/recreation areas, that were created by ANILCA.

THE RESPONSIBILITY for managing these vast areas lies with the National Park Service, U.S. Fish & Wildlife and the Bureau of Land Management. While I am generally in agreement with the idea that the parks and refuges need to be managed, I am always cautious when people in Washington start making decisions that affect people in Alaska (without appropriate public input). This is one of the reasons that the Senate Transportation Committee decided to focus attention on how these plans will affect Alaska's historic trails, otherwise know as R.S. 2477 trails.

The historic trails have been pegged as "R.S. 2477's" because the statute that established their existence is known as Revised Statute 2477, which was passed by an act of Congress on July 26, 1866. The act provided for rights-of-way for "highways" over unreserved public lands. In Alaska, this established a network of public rights-of-way that were used for trade routes, homesteading, mining access and general transportation.

Along the western coast of Alaska, the 500 mile trail used by Eskimos from Kotzebue to Point Hope is classified as a R.S. 2477 trail. Many of the old mail trails in the Interior are probably R.S. 2477's that were used by dog teams — the Iditarod trail is a classic example.

In 1974, the commissioner of highways, Bruce Campbell, compiled an inventory of 1,700 known historic trails. The state of Alaska asserted claim to these trails in April 1974 when documentation of the trails was delivered to the Bureau of Land Management.

TODAY, WE use these trails for hunting, fishing, inter-village travel and for access to homesites, mineral development, forestry and agriculture. It is important for the state and its people to maintain ownership rights to these trails not only for the present but, more importantly, for the future. These trails represent rights of way that may be needed in the future by our children and our grandchildren.

This issue was the focus of Senate hearings sponsored by Sen. Bettye Fahrenkamp last spring. We found that more emphasis was needed in the eyes of the public and in the federal planning processes to recognize Alaska's existing rights of way. As a result, the Senate Transportation Committee formed a task force to ensure that the federal management plans adequately recognizes these historic trails. This task force has been working since July 1 to prepare maps and a list of approximately 100 trails that exist within the national park lands.

There are two important elements to the assertions that must be understood.

First, in no way does the list of trails prevent future assertions by the state or any citizen under the provisions of R.S. 2477.

Second, it is important to understand that when a R.S. 2477 right of way is asserted, it must go through a validation process before it may be utilized. We are in the process of formulating such a process.

The Senate Transportation Committee is "re-asserting" because no acknowledgment by the federal government has been made for the 1974 assertions of 1,700 trails and roads which had been identified and documented by the state of Alaska. Seems that the issue may have fallen through some crack somewhere back on the Potomac.

We in Alaska have to identify and create the means for a workable planning process and a validation process. Our transportation committee will be re-asserting these 1,700 roads and trails the state has documented years ago. We will be asking for acknowledgment of those assertions.

We're in a serious time crunch. The land plan must be submitted to Congress soon with the first (the national parks) due Dec. 2.

In the future, when we wish to activate one of these "assertions," we will go through a process of "validation." I anticipate a long, detailed procedure before we can use the road or trail as a public right of way. Long as it may be, it's got to be done. The alternative is a complete land lockup where only an Act of Congress could recognize our traditional historic roads and trails.

WHEN ASSISTANT Secretary of the Interior Bill Horn was in Alaska in mid-August, he indicated that a task force within the Department of Interior will be set up to issue a report on this issue within 30 days. The group will include representatives from affected landowners.

I personally have been meeting with various interested groups on this issue to hear individual concerns relating to management, liability, weight restrictions, seasonal use, etc. I feel that we must include all the various interests in order to come up with good public policy.

The bottom line of my effort as Chairman of the Senate Transportation Committee is to insure that these historic roads and trails are not forgotten. Our citizens have the right to know that these trails exist and on the basis of knowledge, all of us . . . environmentalists, developers, natives, homesteaders, hikers, hunters and fishermen . . . can work together to determine how to provide for the needs of our people and our state.

Jack Coghill, a Republican from Nenana, is chairman of the Senate Transportation Committee.

Monday, October 7, 1985, The Anchorage Times

Alaska's historic roads, trails should not be forgotten

By JACK COGHILL

Alaska's surface transportation system, or lack of it, is one of the most unique things about our vast state. Consider this: Alaska has more than 225 communities, towns, and cities. Only a few of those are connected by road or highway. But just about every community is, or has been, connected with one another by trails.

These early Alaska trails were historically used by dog teams, wagons, automobiles, and people who walked. Many are still in use. Many of these trails and early roads could be the location of roads or highways we will be forced to build in the future.

Currently, we are facing the possible loss of Alaska's historic trails. The issue is surfacing as federal agencies prepare management plans which will govern the use of park lands created by the Alaska National Interest Lands Conservation Act (ANILCA).

Alaska has 13 national parks, 16 national wildlife refuges, 25 wild and scenic rivers, four national forests and two conservation/recreation areas that were created with ANILCA.

The responsibility for managing these vast areas lies with the National Park Service, U.S. Fish & Wildlife and the Bureau of Land Management. While I generally agree that the parks and refuges need to be managed, I am always cautious when people in Washington start making decisions that affect people in Alaska (without appropriate public input). This is one of the reasons that the Senate Transportation Committee decided to focus attention on how these plans will affect Alaska's historic trails, otherwise known as R.S. 2477 trails, for Revised Statute 2477,

which was passed by Congress on July 26, 1866. The Act provided for rights of way for "highways" over unreserved public lands. In Alaska, this established a network of public rights of way that were used for trade routes, mining access and general transportation.

Along the western coast of Alaska, the 500-mile trail used by Eskimos from Kotzebue to Point Hope is classified as a R.S. 2477 trail. Many of the old mail trails in the Interior are probably R.S. 2477's that were used by dog teams — the Iditarod Trail is a classic example.

In 1974, Commissioner of Highways Bruce Campbell compiled an inventory of 1,700 known historic trails. The state of Alaska asserted claim to these trails that year when documentation was delivered to the Bureau of Land Management.

Today, we use these trails for hunting, fishing, inter-village travel and for access to homesites, mineral development, forestry and agriculture. It is important for the state and its people to maintain ownership rights to these trails not only for the present but, more importantly, for the future. These trails represent rights of way that may be needed in the future by our children and our grandchildren.

This issue was the focus of Senate hearings sponsored by Sen. Bettye Fahrenkamp last spring. We found that more emphasis was needed in the eyes of the public and in the federal planning processes to recognize Alaska's existing rights of way. As a result, the Senate Transportation Committee formed a task force to ensure that the federal management plans adequately recognizes these historic trails. This task force has been working since July 1 to prepare maps and a list of approximately 100 trails that exist within the national park lands.

In no way does the list of trails prevent future assertions by the state or any citizen under the provisions of R.S. 2477. And it is important to understand that when a R.S. 2477 right of way is asserted, it must go through a validation process before it may be utilized. We are in the process of formulating such a process.

The Senate Transportation Committee is "re-asserting" because no acknowledgement by the federal government has been made for the 1974 assertions of 1,700 trails and roads which had been identified and documented by the state of Alaska. Seems that the issue may have fallen through some crack somewhere back on the Potomac.

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We're in a serious time crunch. The land plans must be submitted to Congress soon with the first (the national parks) due Dec. 2.

In the future, when we wish to activate one of these "assertions," we will go through a process of "validation." I anticipate a long, detailed procedure before we can use the road or trail as a public right of way. Long as it may be, it's got to be done. The alternative is a complete land lockup where only an Act of Congress could recognize our traditional historic roads and trails.

When Assistant Secretary of the Interior Bill Horn was in Alaska in mid-August, he indicated that a task force within the Department of the Interior will be set up to issue a report on this issue within 30 days. The group will include representatives from affected landowners.

I personally have been meeting with various interested groups on this issue to hear individual concerns relating to management, liability, weight restrictions, seasonal use, etc. I feel that we must include all the various interests in order to come up with good public policy.

The bottom line of my effort as Chairman of the Senate Transportation Committee is to ensure that these historic roads and trails are not forgotten. Our citizens have the right to know that these trails exist and on the basis of knowledge, all of us — environmentalists, developers, Natives, homesteaders, hikers, hunters and fishermen — can work together to determine how to provide for the needs of our people and our state.

□ Jack Coghill is an Alaska state senator from North Pole.

Legislative Digest

A Forecast and Review

Nov. 25 1985

Senate Transportation - Preserving Access Corridors

A special interim legislative work project will preserve the options to establish public access corridors across federally-managed national parks and wildlife refuges in Alaska.

Alaska trails and mining roads, many still being used, are being catalogued and included on federal National Park Service and Fish and Wildlife Service land management plans through the efforts of the Senate Transportation Committee. The committee took on the job of updating a 1974 Alaska trails inventory put together by former Highway Commissioner Bruce Campbell, and then working with the Interior Department to get trail rights-of-way noted in management plans now being prepared for parks and refuges in Alaska.

Campbell, in 1974, had located about 1700 historic trails and roads in his inventory. Not all of these will be submitted to Interior, but many rights-of-way still actively used can be preserved.

Committee staff were able to get maps and backup data to Interior in time to include the trail identification in nine of 13 National Park Service plans being finalized this year. These alone include 149 access routes. By end of this year, maps and data for trails to be included in 12 wildlife refuge plans scheduled to be done in 1986-7 will be submitted by the committee. The four park plans that were missed were completed in 1984, before the committee started its work. To retain some legal leverage in asserting rights-of-way in these areas, the committee will consider publishing the maps.

Most of the national park areas have just a handful of trails. One of them - Noatak - has none, while Wrangell-St. Elias, an area that was extensively used for mining, has over a hundred, including many still being used.

Including the trails in federal plans and maps doesn't establish a right-of-way but it does preserve the option for the state tc assert a historic public use of a trail or road at some future time. If the old trails hadn't been included in federal management plans, Alaskans would have had to go to congress for legislation to get an access corridor across a park or refuge. Nana Regional Corporation had to do this recently for road access across Cape Krustenstern National Monument to the Red Dog mine location.

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"Cleanup" Needed on Air Carrier Bill

Technical amendments to HB-133 passed last year (financial responsibility for truckers and air carriers) are needed to clean up problems, air carriers told the Senate Transporcation Committee in November. Carriers' association spokesman suggested more 'teeth' in penalty provisions by increasing fines and upgrading violations to Class A misdemeanor for failure of air operators to carry insurance. Also, there are no penalties in the law for failure to actually get a state certifi- [illegible] for all practical pur- priation and Department of Commerce has been administering it with existing staff on a 'time available' basis.

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From the Back Room

Anchorage Mayor Tony Knowles is headed for a collision with some of the Anchorage delegation over highway-building: Sen. Jan Faiks says the municipality is building "parks with a road down the middle",

International Right of Way Association - Winter, 1985 Newsletter

VIEWPOINT

RS-2477's IN ALASKA

Article - by Senator Jack Coghill

Alaska's surface transportation system is one of the unique characteristics of our State. Consider this: Alaska has more than 225 communities, towns, and cities. Only a few of those are connected by road or highway. But just about every community is, or has been, connected to one another by trails, many of which are possible RS 2477 rights-of-ways.

Revised Statute 2477 was an Act passed by Congress in 1866 which provided for rights-of-way for "highways" over unreserved public lands. Under Alaska statutes, the definition of a highway is very broad and includes roads, streets, trails and walks.

Alaska's historic trails were used by dog teams, wagons, motorized vehicles and people who walked. Many of these trails are still in use; some could be critical links to tie our people together in the future.

The RS 2477 issue has received more attention in recent months as Federal agencies prepare management plans which will govern the use of parks and refuge lands created by the Alaska National Interest Lands Conservation Act (ANILCA).

ANILCA conveyed millions of acres of Alaska's land into 13 national parks, 16 national wildlife refuges, 25 wild and scenic rivers, 4 national forests and 2 conservation/recreation areas. The responsibility for managing these vast areas lies with the National Park Service, U.S. Fish & Wildlife and the Bureau of Land Management.

This management responsibility, through the general management plans, must not exclude the rights of the people of Alaska to continue to use our historic trails. This is one of the reasons that the Senate Transportation Committee decided to call attention to how the general management plans will affect Alaska's historic trails. The Senate Resources Committee also held hearings on this issue last spring because they, too, saw a need for more public input in the Federal planning processes.

As a result, the Senate Transportation Committee formed a task force to ensure that the Federal management plans adequately recognize these historic trails. Working with the Alaska Departments of Natural Resources and Transportation/Public Facilities, the task force prepared maps and a list of possible RS 2477 rights-of-way that the State wants included in these Federal plans.

Trail information was derived from the 1974 Alaska Trails System Inventory, an atlas developed by then-Commissioner of Highways Bruce Campbell to catalog the State's 1,400 known trails. The inventory was sent to the Bureau of Land Management in 1974, before that agency had any authorization to deal with RS 2477's. However, the inventory was shelved by BLM and no formal response was made to acknowledge the State's ownership of these trails.

Only now has an inter-agency effort begun to respond to the rising interest in RS 2477. The Department of Interior has formed an RS 2477 Task Force, under the leadership of Ric Davidge, of the U.S. Fish and Wildlife Service. The members include representatives of the Fish and Wildlife Service, National Park Service, Bureau of Land Management, U.S. Forest Service, Bureau of Indian Affairs, Alaska Federation of Natives, Alaska Native Land Managers Association, Alaska Department of Natural Resources, Alaska Department of Transportation/Public Facilities, and the Office of Management and Budget - CSU Coordinator.

The State of Alaska has recently taken a positive posture by publishing for public comment draft policies and procedures governing RS 2477 trails. This well-written and well researched document spells out the State's intent to deal with all the issues surrounding these trails in a fair manner. It includes the criteria used to determine a RS 2477, as well as issues relating to liability, maintenance and use. Copies can be obtained from the Department of Natural Resources or the Department of Transportation/Public Facilities.

This entire issue is vitally important because if the State had let these valid existing rights become forgotten, only the giant corporations or large government entities could afford to get the attention of the Federal government to responsed to their access needs.

The road to Red Dog is a classic example. It was only through a combination of NANA Corporation and Cominco with the backing of the Governor and the support of the Congressional delegation that a right-of-way was granted by Congress. I don't believe that an individual or small corporation should have to mount an expensive lobbying campaign to secure a right-of-way, especially if there are already valid rights-of-way in existence.

It is essential that the State and its people maintain their ownership rights to these trails. What's at stake is access for homesites, fishing, recreation, mineral development, forestry, agriculture and travel between villages, not only for the present but for many generations in the future.

OVERVIEW

1-15-86

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

TO: All Committee members

FROM: Senator Coghill

RE: Bills in committee

DATE: January 13, 1986

HB 100--" An act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

Sponsor--House Rules by request of the Governor

A housekeeping measure which makes the bond posting provision in the statute on detention of vessels involved in oil spills consistent with the 1976 amendment of the statute providing for damages for oil pollution. Detention statute presently limits bond to $100,000. The 1976 amendment eliminates any reference to a maximum amount of damages; it only states that damages must not be punitive and must be remedial and compensatory in nature.

Section 2 clarifies the definition of "owner" with regard to strict liability for oil spills and other hazardous substances.

The bill is intended to correct two statutory oversights brought to light as a result of the oil spill from the M/V Cepheus in 1984.

CSHB111--"An Act relating to local service roads and trails; and providing for an effective date."

Sponsor--House Transportation

This is a housekeeping measure and has no fiscal impact on either the operating or capital budget. It revises AS 19.30 in a number of areas: 1) Allocation boundaries are reworded to coincide with DOT/PF regional boundaries to simplify the LSR&T allocation process.

2) First class cities are removed from district allocation. This returns first class cities to their former status which allows them to receive adequate funds to construct a project.

3) LSR&T projects constructed on a federal aid secondary route will require approval by the Commissioner of DOT/PF to assure that federal requirements are met.

4) LSR&T projects will be limited to low volume roads. This is a correction of an oversight of past legislation in defining specific routes of the federal aid highway system.

SB 14--"An Act making a special appropriation to the Department of Transportation and Public Facilities for highway construction and repairs in Southcentral Alaska; and providing for an effective date."
"

Sponsors--Senators Kerttula, Kelly and Faiks

Requests an appropriation of $200,000,000 from the general fund for capital projects.

SSSB 15--"An Act making a special appropriation for construction of a highway from Eklutna to the junction of the Parks Highway and the Glenn Highway; and providing for an effective date."

Sponsors--Senators Kerttula, Kelly and Faiks

Requests a $65,000,000 appropriation from the general fund to DOT/PF for construction of a four land highway from Eklutna to the junction of the Parks and Glenn Highways.

SB 141--"An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

Sponsor--Senator Coghill

This releases certain highway rights-of-way claimed by the state that are causing economic hardship and distress to persons who hold title under a reservation to the state by a number of federal land orders.

If the right-of-way is not physically occupied by a road, roadway, highway, tramway, trail, bridge or appurtenant structure, the commissioner of DOT/PF shall vacate and relinquish the right-of-way. This does not divest the state of any interest in a currently occupied right-of-way.

SB 175--"An Act making a special appropriation to DOT/PF for design and construction of the DeArmoun-Rabbit Creek interchange; and providing for an effective date."

Sponsor--Senator DeVries

Requests the sum of $18,500,000 be appropriated to DOT/PF. $925,000 from the general fund and $17,575,000 from federal receipts.

SB 308--"An Act providing for the issuance of general obligation bonds in the amount of $350,000,000 for the purpose of paying the cost of transportation projects; calling for a special election on the question, and providing for an effective date."

Sponsors--Senators Rodey and Ferguson

Establishes a "Transportation Projects Fund" which would be credited with the proceeds of a bond sale. The amount of $350,000,000 would be used for a multitude of state-wide transportation projects.

SB 315--" An Act making special appropriations to the principal of the permanent fund, to the dividend fund, and for various capital projects of the state; and providing for an effective date.

Sponsor--Senator Ferguson

Appropriates $400 million from the undistributed income account to the principal of the Alaska permanent fund. Appropriates $400 million from the general fund to the principal of the Alaska permanent fund. The source of these funds shall only come from litigation or settlement receipts. Appropriates $105 million from the undistributed account to the dividend fund. Approximately $348 million is appropriated from the undistributed income account to various state agencies for state-wide projects.

SB 318--" An Act making a special appropriation to the principal of the permanent fund, and for various capital projects of the state; and providing for an effective date."

Sponsors--Senators Ferguson and Josephson

Very similar to SB 315. Does not appropriate $105 million from the undistributed account to the dividend fund. Approximately $348 million is appropriated from the undistributed income account to various state agencies for capital projects.

Introduced: 1/23/85
Referred: Transportation and Resources

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

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

* Section 1. AS 46.03.770 is amended to read:

Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel which is used in or in aid of a violation of AS 46.03.740 -- 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in or the cause of a violation of AS 46.03.740 -- 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.760(b), and if the damages so assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum amount of damages available under AS 46.03.758, 46.03.760, and

HB 100

46.03.822 [$100,000]. The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.760, or 46.03.822 [46.03.760(b)].

* Sec. 2. AS 46.03.826(5) is amended to read:

(5) "[OWNING OR] having control over a hazardous substance" means producing, handling, storing, transporting or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state, and specifically includes bailees and carriers of a hazardous substance;

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Offered: 3/15/85
Referred: Resources

Original sponsor: Rules/Governor

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 111 (Transportation) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to local service roads and trails; and providing for an effective date."

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

* Section 1. AS 19.30.131(a) is amended to read:

(a) During each fiscal year the commissioner shall allocate sums appropriated or otherwise designated for expenditure upon local service roads for that fiscal year among the five allocation districts in the following manner: one-half in the ratio which the area of each allocation district bears to the total area of the state and one-half in the ratio which the population of each allocation district bears to the total population of the state as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs.

* Sec. 2. AS 19.30.131(b) is amended to read:

(b) The commissioner shall also further allocate the sums in each allocation district to the boroughs within each allocation district in the following manner: one-half in the ratio which the area of each organized borough (excluding salt water areas) within that district bears to the total area of the allocation district and one-half in the ratio which the population of each organized borough area within that district bears to the total population of the allocation district as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs.

CSHB 111

* Sec. 3. AS 19.30.131(c) is amended to read:

(c) The commissioner shall also further allocate portions of the sum allocated to any borough, either organized or unorganized, and to any home rule [OR FIRST CLASS] city within the borough in the following manner:

(1) one-half in the ratio which the area of each home rule [OR FIRST CLASS] city bears to the total area of the borough excluding salt water areas; and

(2) one-half in the ratio which the population of each home rule [OR FIRST CLASS] city bears to the total population of the borough as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs.

* Sec. 4. AS 19.30.141 is amended to read:

Sec. 19.30.141. ACQUISITION AND CONSTRUCTION PROGRAMS. Before October 1 of each fiscal year each local government eligible for allocation of funds under AS 19.30.131 shall submit to the commissioner for approval a five-year plan for the acquisition and construction of local service roads and trails. Before December 1 of each fiscal year the commissioner shall submit to the governor a five-year plan for the acquisition and construction of local service roads and trails, including the approved local government programs. An organized borough shall include in its five-year plan local servi road acquisition and construction programs for all cities other t' ome rule [AND FIRST CLASS] cities within the boundaries of the ugh. The commissioner shall include in the [HIS] five-year plan local service road and trail acquisition and construction with the unorganized borough.

* Sec. 5. AS 19.30.161 is amended to read:

Sec. 19.30.161. DESIGN STANDARDS, RIGHTS-OF-WAY AND WIDTHS. Design standards, rights-of-way and widths for each local service road and trail project must [SHALL] have the prior approval of the commissioner, unless the project is under the supervision of a local government that has assumed local road powers. If the project is under the supervision of a local government that has assumed road powers, and the project is not located on a federal-aid secondary route, design standards, rights-of-way and widths shall be established by the local government. If a project under the supervision of a local government that has assumed road powers is located on a federal-aid secondary route, design standards, rights-of-way, and widths must have the prior approval of the commissioner.

* Sec. 6. AS 19.30.241(3) is amended to read:

(3) "local government" means an organized borough of any class, a unified municipality organized under AS 29.68.240 - 29.68.-440, [A HOME RULE CITY,] or a city of any [THE FIRST] class;

* Sec. 7. AS 19.30.241(4) is amended to read:

(4) "local service road" means a public road that is used by an average of fewer than 750 vehicles each day and that [WHICH] is not designated as a route on the approved primary, urban, or interstate federal-aid highway system;

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 1/14/85
Referred: Transportation and Finance

Funding Information
General Fund $200,000,000
Other Funds -0-
$200,000,000

IN THE SENATE BY KERTTULA, KELLY AND FAIKS

SENATE BILL NO. 14

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for highway construction and repairs in Southcentral Alaska; and providing for an effective date."

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

* Section 1. It is the intent of the legislature that to the extent allowed by federal law, these funds shall supplement any available federal funds.

* Sec. 2. The sum of $200,000,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for road construction and repairs within Southcentral Alaska.

* Sec. 3. The appropriation made by this Act is for a capital project and is subject to AS 37.25.020.

* Sec. 4. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1989.

* Sec. 5. This Act takes effect July 1, 1985.

SB 14

Introduced: 1/18/85
Referred: Transportation and Finance

Funding Information
General Fund $65,000,000
Other Funds -0-
$65,000,000

IN THE SENATE BY KERTTULA, KELLY AND FAIKS

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 15

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation for construction of a highway from Eklutna to the junction of the Parks Highway and the Glenn Highway; and providing for an effective date."

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

* Section 1. The sum of $65,000,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for construction of a four-lane highway from Eklutna to the junction of the Parks Highway and the Glenn Highway.

* Sec. 2. The appropriation made by this Act is for a capital project and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect July 1, 1985.

CCSB 15

Introduced: 2/8/85
Referred: Transportation and Resources

IN THE SENATE BY COGHILL

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of transportation and public facilities shall vacate and relinquish to the adjoining property owners any and all rights-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant

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structure.

* Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The vacated and relinquished right-of-way under sec. 2 of this Act may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

* Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not divest the state of its interest in a right-of-way to land or require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act divest the state of an interest in an easement of specific width set out in the original patent from the state or federal government.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

* Sec. 5. APPLICATION TO FEDERAL LAND. The provisions of this Act do not divest the state of its interest in a right-of-way that affects land in which fee title is, on the effective date of this Act, vested in the United States of America.

* Sec. 6. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 2/21/85
Referred: Transportation and Finance

Funding Information
General Fund $ 925,000
Other Funds 17,575,000
$18,500,000

IN THE SENATE BY DEVRIES

SENATE BILL NO. 175

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for design and construction of the DeArmoun-Rabbit Creek interchange; and providing for an effective date."

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

* Section 1. The sum of $18,500,000 is appropriated to the Department of Transportation and Public Facilities of which $925,000 is from the general fund and $17,575,000 is from federal receipts for design and construction of the DeArmoun-Rabbit Creek interchange.

* Sec. 2. The appropriation made by this Act is for a capital project and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect July 1, 1985.

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Introduced: 5/3/85
Referred: Transportation and Finance

IN THE SENATE BY RODEY AND FERGUSON

SENATE BILL NO. 308

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act providing for the issuance of general obligation bonds in the amount of $350,000,000 for the purpose of paying the cost of transportation projects; calling for a special election on the question; and providing for an effective date."

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

* Section 1. For the purpose of paying the cost of transportation projects, general obligation bonds of the state in the principal amount of not more than $350,000,000 shall be issued and sold. The full faith, credit, and resources of the state are pledged to the payment of the principal of and interest and redemption premium, if any, on these bonds. These bonds shall be issued under the provisions of AS 37.15 as those provisions read at the time of issuance.

* Sec. 2. If the issuance of these bonds is authorized by the qualified voters of the state, a special fund of the state to be known as the "1985 Transportation Projects Fund" shall be established, to which shall be credited the proceeds of the sale of the bonds described in sec. 1 of this Act except for the accrued interest and premiums.

* Sec. 3. (a) The amount of $350,000,000 is appropriated from the "1985 Transportation Projects Fund" to the Department of Transportation and Public Facilities to be allocated in accordance with the following projects and estimates:

(1) transportation projects within the Municipality of Anchorage:

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West Northern Lights	21,000,000
Eklutna Transportation Project	28,000,000
Lake Otis Drive	15,500,000
Boniface Parkway and interchanges	26,300,000
C St., Tudor to ARR	2,000,000
100th and Minnesota interchange	3,500,000
C St., - Klatt Road	2,600,000
Spenard Road	12,600,000
36th Avenue	3,100,000
Dimond Blvd	5,600,000
Arctic Blvd	5,600,000
Pedestrian improvements	1,700,000
Traffic circulation improvements	2,000,000
Anchorage road district service areas	3,500,000
Limited road service areas	2,000,000
Eagle River Hiland Road bridge	3,000,000
Chugiak-E.R.-Birchwood road improvements	1,400,000
Old and New Seward Highway Intersections improvements	5,600,000
Eagle River-Birchwood-Chugiak State Road improvements	5,000,000
Total	$150,000,000

(2) transportation projects in the following house election districts, in the respective amounts:

District 1	17,392,439
District 2	8,695,565
District 3	8,695,565
District 4	17,391,304
District 5	17,391,304

District 6		8,695,565
District 16		17,391,304
District 17		8,695,565
District 18		8,695,565
District 19		8,695,565
District 20		17,391,304
District 21		8,695,565
District 22		8,695,565
District 23		8,695,565
District 24		8,695,565
District 25		8,695,565
District 26		8,695,565
District 27		8,695,565
Total		$200,000,000

(b) The proceeds of the bond issue may be reallocated among the listed projects as provided by law.

* Sec. 4. If the issuance of these bonds is authorized by the qualified voters of the state, the amount of $1,225,000 or as much of that amount as is found necessary is appropriated from the general fund of the state to the state bond committee to carry out the provisions of this Act and to pay expenses incident to the sale and issuance of the bonds authorized in this Act. The amounts expended from the appropriation authorized by this section shall be reimbursed to the general fund from the proceeds of the sale of the bonds authorized by this Act.

* Sec. 5. The amount withdrawn from the public facility planning fund for the purpose of advance planning for the improvements financed under this Act shall be reimbursed to the fund from the proceeds of the sale of bonds authorized by this Act.

* Sec. 6. The question whether the bonds authorized in this Act are to

be issued shall be submitted to the qualified voters of the state at a special election to be held the first Tuesday in November 1985 and shall read substantially as follows:

Proposition

State General Obligation Transportation Projects

Bonds $350,000,000

Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than $350,000,000 for the purpose of paying the cost of transportation projects?

Bonds Yes [ ]

Bonds No [ ]

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 5/9/85
Referred: Transportation, HESS, and Finance

Funding Information

General Fund	$ 400,000,000	
Other Funds	400,000,000	UIA/PF
	350,000,000	UIA/Capital
	105,000,000	UIA/PFD
	$1,255,000,000	

IN THE SENATE BY FERGUSON

SENATE BILL NO. 315

IN THE LEGISLATURE OF THE STAT OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: An Act making special appropriations to the principal of the permanent fund, to the dividend fund, and for various capital projects of the state; and providing for an effective date."

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

* Section 1. The sum of $400,000,000 is appropriated from the undistributed income account in the Alaska permanent fund to the principal of the Alaska permanent fund.

* Sec. 2. The sum of $400,000,000 is appropriated from the general fund for deposit in the principal of the Alaska permanent fund. This money shall be deposited only from receipts from litigation or settlement of litigation.

* Sec. 3. The sum of $105,000,000 is appropriated from the undistributed income account to the dividend fund (AS 43.23.045(a)) for increased payments of the 1985 permanent fund dividend.

* Sec. 4. The sum of $226,428,850 is appropriated from the undistributed income account to the Department of Administration for payment as municipal grants for the following capital projects:

Project	Amount
Anchorage West Northern Lights	21,000,000
Anchorage Eklutna Water Project	28,000,000
Anchorage Lake Otis Drive	15,500,000
Anchorage Boniface Parkway and interchanges	26,300,000
Anchorage C St., Tudor to ARR	2,000,000

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Anchorage 100th and Minnesota interchange	3,500,000
Anchorage C St., - Klatt Road	2,600,000
Anchorage Spenard Road	12,600,000
Anchorage 36th Avenue	3,100,000
Anchorage Dimond Blvd.	5,600,000
Anchorage Arctic Blvd.	5,600,000
Anchorage pedestrian improvements	1,700,000
Anchorage traffic circulation improvements	2,000,000
Anchorage road district service areas	3,500,000
Anchorage limited road service areas	2,000,000
Anchorage Eagle River Hiland Road bridge	3,000,000
Anchorage Chugiak-ER Birchwood road improvements	1,400,000
Anchorage Old and New Seward Highway intersections improvements	5,600,000
Anchorage downtown parking garage	5,000,000
Kenai River bridge	6,000,000
Juneau street improvements	8,500,000
Kodiak harbor	11,000,000
Aniak dike/riverbank stabilization - Phase II	1,225,000
Fort Yukon dust control	275,000
Galena riverbank stabilization - Phase III	3,000,000
Shismaref erosion control	1,400,000
Ruby generator/heavy equipment garage	400,000
Kiana roads	550,000
Dillingham public works facilities	1,000,000
Klawock water and sewer	300,000
Kenai water and sewer	1,600,000
Bristol Bay Borough water sewer/solid waste	750,000
Craig water source	2,000,000

St. Mary's water and sewer	575,000
Fairbanks water and sewer	2,900,000
Petersburg water and sewer system	850,000
Cordova water and sewer	1,900,000
Valdez water and sewer	1,500,000
St. Paul water and sewer	800,000
St. George water and sewer	850,000
Palmer water and sewer	1,500,000
Juneau water and sewer	7,500,000
Emmonak water and sewer	900,000
Ketchikan Gateway Borough sewer project	850,000
Soldotna water and sewer	1,100,000
Selawik water and sewer feasibility study	50,000
Nenana water and sewer	2,700,000
North Pole water and sewer	3,500,000
Koyuk water and sewer	1,600,000
McGrath water system - Phase III	962,000
Mountain Village water and sewer system	483,000
Shungnak water/sewer/solid waste	420,000
Bethel alcohol treatment facility	700,000
Anderson medical center and roads	768,850
Fort Yukon community health facilities	240,000
Tanana senior center upgrade	115,000
Angoon water storage tanks	165,000
Haines Port Chilkoot dock rehabilitation	700,000
Hoonah water and sewer	750,000
Hydaburg port development project	1,500,000
Pelican creek dam reconstruction	1,700,000
Skagway water tank	25,000

Yakutat road projects	175,000
Seward-marine industrial park	650,000

* Sec. 5. The sum of $5,429,600 is appropriated from the undistributed income account to the Department of Transportation and Public Facilities for the following capital projects:

Dillingham airport project	2,800,000
Birch Creek dock	65,000
Chalkyitsik runway lighting	280,000
Grayling road improvements	337,700
Huslia erosion control Phase II	1,000,000
Kaltag road extension completion	245,900
Nilolai maintenance shop/community center Phase II	150,000
Nulato street lights	42,000
Rampart road improvements	50,000
Russian Mission heavy equipment	125,000
Edna Bay marine facilities development phase II	150,000
Gustavus boat harbor improvements	184,000

* Sec. 6. The sum of $2,252,500 is appropriated from the undistributed income account to the Department of Environmental Conservation for the following capital projects:

Holy Cross water and sewer	700,000
Hughes wellhouse modification	250,000
Upper Kuskokwim water wells	365,000
Pitkas Point water sewer study	50,000
Venetie water and sewer feasibility	12,500
Port Protection water system	875,000

* Sec. 7. The sum of $2,101,550 is appropriated from the undistributed income account to the University of Alaska for the following capital projects:

Valdez/Prince William Sound Community College addition	1,300 000
UAF - Statewide computer and library network	801,550

* Sec. 8. The sum of $47,983,000 is appropriated from the undistributed income account to the Department of Education for the following capital projects:

Matanuska-Susitna/Knik/Vine Road elementary school	9,000,000
Fairbanks/University Park school expansion	3,500,000
Fairbanks/Lathrop High school addition	5,300,000
Fairbanks/Tanana Jr. High addition	700,000
Lower Kuskokwim/Tununuk Elementary	1,100,000
Bering Straits School District/Unalakleet elementary Phase I	2,500,000
Kodiak Schools asbestos removal	2,000,000
Bering Straits School District/Golovin School life safety code repairs	1,000,000
Copper River/Glennallen school project	2,000,000
Iditarod/Anvik pre-school	200,000
Nome elementary school	10,000,000
Iditarod/Grayling school	1,000,000
Yukon-Koyukuk School District/Manley Hot Springs school addition	200,000
St. Mary's community education center	350,000
Northwest Arctic School District/Kotzebue elementary school	4,500,000
Chatham School District/Tenakee school Phase II	800,000
Kake School District elementary school Phase II	1,633,000
Hoonah School District gym project	900,000
Sitka School District/Sitka High/Blatchley Jr. High renovations and repairs	1,300,000

* Sec. 9. The sum of $60,286,500 is appropriated from the undistributed income account to the Department of Health and Social Services for the following capital projects:

Wrangell, Seward, Bartlett (Juneau), Central Peninsula (Kenai), Cordova, Ketchikan, Kodiak, Norton Sound Hospital and related facilities (Nome), Providence House (Anchorage), South Peninsula (Kenai), St. Ann's Nursing Home (Juneau), Wesleyan Nursing Home (Seward)	34,750,000
Fairbanks regional mental health facility	25,000,000
Pilot Station new clinic building	200,000
Tyonek emergency medical equipment	20,000
Fortuna Ledge alternative center	316,500

* Sec. 10. The sum of $5,298,000 is appropriated from the undistributed income account to the Department of Community and Regional Affairs for payment as grants for the following capital projects:

Evansville fire truck/warm storage building	200,000
Shageluk fire hall	60,000
Kotzebue electrification and facilities	700,000
Stony River electrification	55,000
Low-Income housing program statewide	3,500,000
Gustavus fire hall completion	33,000
Boys and Girls Club of Alaska - educational/training facility	750,000

* Sec. 11. The sum of $70,000 is appropriated from the undistributed income account to the Alaska Power Authority for the Elfin Cove electrical distribution system.

* Sec. 12. The sum of $150,000 is appropriated from the undistributed income account to the Department of Fish and Game for the Paint River Stocking Program.

* Sec. 13. The appropriations made by secs. 4 - 12 of this Act are for capital projects and are subject to AS 37.25.020.

* Sec. 14. This Act takes effect July 1, 1985.

Introduced: 5/9/85
Referred: Transportation, Resources
State Affairs and Finance

Funding Information

General Fund	$ 400,000,000	
Other Funds	400,000,000	UIA/PF
	350,000,000	UIA/Capital
	$1,150,000,000	

IN THE SENATE

BY JOSEPHSON, FERGUSON AND V. FISCHER

SENATE BILL NO. 318

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making special appropriations to the principal of the permanent fund, and for various capital projects of the state; and providing for an effective date."

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

* Section 1. The sum of $400,000,000 is appropriated from the undistributed income account in the Alaska permanent fund to the principal of the Alaska permanent fund.

* Sec. 2. The sum of $400,000,000 is appropriated from the general fund for deposit in the principal of the Alaska permanent fund. This money shall be deposited only from receipts from litigation or settlement of litigation.

* Sec. 3. The sum of $226,428,850 is appropriated from the undistributed income account to the Department of Administration for payment as municipal grants for the following capital projects:

Project	Amount
Anchorage West Northern Lights	21,000,000
Anchorage Eklutna Water Project	28,000,000
Anchorage Lake Otis Drive	15,500,000
Anchorage Boniface Parkway and interchanges	26,300,000
Anchorage C St., Tudor to ARR	2,000,000
Anchorage 100th and Minnesota interchange	3,500,000
Anchorage C St., - Klatt Road	2,600,000
Anchorage Spenard Road	12,600,000

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Anchorage 36th Avenue	3,100,000
Anchorage Dimond Blvd.	5,600,000
Anchorage Arctic Blvd.	5,600,000
Anchorage pedestrian improvements	1,700,000
Anchorage traffic circulation improvements	2,000,000
Anchorage road district service areas	3,500,000
Anchorage limited road service areas	2,000,000
Anchorage Eagle River Hiland Road bridge	3,000,000
Anchorage Chugiak-ER Birchwood road improvements	1,400,000
Anchorage Old and New Seward Highway intersections improvements	5,600,000
Anchorage downtown parking garage	5,000,000
Kenai River bridge	6,000,000
Juneau street improvements	8,500,000
Kodiak harbor	11,000,000
Aniak dike/riverbank stabilization - Phase II	1,225,000
Fort Yukon dust control	275,000
Galena riverbank stabilization - Phase III	3,000,000
Shismaref erosion control	1,400,000
Ruby generator/heavy equipment garage	400,000
Kiana roads	550,000
Dillingham public works facilities	1,000,000
Klawock water and sewer	300,000
Kenai water and sewer	1,600,000
Bristol Bay Borough water sewer/solid waste	750,000
Craig water source	2,000,000
St. Mary's water and sewer	575,000
Fairbanks water and sewer	2,900,000
Petersburg water and sewer system	850,000

Cordova water and sewer	1,900,000
Valdez water and sewer	1,500,000
St. Paul water and sewer	800,000
St. George water and sewer	850,000
Palmer water and sewer	1,500,000
Juneau water and sewer	7,500,000
Emmonak water and sewer	900,000
Ketchikan Gateway Borough sewer project	850,000
Soldotna water and sewer	1,100,000
Selawik water and sewer feasibility study	50,000
Nenana water and sewer	2,700,000
North Pole water and sewer	3,500,000
Koyuk water and sewer	1,600,000
McGrath water system - Phase III	962,000
Mountain Village water and sewer system	483,000
Shungnak water/sewer/solid waste	420,000
Bethel alcohol treatment facility	700,000
Anderson medical center and roads	768,850
Fort Yukon community health facilities	240,000
Tanana senior center upgrade	115,000
Angoon water storage tanks	165,000
Haines Port Chilkoot dock rehabilitation	700,000
Hoonah water and sewer	750,000
Hydaburg port development project	1,500,000
Pelican creek dam reconstruction	1,700,000
Skagway water tank	25,000
Yakutat road projects	175,000
Seward-marine industrial park	650,000

* Sec. 4. The sum of $5,429,600 is appropriated from the undistributed

income account to the Department of Transportation and Public Facilities for the following capital projects:

Dillingham airport project	2,800,000
Birch Creek dock	65,000
Chalkyitsik runway lighting	280,000
Grayling road improvements	337,700
Huslia erosion control Phase II	1,000,000
Kaltag road extension completion	245,900
Nilolai maintenance shop/community center Phase II	150,000
Nulato street lights	42,000
Rampart road improvements	50,000
Russian Mission heavy equipment	125,000
Edna Bay marine facilities development Phase II	150,000
Gustavus boat harbor improvements	184,000

* Sec. 5. The sum of $2,252,500 is appropriated from the undistributed income account to the Department of Environmental Conservation for the following capital projects:

Holy Cross water and sewer	700,000
Hughes wellhouse modification	250,000
Upper Kuskokwim water wells	365,000
Pitkas Point water sewer study	50,000
Venetie water and sewer feasibility	12,500
Port Protection water system	875,000

* Sec. 6. The sum of $2,101,550 is appropriated from the undistributed income account to the University of Alaska for the following capital projects:

Valdez/Prince William Sound Community College addition	1,300,000
UAF - Statewide computer and library network	801,550

* Sec. 7. The sum of $47,983,000 is appropriated from the undistributed

income account to the Department of Education for the following capital projects:

Matanuska-Susitna/Knik/Vine Road elementary school	9,000,000
Fairbanks/University Park school expansion	3,500,000
Fairbanks/Lathrop High school addition	5,300,000
Fairbanks/Tanana Jr. High addition	700,000
Lower Kuskokwim/Tununuk Elementary	1,100,000
Bering Straits School District/Unalakleet elementary Phase I	2,500,000
Kodiak Schools asbestos removal	2,000,000
Bering Straits School District/Golovin School life safety code repairs	1,000,000
Copper River/Glennallen school project	2,000,000
Iditarod/Anvik pre-school	200,000
Nome elementary school	10,000,000
Iditarod/Grayling school	1,000,000
Yukon-Koyukuk School District/Manley Hot Springs school addition	200,000
St. Mary's community education center	350,000
Northwest Arctic School District/Kotzebue elementary school	4,500,000
Chatham School District/Tenakee school Phase II	800,000
Kake School District elementary school Phase II	1,633,000
Hoonah School District gym project	900,000
Sitka School District/Sitka High/Blatchley Jr. High renovations and repairs	1,300,000

* Sec. 8. The sum of $60,286,500 is appropriated from the undistributed income account to the Department of Health and Social Services for the following capital projects:

Wrangell, Seward, Bartlett (Juneau), Central Peninsula (Kenai), Cordova, Ketchikan, Kodiak, Norton Sound Hospital and related facilities (Nome), Providence House (Anchorage), South Peninsula (Kenai), St. Ann's Nursing Home (Juneau), Wesleyan Nursing Home (Seward)	34,750,000
Fairbanks regional mental health facility	25,000,000
Pilot Station new clinic building	200,000
Tyonek emergency medical equipment	20,000
Fortuna Ledge alternative center	316,500

* Sec. 9. The sum of $5,298,000 is appropriated from the undistributed income account to the Department of Community and Regional Affairs for payment as grants for the following capital projects:

Evansville fire truck/warm storage building	200,000
Shageluk fire hall	60,000
Kotzebue electrification and facilities	700,000
Stony River electrification	55,000
Low-Income housing program statewide	3,500,000
Gustavus fire hall completion	33,000
Boys and Girls Club of Alaska - educational/training facility	750,000

* Sec. 10. The sum of $70,000 is appropriated from the undistributed income account to the Alaska Power Authority for the Elfin Cove electrical distribution system.

* Sec. 11. The sum of $150,000 is appropriated from the undistributed income account to the Department of Fish and Game for the Paint River Stocking Program.

* Sec. 12. The appropriations made by secs. 4 - 8, 10 and 11 of this Act are capital projects and are subject to AS 37.25.020.

* Sec. 13. This Act takes effect July 1, 1985.

SB

38

IDENTIFICATION

BILL NAME

An Act making a special appropriation to the DOT&PF For construction of a Kenai River Bridge; & p E O

ILL NUMBER SB 38

DATE INTRODUCED 1-14

RELATED BILLS PENDING ~~SSSB 389 Finance 84~~

SPONSOR(S) P. Fischer

REFERRALS Trans & Fin.

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

Yes 1-23-85

LEGAL DIVISION SUMMARY —

DEPT OF LAW SUMMARY —

SPONSOR CONTACTED FOR BACKUP MATERIALS

Rec'd 1-18

FISCAL NOTE

N/A

AGENCY RESPONSE ?

OTHER INTERESTED LEGISLATORS NOTIFIED

Navarre

Mason

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

CSSB 389 Finance '84

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS

See Minutes 1-23-85

HEARING PREPARATION

CHAIRMAN BRIEFED

Yes

DATE & PLACE SET

1-23-85 Butrovich

STAFF MEMO TO COMMITTEE

Yes 1-23

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

Yes - 1-23

PSA/PRESS RELEASE

LIST OF WITNESSES

Senator Paul Fischer

SUGGESTED AMENDMENTS/CS DRAFTED

Adopted Transportation CS

DRAFT

5 DAY NOTICE

OF PUBLIC HEARING

The Senate Transportation Committee will hold a first public hearing on the following Senate Bill at 3:30 p.m. on Wednesday, Jan. 23, 1985 in the Butrovich Room in the

SB 38 "An Act making a special appropriation to the Department of Transportation and Public Facilities for construction of a Kenai River Bridge; and providing for an effective date."

Ford
1/23/85✓

Original sponsor: P.Fischer

Funding Information
General Fund $6,660,000
Other Funds -0-
$6,660,000

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 38 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for construction of a Kenai River bridge; and providing for an effective date."

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

* Section 1. The sum of $6,660,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for construction of a Kenai River bridge providing for access to Funny River Road.

* Sec. 2. The appropriation made by this Act is for a capital project and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

LETTER OF INTENT

To Accompany

Senate Bill 38 "An Act making a special appropriation to the Department of Transportation and Public Facilities for construction of a Kenai River Bridge; and providing for an effective date."

It is the intention of the Senate Committee on Transportation that public access for the purpose of boat launching and parking be included within the right-of-way, or adjacent to the right-of-way, of the roadway to be funded by this appropriation.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Transportation Committee Members
From: Chairman Coghill
Date: Wednesday, January 23, 1985
Re: SB 38 "Kenai River Bridge"

Senate Bill 38 proposes to fund the construction of a highway bridge across the Kenai River near Sterling. Construction would include upgrading a portion of the existing Scout Lake Road, to be used as access on the north side of the river, and connection with Funny River Road on the south.

This project would have the desired effect of relieving sport fishing pressure on the north side of the Kenai, as well as allowing easier access to the Sterling Highway by residents living along the Funny River Road.

The bridge has been proposed for a number of years, and has been identified as a priority of both the Kenai Borough and DOT/PF. It's legislative history is varied over the past several years.

In their analysis, the sport fish division, ADF&G, has given its support to the project, and has asked for additional language to insure vehicle access to the river along the road's right-of-way. This particular spot at the end of Scout Lake Road is currently used as a boat-launching area, and with statutorily guaranteed access, federal funds may be available for construction of boat ramps near the bridge. Because this is an appropriation bill, this request has been addressed in the letter of intent.

The proposed CS reflects the higher capital cost as indicated on the DOT/PF fiscal note. In addition to the DOT/PF and ADF&G analyses, the letter of intent and the CS, we have included a memorandum from Sen. Paul Fischer, the prime sponsor; a clipping from the Peninsula Clarion; and a map showing the project's location.

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H

State Senate

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

January 17, 1985

Memorandum: Senate Bill 38

To: Jack Coghill
Chairman, Senate Transportation Committee

From: Senator Paul Fischer

The Kenai River Bridge project is one that has been identified by local and state authorities for over 20 years. It has been documented by community need and economic factors in attached pages from the Kenai River Transportation Study, published by DOT/PF and jointly prepared by DOT/PF, Kenai Peninsula Borough and the Cities of Soldotna, Kenai, Homer, Seward, and Seldovia,

Salient features are as follows:

1. This project is the keystone to solving the problems of overcrowding and congestion experienced by South Central Alaskan sport fishermen and other recreational users on the Kenai River. Completion will, for the first time, give equal access to the south side of the Kenai River. In addition, Alaskans will have their round trip driving time shortened by approximately 2 hours allowing more leisure time to enjoy the area.

2. Provides access to a large area on the southeast side of the Kenai River. Borough tax records show approximately 200 families with 576 persons in the area. Access is currently in the 17-mile Funny River Road following the Kenai River from Soldotna.

A large portion of Funny River Road passes through federal land of the Kenai Wildlife Refuge (formerly the Kenai National Moose Range). The road was constructed many years ago to minimum access standards and poses grave safety problems due to its narrow width and current high traffic levels. Accidents are frequent (see attached Peninsula Clarion article). School buses have a treacherous time in the severe weather conditions during winter and break up. Routing keeps children on the buses far longer than necessary, time on the bus for elementary school children is often in excess of 3 hours.

3. The bridge is far more cost effective and removes much of the need for upgrade and realignment of Funny River Road. The project cost is under $6 million while DOT/PF's cost estimates of reconstructing for reconstructing the 17 miles of the road run as high as $1 million per mile ($17 million total cost).

4. Provides faster and improved ambulance, fire and public safety access to families on the south side of Kenai River by allowing emergency vehicles to use the paved Sterling Highway and cross the Kenai River toward the end of Funny River. Residential fires are frequently terminal since heavy fire equipment makes very slow progress over the 17 miles of narrow, icy and potholed road,

5. Provides access for residents of the southern side of Kenai River to:

   a. Sterling Elementary School, grades K-6.
   b. Business area of Sterling
   c. Access to paved Sterling Highway for faster, safer travel either toward Anchorage or Soldotna.

6. Provides general public access to underutilized state park lands on the southeast side of the Kenai River, including the Nilnunga State Historical Park and Funny River Recreation area.

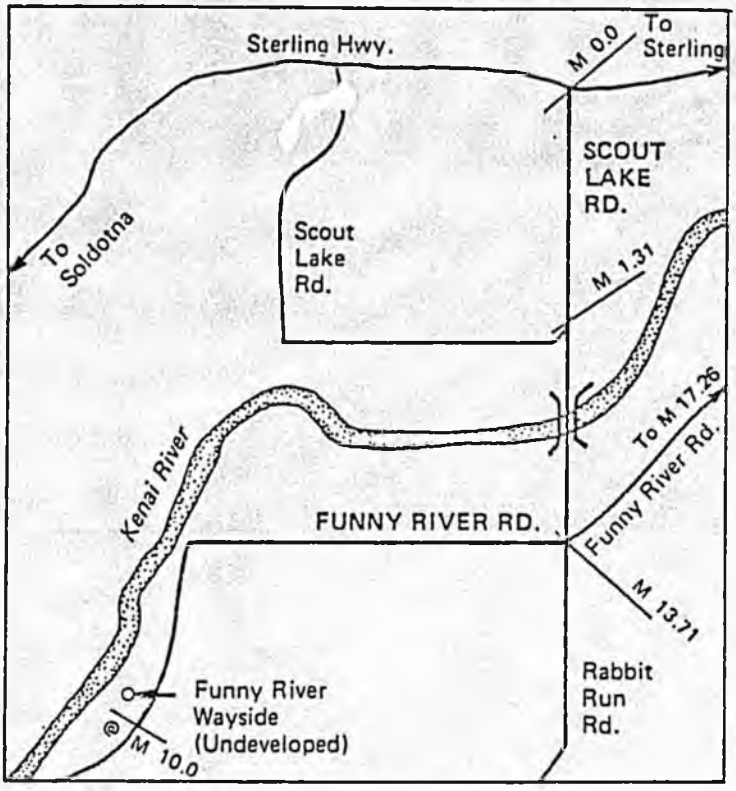
Actions on this Bridge/Road project are as follows:

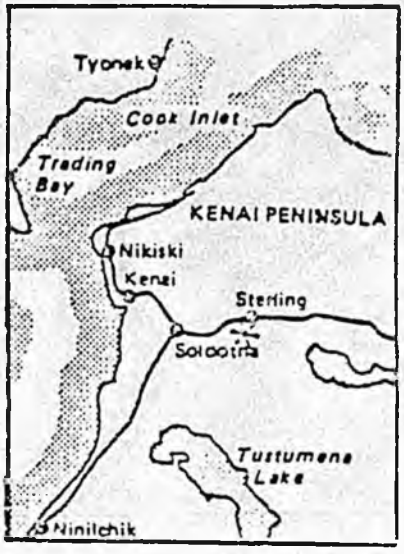
1. 1980- Appropriation for reconnaissance.
2. 1981- Appropriation for design
3. 1982- Included in bond package which was vetoed by the Governor.
4. 1983- Included in Sheffield Administrative Budget (DOT/PF which was submitted to the Legislature.
5. 1984- Passed Senate as CSSB 389 (Finance).

Attached: Fiscal Note
Project Study (DOT/PF)
Newspaper article

Project No. 14

FUNNY RIVER (SR 117300)/BRIDGE/SCOUT LAKE (SR 118700)





Capital Cost:

$ 8.4 million

Funny River: 1980 ADT =225

Scout Lake: 1980 ADT = 200

Existing Condition: Scout Lake Mile 0.0 (E. Jct. Sterling Hwy) to Mile 1.31 (Jct. improved road to river): Gravelled 22' surface, no shoulders. Funny River Mile 10 to Mile 17.26 (End of route): Gravelled 26' surface.

Proposed Physical Improvement: Phase I: Scout Lake (Sterling Hwy to Funny River Rd); Widen to 36', pave. Construct 26'-wide bridge, boat ramp and parking area next to bridge. Phase II: Funny River: Mile 13.71 to Mile 17.26: Widen to 36', pave. Phase III: Funny River: Mile 10 to Mile 13.71: Widen to 36', pave.

Project Alternatives: Improve Funny River Rd., Mile 0.0 (Jct. Sterling Hwy) to Mile 17.26 (End of route) to 28' rural paved standard.

Status: DOT/PF has completed Scout Lake Rd. and bridge design. Funding for project requested in DOT/PF's Central Region, FY 83 CIP.

Next Step Prior to Construction: Final design and permits for Funny River Rd., Mile 10 to Mile 17.26 and parking area.

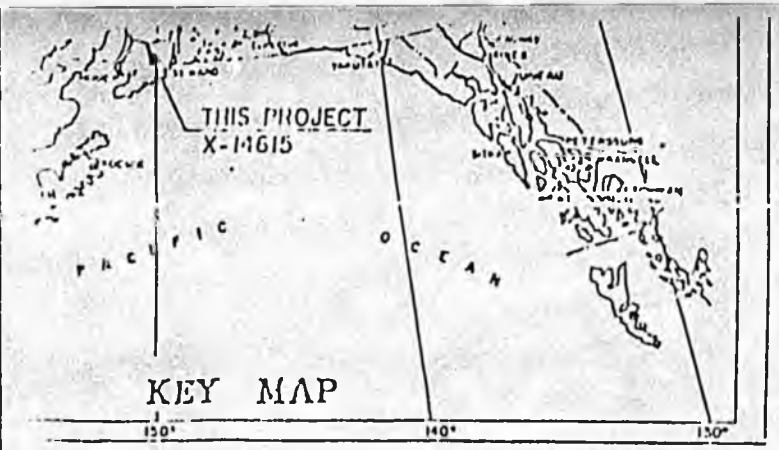
Factors Affecting Development: Need parking area maintenance agreement with DNR-Div. of Parks

Relation to Other KRTS Projects: None

Cost - 5,672

X-14615
SCOUT LAKE ROAD EXTENSION

STERLING HIGHWAY TO FUNNY RIVER R.D.
GRADING, DRAINAGE, PAVING, & BRIDGE



LEGEND

CONSTRUCT RESIDENTIAL DRIVEWAY APPROACH RADIUS=25' UNLESS SHOWN OTHERWISE

CONSTRUCT PUBLIC ROAD APPROACH @ 90° UNLESS SHOWN OTHERWISE

CONSTRUCT PIPE CONDUIT - (SKEW INDICATED IF OTHER THAN PARALLEL TO ℄ CONSTRUCTION)

REMOVE AND DISPOSE OF CULVERT PIPE

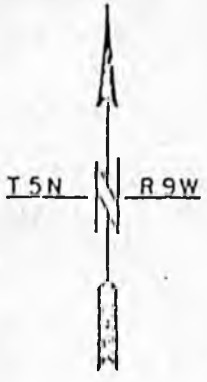
INSTALL GUARDRAIL

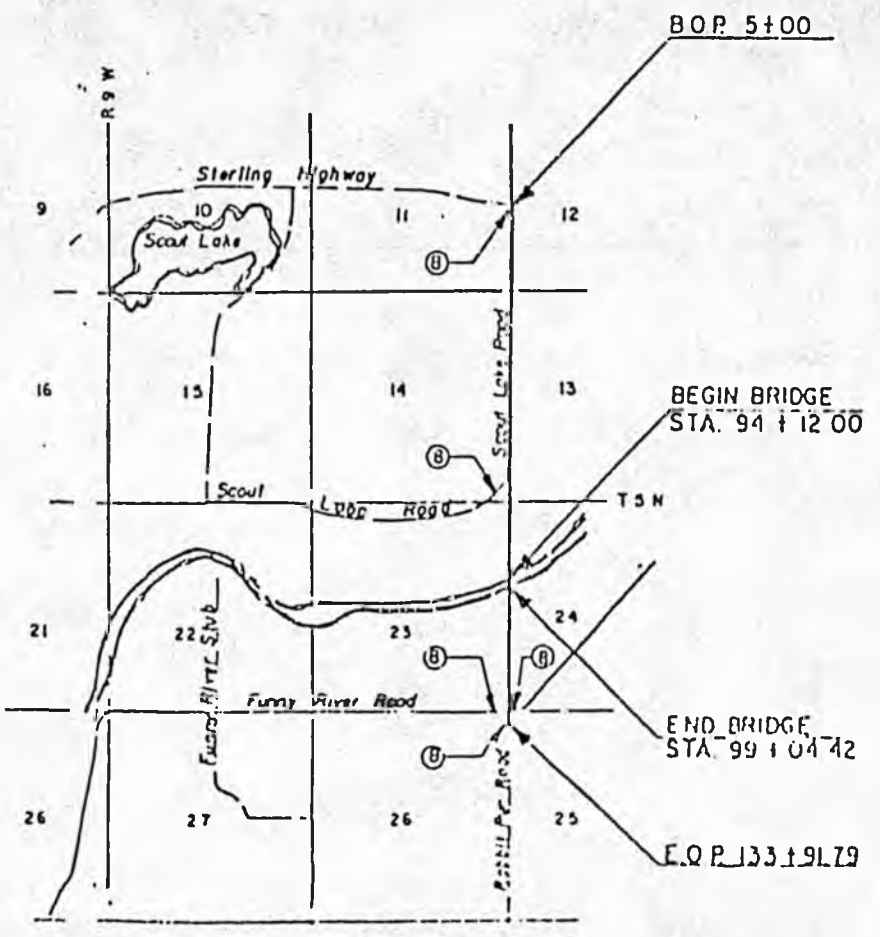
REMOVE STRUCTURE

TRAFFIC SIGN (NUMBER REFERS TO POST NUMBER LISTED IN SIGN SCHEDULE)

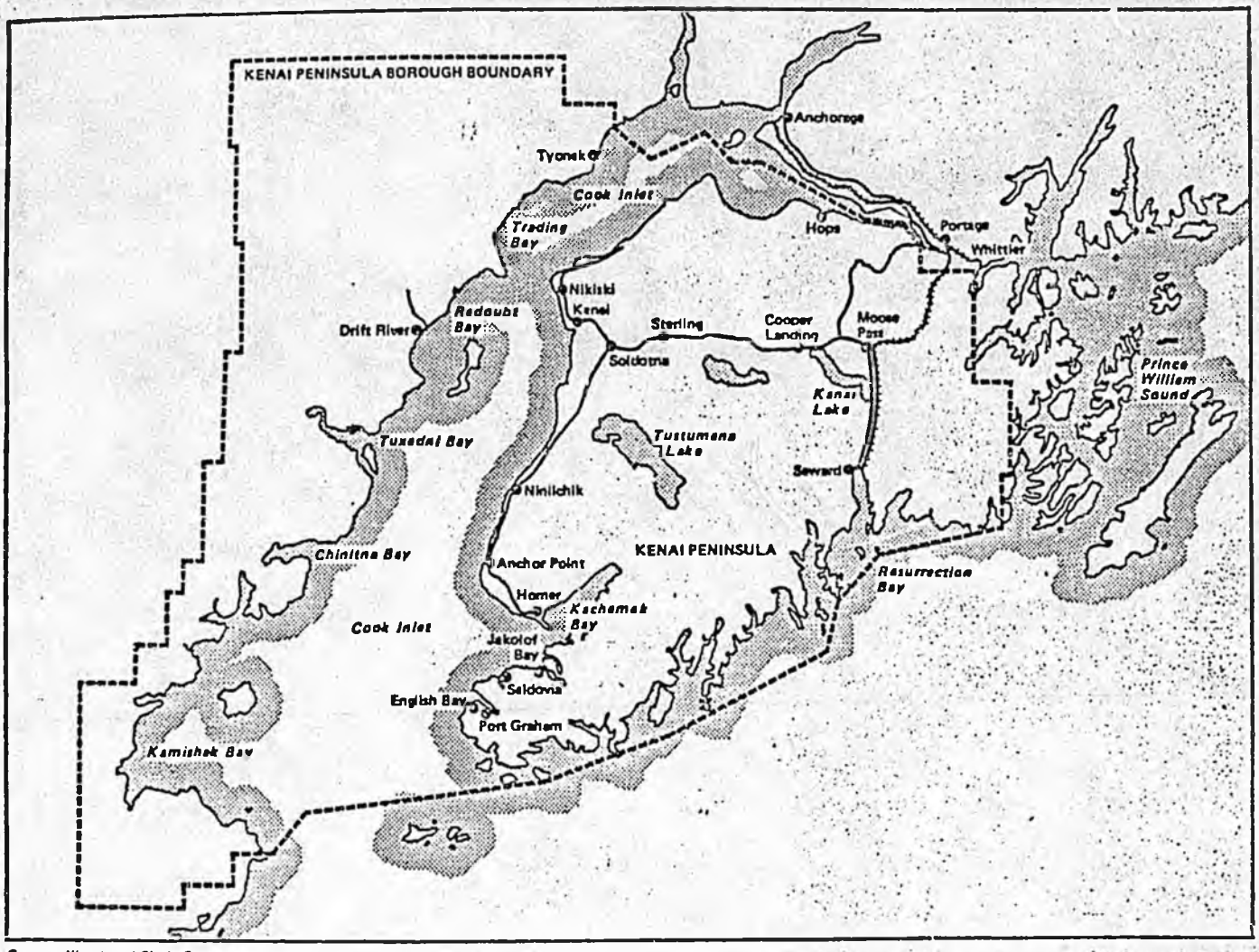
PERMANENT ADVANCE CONSTRUCTION SIGN IN ACCORDANCE WITH STANDARD DRAWINGS C-10.04 AND C-11.04

ADJUST SURVEY MONUMENT/CASE TO GRADE





Draft Phase III



Source: Woodward-Clyde Consultants

KENAI REGIONAL TRANSPORTATION STUDY (KRTS) PROJECT

Prepared for

Alaska Department of Transportation and Public Facilities

October 1982

Woodward-Clyde Consultants/Wince-Corthell and Associates

Table III-4
HIGH PRIORITY PROJECTS*

	Ongoing DOT/PF Project	Ongoing KPB or Municipal Projects	Community Desires	Economic Development	Use Deficiency (safety, traffic overload, etc)
Roads					
1. Airport Bypass/Kachemak	x		x		
2. Anchor Point		x	x		
3. Bean Creek		x	x		
4. Bear Creek (Kachemak City)			x		x
5. Big Eddie		x	x		
6. Cannery			x		
7. Ciechanski			x		
8. Clam Gulch				x	x
9. Cohoe Loop			x		
10. Diamond Ridge (Skyline Dr.)/Olson Mt.		x	x		
11. East End - Phases I, II, III, & IV	x	x	x		x
12. East Hill	x		x		x
13. Feuding Lane/Kenai Keys		x	x		
14. Funny River/Bridge/Scout Lake	x		x	x	
15. Halbouty		x	x		
16. Homesite Loop		x	x		
17. Kenai Alternate			x		
18. Kenai Spur			x		
19. Kingsley/Oil Well	x	x	x	x	
20. Lake St./Pioneer Ave.			x		x
21. Lamplight/Holt		x	x		
22. Lou Morgan/Scout Lake	x		x	x	
23. Lowell Point			x		x
24. Mackeys Lakes		x	x		
25. Meyers/Strawberry		x	x		
26. Naan Rd./Seward Hwy. Intersection			x		
27. Ninilchik/Beach		x	x	x	x
28. North Anchor River		x	x		x
29. North Kenai Highway Phases I, II, & III	x		x	x	
30. Olson/Bunnel/Main			x		
31. Resurrection River		x	x	x	
32. Seldovia Airport Rd.-Main St.			x		x
33. Seldovia/Jakolof Bay-Seldovia/Anderson			x		
34. Seward Highway	x		x		x
35. Soldotna Frontage					x
36. Sports Lake		x	x		
37. Sterling Highway	x		x		x
38. Tustumena Lake	x			x	
39. West Hill	x		x		x
Air					
40. English Bay Airport	x		x		
41. Homer Airport	x		x		x
42. Kenai Airport		x	x		x
43. Port Graham Airport			x		
44. Seldovia Airport			x		x
45. Seward Airport			x		x
46. Soldotna Airport			x		x
Marine					
47. English Bay Shuttle Ferry Ramp			x		
48. Homer Ferry Terminal and Passenger Bldg.	x		x	x	x
49. Homer Fish Dock	x	x	x		
50. Homer Small Boat Harbor	x	x	x	x	
51. Homer Ocean Dock			x		
52. Kachemak Park Shuttle Ferry Ramp				x	
53. Kasilof Harbor			x	x	
54. Kenai Small Boat Harbor		x	x		
55. Ninilchik Harbor			x	x	x
56. Port Graham Harbor/Ferry Dock	x	x	x	x	
57. Seldovia Ferry Terminal and Passenger Bldg.	x		x	x	x
58. Seward Ferry Terminal			x	x	x
59. Seward Small Boat Harbor			x	x	
60. Shuttle Ferry Vessel	x	x	x	x	
61. Tustumena Replacement	x		x		x
Rail					
62. Fourth of July R.R. Spur			x		

*Projects are listed alphabitically and not order of priority

HIGH PRIORITY PROJECTS

The high priority project list consists of 1) ongoing, 2) current needs and 3) the higher ranked future projects. This list is shown in Table III-4, and detailed descriptions of each of these projects are included at the end of this chapter. In addition, the general location of each High Priority project is shown in Figure III-3.

The higher ranked projects were the subject of both quantitative and qualitative evaluations. While these evaluations provided valuable information on each project, the evaluations were not the sole criterion for placing or keeping a project on the high priority list. In fact, the Technical Advisory and Steering Committees made the final decisions on placements in the high priority group.

High Priority Project Descriptions

The following descriptions are intended to provide the information and data needed for DOT/PF's capital improvement programming (CIP) decisions. Thus, they represent a "resource" from which DOT/PF can select projects for its annual CIP submission to the Governor.

Each of the following projects are numbered to coincide with those shown earlier in Table III-4. Also the project names are those from the DOT/PF Coordinated Data System (CDS) log--when the popular name differs from the CDS designation, it is added to the CDS name and number.

Most of these roads have been recognized and scheduled for improvement by DOT/PF, by the Borough or by the cities. Thus, the traffic capacity/use analyses in the Phase II report served mainly to confirm their overloaded condition. Table II-3 identifies facilities below the minimal level of service for this project.

FUTURE NEEDS

Community Development Goals

During Phase II of the KRTS study, a large list of projects was proposed by the general public and elected and appointed officials during the initial round of public meetings. Many of these facilities are on-going or below minimal level of service facility projects which are included in Tables II-1 and II-2 above. The remaining projects included both regional and local projects on the state-maintained system. See Table II-4 for these community preferred projects which were presented in the Phase II report and repeated here. Note that Table II-4 still includes projects previously included in the On-going (Tables II-1 and II-2) and Facility Projects not meeting a minimal level of service (Table II-3).

Economic Development Requirements

Projects were identified for this category through the Phase II evaluation of regional economic development potentials. The primary criteria for inclusion on this list was a demonstrable potential for development that would warrant DOT/PF's attention at this time. See Table II-5 which was taken from the Phase II report and still includes projects listed in the On-going (Tables II-1 and II-2) and Facility Projects not meeting a minimal level of service (Table II-3).

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Sport Fish	SB 38	P. Fisher

DEPARTMENT POSITION

Support with Amendment

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Richard Logan, Director	1/22/85	Steve Pennoyer	1/22/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
DOT/PF; DNR & DEC	Southcentral Sport Fisherman Various Environmental Groups Local Government
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Not Known	Not Known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

Construction of a bridge across the Kenai River near Sterling to provide access to the Funny River Road should have no direct impact to the fishery resources of the Kenai River. The improved access will increase development, specifically on the south side, that will in the future impact the Kenai River resources. The degree of impact is not presently known nor can it be reasonably determined.

Depending on final bridge design and location, existing river angler and boating access may be eliminated or compromised. Loss of public access must be avoided during state capital projects.

Section 147 of the Federal-Aid Highway Act of 1976, PL 94-280 provides that funds apportioned to the states under 23 USC Section 104 may be used on application by the states for the construction of access ramps to public boat launching areas adjacent to bridges under construction, reconstruction, replacement, repair or alteration on the

(Continued)

AMENDMENTS PROPOSED

Amend Section 1 by adding at the end of line 13;

Public access will be included within the right-of-way or provided adjacent to the right-of-way for vehicle access to the river including boat launching and parking. The facility needs to be determined in cooperation with the Department of Fish and Game.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Analysis of Bill/Program Effects (Continued)

Federal-Aid primary, secondary, and urban system highways. If this bridge does not qualify under this federal legislation, then appropriate funding should be provided in the state appropriation.

Peninsula Clarion

THURSDAY, Feb. 16, 1984 Vol. 14, Issue 99 © The Peninsula Clarion/U.S.P.S. 438-410

Former chief Wisecarver dies in crash

Frank Wisecarver, the first fire chief for the city of Kenai, died Wednesday afternoon in a head-on collision on Funny River Road.

The collision also seriously injured a 19-year-old Soldotna man.

Wisecarver, 59, was the chief of the city's volunteer fire department in the mid-1960s and served as the first chief when the department converted to a paid force. He left the department in 1975.

The accident occured at Mile 11 Funny River Road at about 1 p.m.

According to an Alaska State Troopers report, Elmer (Roy) Bird of Soldotna was driving his car toward Soldotna on Funny River Road when his car apparently crossed the center line as it was coming around a curve. It struck Wisecarver's truck head-on.

Wisecarver was pronounced dead on arrival at Central Peninsula General Hospital. An Emergency Services medic said Bird suffered rib cage injuries, broken bones and possible internal injuries. He was taken to the hospital, where he is recovering in intensive care.

Kenai Fire Department Capt. Don Morgan remembered Wisecarver as "probably the best thing to happen to the Kenai Fire Department. He was highly respected by the guys he worked with, and was a personal friend, too."

Introduced: 1/14/85
Referred: Transportation and Finance

Funding Information
General Fund $5,500,000
Other Funds -0-
$5,500,000

IN THE SENATE BY P.FISCHER

SENATE BILL NO. 38

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for construction of a Kenai River bridge; and providing for an effective date."

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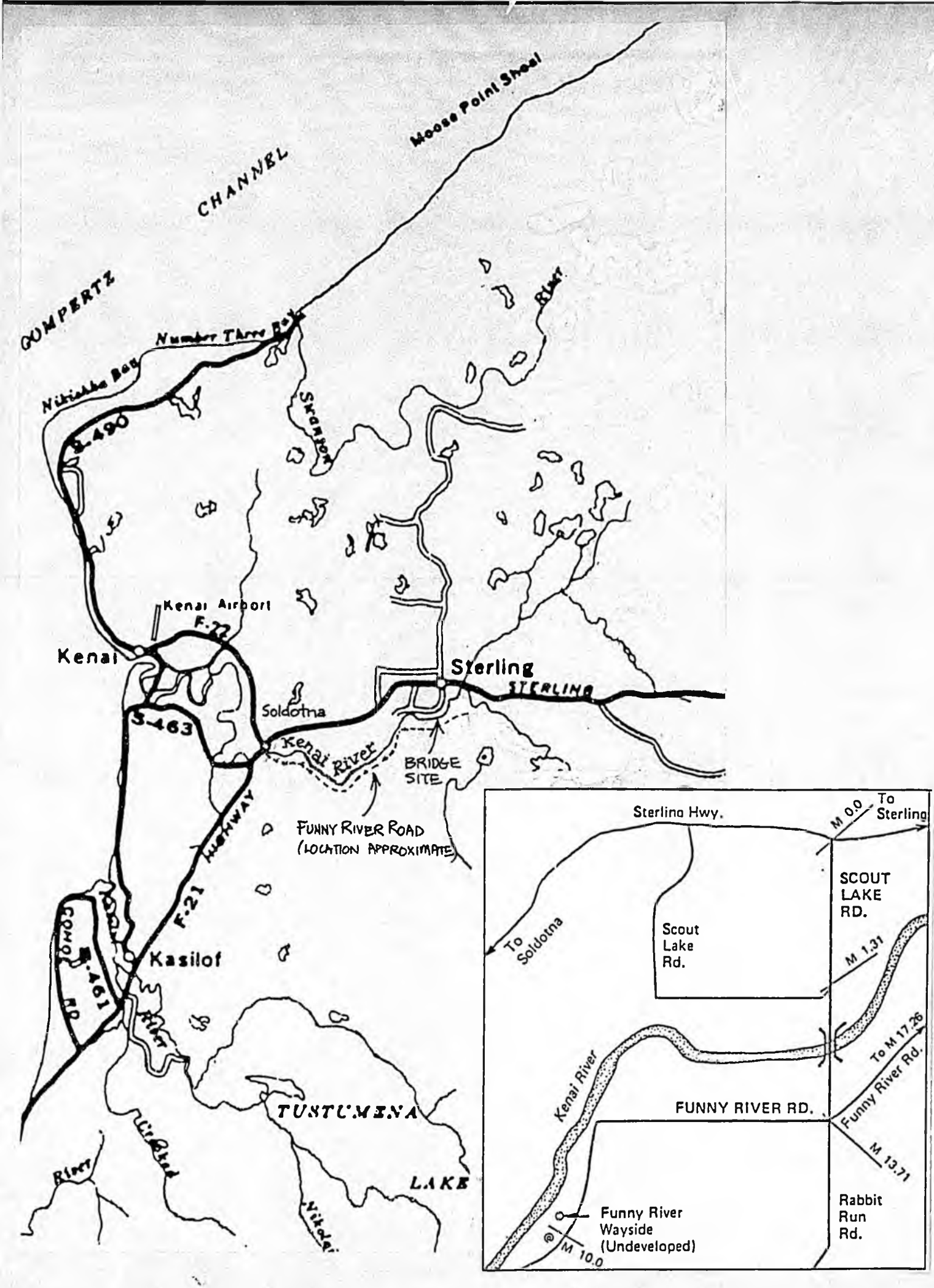
CHANNEL
Moose Point Shoal
GUMPERTZ
Number Three Bay
Nikiahka Bay
S-490
Swanson River
Kenai Airport
F-72
Kenai
Sterling
STERLING
Soldotna
S-463
Kenai River
BRIDGE SITE
FUNNY RIVER ROAD
(LOCATION APPROXIMATE)
F-21 HIGHWAY
S-461
Kasilof
TUSTUMENA
LAKE
Sterling Hwy.
M 0.0
To Sterling
SCOUT LAKE RD.
Scout Lake Rd.
To Soldotna
M 1.31
To M 17.26
Funny River Rd.
Kenai River
FUNNY RIVER RD.
M 13.71
Rabbit Run Rd.
Funny River Wayside (Undeveloped)
M 10.0

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Sport Fish	SB 38	P. Fisher

DEPARTMENT POSITION

Support with Amendment

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Richard Logan, Director	1/22/85	Steve Pennoyer	1/22/85

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Analysis of Bill/Program Effects (Continued)

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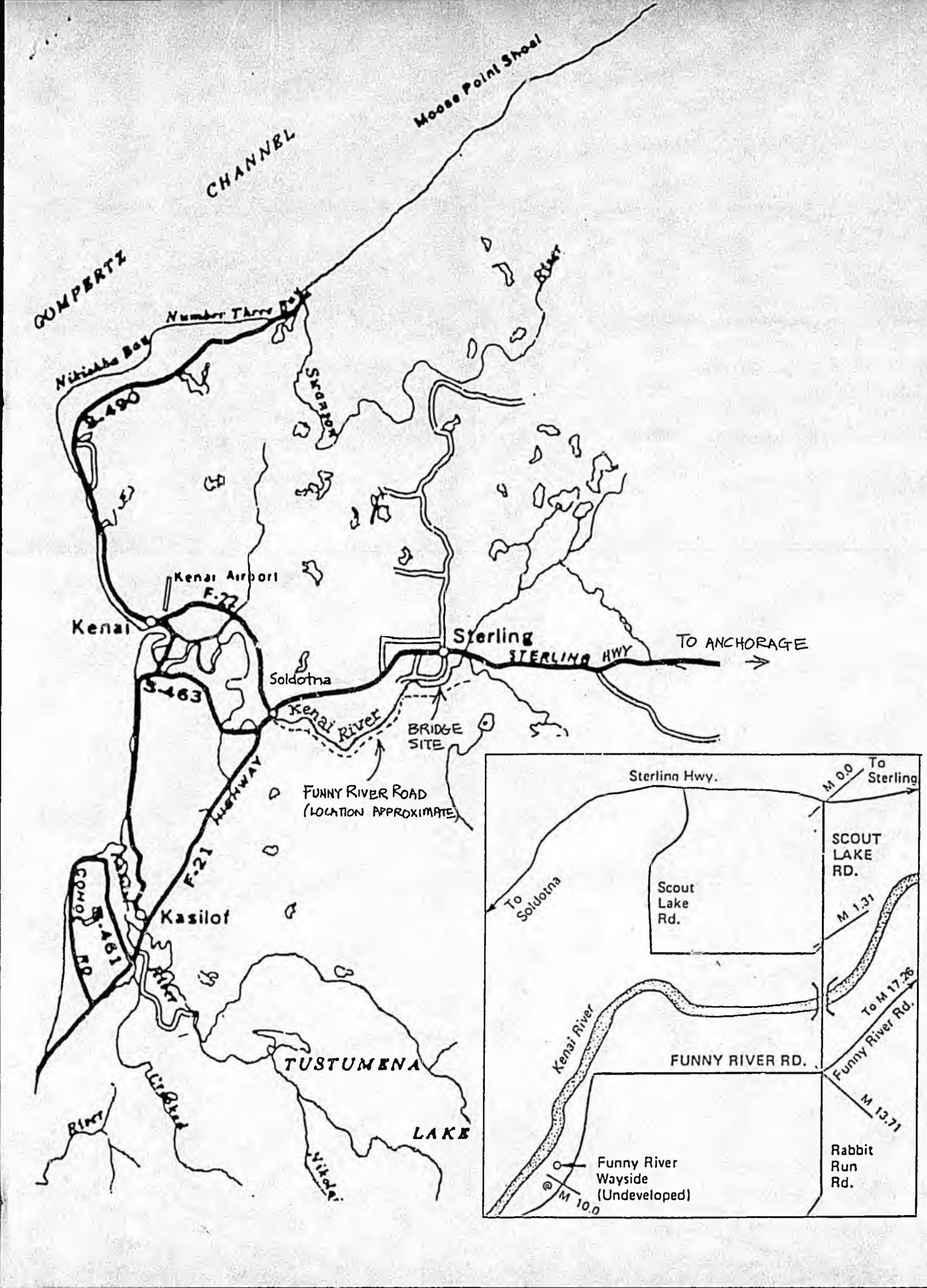
Moose Point Shoal
CHANNEL
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Kenai
Soldotna
S-463
Kenai River
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Sterling
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TO ANCHORAGE
FUNNY RIVER ROAD
(LOCATION APPROXIMATE)
F-21 HIGHWAY
Kasilof
TUSTUMENA
LAKE
Sterling Hwy.
M 0.0
To Sterling
SCOUT LAKE RD.
Scout Lake Rd.
To Soldotna
M 1.31
To M 17.26
Funny River Rd.
FUNNY RIVER RD.
M 13.71
Rabbit Run Rd.
Funny River Wayside (Undeveloped)
M 10.0

Ford
1/23/85✓

Original sponsor: P.Fischer

Funding Information

General Fund	$6,660,000
Other Funds	-0-
	$6,660,000

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 38 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

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Introduced: 1/14/85
Referred: Transportation and Finance

Funding Information
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Other Funds -0-
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IN THE SENATE BY P.FISCHER

SENATE BILL NO. 38

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Official Business

COMMITTEE: Trans.

DATE: 1-23-85

Subject of meeting: SB 38

SIGN-IN

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
SEN. PAUL FISCHER	POUCH V JUNEAU AK 99811	465-3791	PRIME SPONSOR	YES

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Transportation Committee Members
From: Chairman Coghill
Date: Wednesday, January 23, 1985
Re: SB 38 "Kenai River Bridge"

Senate Bill 38 proposes to fund the construction of a highway bridge across the Kenai River near Sterling. Construction would include upgrading a portion of the existing Scout Lake Road, to be used as access on the north side of the river, and connection with Funny River Road on the south.

This project would have the desired effect of relieving sport fishing pressure on the north side of the Kenai, as well as allowing easier access to the Sterling Highway by residents living along the Funny River Road.

The bridge has been proposed for a number of years, and has been identified as a priority of both the Kenai Borough and DOT/PF. It's legislative history is varied over the past several years.

In their analysis, the sport fish division, ADF&G, has given its support to the project, and has asked for additional language to insure vehicle access to the river along the road's right-of-way. This particular spot at the end of Scout Lake Road is currently used as a boat-launching area, and with statutorily guaranteed access, federal funds may be available for construction of boat ramps near the bridge. Because this is an appropriation bill, this request has been addressed in the letter of intent.

The proposed CS reflects the higher capital cost as indicated on the DOT/PF fiscal note. In addition to the DOT/PF and ADF&G analyses, the letter of intent and the CS, we have included a memorandum from Sen. Paul Fischer, the prime sponsor; a clipping from the Peninsula Clarion; and a map showing the project's location.

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W
262-9269 H

Alaska State Legislature

State Senate

While in Juneau
Pouch V
Juneau, Alaska 99811
(907) 465-3791

January 17, 1985

Memorandum: Senate Bill 38

To: Jack Coghill
Chairman, Senate Transportation Committee

From: Senator Paul Fischer

The Kenai River Bridge project is one that has been identified by local and state authorities for over 20 years. It has been documented by community need and economic factors in attached pages from the Kenai River Transportation Study, published by DOT/PF and jointly prepared by DOT/PF, Kenai Peninsula Borough and the Cities of Soldotna, Kenai, Homer, Seward, and Seldovia,

Salient features are as follows:

1. This project is the keystone to solving the problems of overcrowding and congestion experienced by South Central Alaskan sport fishermen and other recreational users on the Kenai River. Completion will, for the first time, give equal access to the south side of the Kenai River. In addition, Alaskans will have their round trip driving time shortened by approximately 2 hours allowing more leisure time to enjoy the area.

2. Provides access to a large area on the southeast side of the Kenai River. Borough tax records show approximately 200 families with 576 persons in the area. Access is currently in the 17-mile Funny River Road following the Kenai River from Soldotna.

A large portion of Funny River Road passes through federal land of the Kenai Wildlife Refuge (formerly the Kenai National Moose Range). The road was constructed many years ago to minimum access standards and poses grave safety problems due to its narrow width and current high traffic levels. Accidents are frequent (see attached Peninsula Clarion article). School buses have a treacherous time in the severe weather conditions during winter and break up. Routing keeps children on the buses far longer than necessary, time on the bus for elementary school children is often in excess of 3 hours.

3. The bridge is far more cost effective and removes much of the need for upgrade and realignment of Funny River Road. The project cost is under $6 million while DOT/PF's cost estimates of reconstructing for reconstructing the 17 miles of the road run as high as $1 million per mile ($17 million total cost).

4. Provides faster and improved ambulance, fire and public safety access to families on the south side of Kenai River by allowing emergency vehicles to use the paved Sterling Highway and cross the Kenai River toward the end of Funny River. Residential fires are frequently terminal since heavy fire equipment makes very slow progress over the 17 miles of narrow, icy and potholed road,

5. Provides access for residents of the southern side of Kenai River to:

   a. Sterling Elementary School, grades K-6.
   b. Business area of Sterling
   c. Access to paved Sterling Highway for faster, safer travel either toward Anchorage or Soldotna.

6. Provides general public access to underutilized state park lands on the southeast side of the Kenai River, including the Nilnunga State Historical Park and Funny River Recreation area.

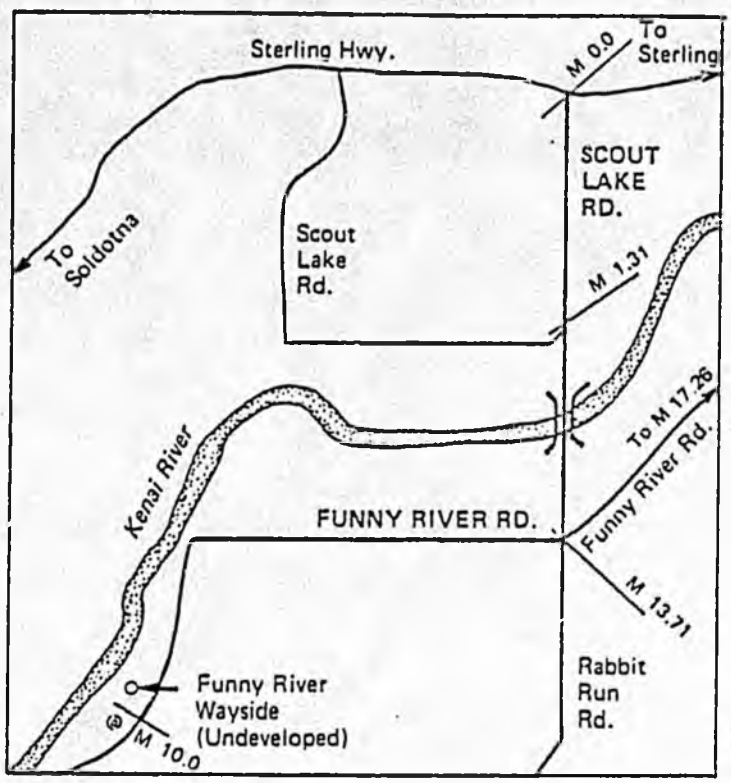
Actions on this Bridge/Road project are as follows:

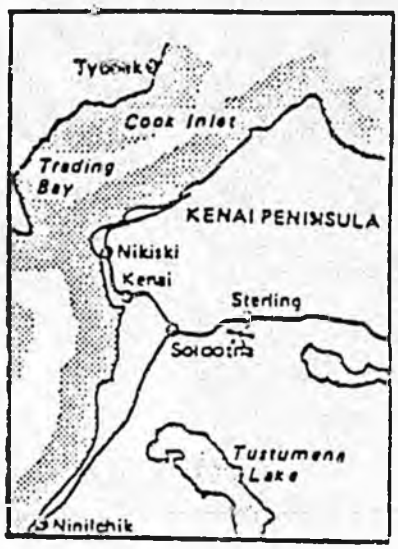
1. 1980- Appropriation for reconnaissance.
2. 1981- Appropriation for design
3. 1982- Included in bond package which was vetoed by the Governor.
4. 1983- Included in Sheffield Administrative Budget (DOT/PF which was submitted to the Legislature.
5. 1984- Passed Senate as CSSB 389 (Finance).

Attached: Fiscal Note
Project Study (DOT/PF)
Newspaper article

Project No. 14

FUNNY RIVER (SR 117300)/BRIDGE/SCOUT LAKE (SR 118700)





Capital Cost:

$ 8.4 million

Funny River: 1980 ADT =225

Scout Lake: 1980 ADT = 200

Existing Condition: Scout Lake Mile 0.0 (E. Jct. Sterling Hwy) to Mile 1.31 (Jct. improved road to river): Gravelled 22' surface, no shoulders. Funny River Mile 10 to Mile 17.26 (End of route): Gravelled 26' surface.

Proposed Physical Improvement: Phase I: Scout Lake (Sterling Hwy to Funny River Rd); Widen to 36', pave. Construct 26'-wide bridge, boat ramp and parking area next to bridge. Phase II: Funny River: Mile 13.71 to Mile 17.26: Widen to 36', pave. Phase III: Funny River: Mile 10 to Mile 13.71: Widen to 36', pave.

Project Alternatives: Improve Funny River Rd., Mile 0.0 (Jct. Sterling Hwy) to Mile 17.26 (End of route) to 28' rural paved standard.

Status: DOT/PF has completed Scout Lake Rd. and bridge design. Funding for project requested in DOT/PF's Central Region, FY 83 CIP.

Next Step Prior to Construction: Final design and permits for Funny River Rd., Mile 10 to Mile 17.26 and parking area.

Factors Affecting Development: Need parking area maintenance agreement with DNR-Div. of Parks

Relation to Other KRTS Projects: None

Cost - 5,672

X-14615
SCOUT LAKE ROAD EXTENSION

STERLING HIGHWAY TO FUNNY RIVER RD.
GRADING, DRAINAGE, PAVING, & BRIDGE

RECI

UNT

DEPT. OF TR

LEGEND

CONSTRUCT RESIDENTIAL DRIVEWAY APPROACH RADIUS=25' UNLESS SHOWN OTHERWISE

CONSTRUCT PUBLIC ROAD APPROACH Δ=90° UNLESS SHOWN OTHERWISE

CONSTRUCT PIPE CONDUIT-(SKEW INDICATED IF OTHER THAN PARALLEL TO ℄ CONSTRUCTION)

REMOVE AND DISPOSE OF CULVERT PIPE

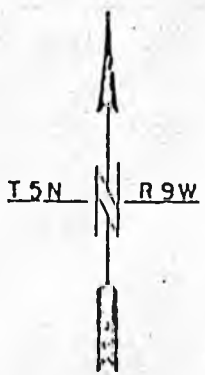
INSTALL GUARDRAIL

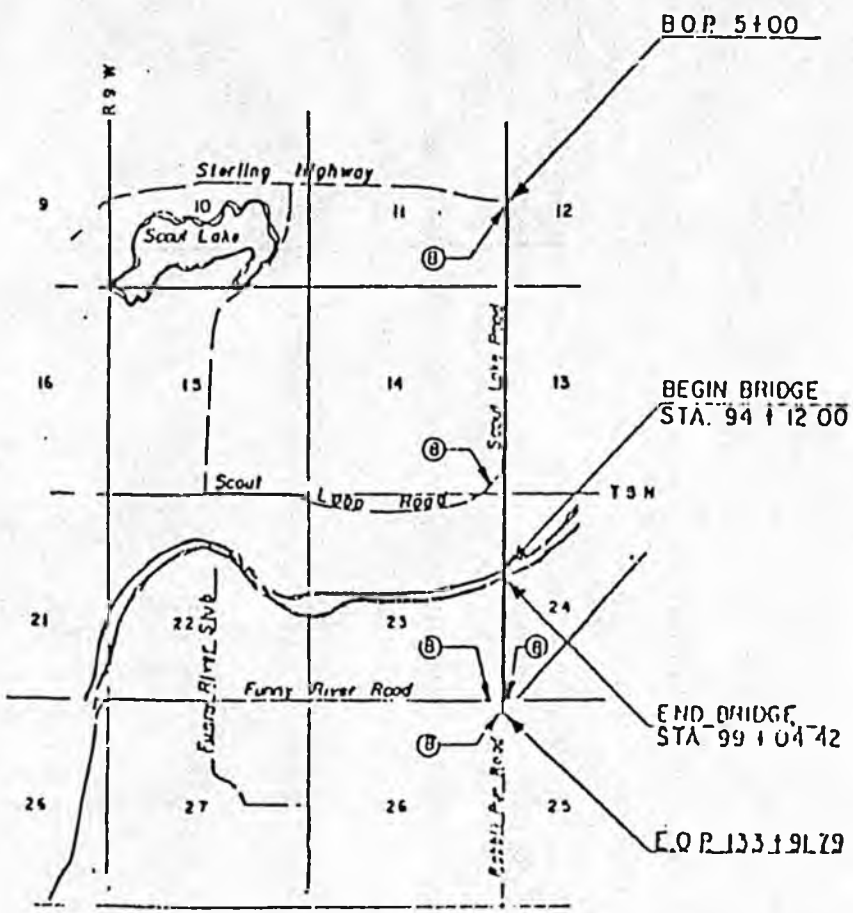
REMOVE STRUCTURE

TRAFFIC SIGN (NUMBER REFERS TO POST NUMBER LISTED IN SIGN SCHEDULE)

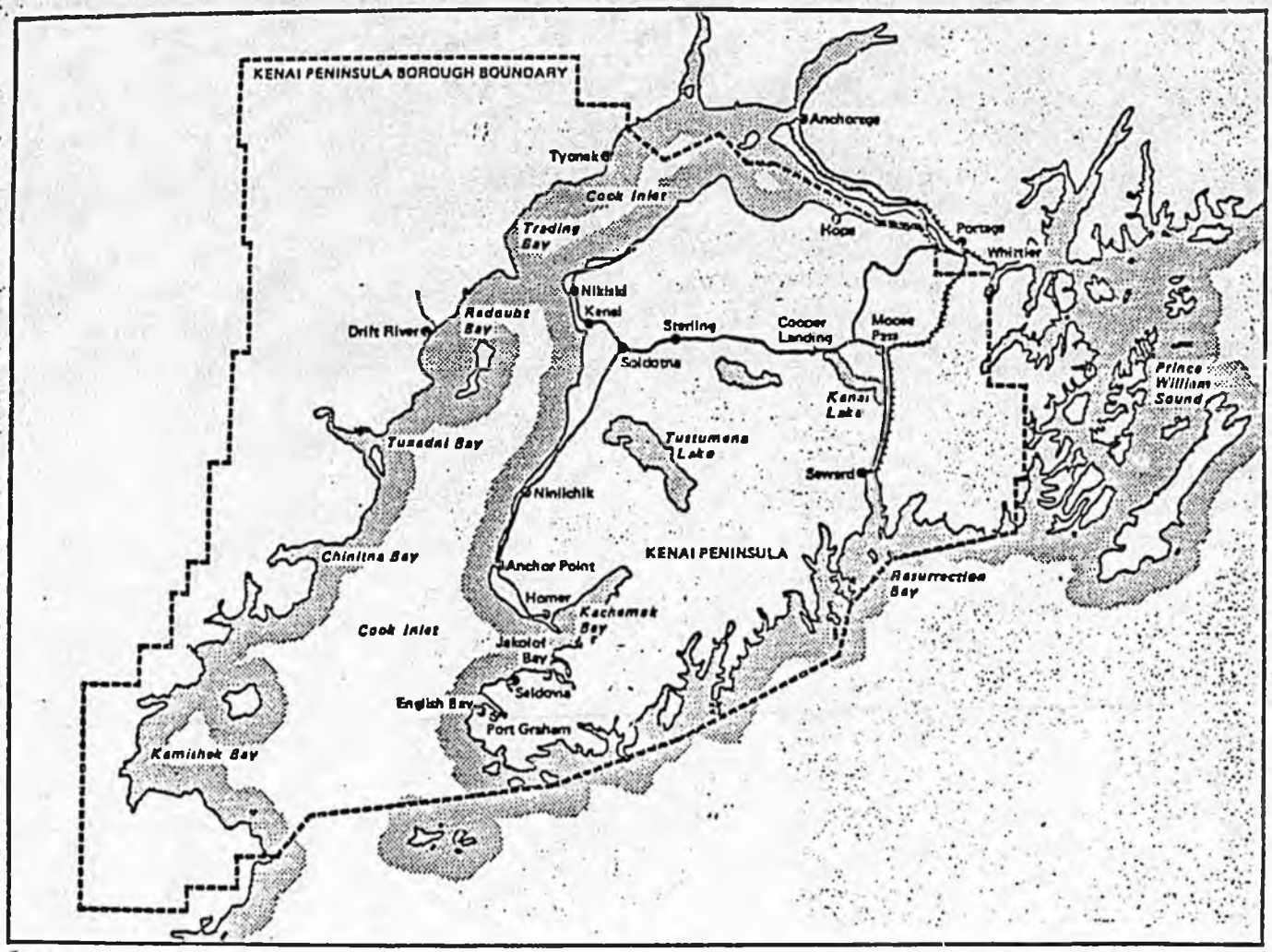
PERMANENT ADVANCE CONSTRUCTION SIGN IN ACCORDANCE WITH STANDARD DRAWINGS C-10 04 AND C-10-1

ADJUST SURVEY MONUMENT/CASE TO GRADE





Draft Phase III



Source: Woodward-Clyde Consultants

KENAI REGIONAL TRANSPORTATION STUDY (KRTS) PROJECT

Prepared for

Alaska Department of Transportation and Public Facilities

October 1982

Woodward-Clyde Consultants/Wince-Corthell and Associates

Table III-4
HIGH PRIORITY PROJECTS*

		Ongoing DOT/PF Project	Ongoing KPB or Municipal Projects	Community Desires	Economic Development	Use Deficiency (safety, traffic overload, etc)
	rport Bypass/Kachemak	x		x		
	Anchor Point		x	x		
3.	Be. Creek		x	x		
4.	Bear Creek (Kachemak City)			x		x
5.	Big Eddie		x	x		
6.	Cannery			x		
7.	Ciechanski			x		
8.	Clam Gulch				x	x
9.	Cohoe Loop			x		
10.	Diamond Ridge (Skyline Dr.)/Olson Mt.		x	x		
11.	East End - Phases I, II, III, & IV	x	x	x		x
12.	East Hill	x		x		x
13.	Feuding Lane/Kenai Keys		x	x		
14.	Funny River/Bridge/Scout Lake	x		x	x	
15.	Halbouty		x	x		
16.	Homesite Loop		x	x		
17.	Kenai Alternate			x		
18.	Kenai Spur			x		
19.	Kingsley/Oil Well	x	x	x	x	
20.	Lake St./Pioneer Ave.			x		x
21.	Lamplight/Holt		x	x		
22.	Lou Morgan/Scout Lake	x		x	x	
23.	Lowell Point			x		x
24.	Mackeys Lakes		x	x		
25.	Mayers/Strawberry		x	x		
26.	Nash Rd./Seward Hwy. Intersection			x		
27.	Ninilchik/Beach		x	x	x	x
28.	North Anchor River		x	x		x
29.	North Kenai Highway Phases I, II, & III	x		x	x	
30.	Olson/Bunnel/Main			x		
31.	Resurrection River		x	x	x	
32.	Seldovia Airport Rd.-Main St.			x		x
33.	Seldovia/Jakolof Bay-Seldovia/Anderson			x		
34.	Seward Highway	x		x		x
35.	Soldotna Frontage					x
36.	Sports Lake		x	x		
37.	Sterling Highway	x		x		x
38.	Tustumena Lake	x			x	
39.	West Hill	x		x		x
	Air					
40.	English Bay Airport	x		x		
41.	Homer Airport	x		x		x
42.	Kenai Airport		x	x		x
43.	Port Graham Airport			x		
44.	Seldovia Airport			x		x
45.	Seward Airport			x		x
46.	Soldotna Airport			x		x
	Marine					
47.	English Bay Shuttle Ferry Ramp			x		
48.	Homer Ferry Terminal and Passenger Bldg.	x		x	x	x
49.	Homer Fish Dock	x	x	x		
50.	Homer Small Boat Harbor	x	x	x	x	
51.	Homer Ocean Dock			x		
52.	Kachemak Park Shuttle Ferry Ramp				x	
53.	Kasilof Harbor			x	x	
54.	Kenai Small Boat Harbor		x	x		
55.	Ninilchik Harbor			x	x	x
56.	Port Graham Harbor/Ferry Dock	x	x	x	x	
57.	Seldovia Ferry Terminal and Passenger Bldg.	x		x	x	x
58.	Seward Ferry Terminal			x	x	x
59.	Seward Small Boat Harbor			x	x	
60.	Shuttle Ferry Vessel	x	x	x	x	
61.	Tustumena Replacement	x		x		x
	Rail					
62.	Fourth of July R.R. Spur			x		

*Projects are listed alphabitically and not order of priority

HIGH PRIORITY PROJECTS

The high priority project list consists of 1) ongoing, 2) current needs and 3) the higher ranked future projects. This list is shown in Table III-4, and detailed descriptions of each of these projects are included at the end of this chapter. In addition, the general location of each High Priority project is shown in Figure III-3.

The higher ranked projects were the subject of both quantitative and qualitative evaluations. While these evaluations provided valuable information on each project, the evaluations were not the sole criterion for placing or keeping a project on the high priority list. In fact, the Technical Advisory and Steering Committees made the final decisions on placements in the high priority group.

High Priority Project Descriptions

The following descriptions are intended to provide the information and data needed for DOT/PF's capital improvement programming (CIP) decisions. Thus, they represent a "resource" from which DOT/PF can select projects for its annual CIP submission to the Governor.

Each of the following projects are numbered to coincide with those shown earlier in Table III-4. Also the project names are those from the DOT/PF Coordinated Data System (CDS) log--when the popular name differs from the CDS designation, it is added to the CDS name and number.

Most of these roads have been recognized and scheduled for improvement by DOT/PF, by the Borough or by the cities. Thus, the traffic capacity/use analyses in the Phase II report served mainly to confirm their overloaded condition. Table II-3 identifies facilities below the minimal level of service for this project.

FUTURE NEEDS

Community Development Goals

During Phase II of the KRTS study, a large list of projects was proposed by the general public and elected and appointed officials during the initial round of public meetings. Many of these facilities are on-going or below minimal level of service facility projects which are included in Tables II-1 and II-2 above. The remaining projects included both regional and local projects on the state-maintained system. See Table II-4 for these community preferred projects which were presented in the Phase II report and repeated here. Note that Table II-4 still includes projects previously included in the On-going (Tables II-1 and II-2) and Facility Projects not meeting a minimal level of service (Table II-3).

Economic Development Requirements

Projects were identified for this category through the Phase II evaluation of regional economic development potentials. The primary criteria for inclusion on this list was a demonstrable potential for development that would warrant DOT/PF's attention at this time. See Table II-5 which was taken from the Phase II report and still includes projects listed in the On-going (Tables II-1 and II-2) and Facility Projects not meeting a minimal level of service (Table II-3).

Peninsula Clarion

THURSDAY, Feb. 16, 1984 Vol. 14, Issue 99 © The Peninsula Clarion/U.S.P.S. 438-410

Former chief Wisecarver dies in crash

Frank Wisecarver, the first fire chief for the city of Kenai, died Wednesday afternoon in a head-on collision on Funny River Road.

The collision also seriously injured a 19-year-old Soldotna man.

Wisecarver, 59, was the chief of the city's volunteer fire department in the mid-1960s and served as the first chief when the department converted to a paid force. He left the department in 1975.

The accident occured at Mile 11 Funny River Road at about 1 p.m.

According to an Alaska State Troopers report, Elmer (Roy) Bird of Soldotna was driving his car toward Soldotna on Funny River Road when his car apparently crossed the center line as it was coming around a curve. It struck Wisecarver's truck head-on.

Wisecarver was pronounced dead on arrival at Central Peninsula General Hospital. An Emergency Services medic said Bird suffered rib cage injuries, broken bones and possible internal injuries. He was taken to the hospital, where he is recovering in intensive care.

Kenai Fire Department Capt. Don Morgan remembered Wisecarver as "probably the best thing to happen to the Kenai Fire Department. He was highly respected by the guys he worked with, and was a personal friend, too."

STATE OF ALASKA

OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT	DIVISION	BILL NUMBER	SPONSOR
Fish and Game	Sport Fish	SB 38	P. Fisher

DEPARTMENT POSITION:

Support with Amendment

PREPARED BY	DATE	COMMISSIONER'S SIGNATURE	DATE
Richard Logan, Director	1/22/85	x/Steve Pennoyer	1/22/85

SUMMARY

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUP(S) AFFECTED BY BILL
DOT/PF; DNR & DEC	Southcentral Sport Fisherman Various Environmental Groups Local Government
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
Not Known	Not Known

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

ANALYSIS OF BILL/PROGRAM EFFECTS

Construction of a bridge across the Kenai River near Sterling to provide access to the Funny River Road should have no direct impact to the fishery resources of the Kenai River. The improved access will increase development, specifically on the south side, that will in the future impact the Kenai River resources. The degree of impact is not presently known nor can it be reasonably determined.

Depending on final bridge design and location, existing river angler and boating access may be eliminated or compromised. Loss of public access must be avoided during state capital projects.

Section 147 of the Federal-Aid Highway Act of 1976, PL 94-280 provides that funds apportioned to the states under 23 USC Section 104 may be used on application by the states for the construction of access ramps to public boat launching areas adjacent to bridges under construction, reconstruction, replacement, repair or alteration on the

(Continued)

AMENDMENTS PROPOSED

Amend Section 1 by adding at the end of line 13;

Public access will be included within the right-of-way or provided adjacent to the right-of-way for vehicle access to the river including boat launching and parking. The facility needs to be determined in cooperation with the Department of Fish and Game.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Analysis of Bill/Program Effects (Continued)

Federal-Aid primary, secondary, and urban system highways. If this bridge does not qualify under this federal legislation, then appropriate funding should be provided in the state appropriation.

SB

39

BACKUP MATERIAL FOR SB 39

"An Act making a special appropriation to the Department of Transporation and Public Facilities for various construction projects in the Totchaket Resource area".

With an overview of prior work completed with regards to Nenana - Totchaket Agricultural Project.

Compiled by:

Steve Bainbridge
City of Nenana
January 1985

Funding Information	
General Fund	$5,630,000
Other Funds	-0-
	$5,630,000

IN THE SENATE BY COGHILL

SENATE BILL NO. 39

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for various construction projects in the Totchaket resource area; and providing for an effective date."

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

* Section 1. The sum of $5,630,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for the following construction projects in the Totchaket resource area:

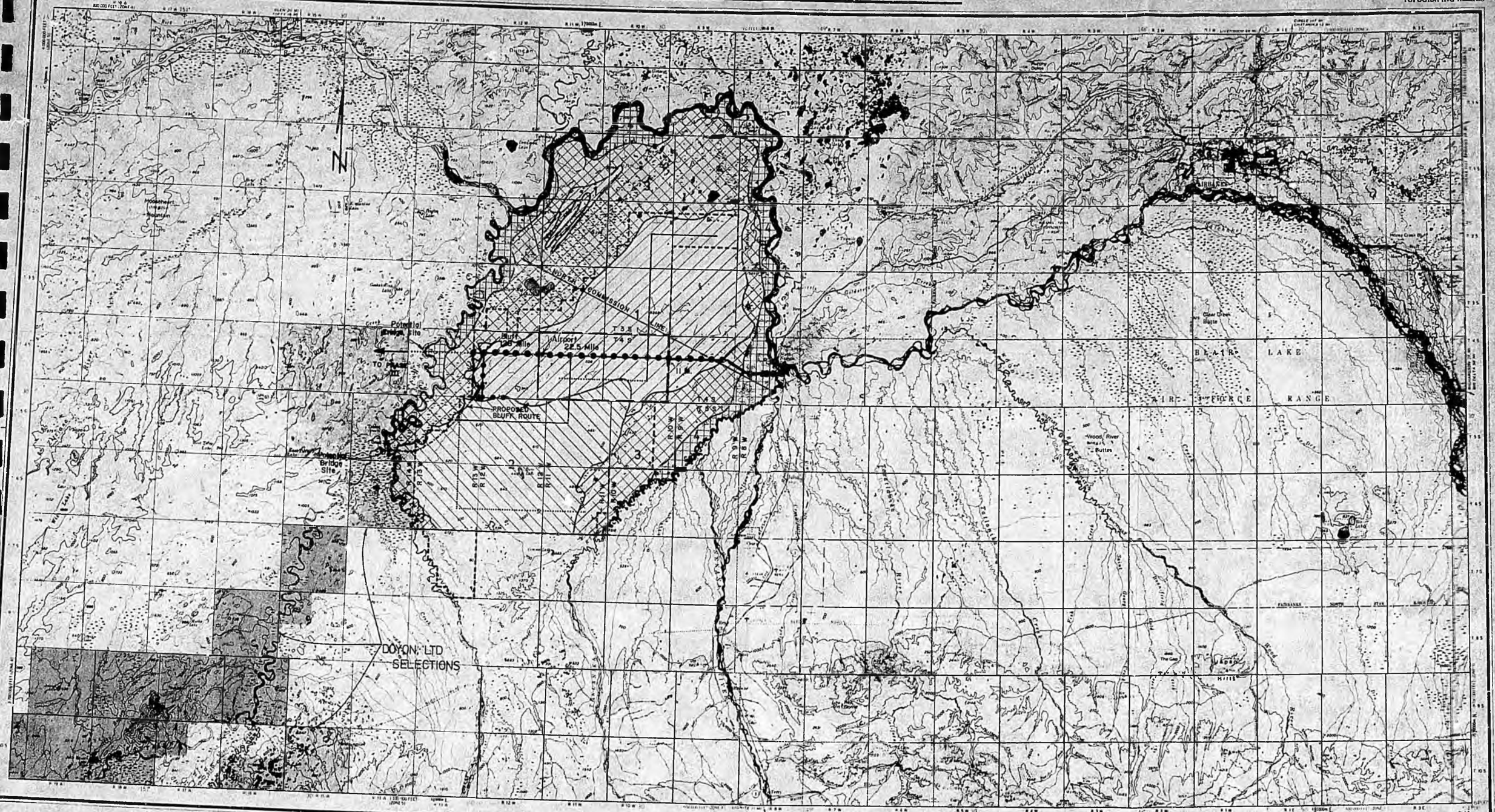
Nenana River Bridge	$3,000,000
East Middle River, West Middle River, and Little Nenana River Bridges	1,600,000
Road construction	1,030,000

* Sec. 2. The appropriation made by this Act is for capital projects and is subject to AS 35.15.080, 35.15.090, and AS 37.25.020.

* Sec. 3. This Act takes effect July 1, 1985.

TOTCHAKET AGRICULTURAL PROJECT

ALASKA
TOPOGRAPHIC SERIES



MAP UNITS

1. NENANA - VOLKMAR: DEEP, NEARLY LEVEL TO STRONGLY SLOPING, WELL DRAINED AND MODERATELY WELL DRAINED, SILTY SOILS, ON OUTWASH PLAINS.
2. TEKLANIKA - BEALES - NENANA: DEEP, NEARLY LEVEL TO STEEP, WELL DRAINED TO EXCESSIVELY DRAINED; SILTY SOILS THAT ARE UNDERLAIN BY SAND; ON OUTWASH PLAINS.
3. GOLDSTREAM - BOLIO - KANTISHNA: SHALLOW TO DEEP, NEARLY LEVEL, POORLY DRAINED, SILTY SOILS AND VERY POORLY DRAINED PEAT SOILS; ON BROAD ALLUVIAL PLAINS.
4. TANANA - SALCHAKET: MODERATELY DEEP AND DEEP, NEARLY LEVEL, WELL DRAINED AND SOMEWHAT POORLY DRAINED, SILTY SOILS AND VERY FINE SANDY LOAMS; ON FLOOD PLAINS.

GENERAL SOIL MAP

LEGEND

- PHASE I - 46,080 ACRES
- PHASE II - 256,000 ACRES
- ARTERIAL ROADS
- COLLECTOR ROADS
- PROPOSED BLUFF ROUTE
- SURVEY CORNERS ON ROUTE
- DENOTES DOYON, LTD. SELECTIONS

Note: Information from U.S.G.S. Fairbanks and Kantishna Quadrangles / U.S.D.A. Soil Conservation Service / University of Alaska. Map updated 3/83

- PREPARED FOR -
THE CITY OF NENANA
PROJECT AG-83-110
GENERAL SOIL MAP

PREPARED BY:	KALJENCO, INC. S.R. 10113 FAIRBANKS, AK 99709		
DRAWN BY: K. FINKEL	SCALE: 1" = 3.95 Mile 1 : 250,000	DATE: 5/29/83	FILE NO. 83-04

Peratrovich, Nottingham & Drage, Inc.
Engineering Consultants
Telex 090 26436
Int. Telex 200 26436
1506 West 36th Avenue • Suite 101 • Anchorage, Alaska 99503 • 907-561-1011

January 25, 1985 PN&D 81059

Mr. Steve Bainbridge
City Engineer
City of Nenana
P.O. Box 177
Nenana, Alaska 99760

Re: Updated Cost and Schedule for Nenana River Bridge

Dear Steve:

Per your request we have reviewed our 1981 cost estimates and have revised our costs accordingly.

There has been no major increases in construction costs as we had projected in 1981, consequently we feel you can still build the bridge and approaches for $4.8 million using standard linear contracting techniques. This estimate includes all construction costs, engineering and administration and assumes construction beginning in September, 1985 and ending by July, 1987.

However, by using the same techniques that were so successfully utilized in constructing the Tanana River Bulkhead, wherein we participated jointly with the City of Nenana in the construction management of the project, we feel the bridge can be constructed for $3,000,000.

Sincerely,

PERATROVICH, NOTTINGHAM & DRAGE, INC.

Roy Peratrovich, Jr., P.E.
Vice President

RP/jk/L4

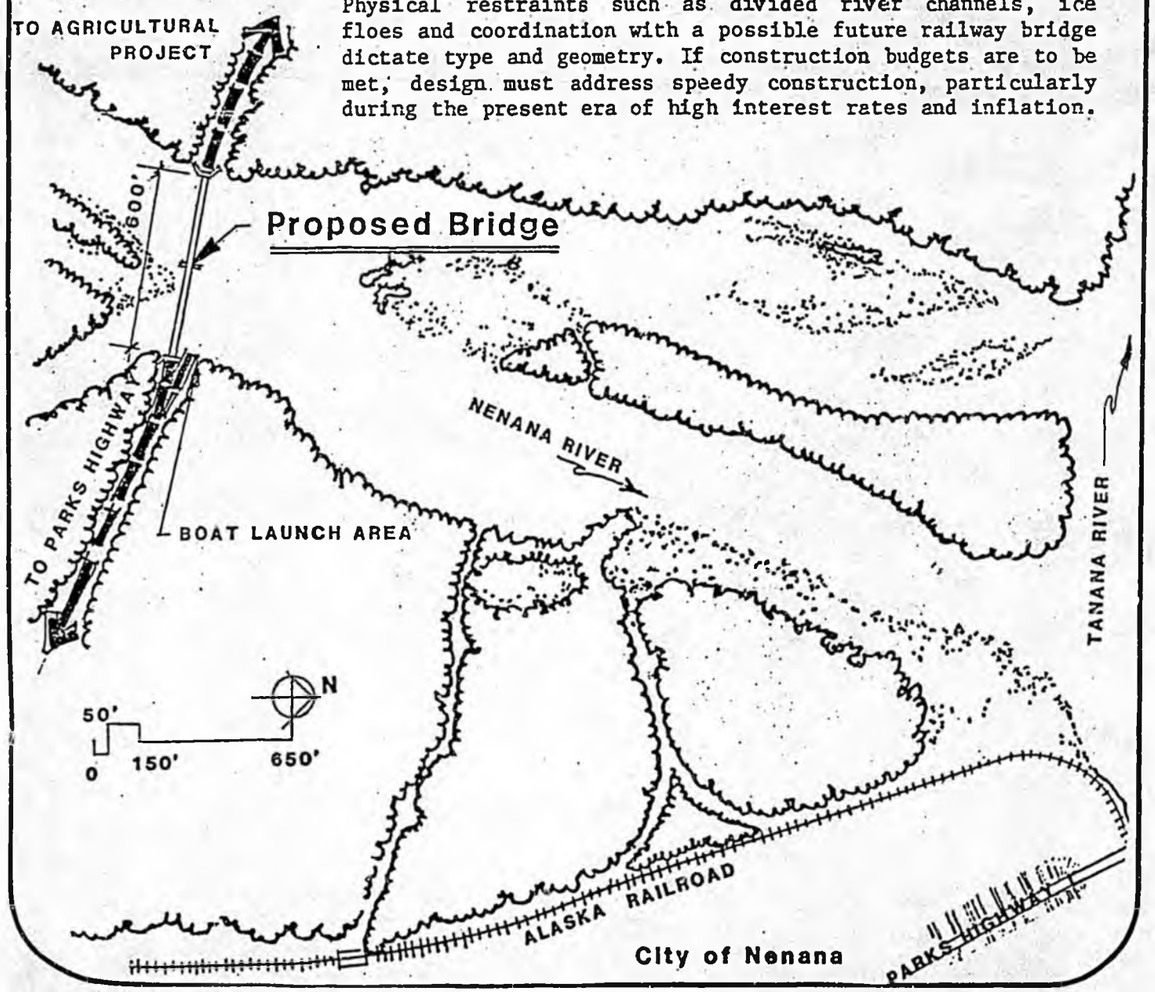
Enclosure

Funding Request: Nenana River Bridge Crossing

CITY OF NENANA RESOURCE DEVELOPMENT PROJECT

INTRODUCTION

Present access to Nenana Agricultural Development is limited by a bridge crossing required over the Nenana River near Nenana. The Nenana River is over 500 ft. wide at its narrowest point, posing a significant obstacle requiring a coordinated effort to economically bridge. It is at this point that the proposed bridge is to be located. Physical restraints such as divided river channels, ice floes and coordination with a possible future railway bridge dictate type and geometry. If construction budgets are to be met, design must address speedy construction, particularly during the present era of high interest rates and inflation.



CITY OF NENANA

JOHN COGHILL, MAYOR — STEVE BAINBRIDGE, CITY ENGINEER

prepared by:

Peratrovich, Nottingham & Drage, Inc.

Engineering Consultants

Telex 090 26436
Int. Telex 200 26436

1506 West 36th Avenue • Suite 101 • Anchorage, Alaska 99503 • 907-561-1011

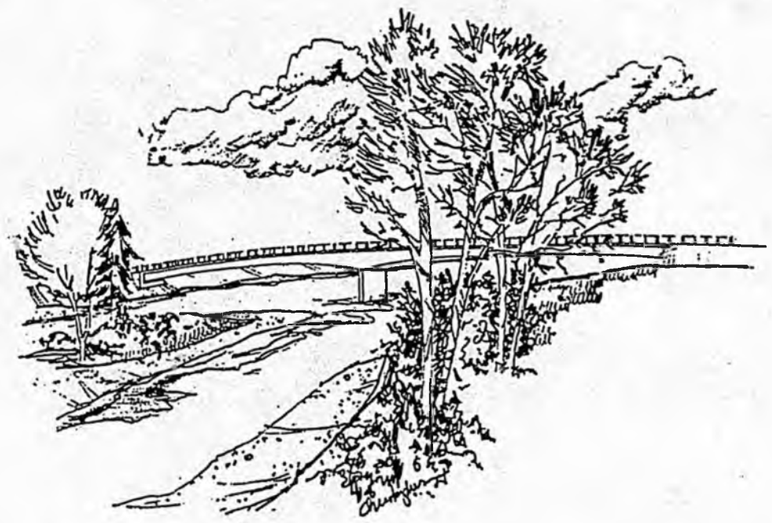
JANUARY 1985

In order to achieve this goal a bridge type was chosen that allows the piers and abutments to be located out of the main river channels. Substructure design also allows the use of readily available materials which will further expedite the project and allow early construction during the winter when the river flow is low and over ice access to piers and abutments is more convenient.

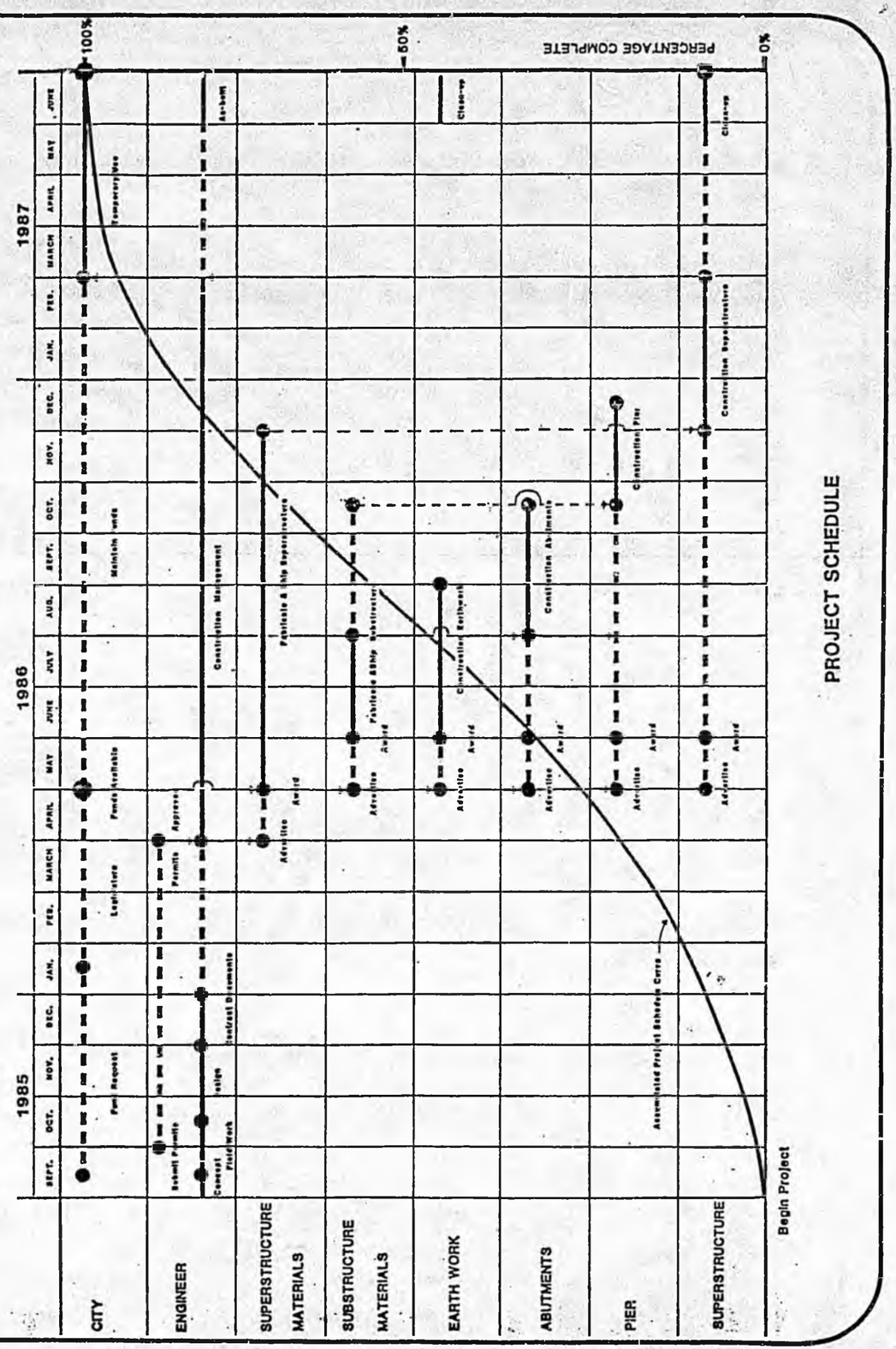
The more expensive superstructure steel must be erected before spring breakup as shown on the construction schedule. If this deadline is to be met and construction costs minimized, the superstructure steel must be ordered as soon as possible.

COST ESTIMATE AND TIMING

Once started, construction should be completed quickly so that capital outlay time is minimized. Using standard contracting techiques the estimated mid-1986 cost for this project would be $4,800,000. However by using the same techniques that were utilized in constructing the Tanana River Bulkhead wherein the designer participated jointly with the City of Nenana in the construction management of the project, the project can be completed for $3,000,000.



Proposed Nenana River Bridge



THOMAS & ASSOCIATES
Box 80783
Fairbanks, AK 99708
(907) 479 4972

January 25, 1985

Mr. Steve Bainbridge
City of Nenana
P.O. Box 117
Nenana, Alaska 99706

Re: East Middle River Crossing,
West Middle River Crossing,
Little Nenana River Crossing

Dear Mr. Bainbridge:

The structures for the subject streams were designed several years ago and have been shelved pending funding. At the time I was a principal of Alaska Transportation Consultants, Inc. and was involved in the original design.

All of the subject bridges are similar in construction type, dimensions and foundation conditions. They are single span, concrete and steel bridges sitting on steel piling and will have a total of approximately 12,800 ft^2 of deck area. I have included attachments showing important details for theses bridges.

I have compared recent bridge construction costs as experienced by the DOTPF with the proposed budget of 1.6 million dollars for the subject bridges. Current DOTPF bridge costs range between $120 and $150 per ft^2. Based upon 120 ft^2, an updated estimate is $1,540,000 for the three bridges with an additional $60,000 for approaches and contingencies.

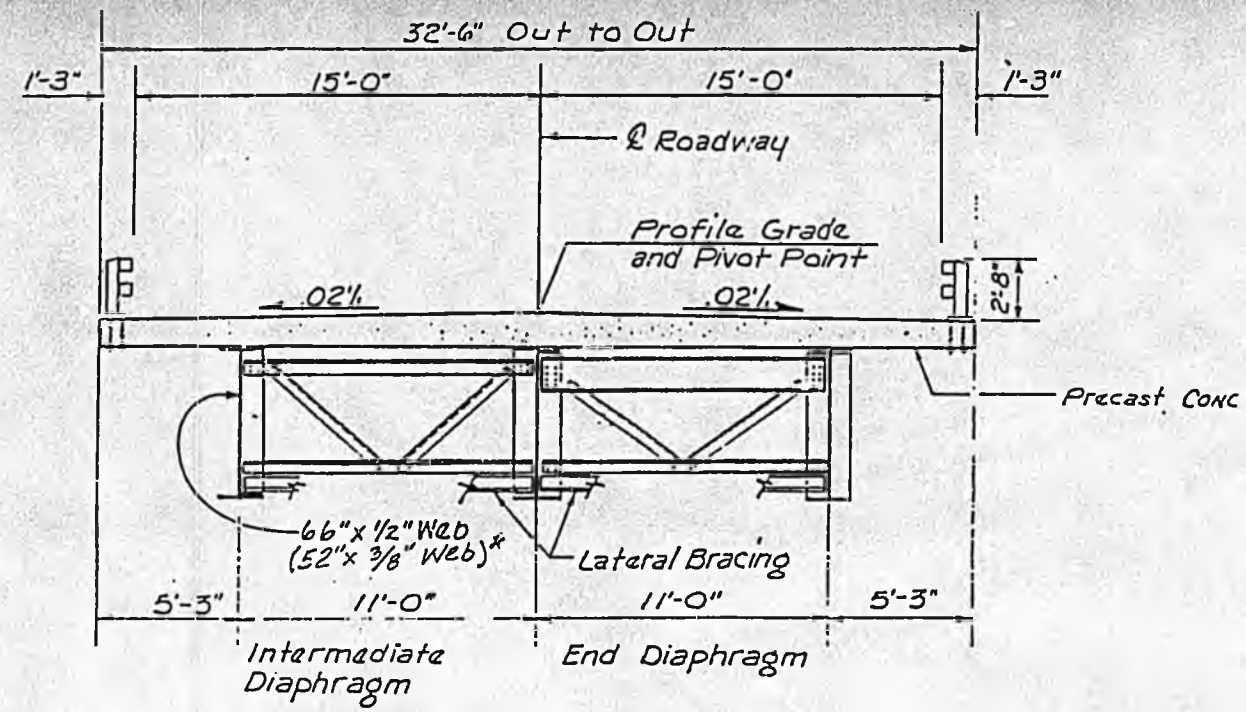
Sincerely,

Bob C. Thomas

Bob C. Thomas P.E.

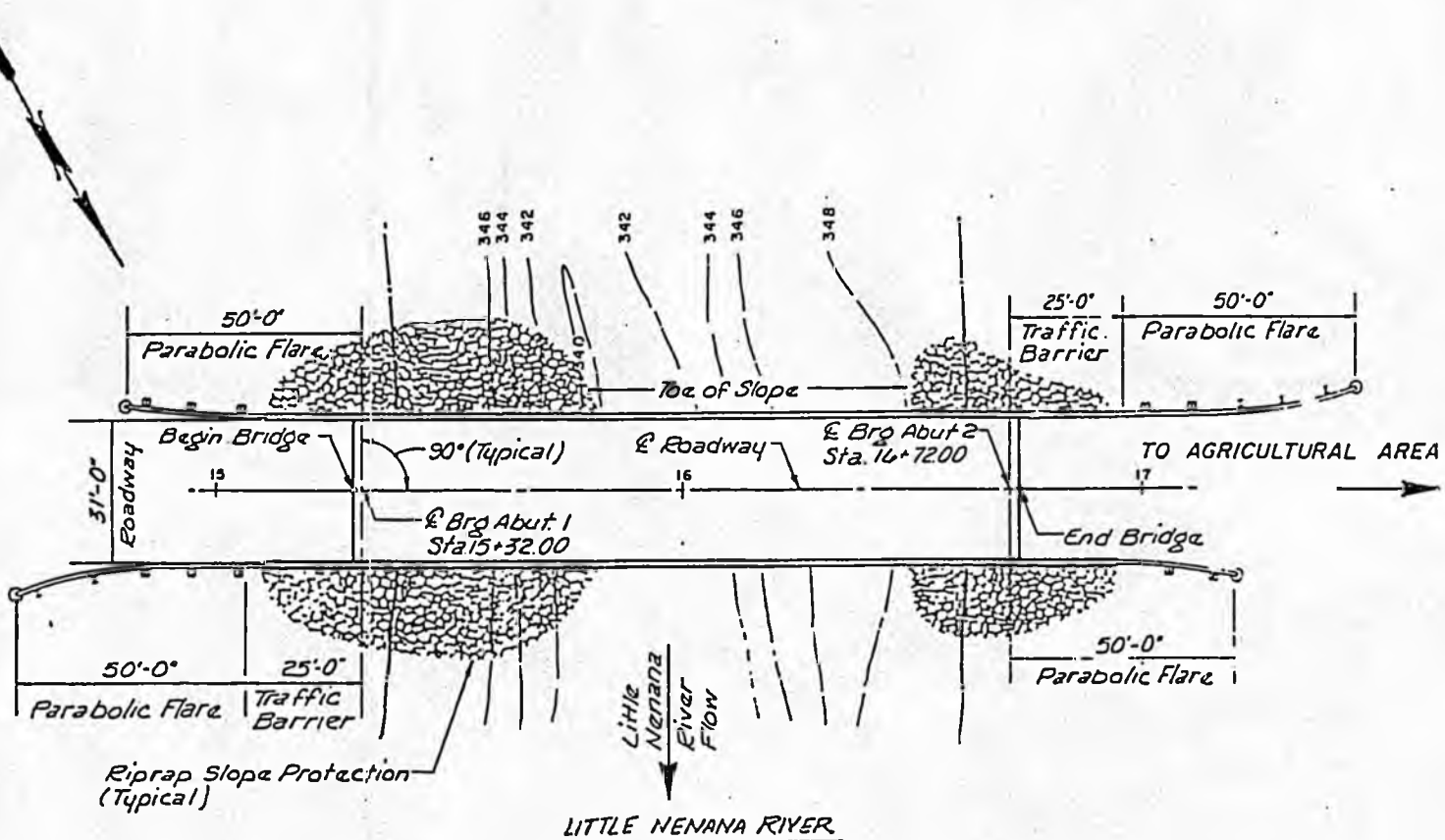
Enclosures

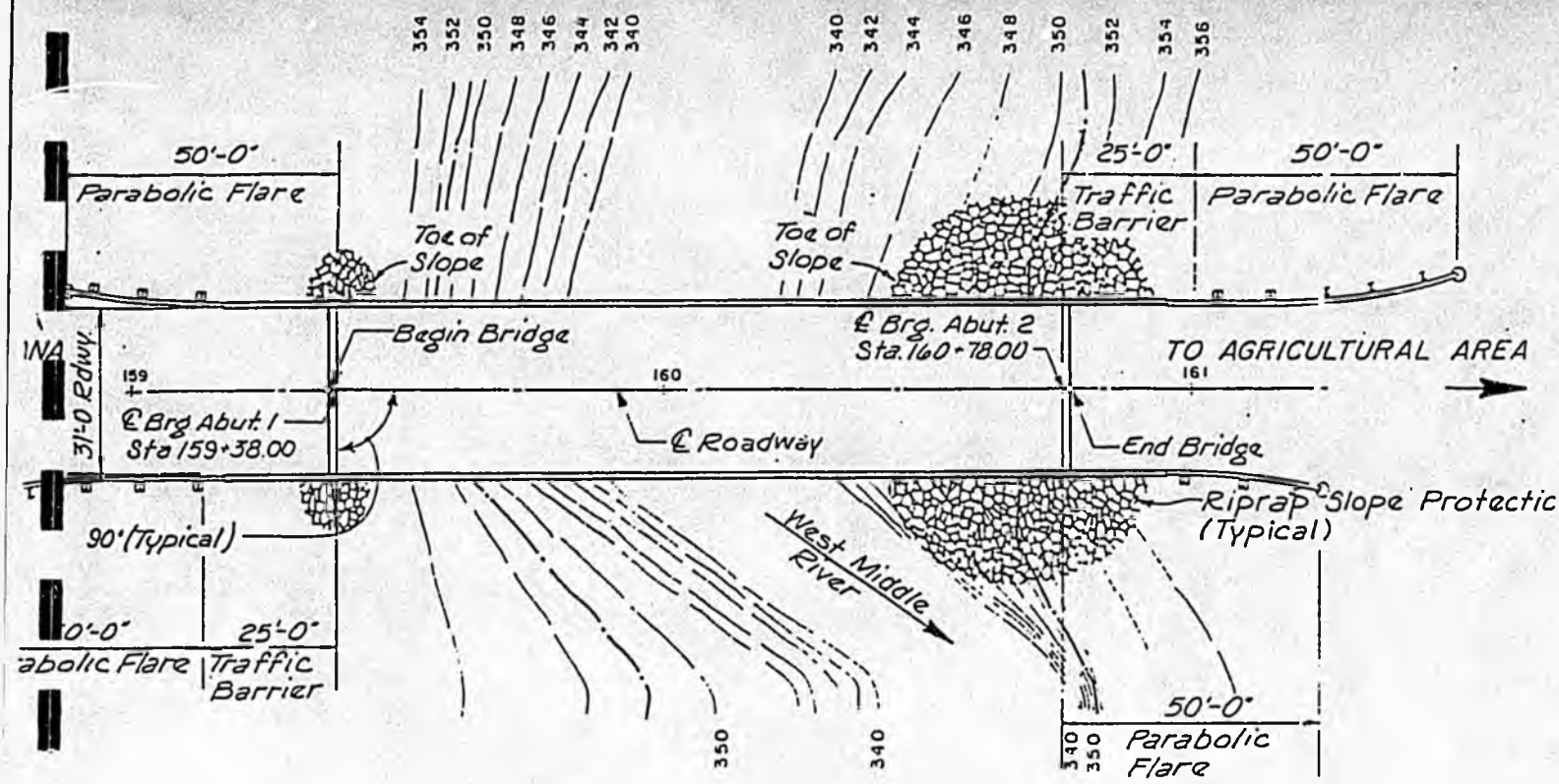
BRIDGE LOCATION
T25
T35
T45
T55
T65
R8W
R9W
R10W
LITTLE NEMAHA R.
NEMAHA RIVER
EAST MIDDLE R.
MIDDLE RIVER
WEST MIDDLE R.
TEKAMAHA RIVER
TANANA
LEE



TYPICAL SECTION
ALL BRIDGES

0 1' 2' 3' 4'

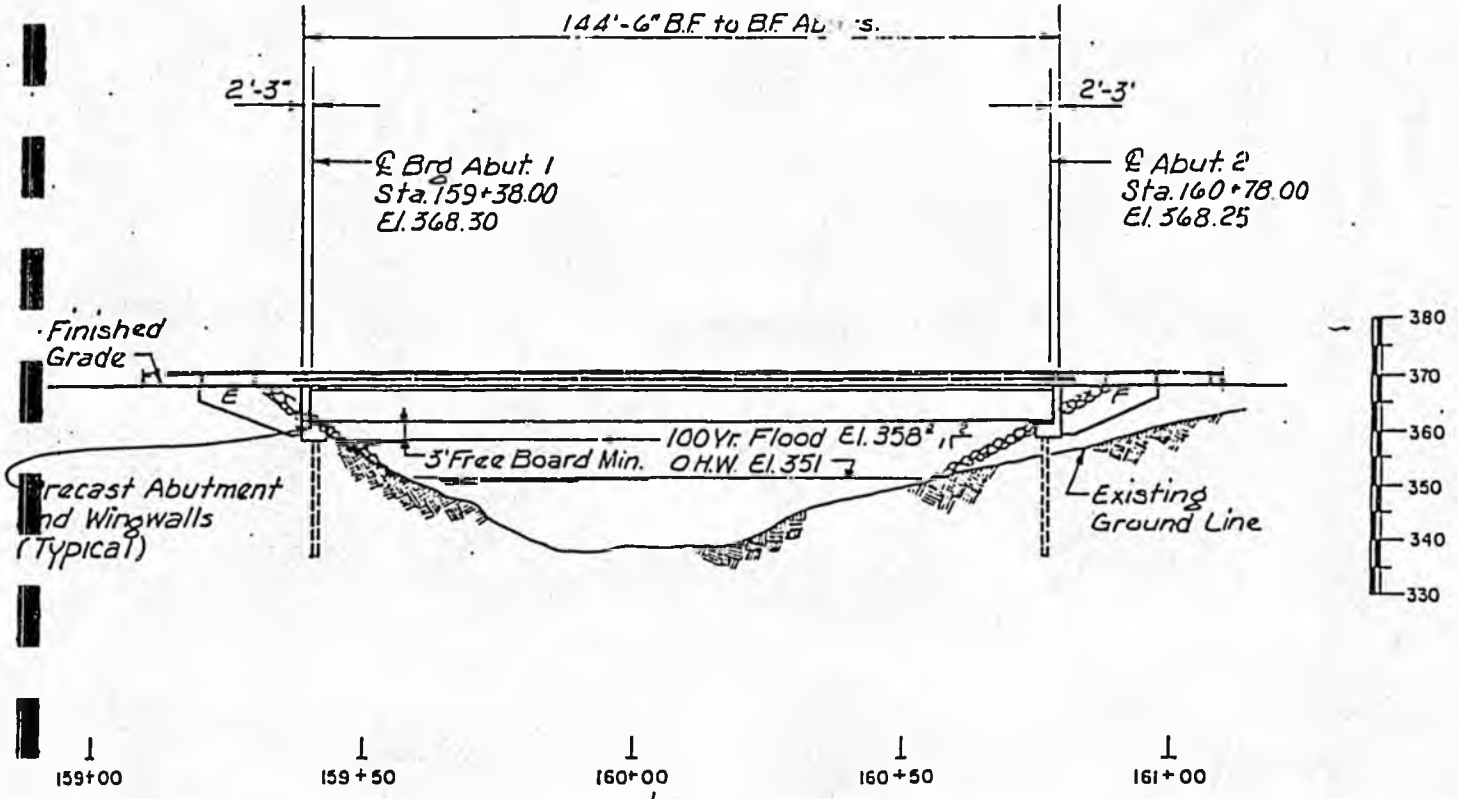




WEST MIDDLE RIVER

PLAN

0 5' 10' 20'

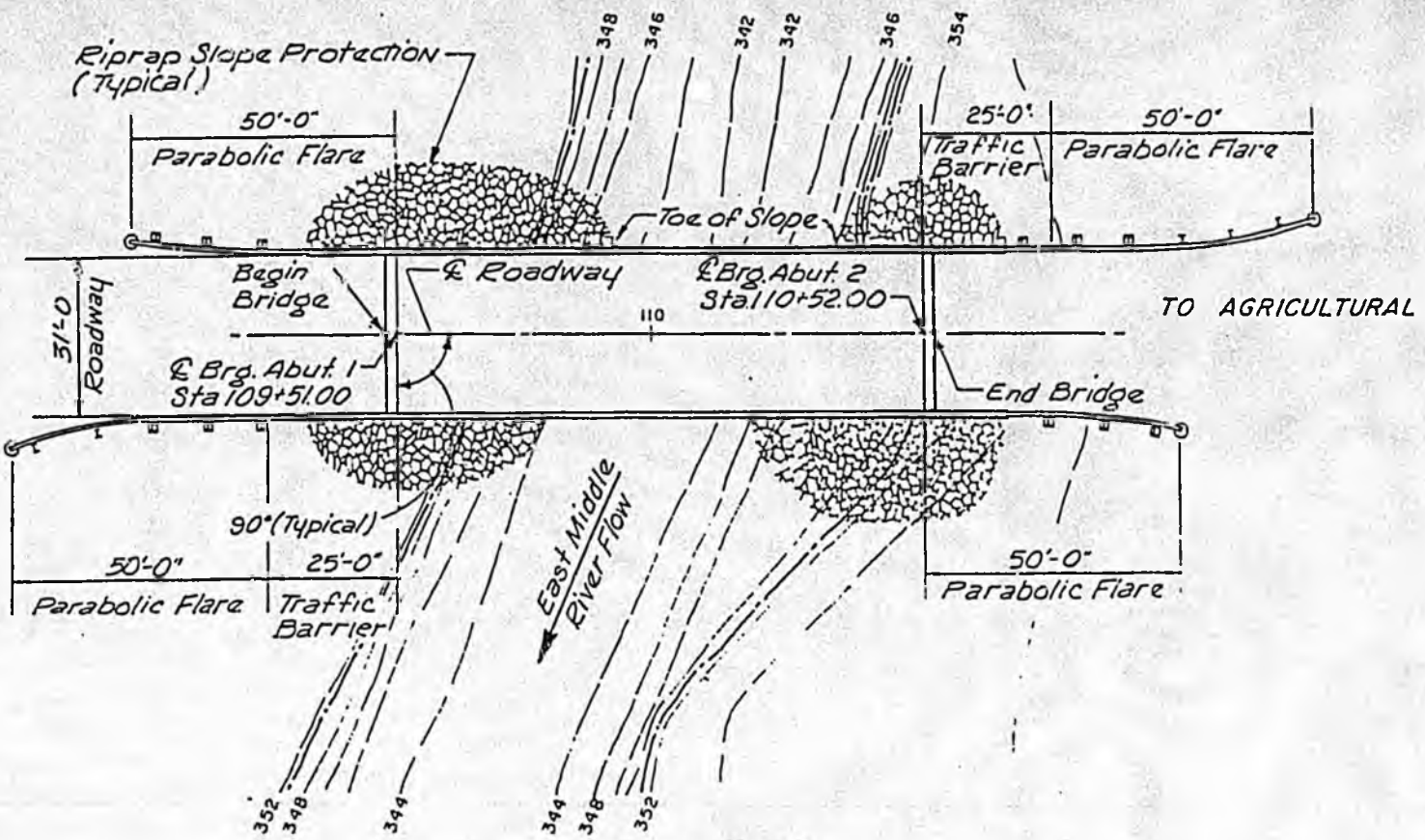


WEST MIDDLE & LITTLE NENANA RIVERS

ELEVATION

B.F. - Back Face
O.H.W. - Ordinary High Water

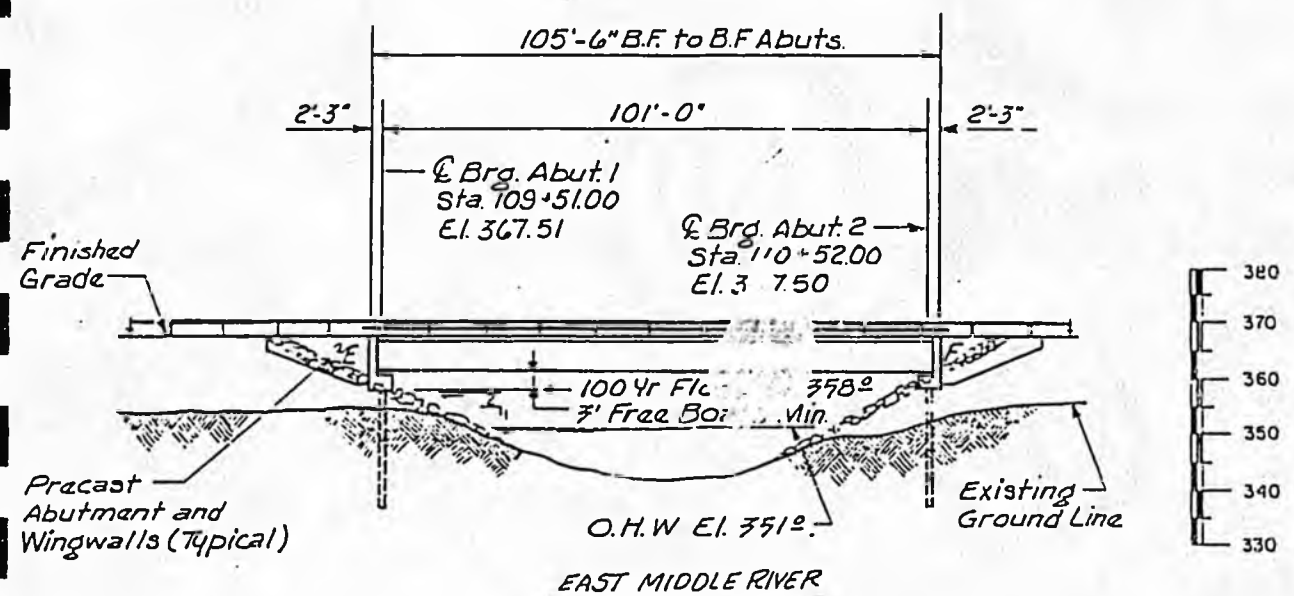
0 5' 10' 20'



EAST MIDDLE RIVER

PLAN

0 5' 10' 20'



EAST MIDDLE RIVER

109+00 | 109+50 | 110+00 | 110+50 | 111+00

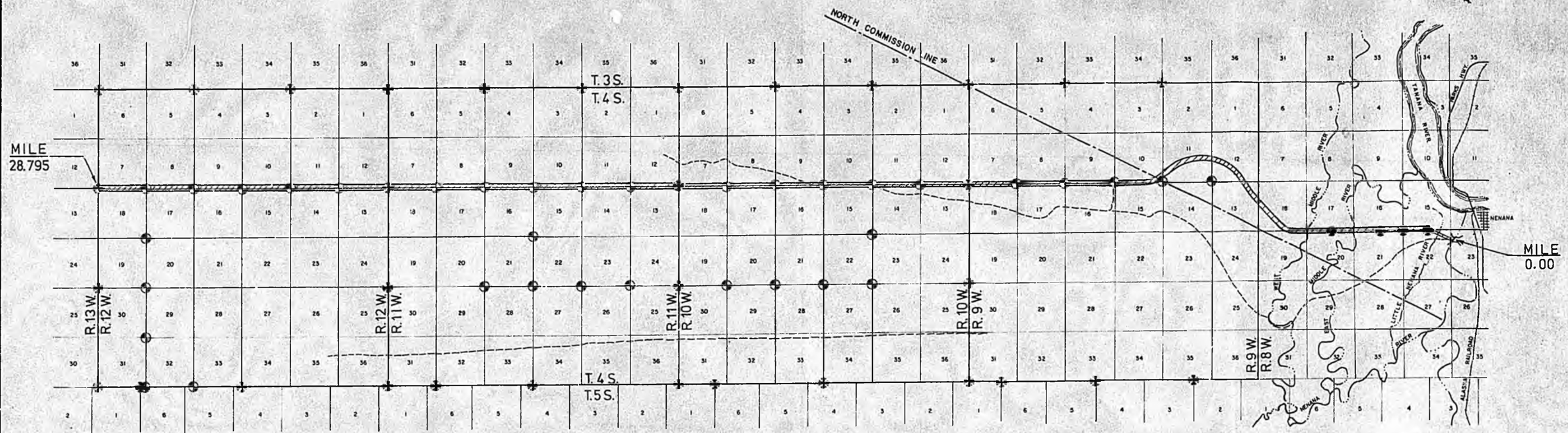
ELEVATION

0 5' 10' 20'

B.F = Back Face
O.H.W = Ordinary High Water

ACREAGE SUMMARY

TOWNSHIP & RANGE	STATE OF ALASKA	UNIVERSITY OF ALASKA	CITY OF NENANA	SUB-TOTAL
T. 4 S. R. 8 W.	235.51		6.92	242.43
T. 4 S. R. 9 W.	345.87	52.20		398.07
T. 4 S. R. 10 W.	362.91			362.91
T. 4 S. R. 11 W.	362.63			362.63
T. 4 S. R. 12 W.	362.88			362.88
TOTAL	1669.80	52.20	6.92	1728.92 ACRES



NOTES

1. FOR CORNER ACCESSORIES IN T. 4 S., R. 8 W., F.M. SEE TABLE ON SHEET 2.
2. FOR CORNER ACCESSORIES IN T. 4 S., R. 9 W., T. 4 S., R. 10 W., AND T. 4 S., R. 11 W., F.M., SEE SUPPLEMENTAL CADASTRAL SURVEY OF THOSE TOWNSHIPS DATED AUGUST 5, 1981.
3. FOR CORNER ACCESSORIES IN A PORTION OF T. 4 S., R. 11 W., AND T. 4 S., R. 12 W., SEE ALASKA STATE CADASTRAL SURVEY PLATS OF THOSE TOWNSHIPS DATED APRIL 1983.
4. ALL BEARINGS ARE ALASKA STATE PLANE ZONE FOUR (1927 NAD).

SURVEYOR'S CERTIFICATE

I, PATRICK H. KALEN, HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT.

DATE: May 30, 1984

REGISTRATION NUMBER: 4603-S

STATE OF ALASKA ★ 49TH ★ PATRICK KALEN

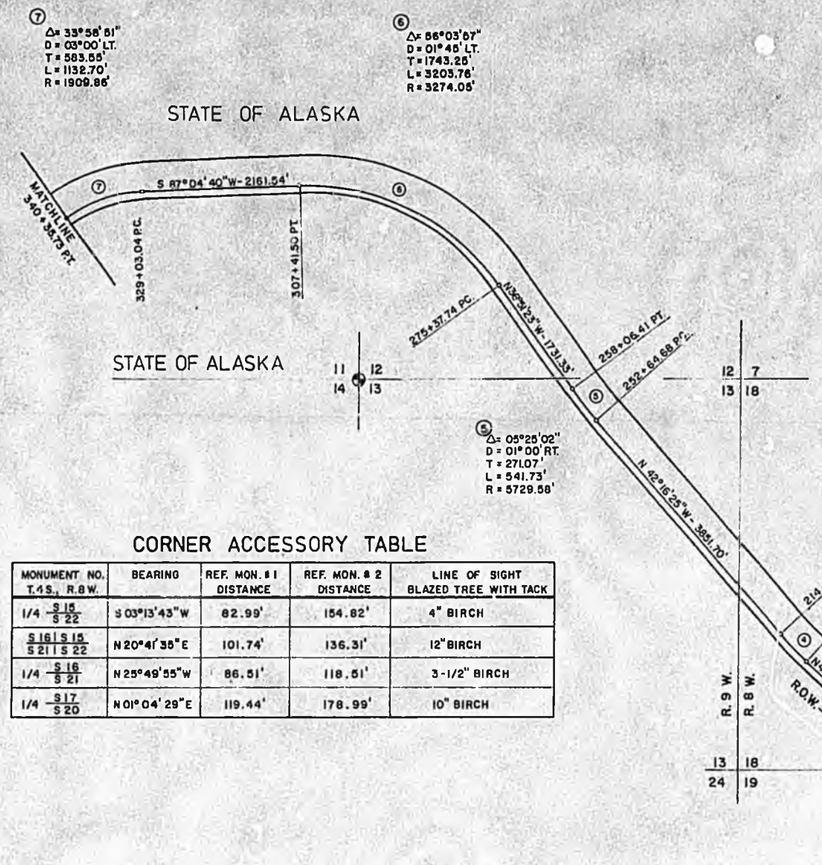
PATRICK H. KALEN R.L.S.

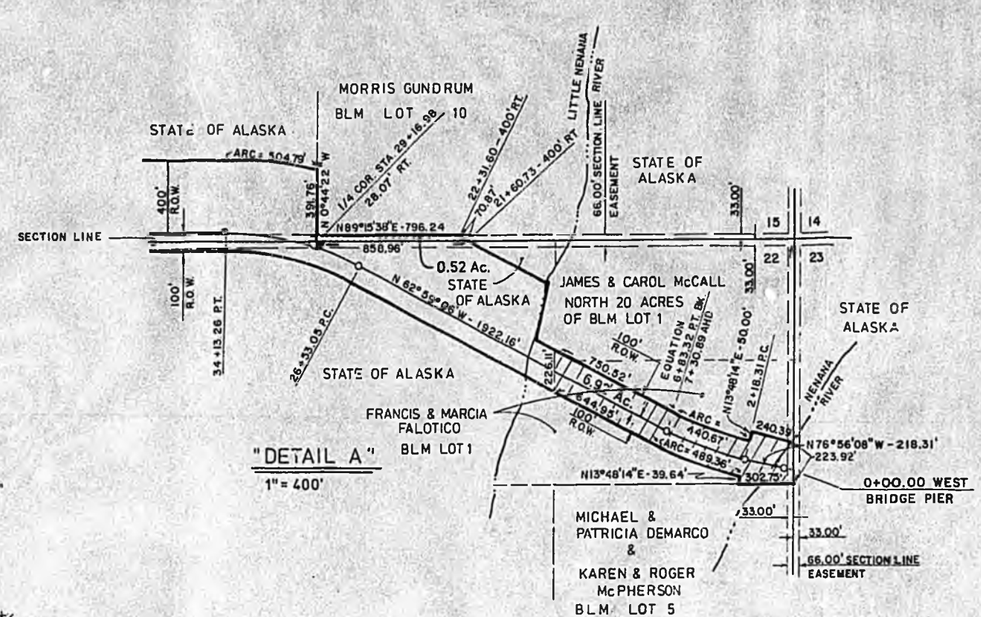
LEGEND

- GLO MONUMENT OF RECORD
- DNR MONUMENT OF RECORD
- CAT TRAILS

SHEET 1 of 3

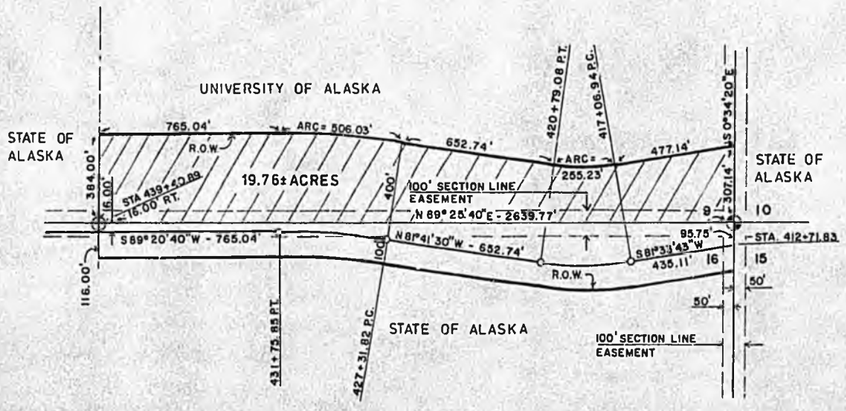
DATE OF SURVEY Beginning NOV. 1983 Ending MAY 1984	KALJENCO, INC. 1041 CHENA RIDGE ROAD FAIRBANKS, ALASKA 99701 479-2628
CITY OF NENANA P.O. BOX 70 NENANA, ALASKA 99760	
TOTCHAKET ROAD RIGHT OF WAY PLAT	
DRAWN BY N. JORDAN DATE 5/84	APPROVAL RECOMMENDED
SCALE 1"=1MILE	CHECKED GR 7/84 FILE NO. 83-45

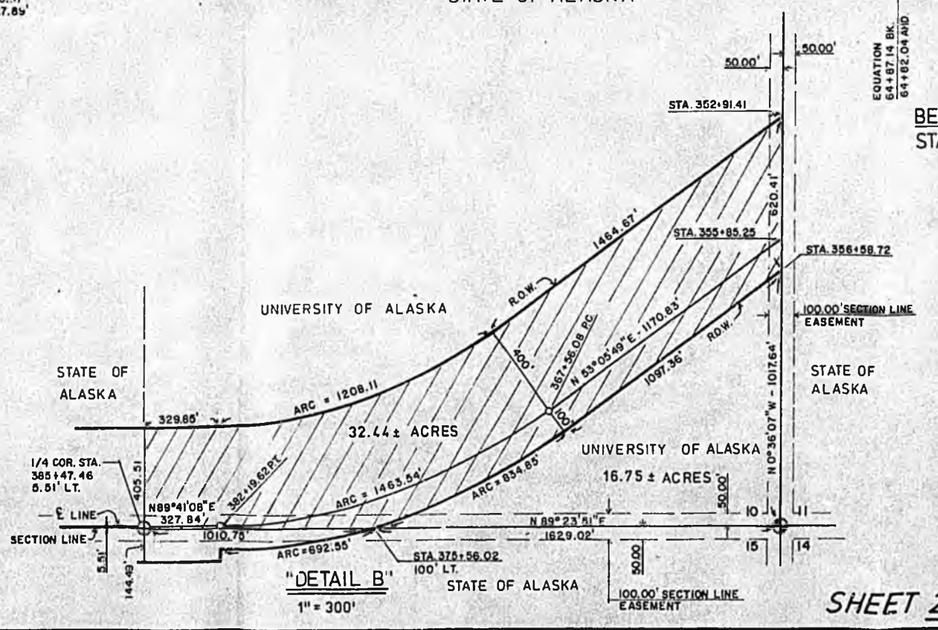




CORNER ACCESSORY TABLE

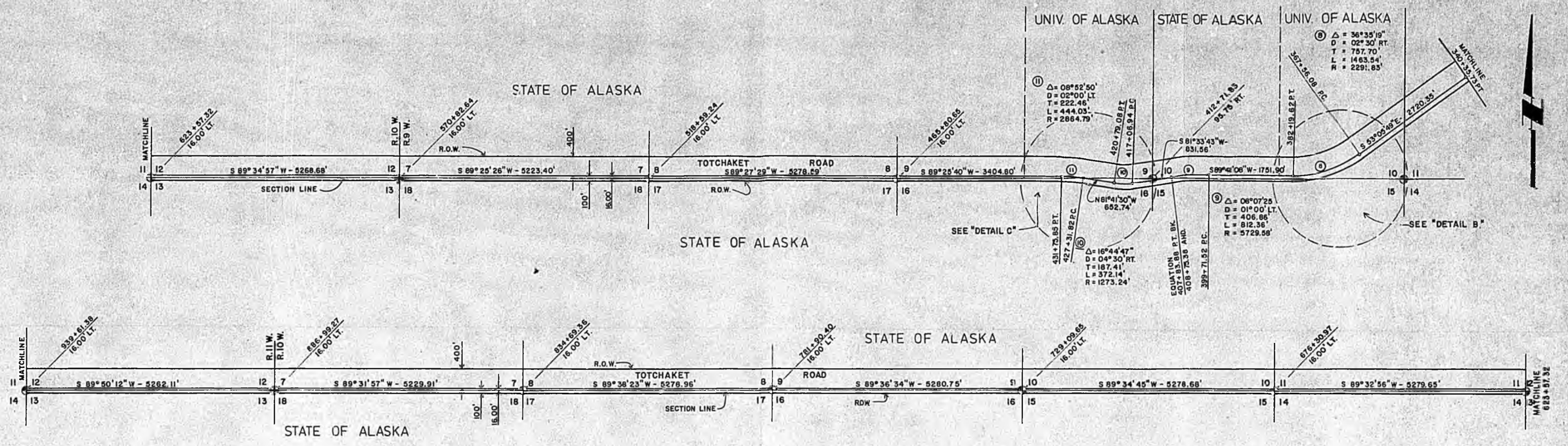
MONUMENT NO. T.4S., R.8W.	BEARING	REF. MON. # 1 DISTANCE	REF. MON. # 2 DISTANCE	LINE OF SIGHT BLAZED TREE WITH TACK
1/4 S 15 / S 22	S 03°13'43"W	82.99'	154.82'	4" BIRCH
S 16 | S 15 / S 21 | S 22	N 20°41'35"E	101.74'	136.31'	12" BIRCH
1/4 S 16 / S 21	N 25°49'55"W	86.51'	118.51'	3-1/2" BIRCH
1/4 S 17 / S 20	N 01°04'29"E	119.44'	178.99'	10" BIRCH





DATE OF SURVEY Beginning NOV 1983 Ending MAY 1984	KALJENCO, INC. 1041 CHENA RIDGE ROAD FAIRBANKS, ALASKA 99701 479-2628
CITY OF NENANA P.O. BOX 70 NENANA, ALASKA 99760	
TOTCHAKET ROAD RIGHT OF WAY PLAT	
DRAWN BY N. JORDAN DATE 5/84	APPROVAL RECOMMENDED
SCALE 1"= 1000'	CHECKED GK 7/84 FILE NO. 83-45

SHEET 2 of 3



DATE OF SURVEY
Beginning NOV. 1983
Ending MAY 1984

KALJENCO, INC.
1041 CHENA RIDGE ROAD
FAIRBANKS, ALASKA 99701
479 - 2620

CITY OF NENANA
P.O. BOX 70
NENANA, ALASKA 99760

TOTCHAKET ROAD
RIGHT OF WAY PLAT

DRAWN BY N. JORDAN
DATE 5/84

APPROVAL RECOMMENDED

SCALE 1"= 1000'

CHECKED 7/84

FILE NO. 83 - 45

SHEET 3 of 3

SEQUENCE OF EVENTS RELATING

TO THE

DEVELOPMENT OF THE NENANA TOTCHAKET AGRICULTURAL PROJECT

1975 - 1980 U.S.D.A. - Soil Conservation Service

"Soil Survey of the Totchaket Area", October 1980

Soil Classification - 579,790 Acres

Second Session, Eleventh Legislature - Chapter 50, SLA80 - Special Projects Office - City of Nenana

1) Transportation planning report, entitled "Nenana Agricultural Transportation Systems" by HDR/ATC, final report, February 1981

2) Livestock production and meat processing facility study prepared by the Featherstone Corporation - final report, February 1981

3) Vegetable Industry Report, by Little Goldstream Associates, February, 1981

4) Preparation of Cadastral Plats for T4S, R8W, R9W, R10W, R11W, F.M. by Kaljenco, Incorporated - March - June, 1981

5) Core drilling and soil sampling along the proposed road right-of-way - by Construction Test Lab, Incorporated - March, 1981

6) "An Investigation into Land Clearing Methods and the Utilization of Salvaged Wood Fiber from the Nenana Agricultural Project" by Columbia Engineering International, Ltd; Vancouver, Canada - April 1982

7) Reimbursable Services Agreements (RSAs)

SPO-DGGS Establishment of weather stations and data collection

SPO-DGGS Soil mapping, color infrared photos, orthophoto base maps to depict vegetation, permafrost and construction material sites

November 1980 - April 1981 - preparation of the

"Nenana - Totchaket Abbreviated Area Plan" - under the direction of the Department of Natural Resources - Division of Research and Development - 1,042,000 Acres

Preparation of the "Agricultural Tract Layout" for approximately 58,144 Acres within T4S, R9W, R10W, and R11W; F.M.

First Session, Twelfth Legislature - CSSB 222 (TRSP)

"An act making a special appropriation to DOT/PF for engineering and design of bridges and roads in the Nenana agricultural area"

Transfer of Responsibilities Agreement (TORA) DOT/PF to the City of Nenana

September, 1981 - June, 1982

1) Nenana River Bridge Design - by Peratrovich and Nottingham, Incorporated

2) Roadway Design - by Alaska Transportation Consultants (jv, with Henningson, Durham, and Richardson)

3) Appraisal of Private Property within R/W - by Price & Associates Appraisers

May 1982 - Corps Permit #071 - OYD -2 - 810451 - Nenana River Bridge

February 1982 - July 1982 - Preparation of the

"Nenana - Totchaket Management Plan" - under the direction of the Department of Natural Resources - Division of Land & Water Management

October 1982 - Corps Permit #071 - OYD -4 - 820272 - Roadway

Second Session, Twelfth Legislature - CSSSSB 702 (Fin)

" An Act transferring parts of certain fiscal year 1982 Agricultural Action Council appropriation allocations to the Nenana - Totchaket agricultural development project"

Total - $1,622,800

February 1983 - Contract documents prepared for 34 miles of road right-of-way clearing

1984 - Secured Right-of-Way from the State of Alaska and private individuals see attached "Right-of-Way Permit" and copy of Right-of-Way Plat

THE NENANA - TOTCHAKET MANAGEMENT PLAN

Planning Section
Northcentral District
Division of Land and Water Management
Alaska Department of Natural Resources

July 1982

State of Alaska
Department of Natural Resources
Division of Land and Water Management

The Nenana-Totchaket Management Plan is hereby adopted as policy of the Division of Land and Water Management for state lands within the planning area, subject to the commissioner's adoption of classification order #CAC-82-055

Signed _____
acting District Planning Officer

Approved:

acting _____
District Manager

July 20, 1982
Date

_____
Director, Division of Land and Water Management

August 20, 1982
Date

INTRODUCTION

Area Description

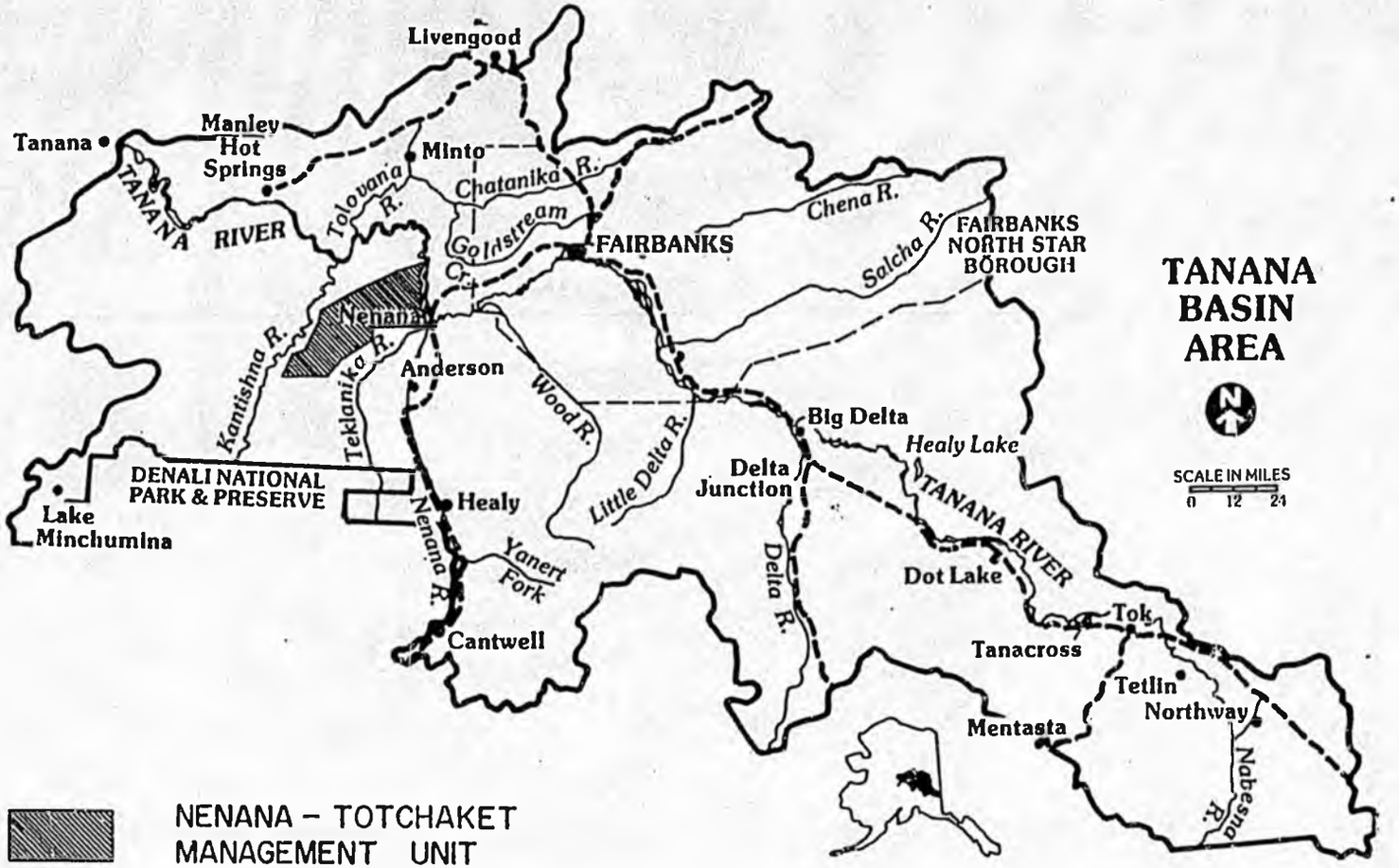
The Nenana-Totchaket Management Plan spans over 346,000 acres of land west of the Parks Highway approximately 60 miles southwest of Fairbanks (see Figure 1). Nearly 87% of the land is under state management authority with an additional 11,000 acres currently selected. The planning area encompasses a large glacial outwash plain bounded by several major rivers, including the Kantishna, Teklanika and Tanana Rivers. The dominant soils are characterized as silt loams ranging from 19 to 28 inches deep overlying sand with moderate permeability. Surface topography ranges from nearly level to hilly. In the southern one-third of the area the sand substrate is exposed to the surface in the sand dunes around Dune Lake.

The predominant vegetation is a mixed forest of aspen, birch and spruce. The proposed agricultural development area contains almost no timber of pole or sawlog size. A recent fire burned over 172,000 acres of land, severely effecting the forest resource in the southern half of the management area.

Activities such as trapping, hunting, and recreating have traditionally concentrated in the productive river corridors edging the region. At present no settlement has occurred in the subject area. The closest community is Nenana, located immediately east of the management unit at the confluence of the Nenana and Tanana River.

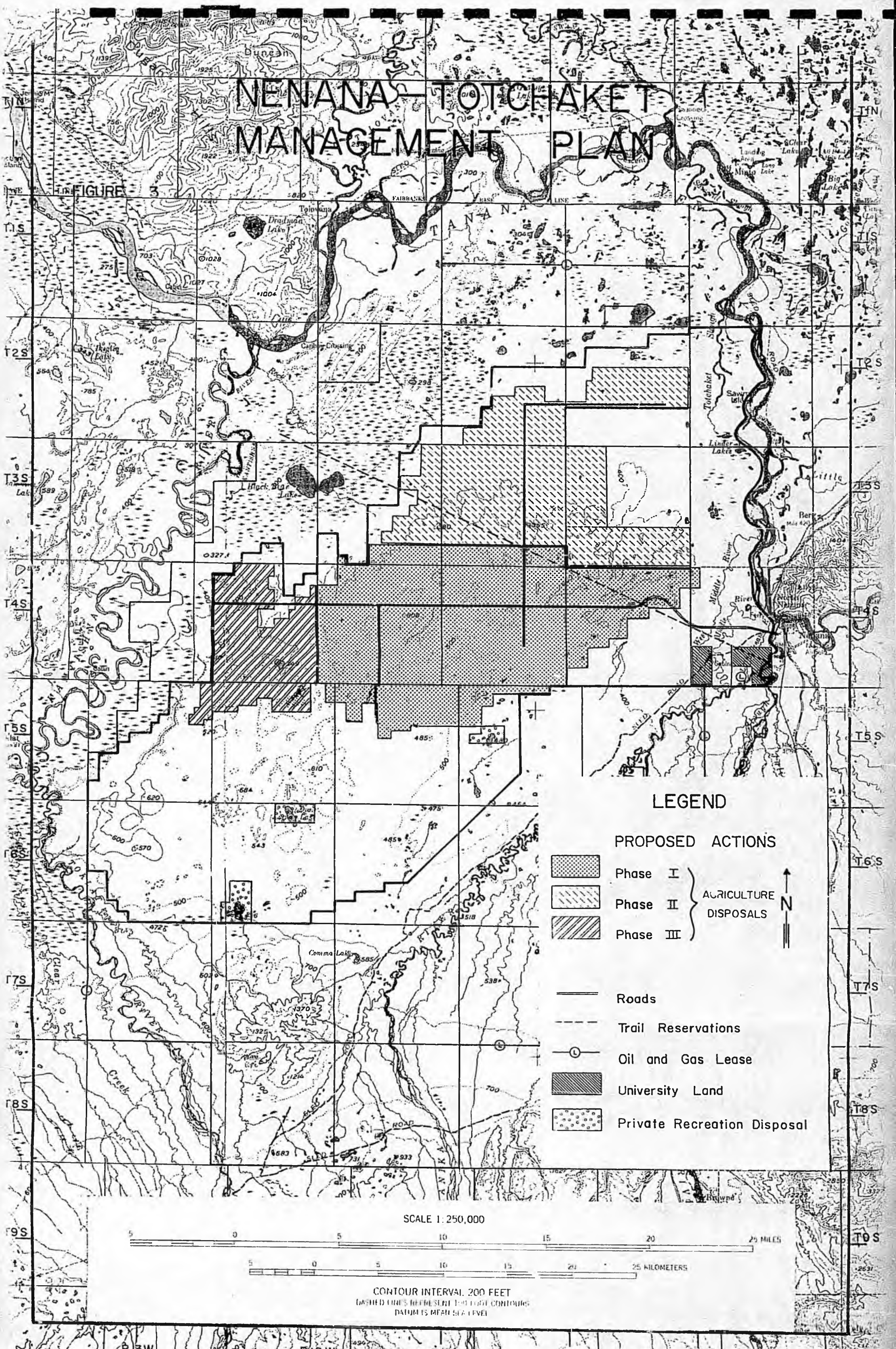
NENANA – TOTCHAKET MANAGEMENT PLAN

FIGURE 1



NENANA — TOTCHAKET MANAGEMENT PLAN

FIGURE 3



LEGEND

PROPOSED ACTIONS

- Phase I — AGRICULTURE DISPOSALS
- Phase II — AGRICULTURE DISPOSALS
- Phase III — AGRICULTURE DISPOSALS

N

- Roads
- Trail Reservations
- Oil and Gas Lease
- University Land
- Private Recreation Disposal

SCALE 1:250,000

5 0 5 10 15 20 25 MILES

5 0 5 10 15 20 25 KILOMETERS

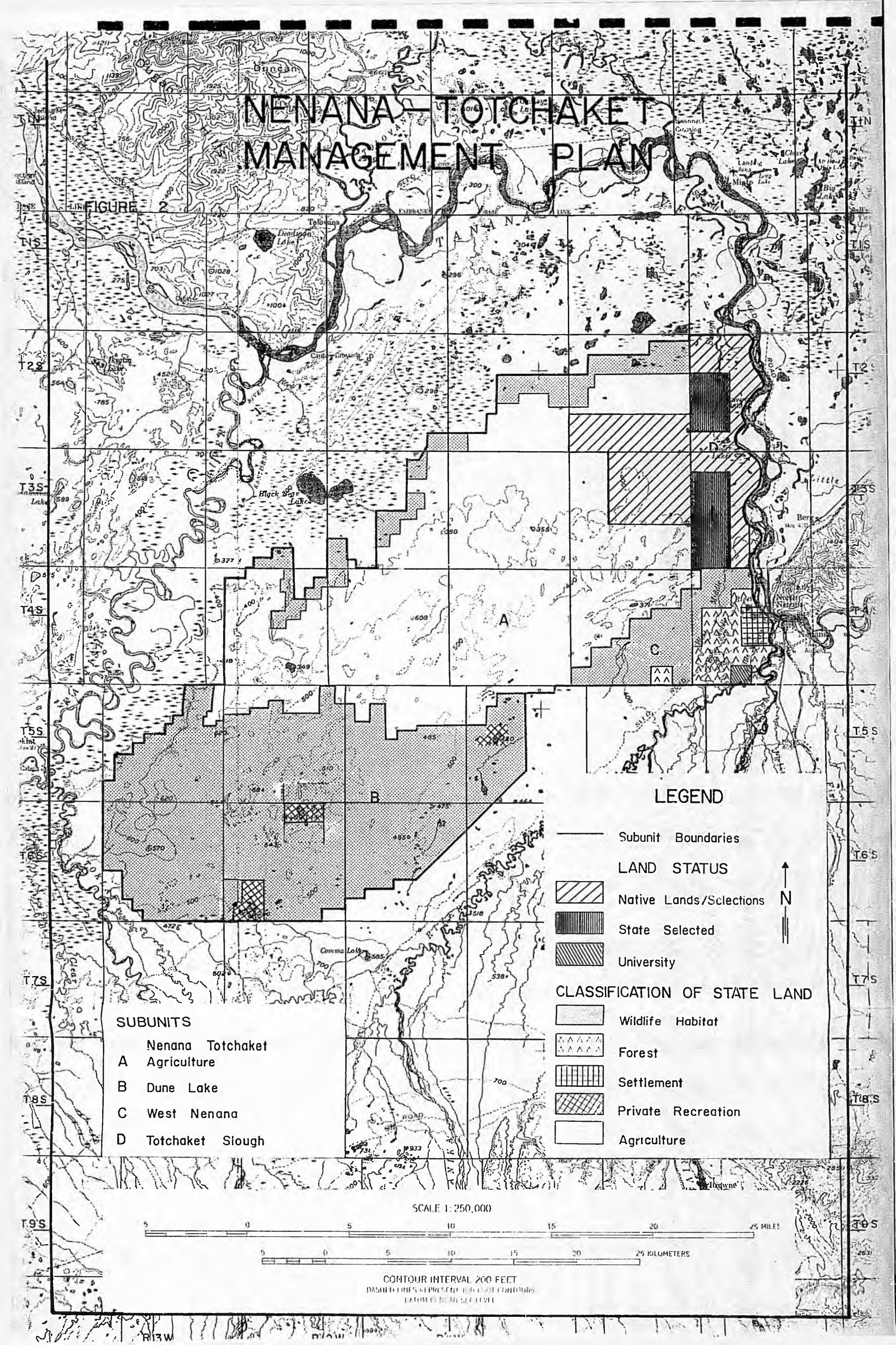
CONTOUR INTERVAL 200 FEET

DASHED LINES REPRESENT 100 FOOT CONTOURS

DATUM IS MEAN SEA LEVEL

NENANA—TOTCHAKET MANAGEMENT PLAN

FIGURE 2



Original sponsors: Sackett, Fahrenkamp, Parr and Bennett

Offered: 3/18/81
Referred: Finance

Funding Information	
General Fund	$500,000
Other Funds	-0-
	$500,000

IN THE SENATE .BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 222 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for engineering and design of bridges and roads in the Nenana agricultural area; and providing for an effective date."

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

* Section 1. The sum of $500,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for engineering and design of bridges and roads in the Nenana agricultural area.

* Sec. 2. The appropriation made by this Act shall be disbursed in accordance with AS 35.15.080 and 35.15.090.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-070(c).

BOOK 33 PAGE 439
Nenana Recording District

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS

ADL No. 409501

RIGHT-OF-WAY PERMIT

THIS AGREEMENT made and entered into this 26th day of October, 1984, by and between the STATE OF ALASKA, acting by and through the Department of Natural Resources, Division of Lands, hereinafter referred to as the grantor and City of Nenana hereinafter referred to as the permittee.

WITNESSETH, that in accordance with the provisions of Sec. 38.05.330, A.S. and the rules and regulations promulgated thereunder, the permittee having filed an application for a right-of-way for: Nenana-Totchaket Primary Public Access Road/Utility Corridor with the Division of Lands together with a map showing the definite location thereon of the line of right-of-way which the permittee has adopted and agrees to be the specific and definite location of the aforesaid right-of-way, and

WHEREAS, it is understood and agreed by the permittee herein that, as a condition to the granting of the right-of-way applied for, the land covered by said right-of-way shall be used for no purpose other than the location, construction, operation and maintenance of the said right-of-way over and across the following described State lands, to wit:

(see Attachment A)

The said right-of-way shall extend 27.51 miles in length and 500 feet in width, containing approx. 1719.01 acres, more or less.

TO HAVE AND TO HOLD the same until the above described land shall no longer be used for the above-mentioned purpose and subject to conditions and reservations elsewhere set forth herein and any "Special Conditions" attached hereto.

The sketch map revealing the right-of-way granted herein shall be attached hereto and made a part hereof.

In the event that the right-of-way herein granted shall in any manner conflict with or overlap a previously granted right-of-way the permittee herein shall use this right-of-way in such a manner as not to interfere with the peaceful use and enjoyment of the previously issued right-of-way and no improvements shall be constructed by the permittee herein upon the overlapping area unless the consent therefore has first been obtained from the permittee under the pre-existing right-of-way.

The permittee in the exercise of the rights and privileges granted by this indenture shall comply with all regulations now in effect or as hereafter established by the Division of Lands and all other Federal, State or municipal laws, regulations or ordinances applicable to the area herein granted.

Upon abandonment, termination, revocation or cancellation of this indenture, the permittee shall within 90 days remove all structures and improvements from the area herein granted, except those owned by the grantor, and shall restore the area to the same or similar condition as the same was upon the issuance of this permit. Should the permittee fail or refuse to remove said structures or improvements, within the time allotted, they shall revert to and become the property of the grantor. However, the permittee shall not be relieved of the cost of the removal of the structures, improvements and/or the cost of restoring the area. Provided further, however, that the grantor, in his discretion, may alter or modify the requirements contained in this provision if it is to the best interest of Alaska to do so.

The permittee shall utilize the lands herein granted consistent with the purposes of the proposed use, as revealed by the application therefore, and shall maintain the premises in a neat and orderly manner and shall adopt and apply such safety measures as shall be necessary, proper and prudent with respect to the use to which the land is subjected.

The permittee shall take all reasonable precaution to prevent and suppress brush and forest fires. No material shall be disposed of by burning in open fire during the closed season unless a permit therefor has first been obtained from the agency empowered by law to issue such permits.

Prior to any construction or development that will use, divert, obstruct, pollute or utilize any of the waters of the State, the permittee shall first obtain approval therefor from the Commissioner of the Department of Fish and Game and file an image copy thereof with the grantor.

Any lands included in this permit which are sold under a contract to purchase shall be subject to this permit. Upon issuance of title to the purchaser, this permit shall remain in effect until its date of expiration.

In case the necessity for the right-of-way shall no longer exist, or the permittee should abandon or fail to use the same, then this permit shall terminate.

The State of Alaska shall be forever wholly absolved from any liability for damages which might result to the permittee herein on account of this permit having been cancelled, forfeited, or terminated prior to the expiration of the full time for which it was issued.

NOW THEREFORE, in accordance with the provisions of Sec. 38.05.330, A.S. and the rules and regulations promulgated thereunder and in accordance with the conditions heretofore set forth or attached hereto and made a part hereof, the permittee herein is hereby authorized to locate, construct, operate and maintain said right-of-way over and across the lands herein described.

BOOK 33 PAGE 441
Nenana Recording District

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed in duplicate and the permittee herein has hereunto affixed his signature on the day and year first above written.

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
By: Howard C. Gilman
Tom Hawkins, Director
Division of Land and Water Management

Steven Bainbridge
Permittee Steven Bainbridge, City Engineer
City of Nenana

UNITED STATES OF AMERICA)
State of Alaska) ss.

This is to certify that on the 30th day of October, 1984, before me, the undersigned Notary Public, personally appeared Howard C. Gilman known to me and known by me to be the acting Dist. Mgr. of the Division of Lands of the Department of Natural Resources, and acknowledged to me that he executed the foregoing instrument for and on behalf of said State, freely and voluntarily for the use and purpose therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affized my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires 1-24-86

UNITED STATES OF AMERICA)
State of Alaska) ss.

This is to certify that on this 3rd day of October 19 84, before me, the undersigned Notary Public, personally appeared Steven Bainbridge to me personally known to be one of the persons described in and who executed the within instrument and the said person acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires Until retired

10-119 (72)
Rev. 4/81

BOOK 33 PAGE 442
Nenana Recording District

ATTACHMENT A

Legal Description of the Nenana - Totchaket
Primary Public Access Road/Utility Corridor

NOTE: Right-of-Way Permit ADL 409501, as illustrated on the attached survey, does not include the proposed Nenana River Bridge, the private property located along the Access Road alignment between Mile 0.00 and Mile 0.29, or two University parcels (E1/2 Section 10, Township 4 South, Range 9 West, Fairbanks Meridian and E1/2 Section 9, Township 4 South, Range 9 West, Fairbanks Meridian) located between Mile 6.80 and Mile 7.30 and between Mile 7.80 and Mile 8.30, respectively. The entire alignment extends from the west bank of the Nenana River (not including the Nenana River Bridge) to the east boundary of Township 4 South, Range 12 West near the Kantishna River. The City of Nenana will be responsible for acquiring a separate Right-of-Way from the University across its two parcels. The City has already acquired the necessary private property through purchase.

The legal description of Right-of-Way ADL 409501, which is shown on the attached survey plat and which is located entirely within the Fairbanks Meridian, can generally be described as follows:

The Right-of-Way ADL 409501 traverses Sections 15-22 of Township 4 South, Range 8 West; Sections 7-13 and 15-18 of Township 4 South, Range 9 West; Sections 7-18, Township 4 South, Range 10 West; ~~and~~ Sections 7-18 of Township 4 South, Range 11 West; and Sections 7-18 of Township 4 South, Range 12 West.

ACREAGE SUMMARY

TOWNSHIP & RANGE	STATE OF ALASKA	UNIVERSITY OF ALASKA	CITY OF NENANA	SUB-TOTAL
T.4S. R.8W.	235.51		6.92	242.43
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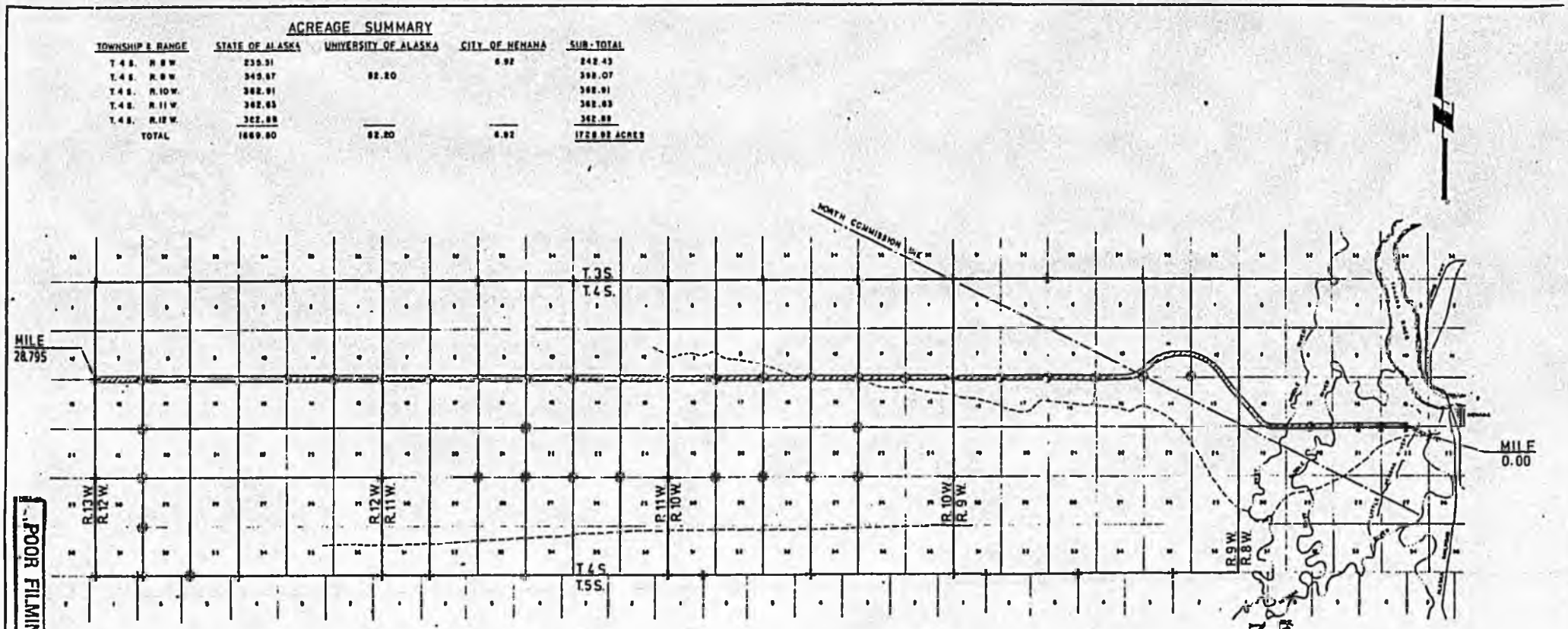
T.4S. R.10W.	362.91			362.91
T.4S. R.11W.	362.83			362.83
T.4S. R.12W.	362.88			362.88
TOTAL	1669.80	52.20	6.92	1728.92 ACRES



POOR FILMING QUALITY

BOOK 33 PAGE 443 Nenana Recording District

NOTES

1. FOR CORNER ACCESSORIES IN T.4S., R.8W., F.M. SEE TABLE ON SHEET 2.
2. FOR CORNER ACCESSORIES IN T.4S., R.9W., T.4S., R.10W., AND T.4S., R.11W., F.M., SEE SUPPLEMENTAL CADASTRAL SURVEY OF THOSE TOWNSHIPS DATED AUGUST 5, 1981.
3. FOR CORNER ACCESSORIES IN A PORTION OF T.4S., R.11W., AND T.4S., R.12W., SEE ALASKA STATE CADASTRAL SURVEY PLATS OF THOSE TOWNSHIPS DATED APRIL 1983.
4. ALL BEARINGS ARE ALASKA STATE PLANE ZONE FOUR (1927 NAD).

SURVEYOR'S CERTIFICATE

I, PATRICK H. KALEN, HEREBY CERTIFY THAT I AM PROPERLY REGISTERED AND LICENSED TO PRACTICE LAND SURVEYING IN THE STATE OF ALASKA, AND THAT THIS PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, AND THE MONUMENTS SHOWN HEREON ACTUALLY EXIST AS DESCRIBED, AND THAT ALL DIMENSIONS AND OTHER DETAILS ARE CORRECT.

DATE: May 30, 1989 REGISTRATION NUMBER: 4803-S

STATE OF ALASKA 4803 PATRICK H. KALEN

PATRICK H. KALEN R.L.S.

LEGEND

- GLO MONUMENT OF RECORD
- DNR MONUMENT OF RECORD
- CAT TRAILS

DATE OF SURVEY: Beginning NOV. 1988 — Ending MAY 1989

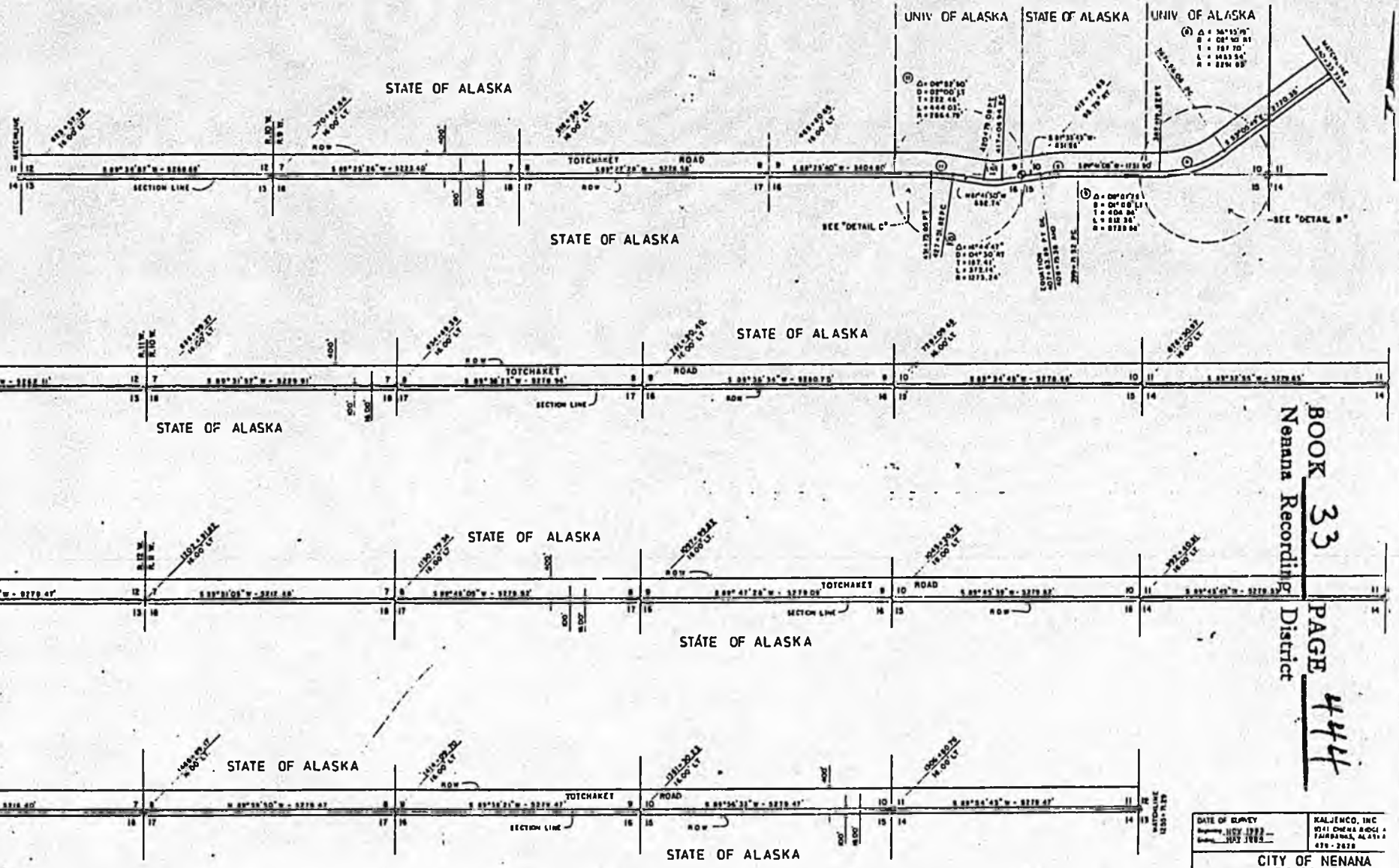
KAL-JENCO, INC. 1041 CHENA RIDGE FAIRBANKS, ALASKA 479-2529

CITY OF NENANA
P.O. BOX 70
NENANA, ALASKA 9976

TOTCHAKET ROAD
RIGHT OF WAY PLAT

DRAWN BY: N. JORDAN DATE: 5/89

APPROVAL RECOMMENDED



POOR FILMING QUALITY

BOOK 33 PAGE 444

Nenana Recording District

DATE OF SURVEY
Beginning NOV 1983
Ending MAY 1984

KALJENCO, INC
1041 CHENA RIDGE
FAIRBANKS, ALASKA
479-2628

CITY OF NENANA
P.O. BOX 70
NENANA, ALASKA 9976

TOTCHAKET ROAD
RIGHT OF WAY PLA

DRAWN BY
M. JORDAN
DATE 5/84

APPROVAL RECOMMENDED

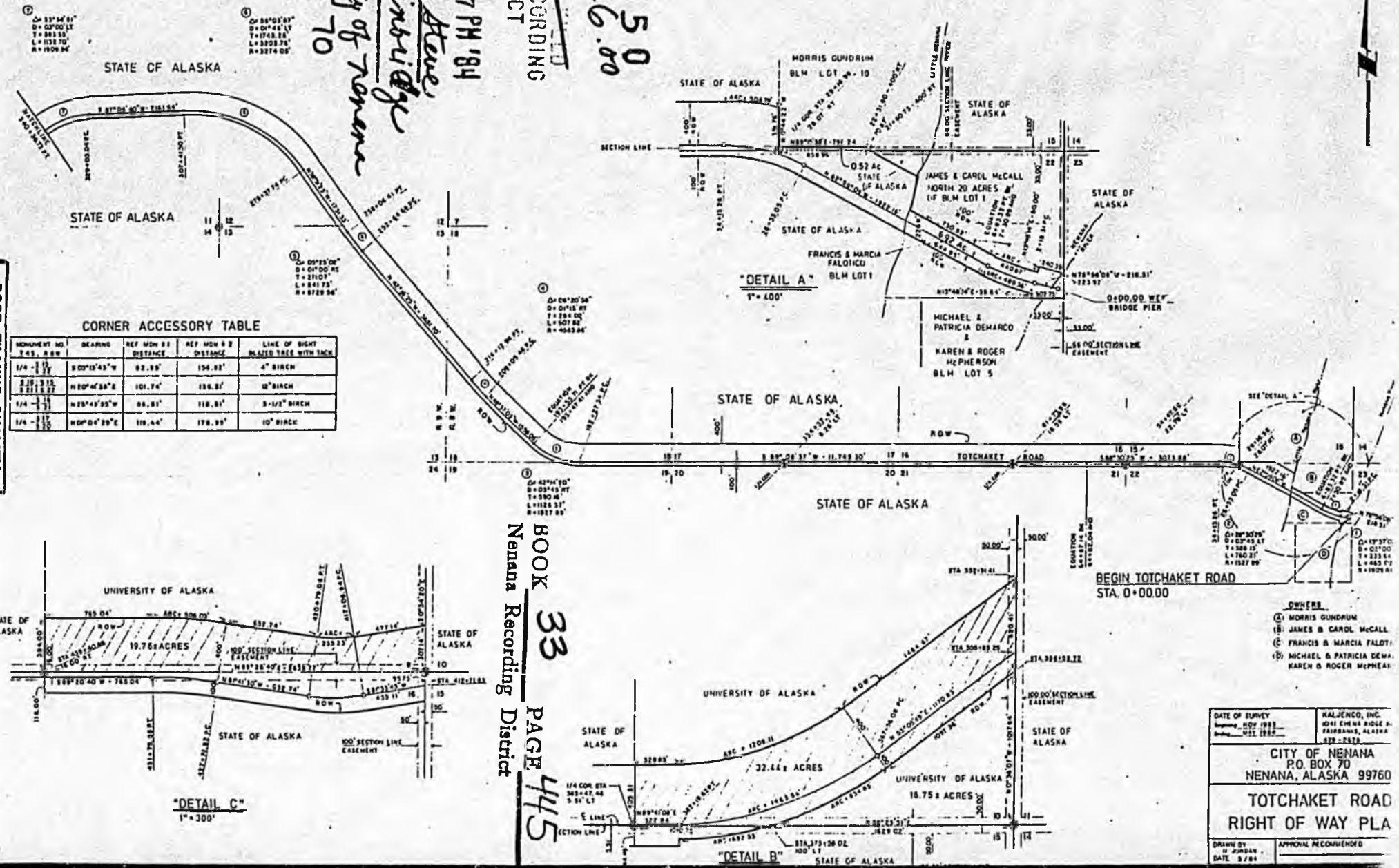
8409502600

RECORDED
NENANA RECORDING
DISTRICT

NOV 5 3 47 PM '84

REQUESTED BY Steve Bainbridge

ADDRESS c/o City of Nenana
P.O. Box 70
Nenana, Ak. 99760



CORNER ACCESSORY TABLE

MONUMENT NO. T 4S., R 8W	BEARING	REF MON # 1 DISTANCE	REF MON # 2 DISTANCE	LINE OF SIGHT BLAZED TREE WITH TACK
1/4 - 11 / 12	S 03°13'45"W	82.88'	154.82'	4" BIRCH
12 / 13	N 20°46'38"E	101.74'	136.82'	12" BIRCH
1/4 - 13 / 14	N 25°43'55"W	86.81'	118.81'	3-1/2" BIRCH
1/4 - 23 / 24	N 01°04'29"E	119.44'	178.99'	10" BIRCH

OWNERS
(A) MORRIS GUNDRUM
(B) JAMES & CAROL McCALL
(C) FRANCIS & MARCIA FALOTI
(D) MICHAEL & PATRICIA DEMA
KAREN & ROGER McPHEAR

DATE OF SURVEY	KALJENCO, INC.
Beginning NOV 1983	1081 CHENA RIDGE R.
Ending MAY 1984	FAIRBANKS, ALASKA
	479-7572

CITY OF NENANA
P.O. BOX 70
NENANA, ALASKA 99760

TOTCHAKET ROAD
RIGHT OF WAY PLA

DRAWN BY	APPROVAL RECOMMENDED
N JORDAN	
DATE 9/84	

BOOK 33 PAGE 445
Nenana Recording District

POOR FILMING QUALITY

NORTHERN REGION
PROPOSED FY 87 DISPOSAL PROJECTS

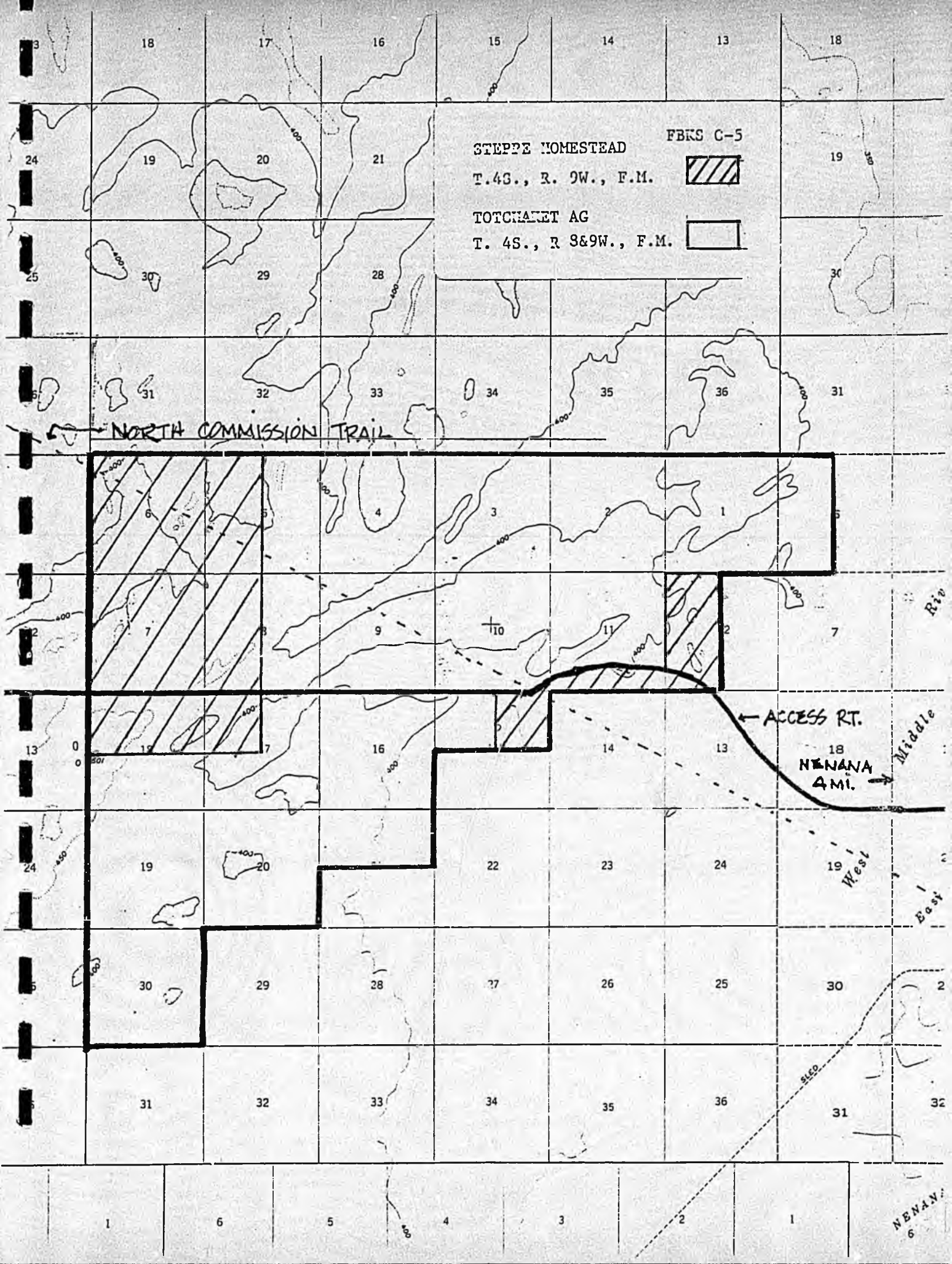
HOMESTEADS

Name	Gross Acres	Net Acres	Lot Size (acres)
Cascaden	1,600	800	1-40
Grand Central	6,400	1,000	1-40
*Pilgrim	3,150	200	1-40
**Steppe	3,1[illegible]	3,100	1-160
Taylor Mountain	48,500	1,000	1-40
**Wickersham	19,200	4,000	1-160
TOTAL	81,950	10,100	

*Pilgrim was a FY 85 project. It is now being offered in FY 87 with a reduced boundary and reduced net acreage.

**Depending upon their suitability for agriculture these homesteads might have a maximum lot size of 40 acres.

Current to: November 16, 1984


FBKS C-5
STEPPE HOMESTEAD
T.4S., R. 9W., F.M.
TOTCHAKET AG
T. 4S., R 8&9W., F.M.
NORTH COMMISSION TRAIL
ACCESS RT.
NENANA
4 MI.
Middle
West
East
SLED
NENANA

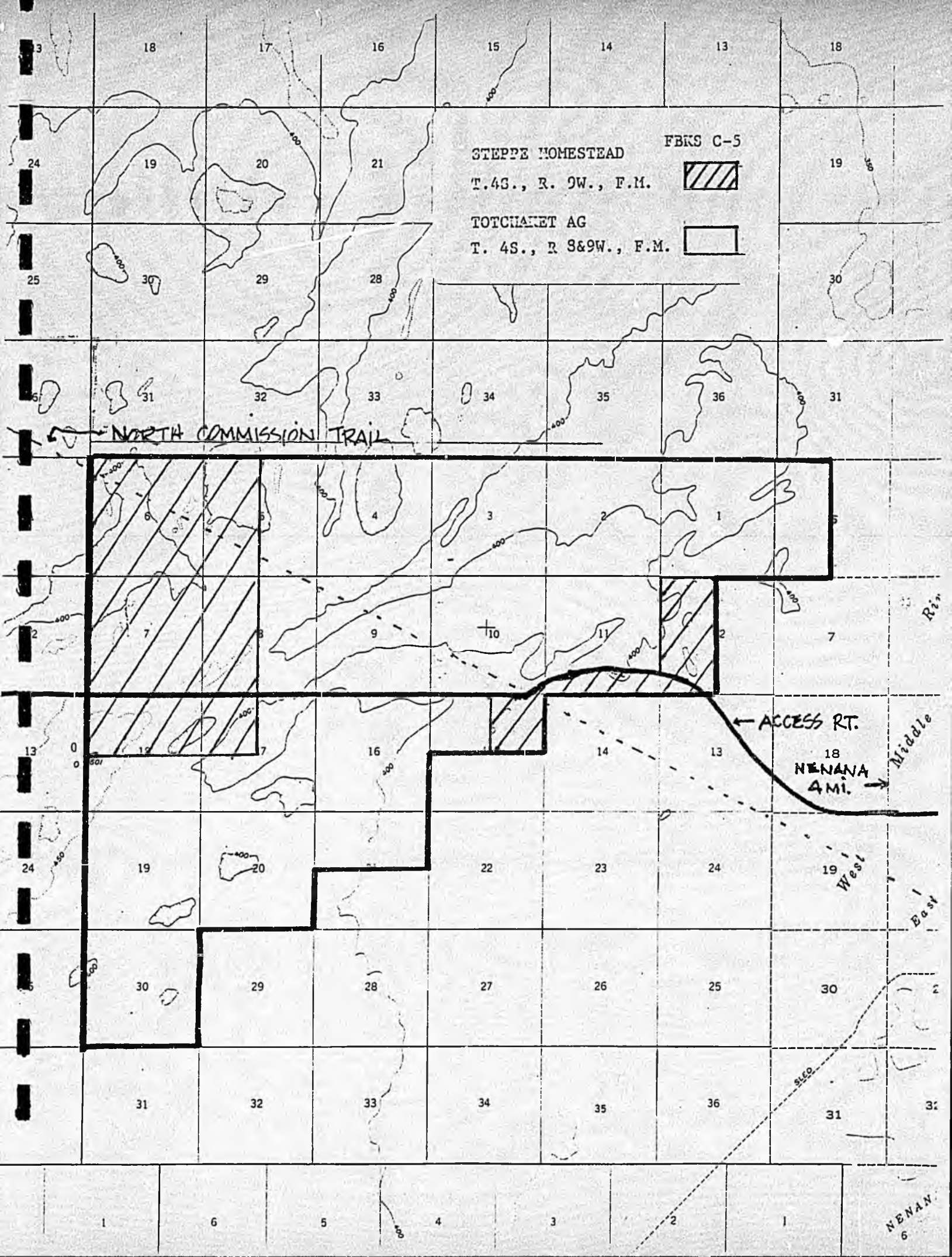
NORTHERN REGION
PROPOSED FY 87 DISPOSAL PROJECTS

AGRICULTURAL SALES

Name	Gross Acres	Net Acres	Lot Size (acres)
French Creek Ag.	2,680	2,680	Undetermined
*Goldstream Ag.	13,600	6,500	Undetermined
Totchaket Ag.	8,000	8,000	Undetermined
TOTAL	24,280	17,180	

*The disposal will be split between FY 86 and FY 87 with a total offering of 13,600 acres. Approximately 6,500 acres will be offered in FY 87. The project will contain homesteads and agricultural sales.

Current to: November 16, 1984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T. 4S., R 8&9W., F.M.
NORTH COMMISSION TRAIL
ACCESS RT.
NENANA
4 MI.
Middle
West
East
NENANA

SENATOR
JOHN B. "JACK" COCHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

TO: Members of the Transportation Committee

FROM: Chairman Coghill

DATE: January 30, 1985

RE: SB 39-Road and Bridges in the Totchaket resource area

S.B. 39 appropriates $5,630,000 for construction of the following:

1. Nenana River Bridge, a three span concrete and steel bridge 440 feet in length.

2. Little Nenana River Bridge, a one span concrete and steel bridge 140 feet in length.

3. East Middle Fork of the Nenana River Bridge, a one span concrete and steel bridge 105 feet in length.

4. West Middle Fork of the Nenana River Bridge, a one span concrete and steel bridge 144 feet in length.

5. Construction of 22.8 miles of roadway.

The purpose of the construction is to open an area of approximately 346,000 acres of land west of the Parks Highway approximately 60 miles southwest of Fairbanks to economic development. The residents of Nenana have been interested in this development area for many years and instigated the studies enclosed in the packet.

Enclosed you will find a copy of the bill, a January, 1981 report on agricultural development, a DOT/PF bill analysis, a packet compiled by Steve Bainbridge of the City of Nenana entitled Backup Material for SB 39, and a copy of Alaska Statute Supplements Sec. 35.15.080 and Sec. 35.15.090.

IDENTIFICATION

BILL NAME
"An Act making a special appropriation to the Department of Transportation & Public Facilities for various construction projects in the Totchaket resources area; and providing for an effective date."

BILL NUMBER
SB. No. 39

DATE INTRODUCED
1-14-85

RELATED BILLS PENDING
None.

SPONSOR(S)
Sen. J.B. 'Jack' Coghill

REFERRALS
Finance

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes

FISCAL NOTE

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED
Rep. Shultz

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES
HB 72 13th Leg.

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
OOT/PF Bill Analysis
Steve Bainbridge/City of Nenana
Thomas ~~Breidt~~ & Associates - Engineering Firm
DNR: No Response

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes

DATE & PLACE SET
1-30-85 Room 250/Butrovich

STAFF MEMO TO COMMITTEE
Yes

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES
Steve Bainbridge
Bob Thomas

SUGGESTED AMENDMENTS/CS DRAFTED

Peratrovich, Nottingham & Drage, Inc.
Engineering Consultants
Telex 090 26436
Int. Telex 200 26436
1506 West 36th Avenue • Suite 101 • Anchorage, Alaska 99503 • 907-561-1011

FILE
TOTCHAKET

February 6, 1985

PN&D 85000jf

Senator Jan Faiks
Co-Chairman, Senate Committee on Finance
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Faiks:

We are requesting your favorable consideration of Senate Bill No. 39 which would provide funds for construction of a highway access road to the farming lands in the Tatchaket area.

We understand the State's limited resources may cause postponement of many worthy projects, and are concerned that this project may not be funded for the same reason.

The Tatchaket Highway Access Road has long range statewide significance in that it will open new lands for development and provide additional future income to the State as well as a useful product for Alaskans. The farming products would utilize our newly acquired railroad and thereby provide another source of revenue to the Alaska Railroad. More people would be employed and other related industries developed. Through our recent involvement as the design engineer for the City of Nenana's Tanana River Bulkhead, we have been very impressed with the efficient manner in which they have managed their capital improvement projects. On that particular project, our engineering company assisted the City in preparing their budget request for the new dock and assisted them in the design and construction management. The City of Nenana, acting as their own contractor, constructed the 1100 ft. of dock for $1.5 million or about $1 million less than conventional State contracting procedures. The City of Nenana used the money wisely and I feel confident they would do the same for this worthy project.

Your support would be appreciated.

Sincerely,

PERATROVICH, NOTTINGHAM & DRAGE, INC.

Roy Peratrovich, Jr., P.E.
Vice President

DN/jk/L5

Toghotthele Corp.

Nenana Village Corporation

P.O. BOX 74080
FAIRBANKS, ALASKA 99707
PHONE: (907) 452-1415

March 20, 1985

Edna B. De Vries, Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Ms. De Vries:

RE: SB 39 Road and Bridges to Totchaket area

Enclosed is a copy of a resolution in opposition to SB 39 that was passed recently by the Toghotthele Corporation Board of Directors. This resolution supports the position of the Nenana Native Council against the road and bridges proposed under SB 39.

SB 39 would provide $4,600,000.00 for the construction of three bridges and $1,030,000.00 for a road. The bridges to be built would cross the Nenana River, the East Middle River and the West Middle River.

It is important to note that the total distance between the three bridges is approximately three miles. Given the cost of constructing roads in Alaska, $1,030,000.00 for the road will be sufficient to build little more then enough to connect the bridges. This will not connect with another road, any existing facility, or any existing State land disposal.

Our main objection is that the access provided by the proposed road and bridges will open the door for haphazard and piecemeal development of the Totchaket area. There is particular concern about the effect agriculture will have on subsistence hunting and fishing. If bridges are to be built that should take place only after there is a clear plan for the development of the Totchaket area and there is evidence that subsistence resources will be protected.

Sincerely,

Winnie B. Atwood
Chief Executive Officer

WBA/cmw

Toghotthele Corp.

Nenana Village Corporation

P.O. BOX 74080
FAIRBANKS, ALASKA 99707
PHONE: (907) 452-1415

TOGHOTTHELE CORPORATION

Resolution 85-2

In Support of Nenana Native Council

on SB 39

WHEREAS; the Nenana Native Council has taken a position of opposition to the bridges and road proposed for construction by SB 39, currently being considered by the 14th Alaska Legislature, and;

WHEREAS; in objecting to the proposed road and bridges the Nenana Native Council cites concerns over the loss of subsistance hunting areas, and;

WHEREAS; further concerns of the Nenana Native Council include the effect of road access on wildlife in the area on the fringe of the Agricultural development and the effect of agricultural on the quality of water in local rivers, and;

WHEREAS; the Nenana Native Council is in opposition to SB 39 specifically because of the adverse effects of agricultural development on traditional lifestyles and because no plan for how the Totchaket is to be developed has been presented to and approved by the residents of Nenana, and;

WHEREAS; the Toghotthele Corporation Board of Directors respects the concerns and objections of the Nenana Native Council, and;

NOW THEREFORE BE IT RESOLVED; the Toghotthele Corporation Board of Directors supports the Nenana Native Council in its opposition to the road and bridges proposed in SB 39.

ADOPTED and DATED this 8 day of March, 1985, in Nenana, Alaska.

Lena E. Dewey

Lena Dewey, Chairperson
TOGHOTTHELE CORPORATION

Winnie B. Atwood

Winnie Atwood, Secretary
TOGHOTTHELE CORPORATION

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

January 28, 1985

Re: SB 39; Road & Bridge Construction in the Totchaket Resource Area

The funds requested for the bridges in SB 39 appear to be adequate. The funds for road construction would provide 2.3 to 5.15 miles of road, depending on the type of road constructed. It is our understanding that the project would include 22.8 miles of road. Perhaps the additional road could be included in subsequent appropriations.

Our costs to construct an 18 ft. wide road to minimum "pioneer" access road standards is $200,000 per mile or about $4,500,000 for 22.8 miles. However, given the type of traffic that would be expected to use this road (farm combines, logging trucks, dump trucks, etc.), we recommend a 28 ft. wide road built to secondary standards. This would cost approximately $440,000 per mile or $10,000,000 for 22.8 miles.

The long-term maintenance costs that might have to be borne by the State for this project could be substantial. The average maintenance costs for a two lane, secondary gravel road open 12 months are $5,400 per mile or $123,120 per year for 22.8 miles. A road constructed to lesser standards may require higher annual maintenance costs.

Warren S. Spurlock

R. J. Knapp
for Commissioner

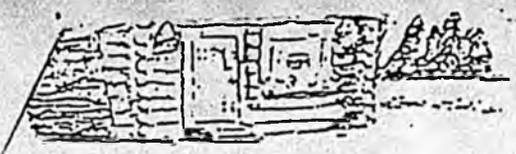
NENANA — TOTCHAKET

UNLOCKING THE AGRICULTURAL POTENTIAL OF WESTERN ALASKA

A Report on A Seminar and Workshop on Agricultural Development.
Sponsored by THE CITY OF NENANA
December 20, 1980

JANUARY, 1981

... the City of
237-5441
Incorporated November 1



City of Nenana

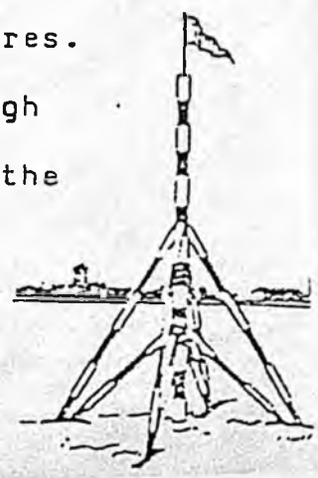
State of Alaska

OVERVIEW OF THE NENANA-TOTCHAKET PROJECT

Date: March 2, 1981
From: John B. Coghill, Mayor

In 1968, during route survey and soil testing work associated with the North Commission west of Nenana, Alaska, field crews found relatively deep top soil covering a broad plateau lying between the Tanana and Nenana rivers to the east and the Kantishna river on the west. More extensive analysis of these soils showed that they possessed excellent agricultural potential. A more extensive and detailed soil survey conducted between 1975 and 1977 by the Soil Conservation Service of the U.S. Department of Agriculture defined the extent of the agricultural soils in what SCS has called the "Totchaket Area", at least 175,000 acres of Class II and Class III soils...soils which, for Alaska, show the highest potential for agricultural productivity. Thousands of acres of Class IV soils with lesser potential are also extensive on the plateau, and preliminary reconnaisance of areas west of the Kantishna show lands with agricultural potential numbering in the millions of acres.

That these lands are capable of producing both High quantity and high quality yields has been accepted by the



State's agricultural community for several years. The more important discussion in recent years has not been whether Totchaket should be developed for agriculture, but what kind of agricultural development would better satisfy the multiple and diverse needs of individual Alaskans and Alaskan families on the one hand, and on the other, what kind of agriculture can best meet the State's urgent need to invest its' short term oil wealth in long term renewable resource industries which can sustain themselves economically far into the future.

Even in view of these urgent concerns, however, planning for eventual development of Totchaket by City, State, University and Federal agricultural interests proceeded slowly during the 1970s as Native Claims in the area were resolved according to the provisions of the Alaska Native Claims Settlement Act of 1971. With final conveyance of land title to Native corporations in the area in late 1979 the last of the major concerns affecting the future of Totchaket were resolved, and the City of Nenana initiated the necessary financing and studies required for the design and long term development of what we are now calling Nenana-Totchaket.

With the support of our delegation to the legislature and the encouragement and assistance of many people around the State, these reports are now either complete or nearly complete and are being presented to the legislature for consideration. It

is important to emphasize again that these studies were not designed by the City to figure out whether or not to develop agriculture. They were designed to determine what kind of agriculture will respond to the real needs of Alaska's people for food, access to land, and increased self-sufficiency; what kind of agriculture can be developed in Nenana-Totchaket which will help the State's new agricultural industry become economically self-sustaining in a reasonably short period of time; and, finally, what will it all cost.

We are pleased with the reports, and we believe they offer a well thought out and detailed plan for initial development of Nenana-Totchaket. The transportation proposal includes both the initial design, and cost estimates for overland access from Nenana to the first two townships which the City and the Department of Natural Resources have scheduled for disposal in February 1982...less than one year from today. The livestock report lays out a detailed and comprehensive plan for the development of a red meat industry that will involve all the State's farming regions. The composite Planning, Development, and Production Schedule from 1980 through 1990 shows our best estimates of the annual financing required and the annual production and employment associated with development in the area. Clearly the amounts of money involved are not insignificant even when compared with the multi-billion annual revenues of the State of Alaska. More importantly, financing decisions this

year will be followed by financing decisions as large, or larger, in subsequent years throughout the decade.

The transportation system should fall into our highest priority for without that access, the proposed clearing, wood fiber harvest, and land disposal programs are meaningless.

AGRICULTURAL PROJECT

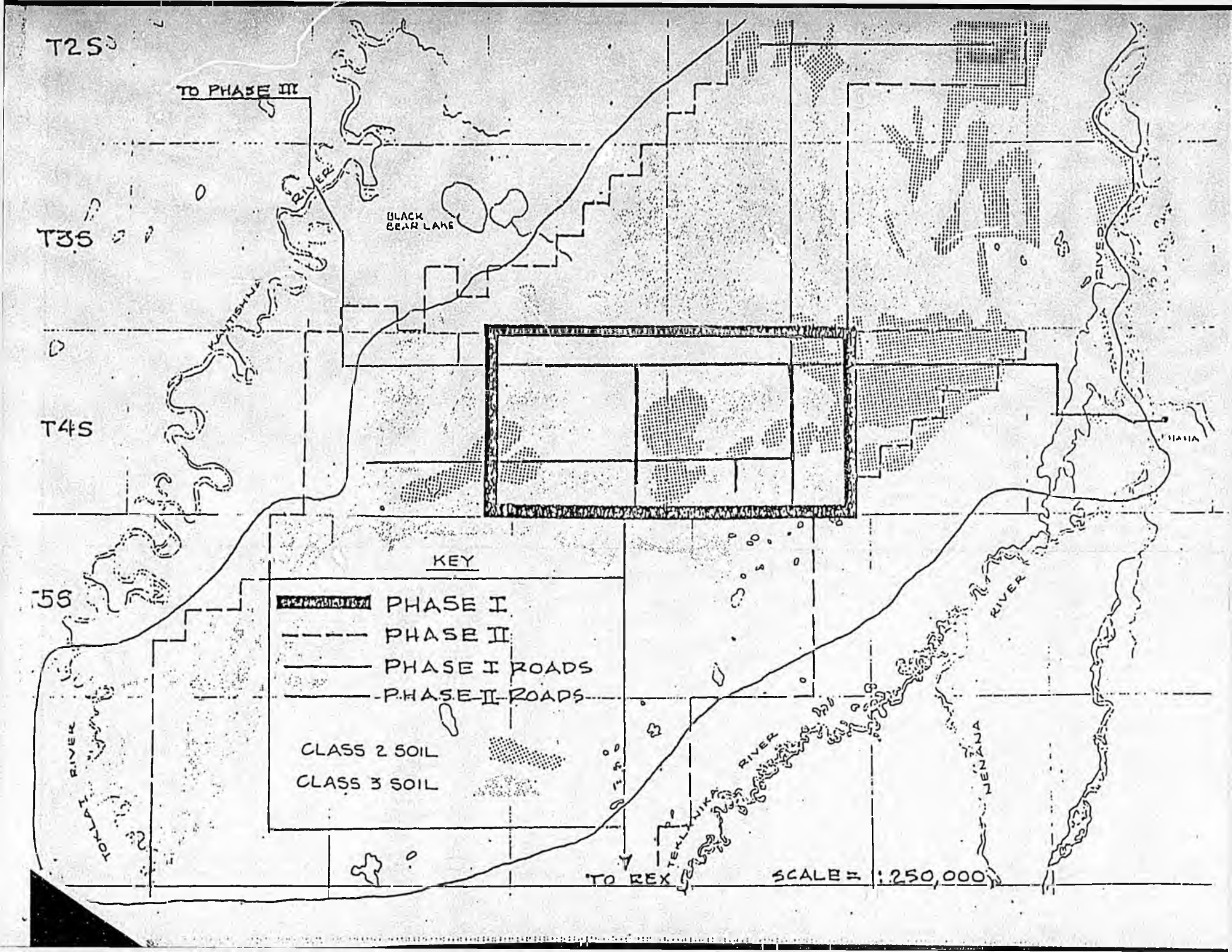
Composite Planning, Development and Production Schedule: 1980 through 1990.

Calendar year.	81	82	83	84	85	86	87	88	89	90
Planning										
1. Research, Development	Phase I			Phase II						Phase III
2. Project	——	——	——	——	——					——
3. Lot Survey	—	—	—	—	—					—
costs per year (000's)	1600	1600	1600	1600	1600	500	500	500	1600	
Development Programs										
1. Clearing	Phase I			Phase II						Phase III
2. Farm support	Phase I				Phase II					Phase III
3. Marketing	Phase I				Phase II					Phase III
4. Livestock	Purchase				Production					
costs per year(000's)	15450	15450	15561	12561	8450	150	150	150	8450	
Capital Projects										
1. Roads and bridges	Phase I			Phase II						Phase III
2. Storage, transfer and support facilities	——									
3. Processing facilities	Livestock						Vegetables			
4. Research Facilities	——									
costs per year(000's)	14000	15000	13000	15000	12500	13000	15000	7000	7000	
Land Disposals (# of townships)	(2)	(2)	(3)	(3)	(2)				(2)	
Fiscal year	81	82	83	84	85	86	87	88	89	90
Total Costs Per Year (000's) (1980 dollars)	31050	32050	34161	29161	22550	13650	15650	7650	17050	
Total Costs Per Year (000's) (12% inflation)	35087	40704	48850	46549	41041	27983	36175	19890	49616	
Disposed Acreage	46080	92160	161280	230400	276480	276480	276480	276480	322560	
Cultivatable	41472	82944	145152	226096	248832	248832	248832	248832	290304	
In Cultivation	13666	34422	69051	107205	142041	159666	166716	166716	166402	
# of Farms	24	48	84	120	144	144	144	144	168	
Employment; Farm Production										
1. Direct (on farm)	150	378	758	1176	1558	1752	1829	1829	1579	
2. Secondary (marketing)	3	7	13	20	26	30	31	31	33	
3. Tertiary (support)	42	105	210	326	432	485	506	506	547	
Production Value, Barley										
1. Tons per year		15465	38897	78028	121142	160506	180423	188389	188389	
2. Price, F.O.B. Port		180	195	210	225	240	255	270	285	
3. Total (000's)		2784	7585	16386	27257	38521	46008	50865	53691	

Revised: 2/23/81

by: Northern Development Associates
Fairbanks, Alaska

* Preliminary calculations.


T2S
TO PHASE III
T3S
T4S
T5S
BLACK BEAR LAKE
RIVER
KAVITSHNA
RIVER
TOKLAT RIVER
TEKLANIKA RIVER
JENNY RIVER
KEY
PHASE I
PHASE II
PHASE I ROADS
PHASE II ROADS
CLASS 2 SOIL
CLASS 3 SOIL
TO REX
SCALE = 1:250,000

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Committee staff
Date: March 4, 1985
Re: Background material for SB 39

The last time the committee heard SB 39, the major question the members could not seem to reconcile was how the City of Nenana could construct the proposed road at considerably less cost than the State DOT/PF estimate.

Included along with the bill in today's packet are background materials as follows:

- A letter from Steve Bainbridge, Nenana city engineer, explaining how the city should be able to build the road for less than ½ the DOT/PF estimate

- A cover letter and computation sheets from David Truax, DOT/PF planner, showing how the department figured their estimate of $200,000 per mile for the pioneer road. They say they have to meet AASHTO standards: AASHTO is the American Association of State Highway and Transportation Officials.

- Resolution number 83-02, passed by the City of Nenana in April 1983, assuming maintenance obligations for Totchaket ag roads

- Information regarding proposed agricultural land disposals in the Totchaket area

Introduced: 1/14/85
Referred: Transportation and Finance

Funding Information
General Fund $500,000
Other Funds -0-
$500,000

IN THE SENATE BY COGHILL

SENATE BILL NO. 49

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities to determine the feasibility of building Kantishna Road; and providing for an effective date."

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

* Section 1. The sum of $500,000 is appropriated from the general fund to the Department of Transportation and Public Facilities to determine the feasibility of building Kantishna Road.

* Sec. 2. The unexpended and unobligated portion of the appropriation made by this Act lapses into the general fund June 30, 1986.

* Sec. 3. The appropriation made by this Act is subject to AS 35.15.080 and 35.15.090.

* Sec. 4. This Act takes effect July 1, 1985.

Office of the City Clerk
832-5441
Incorporated November 17, 1921

City of Nenana

State of Alaska

February 8, 1985

FEB 14 1985

Senator John B. Coghill
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Coghill,

Ref: SB39 - Totchaket Resource Area Roads

Attached you will find a copy of correspondence from David Truax, DOT/PF , Division of Planning, Northern Region that serves to expand on the assumptions made to arrive at a cost per mile of $200,000.

In his letter, Dave comments that ---- "our costs to construct a road would likely be higher than yours. This is because the State DOT/PF must adhere to AASHTO standards ---". In addition, I would add the following comments as to why the City of Nenana is likely to be able to construct roads for lower per mile costs than those indicated by DOT/PF:

FIRST - The City's method of approach to a project would be the "force account" method. This allows the City to act as the "contractor", whereby the City assumes any "risk" associated with the performance on a job. Also the City, by acting as it's own contractor, eliminates the "profit" factor which any private sector contractor would normally include in its contract unit bid prices and in any "change orders" to the contract.

SECOND - The City of Nenana,again as its own contractor, can schedule the work on a project so as to take advantage of competitive bidding climates and slack seasons. For example, for building roads to the Two Mile Lake Agricultural Project, construction was scheduled for the winter months when typically construction equipment is idle. By doing this we achieved the benefit of low equipment rental rates during the off season.

From experience on the Two Mile Lake Ag road construction project where we are building a typical "pioneer" road for approx. $70,000 per mile, it is evident that the above two items allow for a drastic reduction in per mile construction costs.

In addition, and specific to, the proposed Totchaket road project,

THE FOLLOWING ITEMS ARE COMPLETE:

1. Surveying and Design of the roads and bridges was accomplished with funds received during First Session of the Twelfth Legislature (CSSB222)

2. Right-of-way acquisition complete
   Right-of-way Plats filed and recorded

3. Right-of-way partially cleared

IN CONSLUSION, all the above factors should allow the City of Nenana, acting under a "T.O.R.A." with DOT/PF, to accomplish the first seven miles of road construction at $90,000 per mile (TOTAL $630,000) The other $400,000 in the line item appropriation of $1,030,000 for Road Construction was to allow for the upgrading of an additional 20 miles of road to the west at $20,000 per mile. (Note: This 20 miles is already cleared and driveable!)

IT SHOULD BE EMPASIZED that the main thrust of this project is the first seven miles of road and the bridges. The money requested is sufficient to accomplish this.

Please call me at 832-5501 should you require additional informatiom.

Sincerely,

Steve Bainbridge, P.E.
City of Nenana

cc Commissioner Richard Knapp, Pouch Z, Juneau, Alaska 99811
Susan Fleischhauer, Pouch Z Juneau, Alaska 99811
Jon Widdis, 600 University Ave, Suite B, Fairbanks, Alaska 99701
Dave Truax, 600 University Ave, Suite B, Fairbanks, Alaska 99701
Bob Thomas, Box 80783, Fairbanks, Alaska 99701

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DIVISION OF PLANNING, NORTHERN REGION

600 University Avenue, Suite B
Fairbanks, Alaska 99701
(907) 479-4201

February 5, 1985

Re: Totchaket Resource Area Roads

Steve Bainbridge
City Engineer
City of Nenana
P.O. Box 70
Nenana, Alaska 99760

Dear Steve:

Enclosed is a copy of the typical section and computations we used to arrive at our construction cost estimate for an 18' wide access road in the Totchaket resource area. As you know this cost estimate was provided to Senator Coghill by letter on Janaury 25, 1985.

As I mentioned to you during our February 5, 1985, telephone conversation, wherein you requested the enclosed materials, our costs to construct a road would likely be higher than yours. This is because the State DOT&PF must adhere to AASHTO standards, which may not necessarily be true for road construction done by the City of Nenana.

If you have any questions regarding the computations or the typical section please contact Dan Sterley at our Design Section. He can be reached at 452-1911.

Sincerely,

David W. Truax
Southern/Interior Planner

DWT:tc

cc: Susan Fleischhauer, Legislative Liaison, Headquarters
Dan Sterley, Design, Northern Region

250119

State of Alaska
Department of Transportation
& Public Facilities
Interior Region

Computations

Project No. _____
Project Name _____
Calc. by D.S. Date 7-6-8
Checked by _____ Date

For KENANA RE. ROADS - TOTCHAKET AREA

RESOURCE DEVELOPMENT ROAD - DESIGN CRITERIA

DESIGN SPEED - 40 MPH

STOPPING SIGHT DISTANCE - 325 ft. MINIMUM

PASSING SIGHT DISTANCE - 1500 ft MINIMUM

MAXIMUM GRADE 7 % ASSUMING LEVEL TERRAIN

MAXIMUM SUPERELEVATION 6 %

WIDTH OF TRAVELED WAY FOR TWO LANE ARCH ROAD - 18 ft.

SHOULDER WIDTH - 2 ft

TOTAL WIDTH - 22 ft.

HORIZONTAL CURVE RADIUS - 750 ft.

DEGREE OF CURVE - 7.5°

25019

State of Alaska
Department of Transportation
& Public Facilities
Interior Region

Computations

Project No. _____
Project Name _____
Calc. by [illegible] Date 2-6-[illegible]
Checked by _____ Date _____

For [illegible]

QUANTITIES

BORROW "A" (42'+26')(1')(5280')(22.8 mi) ÷ 27 CY/yd³ (= TON/yd³) = 406,500 TONS

C.R.B. (26')(½')(5280')(22.8 mi) ÷ 27 (=) = 107,000 TONS

[illegible] 1 MILE, 36' COVE, EQUAL SPACE = 7200 L.F.

COST

BORROW "A"	406,500 TONS @ $3.50/TON	=	1,423,000
C.R.B.	107,000 TONS @ $12.00/TON	=	1,284,000
CULVERTS	7200 L.F. @ $40.00/L.F.	=	368,000
			3,775,000
+ 5%	[illegible]		189,000
			3,964,000
+ 5%	MOBILIZATION COST		198,000
			4,162,000
+ 10%	CONTINGENCY COST		476,000
			4,638,000

4,638,000 ÷ 22.8 = $203,500/mile

RESOLUTION 83-02

WHEREAS: the Nenana - Totchaket Agricultural Project is of vital importance to the future economic base of the Municipality of Nenana; and

WHEREAS: the access roads and bridges within the project area are necessary for the project to proceed on schedule; and

WHEREAS: the support of the Alaska Department of Transportation and Public Facilities (DOTPF) for legislative capital funding for these access facilities is desired; and

WHEREAS: the DOTPF is concerned about the impact these roads could have upon the DOTPF maintenance budget; and

WHEREAS: the Municipality of Nenana has road powers and the authority to assume maintenance responsiblilites for roadway maintenance; and

WHEREAS: AS 19.30.211 (a) provides the DOTPF an ideal vehicle to transfer this maintenance responsibility; and

WHEREAS: the Municipality of Nenana is willing to assume this maintenance responsibility;

NOW THEREFORE let it be known that the Municipality of Nenana assumes the maintenance obligations for the Nenana - Totchaket Agricultural Project access roads.

ADOPTED AND APPROVED by the Municipal Assembly of the Municipality of Nenana, Alaska this 12 day of April, 1983 by an affirmative vote of 5 to 0.

John B. Coghill, Mayor

Introduced: 4/12/83
Adopted 4/12/83
ATTEST: 4/12/83

Rick S. Brewer, Municipal Clerk

Land Disposal - Totchaket

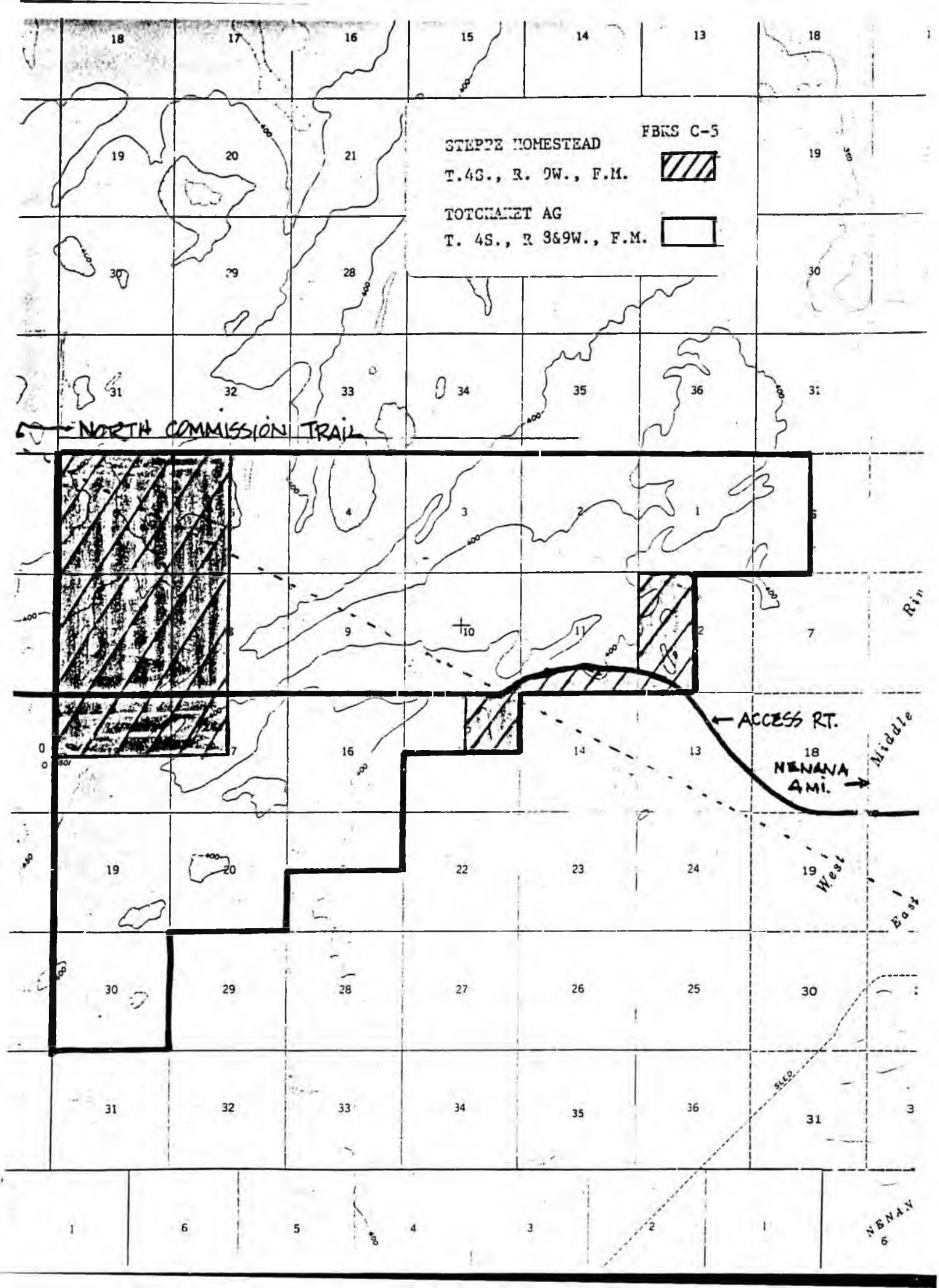
NORTHERN REGION
PROPOSED FY 87 DISPOSAL PROJECTS

AGRICULTURAL SALES

Name	Gross Acres	Net Acres	Lot Size (acres)
French Creek Ag.	2,680	2,680	Undetermined
*Goldstream Ag.	13,600	6,500	Undetermined
Totchaket Ag.	8,000	8,000	Undetermined
TOTAL	24,280	17,180	

*The disposal will be split between FY 86 and FY 87 with a total offering of 13,600 acres. Approximately 6,500 acres will be offered in FY 87. The project will contain homesteads and agricultural sales.

Current to: November 16, 1984


FBKS C-5
STEPPE HOMESTEAD
T.4S., R. 9W., F.M.
TOTCHAKET AG
T. 4S., R 3&9W., F.M.
NORTH COMMISSION TRAIL
ACCESS RT.
NENANA 4 MI.
Middle
West
East
NENANA

SB

409

KANTISHNA ACCESS

Warrants

A highway to the Kantishna area can be justified on the following basis:

Tourism is Alaska's second largest industry and Mt. McKinley is the State's number one tourist attraction. The park road is inadequate to serve this industry for the following reasons:

a. Geometrics, the road is substandard in width, alignment and grade. The road is hazardous as demonstrated by the rash of serious bus accidents that have occurred during the past few years.

b. Access is too restrictive, visitors must travel by bus (shuttle school buses or buses operated by park concessionaires). This ride can last up to six hours and is a source of discomfort, especially to senior citizens and young children.

c. Capacity, the demand has increased dramatically during the past decade as has the growth of tourism. The Interior Alaska Transportation Study estimated nearly 5000 vehicles by the year 2005.

d. Because time at vantage viewpoints is extremely limited, over 50% of those seeking a view of Mt. McKinley are disappointed.

e. The increase of traffic on this road has degraded the wildlife viewing aspect of this route.

Mining is also an important industry in Alaska and the Kantishna area is an important mining area. Recent assessments conducted by governmental officials documented the existance of commercial ore deposits. The existing road is inadequate to serve this industry because of slow moving tour bus traffic, and it is substandard.

FBKS. CHAMBER OF COMMERCE

Enhance the State's ability to assure our visitors and residents a quality experience. Mt McKinley is Alaska's crown jewel. Access and vantage viewing are at the sole discretion of the U.S. Park Service. However Alaska's entire tourist industry and the State's reputation suffer when visitors ride an uncomfortable bus for six hours and still do not get to see the main attraction.

Give opportunity for the private sector to provide tourist facilities that are now being provided by the government sector or not being provided at all. Mining claims in the Kantishna area are patented and can be used by the private developer to locate hotels, lodges, camping parks, hostels and other visitors facilities. The area provides an unsurpassed view of Mt. McKinley and visitors would have the opportunity to remain in the area for longer periods increasing their chances of seeing the mountain. (note, the cyclic type weather that occurs during the dry interior summer virtually assures all visitors a view of the mountain if they can remain there for a day or so.

The private sector is more sensitive to visitor satisfaction thus when this sector caters to our visitors the results are happier, longer and more return visits.

An alternate access to the Kantishna area would make it possible for the park service to redirect the park road traffic toward wildlife viewing. This is more compatable to that portion of the park's classification, (wilderness). It also provides a more focused and quality wildlife viewing concession.

A northern access, currently economically viable as far as the Kantishna area, can be extended toward the McGrath area to serve that area as the need warrants.

A northern access would tie into the existing park road, making it

possible to provide a loop system, a limited loop system or limited to wildlife tours. Note this would be a popular concession and with some imagination could be worked in two directions.

There is less precipitation on the north side of the Alaska Range than on the south. This can be documented through weather records but is clearly evident by the lack of glaciers on the north side when compared with the south side. Since viewing of the mountain is of paramount importance, this aspect cannot be overlooked when establishing park facilities, nor should the North or South facilities be exclusive, both offer differing experiences making improvements not an either/or decision but rather one of establishing priorities.

It should also be recognizied that the Park is such a major attraction that constructing additional facilities will not provide a proportional increase in capacity as visitors will elect to extend their stay to experience all that is offered.

Issues and Strategy

Establishing a northern access will require careful planning and is subject to stipulations established in the National Interest Lands Act as well as the National Environmental Protection Act of 1969. It will be subject to critical review, organzied environmental and philosophical opposition.

Provision has been made in the National Interest Lands Act to mandate access deccision on a timely basis. When the environmental document is officially started a time frame also starts. This is an advantage, if the State has the project well in order. However, it can be a detriment if the State is unprepared to deal with all the issues that may surface, resulting in a decision that may not be in the best interest of the State. If that should occur, the ability to appeal is limited and the State may be required to began the process all over. Because of this, it is important that the DOTPF ensure that

all interested enities are involved, all issues identified and all decision making agencies be as much in accord as possible prior to starting the clock.

This can be accomplished by adding a preliminary phase to the normal location phase of a project. Generally the location report and environmental document are prepared at the same time. In this case it is recomended that the DOTPF prepare a draft location report and in so doing identify and resolve all issues with decision making agencies to gain as much of a consensus as possible, then begin the environmental document. The location report would be finalized concurrent with developing the environmental document.

Project description

Access to Kantishna via the north has three major alternatives, they are:

1. Via the Stampede trail to Stampede then through foot hills to Kantishna.

2. Via the old sled trail leaving the Parks Highway near Rex.

3. Via the proposed Nenana Agriculture access road to the Kantishna River then upriver to Kantishna (note, the route to the Kantishna River is already designed).

It is premature to speculate on which alternate is the most attractive. All have attractive aspects. Some have already been investigated to some degree and some aerial photographs are available. It is conceivable that the final routing will be a combination of these.

The road itself will be a major highway and probably have to be widen to four lanes by the year 2020. Initially it should be paved with two 12' lanes and 8' shoulders. Alignment and grade should be designed for 55 mph and should take advantage of the scenic opportunties. The road should be designed and classified as a State

Scenic Route.

Funding

Immediate funding needs are for the location phase. During that phase the merits of the project will be documented, standards adopted, an alignment chosen and preliminary costs developed. The project will have location approval with authority to design and construct or it will be determine to be in the best interest of the State or Nation not to proceed.

Because of the sensitive nature of the project the DOTPF should allow ample lead time and funding to ensure that location documents will stand up to close scrutinity. At this time the cost to accomplish this is estimated at $500,000 with a time frame of three years.

This work entails field surveys aerial photography, research, conceptal design, economic analysis, comparsion of alternatives, indepth agency coordination and public involvememt. The completed product will include:

-approved environmental impact statement with 4(f) determination

-approved location study report

-certified location public hearing documents

-draft soils report

-location approval.

Westours

February 26, 1985

MAR 4 1985

Senator Jack Coghill, Chairman
Senate Transportation Committee
ALASKA STATE LEGISLATURE
Pouch V
Juneau, AK 99811

Dear Senator Coghill:

I have read your Senate Bill #49 and agree wholeheartedly that now is the time to agressively pursue the development of a road to Kantishna. Mt. McKinley is one of Alaska's greatest assets, however, many people have a disappointing experience in the Park because of inadequate facilities and limited viewing opportunities. Although we will never be able to guarantee a view of the mountain, increased access and facilities would provide us with an increased opportunity to satisfy the Alaska visitors.

We greatly appreciate your interest in this vital segment and fully support the efforts to begin this project.

If we can be of any further assistance please let me know.

Sincerely,

Thomas C. Tougas
Vice President
TRANSPORTATION DIVISION

TCT/ss

300 ELLIOTT AVENUE WEST
SEATTLE, WASHINGTON 98119
TELEPHONE 206 281-3535

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
OFFICE OF MINERAL DEVELOPMENT

POUCH EE
JUNEAU, ALASKA 99811
PHONE: 465-2023

March 4, 1985

MAR 4 1985

The Honorable Jack Coghill
Chairman
Senate Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Coghill:

The Office of Mineral Development has reviewed SB 49 calling for a feasibility study on building the Kantishna access highway.

The Kantishna area has long been recognized for its substantial gold resource. Numerous mining claims have been patented. In addition to gold, significant deposits of strategic metals such as tungsten and antimony have been discovered in the area. With access, the region has much enhanced potential to become once again a significant productive mining region.

Currently, traffic on the Denali Park road is restricted by the National Park Service which severely limits mining activity at Kantishna. This restriction also limits Alaska's rapidly growing visitor industry. Access would allow entry to Denali National Park to many more people now unable to visit because of the severe travel restrictions in effect on the Denali Highway. The Kantishna access would enable firms in the travel industry to construct additional hotels and visitor facilities on privately held land at Kantishna. Additionally, it would greatly facilitate the expanded used of the Stampede Mine as a training property for mining students from the University of Alaska.

Of the three alternative routes being considered, this office supports the Old Stampede Road route. This is the shortest of the options being considered. It makes use of a long established trail to Stampede and requires a relatively short extension through the foothills connecting Stampede to Kantishna.

Sincerely,

John F. M. Sims
Director

JFS/cwREGLR3/Coghill
3485a

08-H25LH

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

January 28, 1985

Re: SB 49; Feasibility of Building a Road to Kantishna

A road to Kantishna would have two major economic advantages. First, it would provide a northern access for tourists into Denali Park. The Interior Transportation Study estimates that within twenty years such an access could generate 5,000 vehicles a day in the summer months. Secondly, the road would provide access for mining in the Kantishna area, and possible future extension to the Kuskokwim Valley.

The possible benefits to be derived from this project compare favorably with other major system extensions, such as extension of Chena Hot Springs Road to Twin Mountain, construction of a road to the Slate Creek asbestos deposit or a major rail extension.

Provided we receive the cooperation of the National Park Service, the feasibility study through location approval is expected to take about 27 months to complete. Because of this timeframe, we recommend that the lapse date be extended to June 30, 1987.

The amount of $500,000 for the study is adequate.

Warren S. Spurk

R.J. Knapp
for Commissioner

Senator John B. (Jack) Coghill
Alaska State Legislature

Box A
Juneau, Alaska 99811
(907) 465-4745

Box 158
Nenana, Alaska 99760
(907) 832-5471

April 3, 1985

The Honorable Frank Murkowski, Stevens Young
317 Hart Building
Washington, D.C. 20510

Dear Frank:

During this legislative session, the Senate Transportation Committee, of which I am chairman, has considered a proposal to construct a Kantishna access road north of the Alaska Range to connect the Kantishna area with the Parks Highway.

Our State's most popular tourist attraction, the viewing of Mt. McKinley, has disappointed many tourists because inclement weather conditions prevent adequate viewing of the mountain. Summer tourists plan well in advance to visit our great state and the continent's highest mountain. According to Denali Park officials over 50% of the visitors do not even get a glimpse of Mt. McKinley because crowded conditions on the park road and at park facilities do not allow them to stay until the weather clears.

The proposed highway will help solve this problem by providing access to many excellent viewpoints of the mountain. The road will also allow access to private property in the area which can be used by individuals for the construction of new hotels and tourist facilities. Tourists can then be assured of a more satisfying visit to the park, and therefore, a more pleasurable trip to Alaska.

I have received correspondence from a variety of interested groups, including private tour groups and the Alaska State Division of Tourism recognizing the need to develop this project.

Tourism is Alaska's second largest industry. In light of the State's declining oil revenues, it seems prudent to me that we invest in this growing sector.

The proposed road to Kantishna would not only have positive effects on the Denali National Park and Alaska's tourist industry, it would also benefit the mining industry.

The Alaska Miners Association and its 2000 members have extended their support. Many rich mineral deposits are being worked - or have been identified - in the Kantishna area, and the existing access road is limited for miners to certain nighttime hours in the summer.

Presently, mining trucks cannot compete with tour buses which use the road all day long. A new highway will solve this problem and should enable further mining development.

The agriculture industry will also share the benefits of construction of a highway. Rich agricultural land exists in the area. Easy access to these lands will be of value.

The Department of Transportation and Public Facilities is in the process of adopting a five-year plan to answer our highway problems. Construction of the Kantishna Highway is part of that answer; particularly when we consider the growing pressure of visitors on Denali and the pivotal role such a road would play. Federal funding will be necessary to study and implement this project. I urge you to consider the construction of the Kantishna Access Highway and look forward to your reply.

Enclosed with this letter is a synopsis of the Kantishna Access Highway and various correspondence in support of this proposal.

Sincerely,

Jack

JBC:mcm
Enclosure

United States Department of the Interior
NATIONAL PARK SERVICE
ALASKA REGIONAL OFFICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503 - 2892

IN REPLY REFER TO:

A22(ARO-SA)

February 13, 1985

FEB 19 1985

Honorable Jack Coghill
Alaska State Senate
Pouch V
Anchorage, Alasks 99811

Dear Senator Coghill:

We appreciate your request for our review and comments on Senate Bill 49 and the accompanying report and route map.

As you recognize, Denali National Park and Preserve is a major resource and asset to both the State of Alaska and the nation. I believe it is incumbent upon all of us at the state and federal levels to work together to assure that the experience for the visitor is enjoyable and that the wildlife and other resources of the park are preserved.

We agree with and support the goal of improving the visitor's experience. However, it would be inappropriate for the National Park Service to take a position on the proposed bill to appropriate $500,000 for a state feasibility study of a northern access route. As your study recognizes, the Alaska National Interest Lands Conservation Act (ANILCA) and the National Environmental Policy Act set forth procedures for analysis and consideration which must be followed before any decision to allow access across a national park. Title XI of ANILCA sets forth the process for reviewing and permitting construction of a new access route.

The quality of the visitor's experience in Denali National Park has been a major concern within our organization. As you know, we are currently in the process of designing a new visitor access center near the park headquarters and we will soon be contracting with another local firm for the design of the reconstruction of Denali Park Hotel. Recommended budgeting for these two projects totals $14.2 million. In addition approximately $15 million is programmed for improvements on the Denali Park Road.

A draft general management plan for Denali National Park will be released in March for public review and comment. This plan invites public comment on alternattive ways of improving the visitor's experience while preserving the wildlife and natural features which they come to see. As soon as it is available we will send copies of this draft plan to you and members of the Senate and House Resources Committees. We would very much appreciate your thoughts and recommendations.

This summer we will also be working with the State Department of Natural Resources and the Department of Transportation and Public Facilities under a cooperative agreement to investigate the possibilities for developing visitor access and facilities on the south side of the Alaska Range. We were pleased to note that your report recognizes that development on the north and south sides is not an either or situation, and that the south side development would offer visitors a different experience in a landscape which is much in contrast to that of the north. Further, it is important to distribute the points of access to the natural resources of the Mt. McKinley massif so that they are readily accessible from both Anchorage and Fairbanks. We will keep you informed of the results of this cooperative study and look forward to your comments.

Sincerely,

Regional Director
Alaska Region

cc:
Commissioner, Department of Natural Resources
Commissioner, Department of Transportation and Public Facilities
Members of Senate and House Resources Committees

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF TOURISM

POUCH E
JUNEAU, ALASKA 99811
PHONE: 465-2010
TELEX: 45331

February 25, 1985

The Honorable Jack Coghill
Chairman
Senate Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Coghill:

Since statehood, Denali National Park and majestic Mt. McKinley have been one of Alaska's major travel attractions. A recent research report released by our Division of Tourism and compiled by the Department of Labor entitled "Alaska Traveler Survey and Visitor Industry Analysis 1983" shows that more than 70 percent of summer highway pleasure visitors indicated they had visited Anchorage and Fairbanks and 60 percent of these visitors reported they had visited Mt. McKinley/Denali.

Certainly a growing need for access into and through the park suggests that alternative access be explored. The legislation you have proposed in SB 49 calling for a feasibility study of building the Kantishna Access Highway would be a step in this direction.

Because traffic to the park continues to grow and considering the time needed to conduct a feasibility study, the sooner the necessary engineering and cost information is compiled, the sooner our State can move to have some control over the traffic flow to this unique vacation destination. The more visitors who can view the mountain and enjoy our wildlife, the more who will return home with an unequalled vacation experience.

Best regards,

Don Dickey
Director

DD/wfs1752W
22585a

08-H7LH

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

February 26, 1985

Mr. John Manly
Committee Aide
Senate Transportation
Committee
c/o Senator Coghill
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Mr. Manly:

This letter is in response to your request dated February 9, 1985, that the department prepare a brief statement on the fish and wildlife values and potential impacts associated with an extension of the state highway system to Kantishna via three alternative routes from the Parks Highway. It is our understanding that the three alternatives under consideration include access:

1. Via the Stampede Trail to Stampede then through the foothills to Kantishna;

2. Via the Rex Trail to the Kantishna River then upriver to Kantishna;

3. Via the proposed Nenana-Totchaket Agriculture access road to the Kantishna River then upriver to Kantishna.

Our Habitat Division has performed a review of the alternatives. An abbreviated summary of the fish and wildlife values and the department's recommendations relative to the three alternative routes follows.

Alternative #1 - Stampede Trail: Wildlife values adjacent to this route are moderate to high in importance. Black bear, grizzly bear, moose, caribou, and a variety of furbearers are present. Dall sheep are present along the north flank of the Alaska Range to the immediate south. The McKinley Caribou Herd historically utilized this area as prime overwintering and limited calving habitat. Although population abundance is currently low, an expansion of the herd size will necessitate use of this historic range. The

proposed route also transects important moose fall and winter concentration areas. Recreational and subsistence use is moderate and occurs predominately along the Stampede Trail. Trapping intensity is moderate to heavy.

Alternative #2 - Rex Trail: Fish and wildlife values adjacent to this route are moderate to high in importance. Black bear, grizzly bear, moose and a variety of furbearers are present in moderate numbers throughout most of the area. Significant populations of these species, however, are present within the Nenana, Teklanika, Toklat, and Kantishna River riparian corridors. Recreational and subsistence use is moderate to heavy within these river corridors. Human use outside of these corridors is limited.

The portions of the upper Kantishna River and Bearpaw River drainages affected by this route are considered critical waterfowl habitat areas, providing nesting and molting habitat for high concentrations of several species of waterfowl and stopover sites for cranes and other species that utilize the western Interior.

The Toklat River Springs located at the confluence of the Toklat and Sushana Rivers supports the largest known population of fall chum salmon in Alaska and is estimated to contribute 27% of the commercial and subsistence fall chum salmon harvest in the Yukon and Tanana River fisheries downstream from the mouth of the Kantishna River. The spring's area also supports a small population (500-600) of overwintering mallards which is believed to be the northern-most freshwater waterfowl wintering area in North America. The Toklat River Springs' fall chum salmon spawning area is considered critical habitat and has been nominated for legislative designation.

Alternative #3 - Totchaket Agriculture Access Road and Extension: Based upon the limited data presently available, most of the area adjacent to this route appears to have moderate to low fish and wildlife habitat value. Recreational hunting, subsistence use and trapping also appear to very light in the area. There are no critical habitat areas yet identified. From the standpoint of potential impacts, the department's primary concerns are related to those portions of the route which are (1) adjacent to the Kantishna River (which is a designated anadromous fish stream) or (2) require crossings of resident fish streams. Rather than influencing route selection, these concerns are normally addressed by the department, via its AS 16 authorities, through the provision of adequate mitigating measures as a component of route design and construction.

Recommendations: From the sole standpoint of minimizing impacts to fish and wildlife or their habitats, the department prefers that any extension of the state highway system to Kantishna be aligned along the Alternative #3 - Nenana-Totchaket Agriculture Access Road and Extension route.

The department appreciates the Senate Transportation Committee's solicitation of our concerns and recommendations. We remain available to provide additional information as may be needed.

Sincerely,

James Ayers
Special Assistant to
the Commissioner

PART II: INTERIOR SYSTEM EXTENSIONS

Kantishna Extension

The Kantishna Extension could be a highway located along the north flank of the Alaska Range connecting the Kantishna area with the Parks Highway in the area of Anderson or Nenana.

The Kantishna extension should be on the drawing board and ready to be developed into a linkage loop road. A great deal of thought should be given to having this linkage road take-off from the proposed Nenana Agriculture roads. This road can serve at least three industries in the State and give people of our State more access to our lands.

Tourism

Mt. McKinley is Alaska's number one tourist attraction. The demand to see Mt. McKinley has grown dramatically in the past ten years going from less then 100,000 annual visitors to over 300,000, all of which are accommodated during the tourist season. The existing road that goes through Denali National Park back to Wonder Lake, which is in the Kantishna area, is inadequate to accommodate the traffic demands. As a result, users are severely restricted. This restriction stems not only from safety considerations but also to retain the wildlife viewing opportunities that are available along this route. There have been a number of bus accidents on this road which testifies to its inadequacy from a safety standpoint. Because of the imposed restrictions, those wishing to see McKinley must ride a tour bus or shuttle bus back to the more spectacular viewing points--a ride that often takes as much as five hours. Throughout this ride they are treated to magnificent scenery and excellent wildlife viewing opportunities. Too often visitors are unable to view the mountain itself because of the weather conditions at the time they are there. Park officials estimate that the mountain is obscured by clouds more than 50 percent of the time.

No doubt there are many disappointed visitors as well as uncomfortable ones who have endured the round trip. Those older visitors and younger ones with small children can find this exceedingly difficult.

The dilemma that is presented to the Park Service is how can all the visitors be transported back to a viewing vantage point in a comfortable manner and still retain the wildlife viewing opportunities that now exist. There are basically three options. One is to upgrade the existing road within the park. This option would be extremely expensive because of the mountainous terrian that the road traverses, notably that area through Polychrome Pass. An upgraded roadway would also tend to reduce the wildlife viewing opportunities. A second alternative would be to add more shuttle and tour buses, but even this alternative would call for some upgrading to the existing road and would adversely effect wildlife viewing as well. For these reasons, the Park Service is concerned about adding more buses to accommodate the anticipated visitor growth. A third alternative would be to create another viewing vantage point for the mountain. The Park Service has considered this as well. Their concept would be to provide another viewing area on the south flank of the Alaska Range. They have not considered one on the north flank. The Interior Transportation Study (ITS) suggested that the north flank has high potential. The south flank concept would essentially be single purpose. Visitors would drive in and return, probably from the Parks Highway south of Cantwell. There would still be a demand for wildlife viewing and those wishing this service would have to take the tour on the existing park road and return, perhaps a ten hour round trip or longer.

A vantage point on the north side in the vicinity of the Kantishna area and served by a well designed highway, leaving the Parks Highway somewhere between Nenana and Healy, would have some apparent advantages over a southern concept. The weather on the north side of the range is better than on the

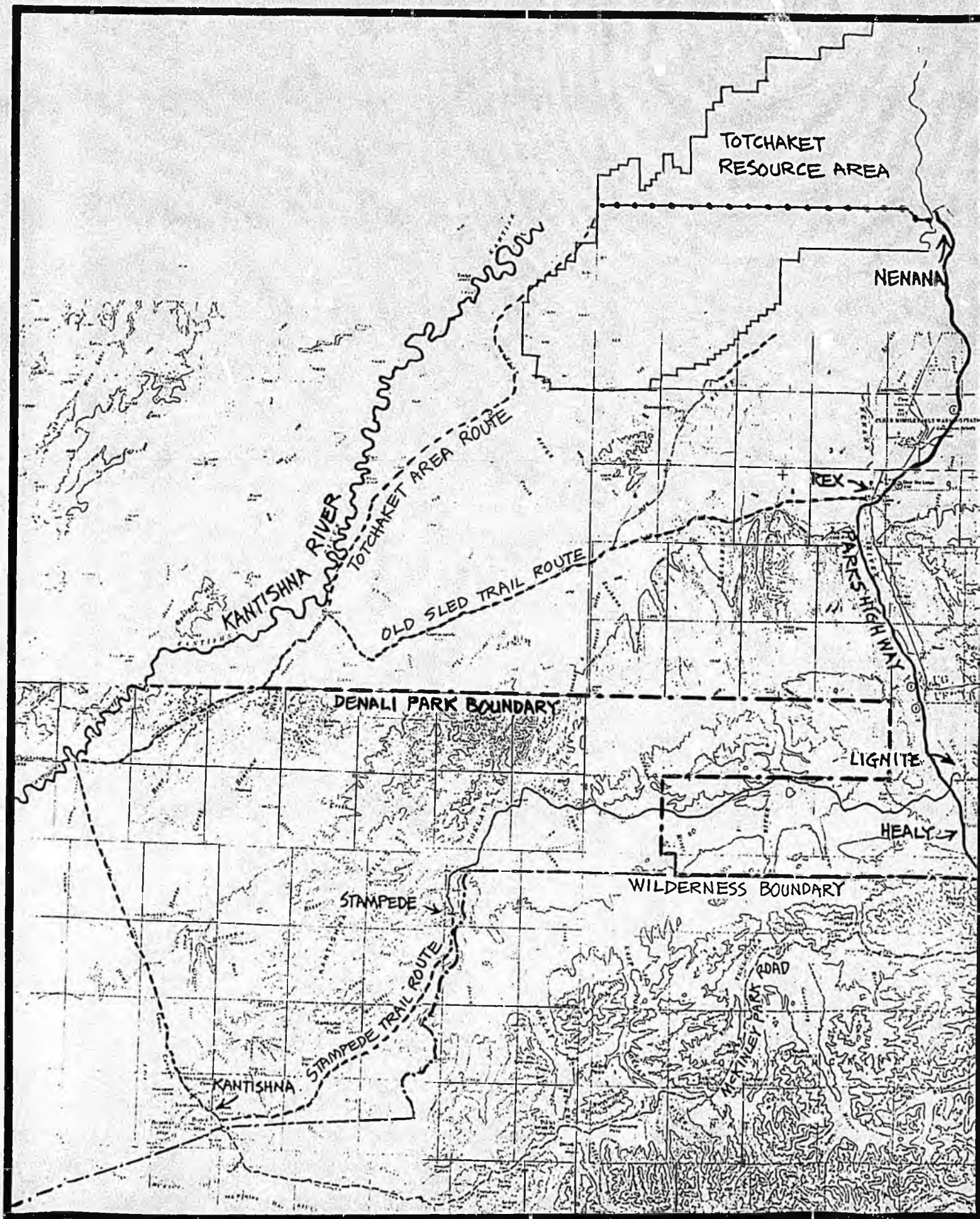
south side. It would seem prudent that a vantage point would recognize the number of clear days before making a decision. The Kantishna area has numerous patented mining claims which would be available for private entrepreneurs to construct hotels and other visitor accommodations. Tourists would then have a greater opportunity to view the mountain in all its awesome splendor because they would be based at the viewing vantage point rather than being transported to one for only a few hours. Under this concept the existing park road could be closed to all but wildlife tours and tour buses; thus creating an opportunity for taking different groups each direction.

Mining

In addition to tourism and recreational travel, a highway into the Kantishna area would serve the mining industry. Currently there are ten active gold mines in the area and significant known reserves of antimony as well as deposits of lead, silver, zinc and tungsten. The importance of this area as a mineral district has been recognized in the Alaska National Interest Lands Act which mandated a study of the impact of mineral development on other resources in the Denali National Park and Preserve. A highway would serve the existing miners as well as encouraging new ventures into this mineral rich area. Presently miners must travel the existing park road by permission of the Parks Service and are restricted to certain hours of operation. This would be unnecessary under the proposed extension.

In addition to the above, this proposed highway extension could be further extended into the McGrath area, also known for mining. The corridor has also been recognized as one which will be needed in Alaska's future. An additional linkage possibility would be to connect the McGrath extension to the road between Ruby and Poorman. Such a connection would provide additional road access to the Yukon River.

SB 49 - STUDY ROUTES



ALASKA MINERS ASSOCIATION, INC.

509 W. Third Ave., Suite 17, Anchorage, Alaska 99501 (907) 276-0347

March 8, 1985

MAR 11 1985

The Honorable John B. Coghill
ALASKA STATE LEGISLATURE
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Coghill:

On behalf of the Alaska Miners Association and its 2000 members, I wish to extend our support for SB 49 and SJR 10 which you have sponsored.

Access to the resources of the public lands in Alaska is essential if we are to achieve the economic and social benefits of living here. It is essential that the State assert its right to access those resources and RS 2477 is the vehicle by which that can be achieved. AMA wholeheartedly supports you in your efforts to cause that to happen.

We also support your efforts on the Kantishna Road. As you may know, a recent cursory mineral inventory of that area showed much greater mineralization than had been previously known to exist.

We recently contacted the Park Service for information on inholder and commercial traffic through the Park which might be alleviated by the Kantishna Road. According to their records, there are currently 322 permits for personal use by inholders and an additional 300 permits for oversized vehicles. This is a significant amount of traffic through the Park that could be reduced by the Kantishna Road. Of course there are the additional benefits of access to the other values of the Park by others users via the Kantishna.

The Alaska Miners Association appreciates your efforts on these two matters and supports them.

Sincerely,

ALASKA MINERS ASSOCIATION

James R. Jinks
Executive Director

DESCRIPTION OF THE ALTERNATIVES

INTRODUCTION

The Kantishna Hills study area encompasses approximately 196,500 acres and is located near Wonder Lake north of the former Mount McKinley National Park boundary in a group of rugged low lying hills known as the Kantishna Hills.

Currently, in the Kantishna Hills study area there are 179 unpatented placer claims, 92 unpatented lode claims, 2 patented placer claims, and 37 patented lode claims recorded with the Bureau of Land Management (see Recorded Claims - Kantishna Hills Study Area map). These 310 claims cover approximately 6,960 acres, the majority of which are located in the southern half of the study area.

Additionally, there are 20 unpatented placer claims covering approximately 400 acres located on Moose Creek that are actually located outside the study area boundary; they comprise a portion of a contiguous claim group on Moose Creek recorded with BLM, the remainder of which lies within the study area. For purposes of this DEIS, they are included in the analysis.

Of the total, 14 claims including 2 unpatented placer claims, 7 unpatented lode claims, 2 patented placer claims, and 3 patented lode claims, are located in the northeastern portion of the study area and comprise the Stampede Mill and mines complex. These claims are currently being managed for educational purposes under the 1979 memorandum of understanding between the University of Alaska and the National Park Service. The memorandum provides that the Stampede area be used for educational rather than commercial purposes.

In summary, the total area covered by recorded claims associated with the Kantishna Hills study area is 7,360 acres or 3.7 percent of the study area.

The Dunkle Mine study area, which includes the historic coal mine complex, encompasses approximately 22,400 acres and is located south of the Alaska Range and east of the West Fork of the Chulitna River near Broad Pass. Currently, there are 142 unpatented lode claims recorded with BLM that are located in the Dunkle Mine study area, covering approximately 2,840 acres. There are 8 recorded unpatented placer claims located partially within the study area and 1 recorded unpatented placer claim (part of the same claim group) located outside the study area boundary. These claims cover approximately 180 acres. For purposes of this DEIS, the single claim located outside the study area boundary is included in the analysis. There are no patented claims in this study area. The total area covered by recorded claims associated with the Dunkle Mine study area is 3,020 acres or 13.5 percent of the study area (see Recorded Claims- Dunkle Mine Study Area map).

Kantishna Hills

Refer to the Alternative 2 map for the Kantishna Hills study area for the location of claims affected under this alternative.

Claims Affected Under Alternative 2:

185 unpatented placer claims	-	4,460 acres
5 unpatented lode claims	-	100 acres
34 patented lode claims	-	680 acres
224 total claims		5,240 acres

Assumptions for Alternative Formulation and Analysis:

The 5 recorded unpatented lode claims and 185 unpatented placer claims assumed valid would pass validity examination and be acquired.

The 2 placer claims on Slate Creek, 10 placer claims on Spruce Creek, and the 80 unpatented lode claims assumed invalid would not be acquired.

Stampede claims would be developed under NPS/University of Alaska memorandum of understanding--claims would not be acquired.

Placer mining effects in alternative 1 would not occur in alternative 2.

Lode mining effects in alternative 1 would not occur in alternative 2.

Dunkle Mine

Refer to the Alternative 2 map for the Dunkle Mine study area for the location of claims affected under this alternative.

Claims Affected Under Alternative 2:

9 unpatented placer claims - 180 acres

Assumptions for Alternative Formulation and Analysis:

Placer Mining Effects Assumptions

Placer mining effects in alternative 1 would not occur in alternative 2.

Alaska Environmental Lobby, Inc.

~~419 6th Street, Suite 328~~ Juneau, Alaska 99801 907-586-2345
204 N. Franklin St. Suite 3

Position Paper on Kantishna Road Feasibility Study SB 49

SB 49 provides for a $500,000 appropriation for a feasibility study of building the Kantishna Road. All of the proposed routes would cross through Denali National Park whose boundaries were expanded by the Alaska National Interests Lands Conservation Act of 1980. Mt. McKinley National Park was established in 1917 to preserve one of the most spectacular populations of large mammals in North America. The boundaries were expanded in 1980 to afford protection of those populations that were dependent on an ecosystem that extended beyond the original boundaries.

The construction of a four lane highway over any of the proposed routes of SB 49 would be extremely destructive to park wildlife populations. In the Environmental Impact Statement done for the Kantishna Hills-Dunkle Mine Study it was concluded that the development of the Stampede/Kantishna Road would cause excessive disturbance and reduction of large mammal populations and result in reduced wildlife viewing in other sections of the park. The study also found that:

* * One of the largest populations of moose use the Clearwater Creek drainage and such development of the Kantishna Road would cross that drainage causing damaging disturbance
* * The road would cross the Toklat River wolf range, reducing wolf activity and bringing disturbance closer to denning and activity sites. Wolves are very intolerant of human disturbance. The mysterious disappearance of the Toklat wolf pack in 1983 was attributed to the probability that they traveled up to the Stampede Road where they were trapped.
* * Caribou use the Kantishna Hills and Moose Creek for rutting and prerutting activity while the Stampede area is one of the major calving areas of an already unstable herd. Further disturbance of the herd especially during calving time would be detrimental to their survival.
* * Development of the Kantishna area could lead to both black and brown bears being attracted to the area if facilities do not have adequate garbage disposal. This in turn would lead to the relocation or destruction of problem bears, thus removing one of the most popular animals viewed by visitors to Denali National Park.

Because of the potential damage the construction of a major highway over any of the proposed routes would do to Denali wildlife populations, the Alaska Environmental Lobby opposes any appropriation for a feasibility study for the construction of Kantishna Road.

Prepared by Jane C. Anderson, Staff Lobbyist

IDENTIFICATION

BILL NAME

BILL NUMBER
SB-49

DATE INTRODUCED
1-14-85

RELATED BILLS PENDING
None

SPONSOR(S)
Sen. J. B. Coghill

REFERRALS
Finance

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes

AGENCY RESPONSE

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

FISCAL NOTE
N/A

OTHER INTERESTED LEGISLATORS NOTIFIED

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES
None

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
OOT/PF Bill Analysis
Thomas & Assoc. - Synopsis of Project
Fairbanks Chamber of Commerce - Interior Roads Study
NPS - Regional Office - Janet McCabe
Sen Ted Stevens - ~~Janet Jans~~ & Gen Dickey

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes

DATE & PLACE SET
1-30-85 3:30 Butrovich room

STAFF MEMO TO COMMITTEE
Yes

TELECONFERENCE
No

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE
No

LIST OF WITNESSES
Bob Thomas -

SUGGESTED AMENDMENTS/CS DRAFTED

- NPS - 586-7127-271-4196
Environmental Lobby - 586-2345
ANILCA - Road Build Auth.
Background on RS2477 roads
Fish & Game V - Jim Ayers
Grey Line/West Tours - Tom Tougas

THOMAS & ASSOCIATES
Box 80783
Fairbanks, AK 99708
(907) 479 4972

February 6, 1985

Senator Jack Coghill
Chairman of the Senate Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Coghill:

I appreciated the opportunity to present the Kantishna highway project to the Senate Transportation Committee. I am writing this letter in response to some of the questions that arose during my presentation.

1. Could federal highway funds be used to fund this reconnaissance effort, essentially reducing the State monies to that required to match federal highway monies? The answer is yes. The funding amount would be approximately five percent (5%) or $25,000.
2. What is the mechanism whereby the State may construct roads through National Interest Lands? I have included that information as an attachment to this letter.
3. Should not the National Park Service and other interested agencies be approached prior to this project in order to get their approval? The National Park Service has been approached a number of times regarding this project. I believe their position at this time is one that neither approves nor disapproves. In their analysis of the mining potential in the Kantishna area (which they confirmed as substantial) this access scenario was described as one way to serve the mining industry. No position was taken. At this time, it is premature to expect a writeoff of this concept. This does not mean that these agencies are categorically opposed to the concept. There are many questions that need to be answered before any sort of concensus can be had. The location phase of a project is the time these issues are resolved. As an example, of the three basic routes, only one may be acceptable from an environmental standpoint. It takes the location phase analysis to make this determination.

The important considerations from the State's viewpoint at this time are that this proposed project will require the National Park Service to address current, critical access problems. It also gives the State a strong voice in resolving these problems. The process established by the D-2 legislation assures that these problems will be addressed within a short time frame.

I would like to add a bit of personal philosophy to this letter. At one time I enjoyed making the trip on the Park Road to Wonder Lake. I have not done this in the past 15 years. The reason for this is that it is no longer very attractive to me. In order for me to travel the Park Road I must make reservations well in advance and my summers are not that well planned. In addition, it may be heavily overcast and raining during that time. The heavy commercial traffic along the existing Park Road, coupled with the poor condition of that road, make the drive a frustrating one at any rate. As a result, I--and I'm sure many other railbelt residents--do not take advantage of living in close proximity to Denali because of the inconvenience. This project would be very attractive and result in more spontaneous use by Alaskan residents. I believe this extra use would be significant.

It disturbs me at great deal when officials are reluctant to address a serious problem because the Park Service is perceived as a formidable opponent particularly when a logical solution to a serious problem exists.

It is important to keep in mind that tourism is our second largest industry and oil revenues are declining as a result of both lower prices and declining resources. Investment in our second largest industry that is growing and renewable seems prudent.

Sincerely,

Bob C. Thomas

Bob C. Thomas, P.E.

Attachment

potent[ial] on all public lands in the State o[f] Alaska in order to expand the data[base] with respect to the mineral p[o]tential of such lands. The mineral a[s]sessment program may include[,] but shall not be limited to, techniques [s]uch as side-looking radar im[a]gery and, on public lands other than s[tate] lands within the national [p]ark system, core and test drilling for ge[o]logic information, notwiths[t]anding any restriction on such drilling u[n]der the Wilderness Act. Fo[r] purposes of this Act, cor[e] and test drilling[] means the extraction [of] drilling of subsurfa[ce] geologic samples i[n] order to assess the met[a]liferous or other min[e]ral values of geologic [f]eature, but shall not [be] construed as incl[u]ding exploratory drilling o[r] oil and gas test wel[ls]. To the maximum [e]xtent practicable, the Secre[tary] shall consult [and] exchange inf[orma]tion with the State of Alaska [re]garding the re[s]ponsibilities of [the] Secretary under this section [a] similar pro[g]rams undertaken by the State. In order to carry ou[t] mineral asse[ss]ments authorized under this or any other law, incl[u]ding but no[t] limited t[o] the National Uranium Resource Evaluation [P]rogram, t[he] Secretary shall allow for access by air for assessment act[ivi]ties per[mi]tted in this subsection to all public lands involved in such study. [He] shall consult with the Secretary of Energy and heads of o[th]er Federal agencies carrying out such programs, to determine such re[a]sonable requirements as may be necessary to protect the resources of [the] land, including fish and wildlife. Such requirements may prov[ide] that access will not occur during nesting, calving, spawning or [at] other times as fish and wildlife in the specific area may be [e]specially vulnerable to such activities. The Secretary is authori[zed] to enter into contracts with public or private entities to carry o[ut] [a] portion of the mineral assessment program. This sect[ion] sha[ll] not apply to the lands described in section 1001 of this [Act].

(b) REGULATIONS.—Activiti[es] carried [out] in conservation system units under subsection (a) s[hall] be subject [to] regulations promulgated by the Secretary. Such r[egu]lations shall [en]sure that such activities are carried out in an en[vi]ronmentally so[und] manner—

(1) which does [not] result in last[ing] environmental impacts which appreci[ably] alter the natur[al] character of the units or biological or ecological systems in th[e] units; and

(2) which [are] compatible with the p[ur]poses for which such units are estab[lis]hed.

Consultation.

Contracts.

PRESIDENTIAL TRAN[SMI]TTAL

SEC. [1]. On or before October 1, 19[8] and annually thereafter, the [P]resident shall transmit to the C[on]gress all pertinent public in[for]mation relating to minerals in Al[as]ka gathered by the United

Annual information, transmittal to Congress.

TITLE XI—TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS

FINDINGS

SEC. 1101. Congress finds that— 16 USC 3161.

(a) Alaska's transportation and utility network is largely undeveloped and the future needs for transportation and utility systen. in Alaska would best be identified and provided for through an orderly,

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FINITION

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EFFECT OF TITLE

SEC. 1103. Except as specifically provided for in this title, applicable law shall apply with respect to the authorization and administration of transportation or utility systems. 16 USC 3163.

PROCEDURAL REQUIREMENTS

SEC. 1104. (a) IN GENERAL.—Notwithstanding any provision of applicable law, no action by any Federal agency under applicable law with respect to the approval or disapproval of the authorization, in whole or in part, of any transportation or utility system shall have any force or effect unless the provisions of this section are complied with. 16 USC 3164.

(b)(1) CONSOLIDATED APPLICATIONS.—Within one hundred and eighty days after the date of enactment of this Act, the Secretary, the Secretary of Agriculture, and the Secretary of Transportation, in consultation with the heads of other appropriate Federal agencies, shall jointly prescribe and publish a consolidated application form to be used for applying for the approval of each type of transportation or utility system. Each such application form shall be designed to elicit such information as may be necessary to meet the requirements of this title and the applicable law with respect to the type of system concerned.

(2) For purposes of this section, the heads of all appropriate Federal agencies, including the Secretary of Transportation, shall share decisionmaking responsibility in the case of any transportation or utility system described in section 1102(4)(B) (ii), (iii), or (vii); but with respect to any such system for which he does not have programmatic responsibility, the Secretary of Transportation shall provide to the other Federal agencies concerned such planning and other assistance as may be appropriate.

(c) FILING.—Each applicant for the approval of any transportation or utility system shall file on the same day an application with each appropriate Federal agency. The applicant shall utilize the consolidated form prescribed under subsection (b) for the type of transportation or utility system concerned.

(d) AGENCY NOTICE.—(1) Within sixty days after the receipt of an application filed pursuant to subsection (c), the head of each Federal agency with whom the application was filed shall inform the applicant in writing that, on its face—

(A) the application appears to contain the information required by this title and applicable law insofar as that agency is concerned; or

(B) the application does not contain such information.

(2) Any notice provided under paragraph (1)(B) shall specify what additional information the applicant must provide. If the applicant provides additional information, the head of the Federal agency must inform the applicant in writing, within thirty days after receipt of such information, whether the information is sufficient.

(e) ENVIRONMENTAL IMPACT STATEMENT.—The draft of any environmental impact statement required under the National Environmental Policy Act of 1969 in connection with any application filed under this section shall be completed, within nine months from the date of filing, by the head of the Federal agency assigned lead responsibility for the statement. Any such statement shall be jointly prepared by all Federal agencies with which the application was filed under subsection (c). The final environmental impact statement shall be com- 42 USC 4321 note.

continuous decisionmaking process involving the State and Federal Governments and the public;

(b) the existing authorities to approve or disapprove applications for transportation and utility systems through public lands in Alaska are diverse, dissimilar, and, in some cases, absent; and

(c) to minimize the adverse impacts of siting transportation and utility systems within units established or expanded by this Act and to insure the effectiveness of the decisionmaking process, a single comprehensive statutory authority for the approval or disapproval of applications for such systems must be provided in this Act.

DEFINITIONS

16 USC 3162.

SEC. 1102. For purposes of this title—

(1) The term "applicable law" means any law of general applicability (other than this title) under which any Federal department or agency has jurisdiction to grant any authorization (including but not limited to, any right-of-way, permit, license, lease, or certificate) without which a transportation or utility system cannot, in whole or in part, be established or operated.

(2) The term "applicant" means any public or private person, including, but not limited to, any Federal department or agency.

(3) The term "Federal agency" means any Federal department or agency that has any function or duty under applicable law.

(4)(A) The term "transportation or utility system" means any type of system described in subparagraph (B) if any portion of the route of the system will be within any conservation system unit, national recreation area, or national conservation area in the State (and the system is not one that the department or agency having jurisdiction over the unit or area is establishing incident to its management of the unit or area).

(B) The types of systems to which subparagraph (A) applies are as follows:

(i) Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.

(ii) Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.

(iii) Pipelines, slurry and emulsion systems and conveyor belts for the transportation of solid materials.

(iv) Systems for the transmission and distribution of electric energy.

(v) Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication.

(vi) Improved rights-of-way for snow machines, air cushion vehicles, and other all-terrain vehicles.

(vii) Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

Any system described in this subparagraph includes such related structures and facilities (both temporary and permanent) along the route of the system as may be minimally necessary for the construction, operation, and maintenance of the system. Such related structures and facilities shall be described in the application required by section 1104, and shall be approved or disapproved in accordance with the procedures set forth in this title.

EFFECT OF

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Publication in Federal Register.

pleted within one year from the date of such filing. Such nine-month and one-year periods may be extended for good cause by the Federal agency head assigned lead responsibility for the preparation of such statement if he determines that additional time is necessary for such preparation, notifies the applicant in writing of such determination, and publishes notice of such determination, together with the reasons therefor, in the Federal Register. The provisions of section 304 of the Federal Land Policy and Management Act of 1976 shall apply to each environmental impact statement under this subsection in the same manner as such provisions apply to applications relating to the public lands referred to in such section 304. The Federal agency assigned lead responsibility shall, in conjunction with such other Federal agencies before which the application is pending, hold public hearings in the District of Columbia and an appropriate location in the State on each draft joint environmental impact statement and the views expressed therein shall be considered by all Federal agencies concerned before publication of the final joint environmental impact statement.

43 USC 1734.

(f) OTHER VIEWS.—During both the nine-month period, and the succeeding three-month period plus any extension thereof provided for in subsection (e), the heads of the Federal agencies concerned shall solicit and consider the views of other Federal departments and agencies, the Alaska Land Use Council, the State, affected units of local government in the State, and affected corporations formed pursuant to the Alaska Native Claims Settlement Act, and, after public notice, shall receive and consider statements and recommendations regarding the application submitted by interested individuals and organizations.

(g) AGENCY DECISION.—(1) Within four months after the final environmental impact statement is published in accordance with subsection (e) with respect to any transportation or utility system, each Federal agency shall make a decision to approve or disapprove, in accordance with applicable law, each authorization that applies with respect to the system and that is within the jurisdiction of that agency.

(2) The head of each Federal agency, in making a decision referred to in paragraph (1), shall consider, and make detailed findings supported by substantial evidence, with respect to—

(A) the need for, and economic feasibility of, the transportation or utility system;

(B) alternative routes and modes of access, including a determination with respect to whether there is any economically feasible and prudent alternative to the routing of the system through or within a conservation system unit, national recreation area, or national conservation area and, if not, whether there are alternative routes or modes which would result in fewer or less severe adverse impacts upon the conservation system unit;

(C) the feasibility and impacts of including different transportation or utility systems in the same area;

(D) short- and long-term social, economic, and environmental impacts of national, State, or local significance, including impacts on fish and wildlife and their habitat, and on rural, traditional lifestyles;

(E) the impacts, if any, on the national security interests of the United States, that may result from approval or denial of the application for a transportation or utility system;

(F) any impacts that would affect the purposes for which the Federal unit or area concerned was established;

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(G) measures which should be instituted to avoid or minimize negative impacts; and

(H) the short- and long-term public values which may be adversely affected by approval of the transportation or utility system versus the short- and long-term public benefits which may accrue from such approval.

STANDARDS FOR GRANTING CERTAIN AUTHORIZATIONS

SEC. 1105. In any case in which there is no applicable law with respect to a transportation or utility system, the head of the Federal agency concerned shall, within four months after the date of filing of any final Environmental Impact Statement, make recommendations, for purposes of section 1106(b), to grant such authorizations as may be necessary to establish such system, in whole or in part, within the conservation system unit concerned if he determines that— 16 USC 3165.

(1) such system would be compatible with the purposes for which the unit was established; and

(2) there is no economically feasible and prudent alternative route for the system.

AGENCY, PRESIDENTIAL, AND CONGRESSIONAL ACTIONS

SEC. 1106. (a)(1) AGENCY ACTION IN CASES OTHER THAN THOSE INVOLVING SECTION 1105 OR WILDERNESS AREAS.—In the case of any application for the approval of any transportation or utility system to which section 1105 does not apply or that does not occupy, use, or traverse any area within the National Wilderness Preservation System, if, in compliance with section 1104— 16 USC 3166.

(A) each Federal agency concerned decides to approve each authorization within its jurisdiction with respect to that system, then the system shall be deemed to be approved and each such agency shall promptly issue, in accordance with applicable law, such rights-of-way, permits, licenses, leases, certificates, or other authorizations as are necessary with respect to the establishment of the system; or

(B) one or more Federal agencies decide to disapprove any authorization within its jurisdiction with respect, to that system, then the system shall be deemed to be disapproved and the applicant for the system may appeal the disapproval to the President.

(2) If an applicant appeals under paragraph (1)(B), the President, within four months after receiving the appeal, shall decide whether to approve or deny the application. The President shall approve the application if he finds, after consideration of the factors set forth in section 1104(g)(2), that such approval would be in the public interest and that (1) such system would be compatible with the purposes for which the unit was established; and (2) there is no economically feasible and prudent alternative route for the system. In making a decision, the President shall consider any environmental impact statement prepared pursuant to section 1104(e), comments of the public and Federal agencies received during the preparation of such statement, and the findings and recommendations, if any, of each Federal agency that rendered a decision with respect to the application. The President's decision to approve or deny the application shall be published in the Federal Register, together with a statement of the reasons for his determination. Appeals, Presidential review. Publication in Federal Register.

(3) If the President approves an application under paragraph (2), each Federal agency concerned shall promptly issue, in accordance with applicable law, such rights-of-way, permits, licenses, leases, certificates, or other authorizations as are necessary with respect to the establishment of the system.

Judicial review.

(4) If the President denies an application under paragraph (2), the applicant shall be deemed to have exhausted his administrative remedies and may file suit in any appropriate Federal court to challenge such decision.

Presidential notification.

(b) AGENCY ACTION IN CASES INVOLVING SECTION 1105 OR WILDERNESS AREAS.—(1) In the case of any application for the approval of a transportation or utility system to which section 1105 applies or that proposes to occupy, use, or traverse any area within the National Wilderness Preservation System, each Federal agency concerned shall promptly submit to the President notification whether the agency tentatively approved or disapproved each authorization within its jurisdiction that applies with respect to the system. Such notification shall be accompanied by a statement of the reasons and findings supporting the agency position.

Presidential determination and recommendation to Congress.

(2) Within four months after receiving all notification referred to in paragraph (1) and after considering such notifications, any environmental impact statement prepared pursuant to section 1104(e), and the comments of the public and Federal agencies received during the preparation of such statement, the President shall decide whether or not the application for the system concerned should be approved. If the President denies an application the applicant shall be deemed to have exhausted his administrative remedies, and may file suit in any appropriate Federal court to challenge such decision. If the President approves the application, he shall submit to Congress his recommendation for approval of the transportation or utility system covered, whereupon the Congress shall consider the application as provided in subsection (c). The President shall include with his recommendation to Congress—

(A) the application which is the subject of his recommendation;

(B) a report setting forth in detail the relevant factual background and the reasons for his findings and recommendation;

(C) the joint environmental impact statement;

(D) a statement of the conditions and stipulations which would govern the use of the system if approved by the Congress.

(c) CONGRESSIONAL APPROVAL.—(1) No application for any transportation or utility system with respect to which the President makes a recommendation for approval under subsection (b) shall be approved unless the Senate and House of Representatives approve a resolution described in paragraph (4) within the first period of one hundred and twenty calendar days of continuous session of the Congress beginning on the date after the date of receipt by the Senate and House of Representatives of such recommendation.

(2) For purposes of this subsection—

(A) continuity of session of the Congress is broken only by an adjournment sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the one-hundred-and-twenty-day calendar period.

(3) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of each House of the Congress respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions

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described by paragraph (6) of this subsection; and it supersedes other rules only to the extent that it is inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

(4) For the purposes of this subsection, the term "resolution" means a joint resolution, the resolving clause of which is as follows: "That the House of Representatives and Senate approve the application for under title XI of the Alaska National Interest Lands Conservation Act submitted by the President to the Congress on , 19."; the first blank space therein to be filled in with the appropriate transportation or utility system and the second blank therein to be filled with the date on which the President submits the application to the House of Representatives and the Senate. "Resolution."

(5) Except as otherwise provided in this subsection, the provisions of section 8(d) of the Alaska Natural Gas Transportation Act shall apply to the consideration of the resolution. 15 USC 719f.

(6) After an application for a transportation or utility system has been approved under subsection 1106(a), the appropriate Federal agencies shall issue appropriate authorizations in accordance with applicable law. In any case in which an application for a transportation or utility system has been approved pursuant to section 1106(b), the appropriate Federal agencies shall issue appropriate authorizations in accordance with title V of the Federal Lands Policy Management Act or other applicable law. After issuance pursuant to this subsection, the appropriate land managing agency shall administer the right-of-way in accordance with relevant management authorities of the land managing agency and title V of the Federal Lands Policy Management Act. 43 USC 1761.

RIGHTS-OF-WAY TERMS AND CONDITIONS

SEC. 1107. (a) TERMS AND CONDITIONS.—The Secretary, or the Secretary of Agriculture where national forest wilderness is involved, shall include in any right-of-way issued pursuant to an application under this title, terms and conditions which shall include, but not be limited to— 16 USC 3167.

(1) requirements to insure that, to the maximum extent feasible, the right-of-way is used in a manner compatible with the purposes for which the affected conservation system unit, national recreation area, or national conservation area was established or is managed;

(2) requirements for restoration, revegatation, and curtailment of erosion of the surface of the land;

(3) requirements to insure that activities in connection with the right-of-way will not violate applicable air and water quality standards and related facility siting standards established pursuant to law;

(4) requirements, including the minimum necessary width, designed to control or prevent—

(A) damage to the environment (including damage to fish and wildlife habitat),

(B) damage to public or private property, and

(C) hazards to public health and safety;

(5) requirements to protect the interests of individuals living in the general area of the right-of-way who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes; and

(6) requirements to employ measures to avoid or minimize adverse environmental, social or economic impacts.

(b) WILD AND SCENIC RIVERS SYSTEM.—Any transportation or utility system approved pursuant to this title which occupies, uses, or traverses any area within the boundaries of a unit of the National Wild and Scenic Rivers System shall be subject to such conditions as may be necessary to assure that the stream flow of, and transportation on, such river are not interfered with or impeded, and that the transportation or utility system is located and constructed in an environmentally sound manner.

(c) PIPELINE RIGHTS-OF-WAYS.—In the case of a pipeline described in section 28(a) of the Mineral Leasing Act of 1920, a right-of-way issued pursuant to this title shall be issued in the same manner as a right-of-way is granted under section 28, and the provisions of subsections (c) through (j), (l) through (q), and (u) through (y) of such section 28 shall apply to rights-of-way issued pursuant to this title.

30 USC 185.

EXPEDITED JUDICIAL REVIEW

16 USC 3168.

SEC. 1108. (a) It is the intent of Congress that any judicial review of any administrative actions, including compliance with the National Environmental Policy Act of 1969, pursuant to this title shall be expedited to the maximum extent possible.

42 USC 4321 note.

(b) Any proceeding before a Federal court in which an administrative action, including compliance with the National Environmental Policy Act of 1969, pursuant to this title is challenged shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way by such court, and such court shall render its final decision relative to any challenge within one hundred and twenty days from the date such challenge is brought unless such court determines that a longer period of time is required to satisfy the requirements of the United States Constitution.

(c) No court shall have jurisdiction to grant any injunctive relief lasting longer than ninety days against any action pursuant to this title except in conjunction with a final judgment entered in a case involving an action pursuant to this title.

VALID EXISTING RIGHTS

16 USC 3169.

SEC. 1109. Nothing in this title shall be construed to adversely affect any valid existing right of access.

SPECIAL ACCESS AND ACCESS TO INHOLDINGS

16 USC 3170.

SEC. 1110. (a) Notwithstanding any other provision of this Act or other law, the Secretary shall permit, on conservation system units, national recreation areas, and national conservation areas, and those public lands designated as wilderness study, the use of snowmachines (during periods of adequate snow cover, or frozen river conditions in the case of wild and scenic rivers), motorboats, airplanes, and nonmotorized surface transportation methods for traditional activities (where such activities are permitted by this Act or other law) and for travel to and from villages and homesites. Such use shall be subject to reasonable regulations by the Secretary to protect the natural and other values of the conservation system units, national recreation

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areas, and national conservation areas, and shall not be prohibited unless, after notice and hearing in the vicinity of the affected unit or area, the Secretary finds that such use would be detrimental to the resource values of the unit or area. Nothing in this section shall be construed as prohibiting the use of other methods of transportation for such travel and activities on conservation system lands where such use is permitted by this Act or other law.

(b) Notwithstanding any other provisions of this Act or other law, in any case in which State owned or privately owned land, including subsurface rights of such owners underlying public lands, or a valid mining claim or other valid occupancy is within or is effectively surrounded by one or more conservation system units, national recreation areas, national conservation areas, or those public lands designated as wilderness study, the State or private owner or occupier shall be given by the Secretary such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned land by such State or private owner or occupier and their successors in interest. Such rights shall be subject to reasonable regulations issued by the Secretary to protect the natural and other values of such lands.

TEMPORARY ACCESS

SEC. 1111. (a) IN GENERAL.—Notwithstanding any other provision of this Act or other law the Secretary shall authorize and permit temporary access by the State or a private landowner to or across any conservation system unit, national recreation area, national conservation area, the National Petroleum Reserve—Alaska or those public lands designated as wilderness study or managed to maintain the wilderness character or potential thereof, in order to permit the State or private landowner access to its land for purposes of survey, geophysical, exploratory, or other temporary uses thereof whenever he determines such access will not result in permanent harm to the resources of such unit, area, Reserve or lands. 16 USC 3171.

(b) STIPULATIONS AND CONDITIONS.—In providing temporary access pursuant to subsection (a), the Secretary may include such stipulations and conditions he deems necessary to insure that the private use of public lands is accomplished in a manner that is not inconsistent with the purposes for which the public lands are reserved and which insures that no permanent harm will result to the resources of the unit, area, Reserve or lands.

NORTH SLOPE HAUL ROAD

SEC. 1112. (a) IN GENERAL.—So long as that section of the North Slope Haul Road referred to in subsection (c) is closed to public use, but not including regulated local traffic north of the Yukon River, regulated industrial traffic and regulated high occupancy buses, such regulation to occur under State law, except that the Secretary, after consultation with the Secretary of Transportation, and the Governor of Alaska shall agree on the number of vehicles and seasonality of use, such section shall be free from any and all restrictions contained in title 23, United States Code, as amended or supplemented, or in any regulations thereunder. Prior to executing an agreement pursuant to this subsection, the Secretary and the Governor of Alaska shall consult with the head of any unit of local government which encompasses lands located adjacent to the route of the North Slope Haul Road. The State of Alaska shall have the authority to limit access, 16 USC 3172.

impose restrictions and impose tolls, notwithstanding any provision of Federal law.

(b) RELEASE.—The removal of restrictions shall not be conditioned upon repayment by the State of Alaska to the Treasurer of the United States of any Federal-aid highway funds paid on account of the section of highway described in subsection (c), and the obligation of the State of Alaska to repay these amounts is hereby released so long as the road remains closed as set forth in subsection (a).

(c) APPLICATION OF SECTION.—The provisions of this section shall apply to that section of the North Slope Haul Road, which extends from the southern terminus of the Yukon River Bridge to the northern terminus of the Road at Prudhoe Bay.

STIKINE RIVER REGION

Consultation with Canadian Government and report to Congress.
16 USC 3173.

SEC. 1113. Congress finds that there is a need to study the effect of this Act upon the ability of the Government of Canada to obtain access in the Stikine River region of southeast Alaska. Accordingly, within five years from the date of enactment of this Act, the President shall consult with the Government of Canada and shall submit a report to the Congress containing his findings and recommendations concerning the need, if any, to provide for such access. Such report shall include, among other things, an analysis of the need for access and the social, environmental and economic impacts which may result from various forms of access including, but not limited to, a road along the Stikine and Iskut Rivers, or other alternative routes, should such access be permitted.

TITLE XII--FEDERAL-STATE COOPERATION

ALASKA LAND USE COUNCIL

16 USC 3181.

SEC. 1201. (a) ESTABLISHMENT.—There is hereby established the Alaska Land Use Council (hereinafter in this title referred to as the "Council").

Presidential appointment.

(b) COCHAIRMEN.—The Council shall have Cochairmen. The Federal Cochairman shall be appointed by the President of the United States with the advice and consent of the Senate. The State Cochairman shall be the Governor of Alaska.

(c) MEMBERS.—In addition to the Cochairmen, the Council shall consist of the following members:

(1) the head of the Alaska offices of each of the following Federal agencies: National Park Service, United States Fish and Wildlife Service, United States Forest Service, Bureau of Land Management, Heritage Conservation and Recreation Service, National Oceanic and Atmospheric Administration, and Department of Transportation;

(2) the Commissioners of the Alaska Departments of Natural Resources, Fish and Game, Environmental Conservation, and Transportation; and

(3) two representatives selected by the Alaska Native Regional Corporations (in consultation with their respective Village Corporations) which represent the twelve geographic regions described in section 7(a) of the Alaska Native Claims Settlement Act.

Any vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(d) STATE DECISION NOT TO PARTICI
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1-2 3. GUIDELINES FILE

Applicant states that the proposed subsidiary would engage in the activities of operating an industrial bank in a manner authorized by Colorado law, and engaging in the sale as agent of credit life, credit disability, credit accident and health, loan redemption and loan cancellation insurance in connection with extensions of credit by bank and nonbank subsidiaries of Maryland National Corporation. These activities would be performed from offices of Applicant's subsidiary in Colorado Springs, Colorado, and the geographic areas to be served are entire United States. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of this proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 28, 1981.

Board of Governors of the Federal Reserve System, May 28, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-16524 Filed 6-2-81; 8:45 am]

BILLING CODE 6210-01-M

First York Bancorp.; Proposed Acquisition of First Trust Company of York

First York Bancorp., York, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of First Trust Company of York, York, Nebraska.

Applicant states that the proposed subsidiary would engage in the activities of a trust company as described in § 225.4(a) of the Board's Regulation Y. These activities would be performed from offices of Applicant's subsidiary in York, Nebraska, and the geographic areas to be served are York County and counties contiguous thereto. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than June 28, 1981.

Board of Governors of the Federal Reserve System, May 28, 1981.

D. Michael Manies,

Assistant Secretary of the Board.

[FR Doc. 81-16526 Filed 6-2-81; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[E-81-6]

Delegation of Authority to the Secretary of Defense

1. *Purpose.* This delegation authorizes the Secretary of Defense to represent, in conjunction with the Administrator of General Services, the consumer interests of the executive agencies of the Federal Government in proceedings before the Public Utility Commission of Texas involving electric utility rates.

2. *Effective date.* This delegation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 277, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4), and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Public Utility Commission of Texas involving the application of the Texas Power and Light Company for an increase in its electric rates. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

d. The Department of Defense shall forward to the General Services Administration copies of its testimony and briefs within 60 days of formal submission.

Dated: May 22, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-16441 Filed 6-2-81; 8:45 am]

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF AGRICULTURE

DEPARTMENT OF TRANSPORTATION

Offices of the Secretary

Notice of Uniform Federal Transportation and Utility System Application for Use on Conservation System Unit Lands in Alaska

AGENCY: Department of the Interior.

ACTION: Notice of Uniform Federal Transportation and Utility System Application for use on Conservation System Unit lands in Alaska.

SUMMARY: This notice publishes a consolidated application form for use in applying for Federal approval of transportation or utility systems in the

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please return!

State of Alaska if any portion of the proposed system is within a Federal conservation system unit, national recreation area or national conservation area. This form is not required to be used until each affected Federal agency has secured the necessary clearance from the Office of Management and Budget as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) for information collection requirements.

EFFECTIVE DATE: May 30, 1981.

ADDRESS: Any questions or suggestions should be sent to: Director (330), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 202040.

FOR FURTHER INFORMATION CONTACT: Robert E. Mollohan, 202–343–5537 or the above address.

SUPPLEMENTARY INFORMATION: Title XI of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371, ("the Act"), specifically Section 1104(b)(1), directs the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Transportation, in consultation with the heads of other appropriate Federal agencies, jointly to prescribe and publish, within 180 days of enactment (December 2, 1980), a consolidated application form. Such form is to be used for applying for the approval of all proposed transportation or utility systems in Alaska in any portion of the system is proposed to be within any Federal conservation system unit, national recreation area or national conservation area. The form is to be used by all Federal agencies which have jurisdiction to grant any authorization, including any right-of-way, permit, license, lease, or certificate, without which a transportation or utility system cannot, in whole or in part, be established. A "conservation system unit" is any unit in Alaska of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Trails System, National Wilderness Preservation System, or a National Forest Monument.

The consolidated application is required to be used for the following types of systems:

1. Canals, ditches, flumes, laterals, pipes, pipelines tunnels, and other systems for the transportation of water.

2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.

3. Pipelines, slurry and emulsion systems and conveyor belts for the transportation of solid materials.

4. Systems for the transmission and distribution of electric energy.

5. Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication.

6. Improved rights-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.

7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

All of the systems listed above include those minimally necessary related structures and facilities, temporary and permanent, along the routes of such system.

Once the consolidated application form is approved by the Office of Management and Budget for use, no action by any Federal agency under applicable law with respect to the approval or disapproval of the authorization of any of the listed transportation or utility systems shall have any force or effect unless this consolidated application form is used.

The applicant will be required to file the consolidated application form simultaneously with each Federal agency having jurisdiction to grant the authorizations neded for the proposed system. Title XI of the Act provides a special procedure, including time limitations for the review and approval or disapproval of these systems. Other applicable law, including existing agency regulations, applies with respect to the authorization and administration of the transportation and utility systems in the same way it applies to non-Title XI applications.

Both regulatory and land managing Federal agencies are included in the consolidated application procedure. After consultation with many affected agencies, the Departments of Interior, Transportation and Agriculture developed the Uniform Federal Transportation and Utility System Application. Departments and independent agencies that participated are as follows: The Departments of Defense, Energy, Commerce and State, the Interstate Commerce Commission, the National Aeronautics and Space Administration, the Federal Communications Commission and the Environmental Protection Agency.

An attempt has been made to solicit only basic information which is required under current applicable law in determining whether to authorize a proposed system. The scope of response to the questions will vary for each applicant, depending on the simplicity or complexity of the project. In many instances, if the proposed form is completed properly, little or no further information will be required in order for the agency to approve or disapprove the system.

However, because of the highly specialized nature of most regulatory agency responsibilities, in some instances, these agencies may require additional information from the applicant. Applicants will also be urged to contact all relevant agencies prior to an application submission to learn of any additional or unique submission requirements which have not been incorporated into the consolidated form.

Comments on the consolidated form were requested in the Federal Register of March 12, 1981 (46 FR 16 342). Comments were received from 23 sources.

General Comments

Overall the comments received on the draft application form expressed the opinion that the form was clear, concise, and met the intent of Title XI of the Act. Out of 23 respondents, only one opposed the form in its entirety. By and large, the comments were of an editorial nature, i.e., word or phrase changes which provide for a clearer understanding of what information is being requested. Most of these suggestions have been incorporated into the form.

Specific Comments

One respondent suggested that an additional item entitled "resident of Alaska" be added to the citizenship requirement. The suggestion was not adopted in that there is no requirement of law for this information.

Several respondents made various suggestions relating to the "Project Description" section of the form. Most wanted additional items listed. We did not feel that it was necessary to add these requests to the Project Description section of the form. Most of these suggestions were, however, included in the instructions that accompany the form.

Two respondents asked that the word "exact" be removed from the section of the form pertaining to map requirements. This has been done.

Several respondents requested that an additional statement be included in the section on State or local government approval. An additional statement indicating that the applicant has applied for State or local government approval has been included.

Several respondents commented on item 13 of the form. In line with these comments we have replaced the word "chosen" with the word "rejected."

Also, we have broken this item into three parts for clarity.

Four respondents commented on item 15. These comments ranged from eliminating the item to minor word changes. We have removed the phrase "net revenue" and have reworded the instructions for completing this item which are in line with the comments received.

The largest number of comments were directed at items 16 through 18 on the form. Again, these comments ranged from total elimination of the items to minor word changes. Most of the suggested word changes were made and have been incorporated into the form. Other suggestions for clarity were incorporated into the instructions for completing each one of these items. The suggestions for eliminating these items have not been accommodated.

John R. Block,
Secretary of Agriculture.
June 1, 1981.

Andrew L. Lewis,
Secretary of Transportation.
May 29, 1981.

James G. Watt,
Secretary of the Interior.
May 29, 1981.

General Information to Applicant

The Uniform Federal Transportation and Utility System Application form contained in this package is provided for your convenience in applying for a right-of-way, permit, license, lease, or certificate for the use of Federal lands that lie within conservation system units and National Recreation or Conservation Areas as defined in the Alaska National Interest Lands Conservation Act. Conservation system units include the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, National Forest Monuments. Any individual, business, or governmental entity desiring to establish and operate a transportation system over, upon, under, or through any one of these units must apply for this use by completing the application form contained in this package.

Transportation system uses for which this application is to be used are as follows:

1. Canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other systems for the transportation of water.

2. Pipelines and other systems for the transportation of liquids other than water, including oil, natural gas, synthetic liquid and gaseous fuels, and any refined product produced therefrom.

3. Pipelines, slurry and emulsion systems and conveyor belts for the transportation of solid materials.

4. Systems for the transmission and distribution of electric energy.

5. Systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication.

6. Improved rights-of-way for snow machines, air cushion vehicles, and all-terrain vehicles.

7. Roads, highways, railroads, tunnels, tramways, airports, landing strips, docks, and other systems of general transportation.

When filing for any of the above types of transportation systems within any conservation system unit, the applicant is required to file the application contained in this package with each Federal agency on the same day. Federal agencies with whom you must file an application include any agency that must issue a right-of-way, permit, license, lease, or certificate without which the proposed transportation system cannot, in whole or part, be established or operated. For example, if you are filing an application for an airport, you must file with the agency responsible for administering the land and with the Federal Aviation Administration. If you need assistance in determining with which Federal agency(ies) you must file, you should contact any local office of the Bureau of Land Management, Fish and Wildlife Service, Forest Service, or National Park Service.

After you have completed your application, please check to be sure the information you have provided is complete and correct, sign it and return it to all appropriate Federal agencies on the same day.

Thank you for your cooperation.

Steps for Completing the Application Form

We have set up the instructions in this package using 4 steps:

(1) Pre-Application Meeting; (2) General Application Instructions; (3) General Instructions for Supplemental and (4) Filing Instructions. If you follow each step in the order that they are set out and read the line-by-line instructions, your application will generally be found to be complete by the Federal agency(ies) with which you have filed. However, in some instances, the Federal agencies may find it necessary to request additional information from you before application processing can proceed. By carefully following the instructions set out below, requests for additional information can be held to a minimum with the net result being a reduced timeframe for processing an application and issuing the appropriate authorization(s).

[Step 1]—Pre-Application Meeting

You are encouraged to contact any Federal agency office with which you will be required to file an application to establish or operate the proposed project, prior to completing and filing the application. For your convenience, we have provided a listing of agencies and their locations under STEP 4 of these instructions. This early contact, for the purposes of these instructions, is identified as the *Pre-Application Meeting*. The *Pre-Application Meeting* has been integrated into this process primarily for your benefit. The purpose of the meeting is to afford you the opportunity to explain your proposed project to the affected Federal agency(ies). In return, the agency(ies) will provide you with assistance and information in completing the attached application form. In view of the fact that the Federal agencies with which you may end up filing an application with have no way of knowing what your plans are, it becomes your responsibility to request a *Pre-Application Meeting* with the agency(ies).

It is at this *Pre-Application Meeting* with the Federal agency(ies) that you can acquire specific information to complete each requirement of the application contained in this package. The importance of a *Pre-Application Meeting* cannot be overemphasized. In many instances, you will find it necessary to file the application for the proposed use with two or more Federal agencies. To assist you in determining which Federal agencies you should contact for *Pre-Application Meetings*, the following guidelines are provided:

1. As a minimum you should contact either the Bureau of Land Management, Fish and Wildlife Service, National Park Service, or the U.S. Forest Service, If your proposal crosses land under the administration of only one of these land managing agencies, then only that land managing agency needs to be contacted. However, if your proposal crosses lands under the jurisdiction of two or more of the above mentioned land managing agencies, then you should contact each affected agency.

2. If your proposed project contemplates construction of any kind in navigable waters of the United States or putting structures of any description into or adjacent to these waters, then as a minimum you should contact the land managing agency and either the Coast

Guard or the Corps of Engineers or both. In some instances, and depending upon your project, it will be advisable to contact a representative of the Environmental Protection Agency.

3. Proposed projects involving the installation of air or water navigation aids, you should in addition to contacting the land managing agency, contact the Coast Guard and Federal Aviation Agency. If the navigation aid emits an electronic signal, then the Federal Communications Commission should be contacted along with the other agencies noted above.

4. In the establishment or alteration of any airport runway or taxiway, the Federal Aviation Administration should be contacted in addition to the land managing agency. The Federal Aviation Administration should also be contacted if any construction of a new structure is within a 5 mile radius of an existing airport or if the proposed structure is 200 feet or higher regardless of its proximity to the existing airport.

5. Generally, any project that contemplates transporting water by canals, ditches, flumes, pipeline or tunnels will require you to contact only the land managing agency. However, in some instances involving a water transportation system of if the water system serves the purpose of discharging waste water, then the Environment Protection Agency, Corps of Engineers, or Coast Guard should be contacted.

6. If the proposed project involves a pipeline for transporting substances other than water including any slurry or emulsion, the land managing agency(ies) should be contacted, and in instances where the pipeline will be a common carrier, the Federal Energy Regulatory Commission and the Department of Transportation should be contacted.

7. In the establishment of any type of communication facility, the land managing agency(ies) on whose land the facility will be situated should be contacted along with the Federal Communications Commission.

8. Any improvement or new construction contemplated for general transportation purposes will require you to contact the land managing agency(ies) across whose land the system affects. Depending on the proposed project, its location, and various other factors, you may need to contact other agencies such as the Corps of the Engineers Coast Guard, Federal Aviation Administration, Interstate Commerce Commission, Federal Highway Administration, Environmental Protection Agency, etc.

9. Any system for the transmission and distribution of electrical energy will require contact with the land managing agency(ies) whose land is crossed by the system. In instances where a powerline interconnects an electric utility and a qualifying cogenerator or small power producer, or where powerlines qualify as primary transmission lines leading from hydroelectric facilities to an interconnection point on the Alaskan distribution grid, you should contact the Federal Energy Regulatory Commission.

10. If the proposed project involves a facility that will emit pollutants into the air, water or land, the land managing agency should be contacted along with the Environmental Protection Agency.

11. If the proposed project involves disturbance to marine life or marine mammals or to their habitat you should check with the National Marine Fisheries Service.

[Step 2]—General Application Instructions

In this step, we have listed *Line-by-Line Instruction* for completing the application form contained in this package. At this point, we caution you that if you have not taken the time to thoroughly read the General Instructions and the instructions set out in STEP 1, you should, before proceeding any further, go back and read those instructions. If you need additional space to complete any line in the application, please put the information on a separate sheet of paper and identify it as follows: "Continuation of Line ——, Project Description."

Line-by-Line Instructions

[Line 1]—Give your complete name and address. Some agencies require the names, addresses, and telephone numbers of property owners located adjacent to the proposed project. If you must include this information in your application, identify this information as follows: "Continuation of Line 1, Identification of Adjacent Property Owners."

[Line 2]—If you plan to designate an authorized agent, you must complete this line with the name and address of your designated agent.

[Line 3]—Provide the appropriate telephone number(s).

[Line 4]—You must check at least one block. If you checked "Individual or Federal Agency" you do not have to complete the "Supplemental." If you check any block other than "Individual or Federal Agency," you must complete the entire form including the "Supplemental."

[Line 5]—You must check at least one block. If you checked the block Existing use for which no authorization received," you must provide information relating to the date use began, type of use, structures or facilities constructed, and vegetative or mineral materials removed or used along or within the area of use. This information should be put on a separate sheet of paper and identified as "Continuation of Line 5, Unauthorized Use Information." If you checked the block for "Other," please explain. This information should be put on a separate sheet of paper and identified as "Continuation of Line 5, Other."

[Line 6]—There are some laws which require the applicant to be a citizen of the United States before a Federal agency can permit the use of Federal lands or issue an authorization, thus the reason for this requirement. Check the appropriate block.

[Line 7]—Before you complete this line, we caution you that if you have not discussed your proposed project with the appropriate Federal agency or agencies are suggested under Step 1 of these instructions, you should do so at this time. Many of the affected agencies have very specific and/or unique requirements, particularly the regulatory agencies such as the Environmental Protection Agency, Interstate Commerce Commission, Federal Energy Regulatory Commission, etc. To list each of these, agency-by-agency, on the form or in these instructions, would not lend assistance to you. Therefore, after you have completed your *Pre-Application* consultation with the various agencies, give as a complete description of the proposed project as possible. If additional space is needed, the information should be put on a separate sheet of paper and identified as "Continuation of Line 7, Project Description." Examples of the type of information to be included are type of use—power transmission, transport oil or gas, vehicular transportation, etc.; units or volume of product to be transported—kilowatts, megawatts generated, cubic feet, barrels, gallons, thousands of board feet of timber, acre feet or water, etc.; the interrelationship of the proposed project with similar existing facilities; physical description of proposed facility—diameter of pipeline, all-weather surfaced road and width of running surface, and generating and transmission capacity of power projects; approximate date use will be terminated or construction completed; if the project involves dredging or filling in bodies of water, the volume and type of material is to be noted along with the name of the body of water. In addition, you may be required to furnish cost estimates of the project to some

agencies, and periods of use if the use will be on an interrupted basis. The above examples are not meant to be all-inclusive for a complete project description, but are only examples. Again, you are cautioned that the pre-application meeting described in STEP 1 will assist you in completing this important part of your application.

[Line 8]—Depending upon the proposed project, the mapping requirement may be satisfied with a relatively simply map or plan, or you may be required to submit a map or plan which shows the project in great detail. Generally, as a minimum, you must show the section, township and range within which the project is to be located and indicate the location of the project on the map as accurately as possible. These requirements are to be considered the minimum. Some agencies, depending upon the project, may require additional data; therefore, prior to preparing your map or plan, please check with the appropriate agencies for their specific mapping requirements. In addition, and depending on the type of use and associated structures to be constructed you may have to provide special maps and/or detailed structural or construction drawings. You should also provide, if required, technical data for specific navigational aids for both water and air travel. Again, you are cautioned to check with any affected agency to see if they require any type of special map or drawing for the type of project and facilities you propose.

[Line 9]—You are to check the appropriate box on this line if your proposed project requires State or local government approval. The various Federal agencies may only require you to furnish proof of application with the State or local government, while others may need the final approval document. For example, some Federal agencies require you to file a copy of the application you have filed with the State for water rights before they will process your application for a water pipeline. There are many variations for this requirement among the Federal agencies, therefore, please check with the agency or agencies with which you are filing this application.

[Line 10]—Some agencies require a nonreturnable application fee at the time of filing, while others do not. The amount or method of computing fees are not uniform among the agencies that do require a fee. Therefore, please check with each agency with which you must file this application for a determination of the fee that must accompany the application.

[Line 11]—If your project crosses the Canadian Boundary, the crossing must be shown on the map prepared to comply with Line 8. If your project affects any international waterway, the waterway must be identified on the map with a complete project description to be included in Line 7.

[Line 12]—Depending upon which law your proposed use will be authorized under, you may have to submit data on your technical and/or financial capability to construct, operate, maintain, and terminate the proposed project. Therefore, you should check with the affected agencies, to see if they require information of this type.

[Line 13]—Providing the requested information on alternate routes and modes in as much detail as you can and discussing in your analysis why certain routes or modes were rejected and why it is necessary to cross a conservation system unit, will in many cases assist the agency(ies) in processing your application and reaching a final decision within a shorter timeframe than normal. Your analysis should consider only reasonable alternative routes and modes as they relate to current technology and economics. For example, if your project is for a high voltage electric transmission line, you need not analyze the underground modes as an alternative.

[Line 14]—If you have applied for and received authorizations for similar projects in Alaska, please list these authorizations by their identifying number, date, code, or name. Information contained in these files may be useful in analyzing and processing the application you have just filed.

[Line 15]—The objective of this item is to provide information needed to evaluate the benefits, both tangible economic benefits and intangible public interest benefits, of a proposed transportation system for comparison with the magnitude of its detrimental effects on conservation units. The amount of specific information needed will depend on the nature and size of the transportation system. This item should always begin with a simple statement of the purpose of the system, including indications of the quantities of materials to be transported. In many cases, this will be sufficient, since the importance of the purpose would be obvious. However, this is only an abbreviated approximation of a full analysis of the total public and private costs of the proposed system and its next best alternative system. Major systems will require a full analysis for which additional specific information is needed. For transportation systems which will serve a new commercial enterprise, the expected net revenue of the enterprise will be a measure of the benefits of the transportation system. If there are public benefits in excess of expected revenues, these should be identified. For improved transportation systems to existing enterprises, the saving in transportation cost would be a measure of the economic benefits as well as the public benefits.

[Lines 16 through 18]—Recognizing the fact that some applicants will not have either the expertise or financial resources or both to provide all of the detailed information requested in these lines, you are requested to complete each line to the best of your ability and knowledge. The advantage to you to provide as much of the requested information as possible is that any useful information supplied will assist the Federal agency(ies) in reaching a decision and in all probability speed up the decisionmaking process on your application. In addition, and when providing information requested in these lines, you should use sound judgment in deciding whether certain specifics needs to be addressed depending on what your proposed project is. For example, if your project does not encroach into a stream or other body of water, you need not address this item or simply state that it is not applicable.

[Line 19]—Please check the box with the corresponding initials of the agencies with which you are filing this application. By providing this information the affected Federal agencies will be able to begin their coordinating role shortly after you have filed your application. To identify the initials with the appropriate agency, please go to Step 4 of these instructions.

Upon completing Lines 1 through 19 and prior to submitting your application, be sure you have signed and dated it in the space provided.

[Step 3]—General Instructions for Supplemental

The instructions under this Step apply only to the "Supplemental." Only business or governmental entities excpet for Federal agencies must complete the Supplemental, and then only the appropriate section pertaining to that entity. Regardless of the type of business or governmental entity and if you have any of the required information on file with the agencies and it is still up to date and accurate, check the block entitled "Filed" and note the case number, name, or the appropriate identification code. If any of the required information is not on file with the agency, check the block entitled "Attached" and submit a copy of the required document or information.

Under items "f" and "g" "Private Corporations" a block has been included to mark if you are not filing for an oil and gas pipeline. If, however, you are filing for an oil and gas pipeline, check either the "Attached" or "Filed" and follow the instructions noted in the first paragraph of this Step. The instructions of this paragraph also apply to items "e" under "Public Corporations" and "d" of "Partnership or Other Unincorporated Entity."

[Step 4]—Filing Instructions

Upon completing the application, you must file it with each affected Federal agency from whom you need a right-of-way, permit, license, lease, or certificate to establish and operate your proposed project. For your convenience, we are providing a listing of the participating agencies and their addresses with which you should file you application. In parenthesis following the name of the Federal agency we have included an initial which corresponds to the initials in Line 19 of the application form. Please use these identifying initials for your reference in completing Line 19.

Department of Agriculture

Regional Forester, Forest Service (USFS), Federal Office Building, P.O. Box 1628, Juneau, Alaska 99802; Telephone: (907) 586–7247 (or the appropriate Forest Service office)

Department of the Air Force

Alaskan Air Command (USAF), Headquarters AAC/DE—Bldg. 7000, Elemendorf Air Force Base, Anchorage, Alaska 99506 (or the appropriate installation commander); Telephone: (907) 752–2484

Department of the Army

U.S. Army Corps of Engineers (COE), Office of the District Engineer—Bldg. 21–700, Elemendorf Air Force Base, P.O. Box 7002, Anchorage, Alaska 99510; Telephone: (907) 279–1132

Department of the Navy

Western Division (USN), Naval Facilities Engineering Command, San Bruno, California 94066; Telephone: (415) 877–7601

Department of Commerce

National Marine Fisheries Service (NMFS), Director, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; Telephone: (907) 586–7221

National Oceanic and Atmospheric Administration (NOAA), Director, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; Telephone: (907) 586–7221

Department of Energy

Federal Energy Regulatory Commission (FERC), Office of the Secretary, 825 North Capitol Street, NE, Washington, D.C. 20426; Telephone: (202) 357–8400

Department of the Interior

Bureau of Indian Affairs (BIA), Juneau Area Office, P.O. Box 3–8000, Juneau, Alaska 99802; Telephone: (907) 586–7209

Bureau of Land Management (BLM), 701 (C) Street, Box 13, Anchorage, Alaska 99513; Telephone: (907) 271–5055

National Park Service (NPS), Alaska Regional Office, 540 West 5th Avenue, Room 202, Anchorage, Alaska 99501; Telephone: (907) 271–4196

U.S. Fish & Wildlife Service (FWS), Office of the Regional Director, 1011 East Tudor Road, Anchorage, Alaska 99503; Telephone: (907) 283–3537

Note.—Filings with any Interior Agency may be filed with any office noted above or with the: Office of the Secretary of the Interior, Regional Environmental Officer, Box 120, 1675 "C" Street, Anchorage, Alaska. This central filing point has been established for your convenience and may be used in lieu of filing with the individual agencies.

Department of State

Department of State (STATE), Office of Canadian Affairs (EUR/CAN), Washington, DC. 20520

Environmental Protection Agency

Environmental Protection Agency, Region 10 (EPA), Chief, Permits Branch, 1200 6th Avenue, Seattle, Washington 98101, Telephone: (206) 399–1348

Federal Communications Commission (FCC), Office of the Secretary, 1919 M Street, N.W., Washington, D.C. 20554

Interstate Commerce Commission (ICC), Federal Building and Court House, 701 C Street, Box 7, Anchorage, Alaska 99513; Telephone: (907) 271–5004

National Aeronautics and Space Administration

National Aeronautics and Space Administration (NASA), Station Director, NASA/STDN Alaska Station, P.O. Box 1307, Fairbanks, Alaska 99707; Telephone: (907) 452–1155

Department of Transportation

Federal Aviation Administration, Alaska Region AAL–4, P.O. Box 14, Anchorage, Alaska 99513

Note.—The Department of Transportation has established a central filing point for agencies within that Department. Affected agencies are: Federal Aviation Administration (FAA), Coast Guard (USCA), Federal Highway Administration (FHWA), Federal Railroad Administration (FRA).

BILLING CODE 4310–10–M

UNIFORM FEDERAL TRANSPORTATION AND UTILITY SYSTEM APPLICATION

FORM APPROVED
BUDGET BUREAU NO.

FOR AGENCY USE ONLY

Application Number

Date filed

1. Name and address of applicant *(include zip code)*	2. Name, title, and address of authorized agent if different from item 1 *(include zip code)*	3. TELEPHONE *(area code)* Applicant Authorized agent

4. As applicant are you?

- ☐ Individual
- ☐ Corporation
- ☐ Partnership
- ☐ State Government /State Agency
- ☐ Local Government
- ☐ Federal Agency

5. Specify what application is for:

- ☐ New authorization
- ☐ Renew existing authorization No.
- ☐ Amend existing authorization No.
- ☐ Assign existing authorization No.
- ☐ Existing use for which no authorization received
- ☐ Other *(describe)*

6. If an individual are you a citizen of the United States? ☐ Yes ☐ No

7. Project description *(describe in detail)*: (a) Type of transportation system *(i.e. canal, pipeline, road)*, (b) related structures and facilities, (c) physical specifications *(length, width, grading, etc.)*; (d) term of years needed, (e) time of year of use or operation; (f) volume or amount of product to be transported, (g) duration and timing of construction, and (h) temporary work areas needed for construction. *(Attach additional sheets, if additional space is needed.)*

8. Attach map covering project area and show approximate location on map.

9. State or local government approval: ☐ Attached ☐ Pending/Applied for ☐ Not required

10. Nonreturnable application fee: ☐ Attached ☐ Not required

11. Does project cross International Boundary or affect international waterways? ☐ Yes ☐ No

12. Give statement of your technical and financial capability to construct, operate, and maintain the system for which authorization is being requested.

13a. Describe in detail alternative routes and modes considered.

b. If routes or modes rejected, explain why.

c. Give explanation as to why it is necessary to cross Federal lands.

14. List your previous applications for similar projects which may provide additional information to authorizing agency.

15. Provide statement of need for project, including the economic feasibility. Statement should include items such as: (a) cost of proposed transportation/utility system *(construction, operation, and maintenance)*, (b) estimated cost of next best alternative system; and (c) expected public benefits provided by the system.

16. Describe probable effects on the population in the area, including socioeconomics effects, and statement of effect on rural traditional lifestyles.

17. Describe likely environmental effects that the proposed project will have on: (a) air quality; (b) visual impact on the conservation unit, (c) surface and ground water quality and quantity; (d) the control or structural change on any stream or other body of water; (e) altering existing noise levels, and (f) altering the surface of the land, including vegetation, permafrost, soil, and effects on soil stability.

18. Describe the probable effects that the proposed project will have on: (a) populations of fish, plant, wildlife, and marine life, including endangered and threatened species; and (b) marine mammals, including hunting, capturing, collecting, or killing of these animals.

19. Check appropriate box to indicate agency(ies) with which you are filing. *(For agency identification refer to Step 4 of the instructions.)*

☐ USFS ☐ USAF ☐ COE ☐ USN ☐ NMFS ☐ FERC ☐ NOAA ☐ BIA ☐ BLM ☐ NPS ☐ FWS ☐ STATE
☐ EPA ☐ FCC ☐ ICC ☐ NASA ☐ FAA ☐ USCG ☐ FHWA ☐ FRA ☐ Other *(Specify)*

I HEREBY CERTIFY, That I am of legal age and authorized to do business in the State and that I have personally examined the information contained in the application and believe that the information submitted is correct to the best of my knowledge.

Signature of Applicant	Date

Title 18, U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statements or representations as to any matter within its jurisdiction.

SUPPLEMENTAL

Note: If file block is checked, give application number of file containing the requested information

I – PRIVATE CORPORATIONS *(Check appropriate block(s))*	ATTACHED	FILED
a. Articles of Incorporation	☐	☐
b. Corporation Bylaws	☐	☐
c. If not incorporated in the State of Alaska, a certificate from the Secretary of State showing corporation is in good standing and is entitled to operate in Alaska. If incorporated in Alaska, a certificate from the State Department of Commerce and Commercial Development is required.	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. The name and address of each shareholder owning 3 percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote and the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.	☐	☐
f. If application is for an oil or gas pipeline, describe any related right-of-way or temporary use permit applications, and identify previous applications. *(If does not apply check this block ☐.)*	☐	☐
g. If application is for an oil and gas pipeline, identify all Federal lands by agency impacted by proposal. *(If does not apply check this block ☐.)*	☐	☐
II – PUBLIC CORPORATIONS		
a. Copy of law forming corporation	☐	☐
b. Proof of organization	☐	☐
c. Copy of Bylaws	☐	☐
d. Copy of resolution authorizing filing	☐	☐
e. Information required by Items "1f" and "1g" above are required for public corporations. *(If does not apply check this block ☐.)*	☐	☐
III – PARTNERSHIP OR OTHER UNINCORPORATED ENTITY		
a. Articles of association, if any	☐	☐
b. If one partner is authorized to sign, resolution authorizing action is.	☐	☐
c. Name and address of each participant, partner, association, or other	☐	☐
d. Information required by Items "1f" and "1g" above are required. *(If does not apply check this block ☐.)*	☐	☐

Comments/remarks *(attach additional sheets, if necessary and specify items involved)*

[FR Doc. 81-15637 Filed 6-2-81; 8:45 am]

BILLING CODE 4310-10-C

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/14/85

Date JAN 30, 1985

Mr. President

The Committee on TRANSPORTATION considered SB 49

Special appropriation to the Department of Transportation and Public Facilities to determine the feasibility of building Kantishna Road; efd.

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

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO ~~PASS~~

MEMBERS HAVING
OTHER RECOMMENDATIONS

Jerl Josephson - Do Not Pass

Pending Additional Information from Dept of Natural Resources, Dep't of Fish & Game, & Dep't of Environmental Conservation

_____
Chairman

_____
Chairman recommendation

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Don Dickey, Director
Division of Tourism

From: Senator Jack Coghill, Chairman
Senate Transportation Committee

Date: February 7, 1985

Re: SB 49 - Kantishna Road Feasibility Study

As your division is charged with the development and promotion of the tourist industry in Alaska, we thought it appropriate to ask for your views on the attached legislation.

It is our intention with this bill to study three alternate routes from the Parks Highway into the Wonder Lake area, with the express purpose of relieving the steadily-growing pressure on the McKinley Park Road. Included in the study, along with the determination of the actual physical viability of each route, will be discussions with public officials in effected federal agencies to determine the reality of putting a road in through the park.

Attached you will find a copy of the bill, a map showing the alternate routes, and a proposal for the study from a Fairbanks engineering firm. The extension into Kantishna has been identified by the Fairbanks Chamber of Commerce as a transportation priority, and has been listed by DOT/PF as a highly viable Interior road extension.

Although we realize you cannot endorse appropriations outside the Governor's proposed budget, we would appreciate your analysis of the value such a road extension would have to the tourist industry in Alaska.

Thank you for your prompt attention to this request. If you need further information, please contact John Manly at the above number.

Alaska State Legislat

Letter + Copy of Thomas + assoc. Report dtd Map also

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Senate Committee on Transportation

MEMORANDUM

To: Tom Tougas, Vice President
Holland/America Tours

From: Senator Jack Coghill, Chairman
Senate Transportation Committee
Blake Call, Committee Secretary

Date: February 7, 1985

Re: SB 49 - Kantishna Road Feasibility Study

As your company is quite interested with the tourist industry in Alaska, we thought it appropriate to ask for your views on the attached legislation.

It is our intention with this bill to study three alternate routes from the Parks Highway into the Wonder Lake area, with the express purpose of relieving the steadily-growing pressure on the McKinley Park Road. Included in the study, along with the determination of the actual physical viability of each route, will be discussions with public officials in effected federal agencies to determine the reality of putting a road in through the park.

Attached you will find a copy of the bill, a map showing the alternate routes, and a proposal for the study from a Fairbanks engineering firm. The extension into Kantishna has been identified by the Fairbanks Chamber of Commerce as a transportation priority, and has been listed by the Alaska Department of Transportation/Public Facilities as a highly viable Interior road extension.

Thank you for your prompt attention regarding this matter. If you need further information, please contact Blake Call at the above number.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Jim Ayers, Special Assistant
Department of Fish & Game

From: John Manly, Committee Aide
Senate Transportation Committee

Date: February 9, 1985

Re: SB 49 - Kantishna Road Feasibility Study

As your departmet is charged with the management of fish and wildlife throughout Alaska, we thought it appropriate to ask for your views on the attached legislation.

It is our intention with this bill to study three alternate routes from the Parks Highway into the Wonder Lake area, with the express purpose of relieving the steadily-growing pressure on the McKinley Park Road. Included in the study, along with the determination of the actual physical viability of each route, will be discussions with public officials in effected federal agencies to determine the reality of putting a road in through the park.

Attached you will find a copy of the bill, a map showing the alternate routes, and a proposal for the study from a Fairbanks engineering firm. The extension into Kantishna has been identified by the Fairbanks Chamber of Commerce as a transportation priority, and has been listed by DOT/PF as a highly viable Interior road extension.

Although we realize you cannot endorse appropriations outside the Governor's proposed budget, we would appreciate a brief statement of the impact a road of the type proposed here would likely have on the wildlife inhabiting the area behind McKinley Park.

Thank you for your prompt attention to this request. If you need further information, please contact John Manly at the above number.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

To: Jeralyn Cox
Alaska Visitor's Association

From: Senator Jack Coghill, Chairman
Senate Transportation Committee
Blake Call, Committee Secretary

Date: February 11, 1985

Re: SB 49 - Kantishna Road Feasibility Study

As your association is quite interested with the tourist industry in Alaska, we thought it appropriate to ask for your views on the attached legislation.

It is our intention with this bill to study three alternate routes from the Parks Highway into the Wonder Lake area, with the express purpose of relieving the steadily-growing pressure on the McKinley Park Road. Included in the study, along with the determination of the actual physical viability of each route, will be discussions with public officials in effected federal agencies to determine the reality of putting a road in through the park.

Attached you will find a copy of the bill, and a proposal for the study from a Fairbanks engineering firm. The extension into Kantishna has been identified by the Fairbanks Chamber of Commerce as a transportation priority, and has been listed by the Alaska Department of Transportation/Public Facilities as a highly viable Interior road extension.

Thank you for your prompt attention regarding this matter. If you need further information, please contact Blake Call at the above number.

A SYNOPSIS OF THE

KANTISHNA ACCESS HIGHWAY

prepared for the

SENATE TRANSPORTATION COMMITTEE

by

Thomas & Associates
P.O. Box 80783
Fairbanks, Alaska 99708
(907)479-4972

January 1985

PROJECT DESCRIPTION

The Kantishna access consists of a road north of the Alaska Range that connects the Parks Highway with the Kantishna area and the western end of the Denali National Park Road. There are any number of possible alignments but all can be categorized into three basic routes this road could take:

1. along the old Stampede Road then through the foothills to Kantishna;
2. along the old Sled Road to Kantishna;
3. through the Nenana Agricultural Area to the Kantishna River then up the Kantishna River to Kantishna.

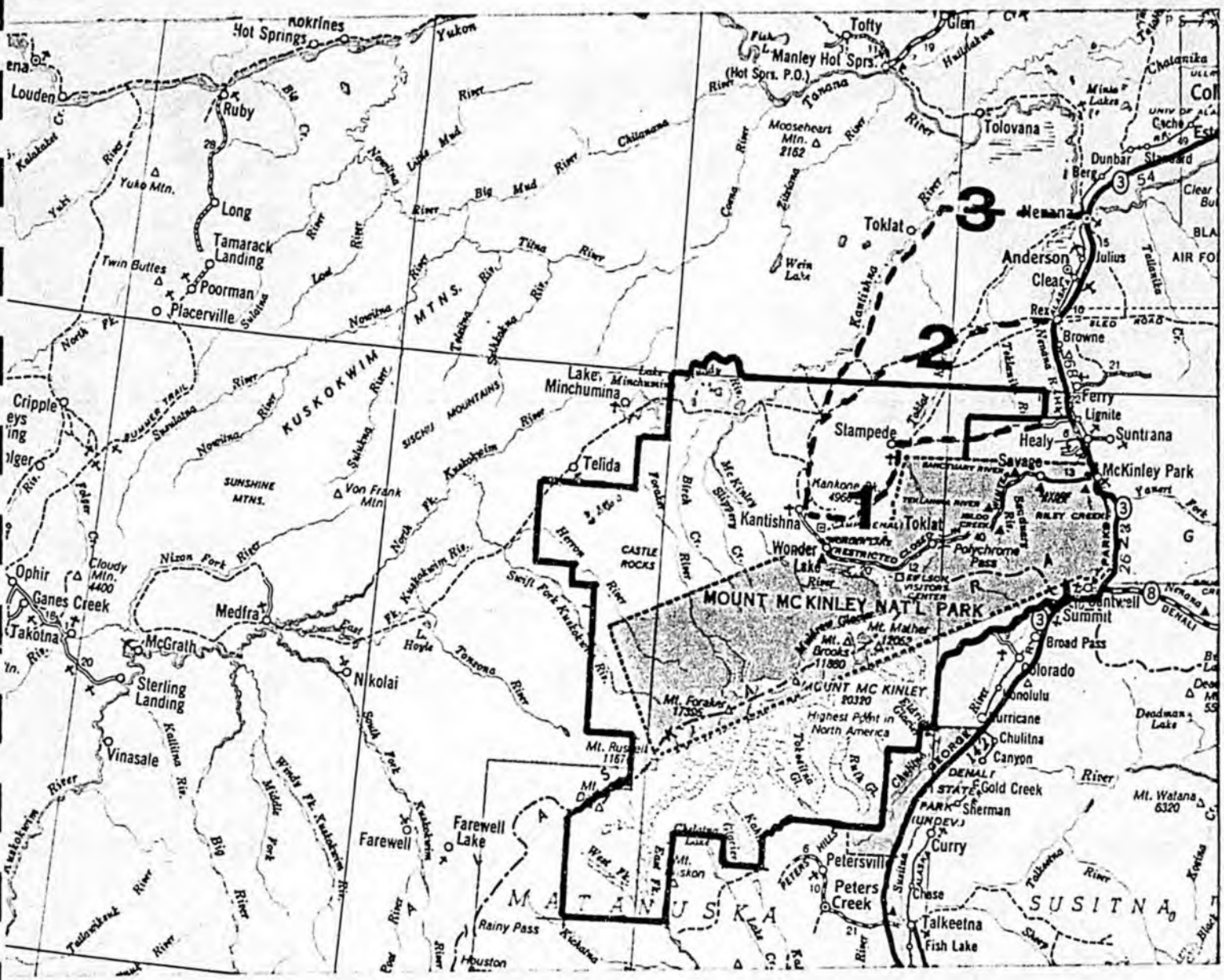
Traffic projections for this road are estimated at 5,000 vehicles per day during the summer months. This suggests a high standard, paved highway consisting of a 40 foot top with curves of five degrees (5^{o}) or less. The highway should be considered for a scenic highway classification.

The map on the following page shows the Denali National Park and the location of the three basic routes.

PROJECT JUSTIFICATION

Tourism

Mt. McKinley is Alaska's number one tourist attraction, and tourism is Alaska's second largest industry and growing at ten percent (10%) annually. Even though Mt. McKinley is Alaska's most popular attraction, many tourists have disappointing viewing experiences using the existing National Park Service shuttle bus system. Park officials estimate that over fifty percent (50%) of visitors fail to get a glimpse of the mountain. This is because of the poor weather that is often encountered near the mountain coupled with only a limited viewing time. The shuttle bus requires a minimum three hour ride to the



BASIC ROUTES

1. Stampede Trail
2. Sled Route
3. Agricultural Area Route

premium viewing area and a similar ride back to the Park hotel. It has been necessary to severely restrict traffic on the existing Park road for safety reasons and to retain at least some wildlife viewing opportunities.

It should be recognized that Alaska's tourist industry receives the brunt of criticism from disappointed visitors in spite of the fact that the State of Alaska has absolutely no control over National Park activities and policies. With tourism growing, the problem will get much worse very quickly.

The subject project will resolve all these issues as well as provide the catalyst and opportunity for the private sector to meet the growing need for more hotel space and tourist facilities. The Kantishna Highway would provide good access to the historical Kantishna mining area where a number of patented mining claims exist. These claims are private property in every sense of the word and can be used by the private sector for locating hotels and other tourist facilities--many with excellent views of Mt. McKinley. Tourists staying at these facilities would have a much better chance of observing the mountain since their time at these facilities would be nearly unlimited. In addition, the existing Park road could be restricted for use as a wildlife tour road enhancing this aspect of Denali National Park.

Mining

Mining is an important industry in the Kantishna area. This is true now as well as historically, and it is documented by the fact that there are numerous federally patented mining claims in the Kantishna area. Along with gold, tungsten occurs in commercial size deposits. Prospecting under the direction of the National Park Service in 1983 and 1984 confirmed the importance of this mineralized area to mining.

At the present time, surface access to the Kantishna area is limited

to the National Park Service Road to Wonder Lake. Because of the overuse this road receives from tour buses, shuttle buses and a limited number of private vehicles, the Park Service has found it necessary to restrict mining traffic to the times of day when other traffic is the lightest. This situation will not improve until there is a major improvement of the existing Park road or until an alternative access is constructed. The Interior Alaska Transportation Study projected 50 vehicles per day would be generated by the mining industry. Most of these vehicles would be trucks hauling ore or supplies. Current restrictions imposed by the Park Service are severe enough to discourage major mining efforts. The proposed highway would not only resolve this conflict in traffic but would access the area with a modern highway which would further encourage mining development.

As noted before, these mining claims could be used for siting hotels and other visitor facilities creating an opportunity for the private sector in the tourism industry.

Mt. McKinley

Mt. McKinley is Alaska's crown jewel and our birthright. Since statehood, access has been under the direct control of the federal government. Congressional action has increased this control through National Interest Lands. In spite of the importance of Mt. McKinley to our tourist industry, the federal government has made little, if any, effort to make that attraction more accessible or convenient. This a serious indictment when one considers the historical and projected growth and importance of our tourist industry.

The proposed highway would allow our State to share in this natural resource. It would also allow the federal government to enhance wildlife viewing along the existing Park road thus emphasizing the original Park mandate, that of perserving wildlife. This could occur by confining development to the mining areas which have already

experienced the touch of man and reserve the existing Park road for wildlife viewing.

Agricultural

The furtherest north of the basic routes shown on the attached map would benefit the agricultural industry as well as tourism and mining. This route provides access to the Nenana-Totchaket Agricultural Area already identified as prime agricultural land. It should be noted that access into this area has been planned and designed.

Access Extension

Both the Tanana Valley Development Plan and the Interior Alaska Transportation Study document that access into the Kantishna area is economically justified. In the future, the access needs of the McGrath area may result in extending this highway in that direction. All long range transportation plans for Alaska have shown the Parks Highway - McGrath as a service transportation corridor. While the construction of a highway to Kantishna will not guarantee such an extension, it does provide for the possibility when and if the need is there.

ALTERNATIVES

The alternatives to a northern access into the Kantishna area are limited to:

1. do nothing;
2. upgrade the existing Park road;
3. provide tourist facilities on the south flank of the Alaska Range.

All are discussed briefly in the following paragraphs.

Do Nothing

This is not a viable alternative. It is mentioned to show that it has been considered. The Park Service cannot accommodate the existing visitor demand, and this demand is growing by ten percent (10%) per

year. Alaska has a vital interest in assuring that this growing demand is met because it effects the reputation of our tourist industry.

Upgrading the Existing Park Road

Upgrading the existing Park road to Wonder Lake has several significant disadvantages. First, the existing road traverese through rugged mountainous terrain, and it would be expensive to achieve reasonable standards to accommodate increased traffic. Second, the existing road bisects the most restrictive Park use lands, so designated to protect the wilderness environment. An upgraded road would compromise this situation and further degrade the wildlife experience now enjoyed by visitors. Third, unless travel restrictions were relaxed, the visitors' experience would be much the same as it is now. There would be only limited opportunity to remain at vantage points to see the mountain. There would be no opportunity to create loop routes or enhance wildlife viewing. Fourth, mining activities would likely remain restrictive. There would be little opportunity or incentive for the private entrepreneur to develop visitor facilities.

Provide Tourist Facilities on the South Flank of the Alaska Range

Such a facility has some obvious drawbacks. First, it would be an additional tourist facility and not a substitute of the existing road. Alaskan visitors are making a major vacation. In many instances, it will be the major vacation of their life time. If there are two different tourist's experiences to be had, they will want to experience both of them. Thus, a south flanked visitor facility will not significantly reduce the demand on the existing Park road; however, it may make the Park Service feel less obligated to meet thoses demands. Second, the climate on the south side of the Alaska Range is wetter than that on the north. Consequently, the viewing opportunities are reduced on that side of the range. A northern facility has a distinct advantage in this regard. Third, a facility on the south side could not be linked with the existing Park road thus precluding any

opportunity for looping or restiction of the existing road for wildlife viewing. Fourth, because of the more rugged terrain on the south side, both capital and maintenance costs would be increased. Fifth, there would be no opportunity for the private entrepreneur to develop tourist facilities except as concessionnaire.

In contrast, the northern access provides for all of these things and creates a roadway system that best serves the public and is the most economical to achieve.

NECESSARY ACTION

Both the Interior Alaska Transportation Study and the Tanana Valley Development Plan, both State funded planning studies, recognized the value and feasbility of the Kantishna access highway. The next step is the location phase which consists of a location study report, environmental impact statement and a public involvement plan. Upon completion of this phase, the State would have an approved alignment for this highway and would be ready to enter the next project phase, that of project design. The cost of this phase is estimated at $500,000.

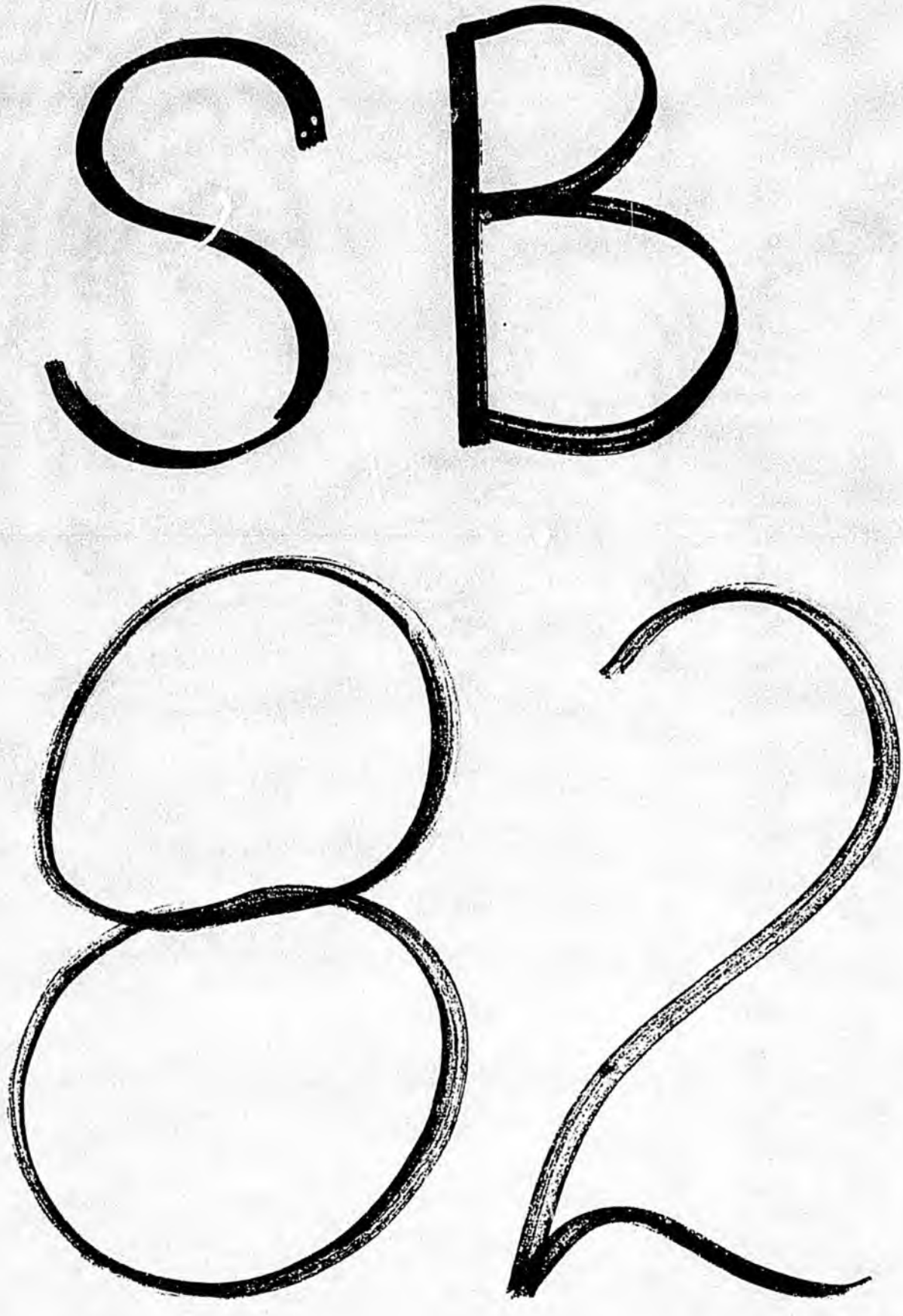
PROJECT SCHEDULING

There is some urgency to fund this project this session. This urgency stems from the fact that the tourist demand is exceeding the capacity of the Park road resulting in unsafe operations and dissatisfied visitors. The Park Service is obligated to do something. If it adopts a short term solution, the Kantishna access option may be foreclosed. Both the State of Alaska and our tourist industry would be greatly compromised if that were to happen. The current federal administration is more attuned to improved access than has been past administrations. There is no way of knowing the position of future administrations. The Alaskan Congressional Delegation is very concerned over the situation created by the existing Park road. All are looking for

a solution to this problem.

Funds available for capital improvements within the State are shrinking. If the federal government can agree that the nothern access route provides the best solution to these problems, there should be opportunity for significant federal funding participation without effecting our regular federal highway resources.

If access is not provided into the Kantishna area, mining may not develop, resulting in the Park Service eventually buying these patented claims up and forever foreclosing on the possibility of the State and the private sector to share the benefits brought on by the highest mountain in North America.


SB
82

Sec. 12.25.160. Arrest defined. Arrest is the taking of a person into custody in order that the person may be held to answer for the commission of a crime. (§ 2.01 ch 34 SLA 1962)

NOTES TO DECISIONS

Arrest for speedy trial purposes. — "Arrest," as used in Crim. R. 45(c)(1), which provides for a 120-day speedy trial period, must be defined in conformity with the statutory definition of an arrest. G.D. v. State, Ct. App. Op. No. 374 (File No. 7724), P.2d (1984).

Defendant was not arrested on the date of the child-in-need-of-aid hearing, and the 120-day speedy trial period did not begin to run until he was served with a copy of the information charging him with sexual assault in the first degree and contributing to the delinquency of a minor. G.D. v. State, Ct. App. Op. No. 374 (File No. 7724), P.2d (1984).

Drawn guns and handcuffing do not necessarily turn stop into arrest. Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Lawful stops and custodial arrest distinguished. — See Howard v. State, Ct. App. Op. No. 260 (File Nos. 6027, 6123), 664 P.2d 603 (1983).

Applied in Goss v. State, Sup. Ct. Op. No. 193 (File No. 235), 390 P.2d 220, cert. denied, 379 U.S. 859, 85 S. Ct. 118, 13 L.Ed.2d 62 (1964); Aldridge v. State, Sup. Ct. Op. No. 1971 (File No. 3413), 602 P.2d 798 (1979); Maynard v. State, Ct. App. Op. No. 136 (File No. 5501), 652 P.2d 489 (1982).

Sec. 12.25.180. When peace officer may issue citation or take person before the court. (a) When a person is stopped or contacted by a peace officer for the commission of a misdemeanor or the violation of a municipal ordinance, the person may, in the discretion of the contacting peace officer, be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

(1) the person does not furnish satisfactory evidence of identity;

(2) the contacting officer has reasonable and probable cause to believe the person is a danger to self or others;

(3) the crime for which the person is contacted is one involving violence or harm to another person or to property; or

(4) the person asks to be taken before a judge or magistrate under AS 12.25.150.

(b) When a person is stopped or contacted by a peace officer for the commission of an infraction or a violation, the person shall be issued a citation instead of being taken before a judge or magistrate under AS 12.25.150, unless

(1) the person does not furnish satisfactory evidence of identity; or

(2) the person refuses to accept the citation or to give a written promise to appear as provided for under AS 12.25.190(c). (§ 1 ch 31 SLA 1973; am § 19 ch 127 SLA 1974; am § 3 ch 144 SLA 1977; am § 34 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment designated the provisions of this section as subsection (a), deleted "or an infraction" following "of a misdemeanor" near the beginning of subsection (a), and added subsection (b).

Legislative history reports. — For report on ch. 31, SLA 1973 (SB 25), see 1973 Senate Journal Supplement No. 7, p. 2.

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

February 7, 1985

The Honorable Jack Coghill
Chairman
Senate Transportation Committee
Pouch V
Juneau, AK 99811

Dear Senator Coghill:

I am writing to bring to your attention some court system concerns arising from Senate Bill 82, an act relating to weights and measures, which is presently before the Senate Transportation Committee.

A major concern is the legislative intent about how violations under this act will be handled in court. Under Section 13 of the bill, an authorized employee may issue citations for size, weight, or load limitations and for violations of an overweight or oversize permit. Proposed paragraph 45.75.130(d) (page 7, lines 16-23) provides that a citation may be disposed of only by trial. These offenses will be classified as violations rather than misdemeanors (A.S. 45.75.380(a); page 13, lines 6-8) with an additional fine of five cents per pound for each overweight pound.

When these offenses were enforced by the Department of Public Safety they were included on the traffic and motor vehicle bail forfeiture schedule adopted by supreme court order under the authority of A.S. 28.05.151. These offenses were handled like traffic tickets. A person cited who wished to plead guilty could do so by waiving the person's right to trial and mailing a bail forfeiture amount to the court. The amount was set by the supreme court based upon recommendations from the Department of Public Safety and was standard for each offense. Persons who wished to plead not guilty were scheduled for a non-jury trial, and if found guilty could be required to pay a fine no greater than the bail forfeiture amount.

Under the scheme proposed in SB 82, all persons cited would be required to come to court to plead guilty. Because this results in additional judicial time handling court appearances rather than additional clerical time handling bail forfeiture payments, the court system suggests

COURT SYSTEM REQUEST

that the committee consider whether a bail forfeiture procedure would be appropriate for these offenses. I have attached a copy of language which could be incorporated into the bill if the committee wishes to consider this approach.

The bill raises an additional question about legislative intent. The Alaska Supreme Court has held that a defendant is entitled to a jury trial and, if indigent, to court-appointed counsel at public expense if a direct penalty of the offense will be incarceration, loss of a valuable license, or offenses which, even if incarceration is not possible, still connote criminal content.

A heavy enough fine might also indicate criminality. Baker v. City of Fairbanks, 471 P.2d 386 (1970). Additionally, A.S. 11.81.700(b)(56) defines a violation as a non-criminal offense punishable only by a fine and provides that a person charged with a violation is not entitled to a jury trial or counsel at public expense. Although offenses under this bill are classified as violations (Section 26), an additional fine of 5¢ per pound is required for overweight violations (see page 15, lines 7-12). If a defendant's vehicle is substantially overweight, the additional fine could increase the total fine to such an extent that it denotes criminality. Thus, jury trials and counsel at public expense may be constitutionally required, although the bill classifies these offenses as violations. Since cases requiring jury trials must be processed as misdemeanors before a district court judge, whereas cases which do not require a jury trial can be processed similarly to traffic infractions, it would be helpful if the intent regarding the availability of jury trials and counsel for these offenses could be clarified.

Thank you for this opportunity to submit comments. If I can provide further information to the committee, please let me know.

Sincerely,

Karla L. Forsythe

Karla Forsythe
General Counsel

cc: Arthur H. Snowden, II
Peter Froehlich
Lisa Nelson

Attachment
KF:lae

PROPOSED LANGUAGE

SENATE BILL 82

Form and issuance of citation. (a) When an authorized employee stops or contacts a person concerning a violation, the employee may issue a citation to the person as provided in A.S. 12.25.180.

(b) The supreme court shall specify by rule or order those violations that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. The maximum bail forfeiture amount for an offense may not exceed the maximum fine specified by law for that offense. If the violation for which the citation is issued may be disposed of without court appearance, the issuing employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(c) A person cited for a violation for which a bail forfeiture amount has been established under (b) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the employee

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(d) When bail has been forfeited under (c) of this section, a judgment of conviction shall be entered. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact.

(e) If the person cited fails to pay the bail forfeiture amount established under (b) of this section or to appear in court as required, the citation is considered a summons for a misdemeanor.

(f) Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail forfeiture amount for that offense established under (b) of this section.

AK TOURISM JNU

PERMITS II AHG

TO: JOE SWANSON,DIRECTOR
DIVISION OF MEASUREMENT STANDARDS
C/O DEPARTMENT OF COMMERCE
TOURISM DIVISION
JUNEAU, AK

FROM: A.D.THOMPSON,CHIEF
SECTION OF PERMITS &
WEIGH STATIONS
ANCHORAGE,AK

	FY 83	FY 84	1/2 FY 85
1. NO PERMIT		131	227
2. PERMIT VIOLATIONS		118	183
3. PERMIT CORRECTIONS		202	156
TOTAL	##297	451	566

1. OVERSIZE VEHICLE TRAVELING WITH NO PERMIT.

2. A VIOLATION OF PERMIT CONDITIONS WHICH REQUIRED THE APPROVAL OF THE PERMIT OFFICE PRIOR TO CONTINUING TRIP.

3. A VIOLATION OF PERMIT CONDITIONS THAT WHERE A PERMIT CORRECTION FORM WAS ISSUED BY A WEIGHT STATION OPERATOR.

REPRESENTS NINE MONTHS OF FY 83. UNABLE TO SEPARATE BY TYPE.#

AK TOURISM JNU

PERMITS II AHG
K
TOD FEB 11 85

OVERSIZE PERMIT VIOLATIONS - AT SCALE HOUSES

CSSB 82 (Trans)

OUTLINE FOR FLOOR STATEMENT

- Most of the bill is housekeeping, making gender and grammatical changes, and replacing "director" with "commissioner" in a multitude of occurrences.

- Substantive change in Section 14, which in the original and in the CS allows the department to issue citations for oversize and overweight violations. This is to close a loophole that has existed since 1982, when the scale houses were transferred to Commerce from Public Safety. Currently, department personnel can stop a violator, but cannot issue a citation.

Additionally, in the CS, a provision has been made, at the request of the Court System, to allow for them to establish a bail forfeiture schedule, so that not all of these violations will have to come to court.

- 2nd substantive change is in section 27, where it is a violation to hinder or obstruct certain department personnel in their performance of duties, to violate an oversize or overweight permit, or regulation.

- Additionally, the original bill would have set the fine for overweight violations at $300 plus 5 cents a pound, and the cs puts it back to the current rate of 5 cents a pound. Testimony indicated that with the heavier fine, the violation could be propelled into a higher class of crime by the constitution.

- Repealers:

AS 28.40.050(e) is the current 5 cents a pound fine, which is placed elsewhere in the statutes by the CS.

AS 45.75.360 is current prohibition of hindering or obstructing an officer, which is recodified elsewhere by the CS.

REQUESTED PROCEDURE TO MOVE COMMITTEE SUBSTITUTE FOR SB 82

- AFTER THE SENATE SECRETARY BRINGS UP THE SB 82 AS THE "NEXT ORDER OF BUSINESS", AND SAYS SHE HAS ONE COMMITTEE SUBSTITUTE ON HER DESK,

- MOVE AND ASK UNANIMOUS CONSENT THAT THE TRANSPORTATION COMMITTEE SUBSTITUTE BE ADOPTED.

Offered: 2/26/85
Referred: Labor & Commerce
and Finance

Original sponsor: Rules/Governor

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 82 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to weights and measures; and providing for an effective date."

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

* Section 1. AS 45.75.030 is amended to read:

Sec. 45.75.030. STATE DIRECTOR AND INSPECTORS OF WEIGHTS AND MEASURES. The commissioner of commerce and economic development is ex officio state director of weights and measures. The commissioner may delegate this authority, and [DIRECTOR] may appoint state inspectors.

* Sec. 2. AS 45.75.040 is amended to read:

Sec. 45.75.040. GENERAL POWERS AND DUTIES OF COMMISSIONER [DIRECTOR]. The commissioner [DIRECTOR] is the custodian of the state standards of weight and measure and of the other standards and equipment provided for by this chapter, and [. THE DIRECTOR] shall keep accurate records of the standards and equipment. The commissioner [DIRECTOR] shall enforce this chapter, implement AS 44.33.020(25), and [. HE SHALL] supervise the weights and measures offered for sale, sold, or in use in the state.

* Sec. 3. AS 45.75.050(a) is amended to read:

(a) The commissioner [DIRECTOR] shall adopt [ISSUE] regulations necessary for the enforcement of this chapter in accordance with the Administrative Procedure Act (AS 44.62). These have the effect of law.

* Sec. 4. AS 45.75.050(b) is amended to read:

(b) The regulations may include

TRANSPORTATION C.S.

(1) standards of net weight, measure, or count, and reasonable standards of fill, for a [ANY] commodity in package form;

(2) rules governing the technical and reporting procedures to be followed, and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties;

(3) exemptions from the sealing or marking requirements of AS 45.75.120 for [WITH RESPECT TO] weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question; [AND]

(4) for [WITH RESPECT TO] classes of weights and measures of a character that annual retesting is unnecessary to continued accuracy, exemptions from the requirements of AS 45.75.070 and 45.75.080 for annual testing, and schedules fixing the frequency of required retests for classes of devices exempted;

(5) in the implementation of AS 44.33.020(25), provisions governing the enforcement of the size, weight, and load limitations established under AS 19.10.060; the issuance of, and the enforcement of the terms of, permits for overweight and oversize vehicles; and the operation of weigh stations.

* Sec. 5. AS 45.75.050(d) is amended to read:

(d) The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments to them, as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 and supplements to it, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and regulations for commercial weighing and measuring devices of the state, except as specifically modified, amended, or rejected by a regulation adopted [ISSUED] by the

commissioner [DIRECTOR].

* Sec. 6. AS 45.75.060 is amended to read:

Sec. 45.75.060. OFFICE AND FIELD [WORKING] STANDARDS AND EQUIPMENT. The commissioner [STATE] shall maintain [SUPPLY THE DIVISION OF WEIGHTS AND MEASURES WITH] a duplicate set of state standards of weight and measure, referred to in this chapter as office standards. The commissioner [STATE] shall also supply field standards and the equipment that [WHICH] is necessary to carry out this chapter. The commissioner shall verify the office standards and field standards on [SHALL BE VERIFIED UPON] their initial receipt and at least once each year afterward. The commissioner shall verify the office standards [SHALL BE VERIFIED] by direct comparison with the state standards. The commissioner shall verify the [THE] field standards [SHALL BE VERIFIED] by comparison with the office standards.

* Sec. 7. AS 45.75.070 is amended to read:

Sec. 45.75.070. TESTING AND INSPECTION OF LOCAL STANDARDS AND WEIGHTS AND MEASURES AT STATE-SUPPORTED INSTITUTIONS. (a) At least once every five years, the commissioner [DIRECTOR] shall test the standards of weight and measure obtained by a city that [WHICH] has appointed a sealer of weights and measures, and shall approve them if they are correct. The commissioner [DIRECTOR] shall inspect the standards at least once every two years.

(b) The commissioner [DIRECTOR] shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution maintained by money appropriated by the legislature, and shall report the commissioner's [HIS] findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

* Sec. 8. AS 45.75.080(a) is amended to read:

(a) The commissioner [DIRECTOR] may inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. The commissioner [DIRECTOR] shall, at least annually [SEMIANNUALLY AND MORE OFTEN AS HE CONSIDERS NECESSARY], inspect and test, to ascertain if they are correct, all weights and measures commercially used

(1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight or of measure;

(2) in computing the basic charge or payment for services rendered on the basis of weight or of measure or count; or

(3) in determining weight or measurement when a charge is made for this determination.

* Sec. 9. AS 45.75.090 is amended to read:

Sec. 45.75.090. INVESTIGATIONS. The commissioner [DIRECTOR] shall investigate complaints of violations of this chapter, and shall [, UPON HIS OWN INITIATIVE,] conduct other [THE] investigations that the commissioner [WHICH HE] considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination, [AND] on possible violations of this chapter, and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

* Sec. 10. AS 45.75.100 is amended to read:

Sec. 45.75.100. INSPECTION OF PACKAGES. (a) The commissioner [DIRECTOR] shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with law. When packages or amounts of commodities do not contain the amounts

represented, or are kept, offered, or exposed for sale in violation of law, the commissioner [DIRECTOR] may order them off sale and may mark or tag them to show they are illegal. The commissioner [DIRECTOR] may use recognized sampling procedures. The commissioner shall determine the compliance [COMPLIANCE] of a given lot of packages [SHALL BE DETERMINED] on the basis of the result obtained on a sample selected from and representative of the lot.

(b) A [NO] person may not

(1) sell, or keep, offer, or expose for sale in intrastate commerce a package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section until the package or amount of commodity has been brought into full compliance with all legal requirements; or

(2) dispose of a package or amount of commodity that is ordered off sale or marked or tagged as provided in this section and that does not meet legal requirements, except with the specific approval of the commissioner [DIRECTOR].

* Sec. 11. AS 45.75.110(a) is amended to read:

(a) The commissioner [DIRECTOR] may issue stop-use orders, stop-removal orders, and removal orders for weights and measures used or capable of being used commercially. The commissioner [DIRECTOR] may issue stop-removal orders and removal orders for packages or amounts of commodities kept, offered, or exposed for sale whenever the commissioner [HE] considers it necessary or expedient in enforcing this chapter.

* Sec. 12. AS 45.75.120 is amended to read:

Sec. 45.75.120. DISPOSITION OF CORRECT AND INCORRECT APPARATUS. (a) The commissioner [DIRECTOR] shall approve for use and seal or mark with appropriate devices the weights and measures that the

commissioner [WHICH HE] finds on [UPON] inspection and test to be correct as provided in AS 45.75.050, and shall reject and mark or tag as "rejected" the weights and measures that are found [WHICH HE FINDS], upon inspections or testing [TEST], to be incorrect as provided in AS 45.75.050 but which in the commissioner's [HIS] best judgment may be satisfactorily repaired [ARE SUSCEPTIBLE OF SATISFACTORY REPAIR]. This sealing or marking is not required for weights and measures exempted by regulation [OF THE DIRECTOR].

(b) The commissioner [DIRECTOR] shall condemn, and may seize and destroy weights and measures found to be incorrect that [WHICH], in the commissioner's [HIS] best judgment, cannot be satisfactorily repaired [ARE NOT SUSCEPTIBLE OF SATISFACTORY REPAIR]. Weights and measures that [WHICH] are rejected under (a) of this section may be confiscated and destroyed by the commissioner [DIRECTOR] if not corrected as required by AS 45.75.180 or if used or disposed of contrary to the requirements of AS 45.75.180.

* Sec. 13. AS 45.75.130 is amended to read:

Sec. 45.75.130. POLICE POWERS AND RIGHT OF ENTRY AND STOPPAGE. In the enforcement of this chapter and [ANY] other laws [LAW] dealing with weights and measures, the commissioner [DIRECTOR] has special police powers. The commissioner [HE] may arrest, without formal warrant, a [ANY] person violating the law, and seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity, used, retained, offered, or exposed for sale, or sold in violation of law. In performing these [HIS] duties, the commissioner [DIRECTOR] may enter, without formal warrant, a [ANY] structure or premises, and stop any person and require the person [HIM] to proceed to a specified place.

* Sec. 14. AS 45.75 is amended by adding new sections to article 2 to

read:

Sec. 45.75.131. ISSUANCE OF CITATIONS. An employee of the Department of Commerce and Economic Development who is authorized by the commissioner to enforce the size, weight, and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060 may issue a citation to a person who violates

(1) a load limitation;

(2) the terms of an overweight or oversize vehicle permit issued under AS 44.33.020(25) and AS 45.75.040; or

(3) the provisions of a regulation adopted under AS 44.33.-020(25) and AS 45.75.050(b)(5).

Sec. 45.75.132. FORM AND ISSUANCE OF CITATION. (a) A citation issued under this section must be in writing. A person receiving the citation is not required to sign a promise to appear in court.

(b) The time specified in the notice to appear on a citation issued under this section must be at least 15 days after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The commissioner is responsible for the issuance of books containing appropriate citations and shall maintain a record of each book and each citation contained in it. The commissioner shall require and retain a receipt for every book issued to an employee of the department designated by the commissioner to provide investigative service to enforce provisions of this chapter.

(d) An employee who issues a citation under this section shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The employee who issued the citation may not dispose of it or copies

of it or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The commissioner shall require the return of a copy of every citation issued under this section and of all copies of every citation that has been spoiled or on which an entry has been made and not issued to an alleged violator. The commissioner shall also maintain in connection with every citation issued a record of the disposition of the charge by the court in which the original or copy of the citation was deposited.

(f) If the form of citation issued under this section includes the essential facts constituting the offense charged and is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, the citation when filed with a court having jurisdiction, is considered to be a lawful complaint for the purpose of prosecution.

(g) Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, or bail has been forfeited under AS 45.75.133, a person who fails to appear in court to answer a citation issued under this section, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

Sec. 45.75.133. BAIL FORFEITURE. (a) The supreme court shall specify by rule or order those violations that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. The maximum bail forfeiture amount for an offense may not exceed the maximum fine specified by law for that offense. If the person who has been cited can dispose of the violation without court appearance, the issuing employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(b) A person cited for a violation for which a bail forfeiture amount has been established under (a) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the employee

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(c) When the cited person has forfeited bail under (b) of this section, the court shall enter a judgment of conviction. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact.

(d) A cited person who fails to pay the bail forfeiture amount established under (a) of this section or to appear in court as required, is guilty of a class B misdemeanor.

(e) Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (a) of this section appears in court and is found guilty, the court may not impose a penalty that exceeds the bail forfeiture amount for that offense established under (a) of this section.

* Sec. 15. AS 45.75.140 is amended to read:

Sec. 45.75.140. POWERS AND DUTIES OF <u>INSPECTORS</u> [DEPUTY DIRECTOR AND INSPECTOR]. The powers and duties of the <u>commissioner</u> [DIRECTOR] specified in <u>AS 45.75.070 - 45.75.100, 45.75.120,</u> [AS 45.75.070,] 45.75.130, <u>and</u> 45.75.170 <u>may</u> [, AND 45.75.380 SHALL] also be exercised by [THE DEPUTY DIRECTOR AND] inspectors, when acting under the instructions and at the direction of the <u>commissioner</u> [DIRECTOR].

* Sec. 16. AS 45.75.150 is amended to read:

Sec. 45.75.150. APPOINTMENT OF CITY SEALERS AND DEPUTY SEALERS OF WEIGHTS AND MEASURES. (a) A city may appoint a sealer of weights and measures, and the deputy sealers of weights and measures it needs. If the city appoints a sealer, the city [IT] shall obtain at its expense the standards of weight and measure [WEIGHTS AND MEASURES] and the additional equipment, for use in the enforcement of this chapter in the city, which the commissioner [DIRECTOR] prescribes.

(b) When the standards of weight and measure provided by a city are examined and approved by the commissioner [DIRECTOR], they are the official standards for the city. At least every five years, the sealer shall make or arrange to have made comparisons between the sealer's [HIS] field standards and appropriate standards of a higher order belonging to the sealer's [HIS] city or to the state, in order to maintain the field standards in accurate condition.

* Sec. 17. AS 45.75.160 is amended to read:

Sec. 45.75.160. CITY SEALERS AND DEPUTY SEALERS. The sealer of a city, and the sealer's [HIS] deputy [SEALER] when acting under the sealer's [HIS] instructions and [AT HIS] direction, have the same powers and shall perform the same duties within the city as those granted to and imposed upon the commissioner [DIRECTOR] by AS 45.75.-080 - 45.75.130 and 45.75.380.

* Sec. 18. AS 45.75.170 is amended to read:

Sec. 45.75.170. CONCURRENT JURISDICTION. In each city having a sealer of weights and measures, the commissioner [DIRECTOR] has concurrent authority to enforce this chapter.

* Sec. 19. AS 45.75.180 is amended to read:

Sec. 45.75.180. DUTY OF OWNERS OF INCORRECT APPARATUS. Weights and measures rejected by the commissioner [DIRECTOR] or a sealer

remain subject to the control of the rejecting authority until suitable repair or disposition of them is made as required by this section. The owner of a rejected weight and measure shall correct it within 30 days or a longer period authorized by the rejecting authority, [;] or [,] may dispose of it in the manner authorized by the rejecting authority. The owner of rejected [REJECTED] weights and measures may not use them again [BE USED] commercially until the rejected weights and measures are officially reexamined [RE-EXAMINED] and found to be correct or until specific written permission for their use is issued by the rejecting authority.

* Sec. 20. AS 45.75.190(c) is amended to read:

(c) The commissioner [DIRECTOR] may adopt [ISSUE] reasonable regulations necessary to assure that a seller determines the amounts of commodity sold [ARE DETERMINED] in accordance with good commercial practice and in an accurate and informative manner [AND ARE SO DETERMINED AND REPRESENTED AS TO BE ACCURATE AND INFORMATIVE].

* Sec. 21. AS 45.75.200(c) is amended to read:

(c) Under (a)(1) of this section the commissioner [DIRECTOR] shall, by regulation, establish

(1) reasonable variations or tolerances to be allowed, that [WHICH] may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure,

(2) exemptions for [EXEMPTION AS TO] small packages, and

(3) exemptions for [AS TO] commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at

the time of sale to the consumer.

* Sec. 22. AS 45.75.220 is amended to read:

Sec. 45.75.220. MISLEADING PACKAGES. A [NO] commodity in package form may not be so wrapped, or put in a container so made, formed, or filled as to mislead the purchaser about [AS TO] the quantity of the contents of the package, and the contents of a container may not fall below the reasonable standard of fill that [WHICH] the commissioner [DIRECTOR] prescribes for the commodity.

* Sec. 23. AS 45.75.282(b) is amended to read:

(b) The vendor shall retain one [ONE] of the tickets provided for in (a) of this section [SHALL BE RETAINED BY THE VENDOR,] and shall deliver the other [SHALL BE DELIVERED] to the purchaser at the time of delivery of the commodity, or surrender the other [SURRENDERED], on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR,] or an inspector, or a sealer[,] or a deputy sealer, who may [, IF HE WANTS TO] retain it as evidence and, if it is retained, the commissioner or deputy sealer [,] shall issue a weight slip in place of it.

* Sec. 24. AS 45.75.290(b) is amended to read:

(b) The vendor shall retain one [ONE] of the tickets provided for under (a) of this section [SHALL BE RETAINED BY THE VENDOR] and shall deliver the other [SHALL BE DELIVERED] to the purchaser at the time of delivery of the fuel, or shall surrender it, [BE SURRENDERED,] on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR] or an inspector, or a sealer or deputy sealer, who may [, IF HE DESIRES TO] retain it as evidence and [, SHALL] issue a weight slip in place of it for delivery to the purchaser. If the purchaser carries away the [HIS] purchase, the vendor is required only to give to the purchaser at the time of sale a delivery ticket stating the number of

pounds of fuel delivered to the purchaser [HIM].

* Sec. 25. AS 45.75.300 is amended to read:

Sec. 45.75.300. TEXTILE PRODUCTS. It is unlawful for a person to keep for the purpose of sale, offer or expose for sale, or sell textile yard goods put up or packaged in advance of sale in a bolt or roll, or another [ANY OTHER] textile product put up or packaged in advance of sale in another [ANY OTHER] unit, for wholesale or retail sale, unless the person definitely, plainly and conspicuously marks the bolt or roll, or other unit [, IS DEFINITELY, PLAINLY, AND CONSPICUOUSLY MARKED] to show its net measure in terms of yards or its net weight, in terms of avoirdupois pounds or ounces, subject to the following limitations and requirements:

(1) a unit of twine or cordage may be marked to show its net measure in terms of feet; readywound bobbins not sold separately are not required to be individually marked, but the package containing the bobbins shall be marked to show the number of bobbins contained in it and the net weight or measure of the thread on each bobbin; a unit of sewing, basting, mending, darning, crocheting, tatting, hand-knitting, or embroidery thread or yarn, except nylon hand-knitting yarn, that is not composed in whole or in part of wool, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the spool or other holder; a retail unit of a textile product sold only for household use consisting of a package containing two or more similar individual units that are not sold separately shall be marked to show the number of individual units in the package and the net weight or net measure of the product in each individual unit, but this does not apply where the individual units are separately marked; a unit of yarn, composed in whole or in part of wool, sold to consumers

for handiwork, shall be marked to show the net weight of the yarn, except that a [ANY SUCH] un[illegible] tapestry, mending, or embroidery yarn that [THE NET MEASURE OF WHICH] does not exceed 50 yards in net measure, may be marked to show its linear measure only;

(2) the marking required by this section shall in all cases be in combination with the name and place of business of the manufacturer, packer, or distributor of the product, or a trademark, symbol, brand, or other mark that identifies the manufacturer, packer, or distributor;

(3) reasonable tolerances shall be permitted, and the commissioner shall include reasonable tolerances [THESE SHALL BE INCLUDED] in regulations adopted for the enforcement of this section [THAT ARE ISSUED BY THE DIRECTOR];

(4) this section does not apply to the following textile products when sold at wholesale in bulk by net weight: cordage, agricultural bag sewing threads, twines, yarns that are to be processed, and yarns that are to be industrially converted into end-use products.

* Sec. 26. AS 45.75.330 is amended to read:

Sec. 45.75.330. INJUNCTION. The commissioner [DIRECTOR] may apply to a court for a temporary or permanent injunction restraining a person from violating a provision of this chapter.

* Sec. 27. AS 45.75.380 is amended to read:

Sec. 45.75.380. OFFENSES AND PENALTIES. (a) A person commits a violation subject to the penalty specified in AS 12.55.035(b)(5) if the person does one or more of the following acts [A PERSON WHO, BY HIMSELF OR BY HIS SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF ANOTHER, PERFORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDEMEANOR AND UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A FINE OF NOT LESS THAN $20 NOR MORE THAN $200, OR BY IMPRISONMENT FOR

NOT MORE THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT CONVICTION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN $50 NOR MORE THAN $500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]:

(1) uses or has in possession for the purpose of using for a [ANY] commercial purpose specified in AS 45.75.080, sells, offers, or exposes for sale, or hire, or has in possession for the purpose of selling or hiring, an incorrect weight or measure or a device or instrument used to or calculated to falsify a weight or measure;

(2) uses or has in possession for current use, in buying or selling a commodity or thing, or for hire or award, or in the computation of a basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for determination, a weight or measure that has not been tested and sealed by the appropriate authority within one year, (A) unless the person gives written notice [IS GIVEN] to the appropriate authority to the effect that the weight or measure is available for examination, or is due for reexamination [RE-EXAMINATION], as the case may be, (B) unless the person receives specific written permission to use the weight or measure [IS RECEIVED] from the appropriate authority, or (C) unless the weight or measure is exempt from sealing or annual testing requirements by AS 45.75.080 or by a regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

(3) disposes of a rejected or condemned weight or measure in a manner contrary to law or regulation;

(4) removes from a weight or measure, contrary to law or regulation, a tag, seal, or mark placed on it by the appropriate authority;

(5) sells or[,] offers [OR EXPOSES] for sale less than the

quantity the person [HE] represents of a commodity, thing, or service;

(6) takes more than the quantity the person [HE] represents of a commodity, thing, or service when, as buyer, the person [HE] furnished the weight or measure that the seller used to determine [BY MEANS OF WHICH] the amount of the commodity, thing, or service [IS DETERMINED];

(7) keeps for the purpose of sale, advertises, or offers [OR EXPOSES] for sale, or sells a commodity, thing, or service in a condition or manner contrary to law or regulation;

(8) uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that a customer may accurately read, from a position that may reasonably be assumed by a customer, its indications [MAY BE ACCURATELY READ] and observe the weighing or measuring operation [OBSERVED FROM SOME POSITION WHICH MAY REASONABLY BE ASSUMED BY A CUSTOMER];

(9) hinders or obstructs the commissioner, an inspector, a sealer, or a deputy sealer in the performance of official duties under this chapter;

(10) violates a provision of an overweight or oversize vehicle permit issued under AS 44.33.020(25);

(11) violates a weight, load, or size limitation established under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.33.020(25), or AS 45.75.050(b)(5);

(12) violates a provision of this chapter or of a regulation adopted under this chapter for which a specific penalty is not prescribed.

(b) Notwithstanding the maximum fine for a violation provided under (a) of this section, the commissioner shall impose on a person

who violates a regulation or special permit governing the weight limit of a motor vehicle a maximum penalty of $.05 for each pound of weight over the authorized weight limit for the vehicle.

* Sec. 28. AS 45.75.390(4) is repealed and reenacted to read:

(4) "commissioner" means the commissioner of commerce and economic development or the commissioner's designee;

* Sec. 29. AS 28.40.050(e) and AS 45.75.360 are repealed.

* Sec. 30. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 82

Title: . "An Act relating to weights and measures..."

Sponsor: Rules Comm. for Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Administration of Justice

BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie Phone: 465-4349

Division: Administrative Services Date: 1/8/84

Approved by Commissioner: Date: 1/8/84

Agency: Department of Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies) ZERO FISCAL NOTES (2)

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/~~Resolution~~ No.: SB 82

Title: Relating to weights and measures.

Sponsor: Rules/Governor

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Consumer Protection

BRU, Program or Subprogram(s) Affected: Measurement Standard

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Joseph L. Swanson Phone: 345-7750

Division: Measurement Standards Date: 12/4/84

Approved by Commissioner: Richard A. Lyon Date: 12.5.84

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Measurement Standards

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

TO: MEMBERS OF THE COMMITTEE

FROM: SENATOR COGHILL

DATE: 2-6-85

RE: SB 82

In addition to cleaning up language in statutes dealing with weights and measures SB 82 proposes to complete the transfer of weights and measures from Department of Public Safety to the Department of Commerce and Economic Development by giving DCED personnel the authority to write citations. Included is the authority to arrest violators of regulations adopted under provision of the bill, to seize any commodity offered for sale in violation of weight and measurement standards, and to provide for deposition of citations by trial or other official action. The committee staff expects a position paper by the General Council of the Alaska Court System regarding the disposition of citations included in the bill.

Section 26 revises the penalty clause for certain offenses to conform with the new criminal code by making them "violations" with the penalty prescribed by AS 12.55.035(b)(5) a maximum $300 fine. Subsection (b) provides for a five cents per pound fine in addition to the $300 fine for each pound over legal weight restrictions. Section 26 then makes it a violation to hinder or obstruct officials doing their duties; to violate the provision of an oversize or overweight permit; or to violate size, weight or load regulations.

Section 27 repeals definition of "director" and re-enacts it as "commissioner" for consistency with the rest of the bill.

Section 28 Repeals AS 28.40.050(e)-overweight penalty clause levying five cents per pound fine, and AS 45.75.300-hindering or obstructing an officer, taken care of in Sec. 26

The remaining sections and of the bill are simply housekeeping/updating of outdated language, those are: Sections 1, 3, 5 through 7, 9 through 12, and 14 through 25.

STAFF MEMOS FEB 6, 8 & 25

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks--Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Committee staff
Date: Friday, February 8, 1985
Re: Proposed amendments to SB 82

Attached you will find two amendments to SB 82 proposed for consideration by the committee this afternoon. The first would re-write language regarding violations to allow the court system to process citations through a bail forfeiture schedule. Attached to the amendment are copies of three occurrences of bail forfeiture mechanisms for similar violations. This amendment should answer the first concern expressed by Karla Forsythe of the Alaska Court System - that without a bail forfeiture provision the court system would be overloaded. This was detailed in the letter you should have received earlier today from this staff.

The second proposed amendment would reduce the fine for overweight violations from "up to $300 plus 5 cents per pound" to " 5 cents per pound over the authorized weight." This amendment reverts the penalty back to what it now reads in statute, as well as to answer the court system's second concern - that higher fines constitutionally propel the violation into a criminal offense status.

Both of these amendments have been approved in concept by the director of the division of measurement standards.

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Committee Staff
Date: February 25, 1985
Re: Proposed CS for SB 82

As per the discussion of SB 82, making changes to weights and measures statutes, that took place at the committee meeting of February 8, we have had the attached committee substitute drawn up.

Aside from the two substantial changes the members asked for, which are found in sections 14 and 27 of the proposed cs, the bill remains nearly identical to the original (a number of minor gender and grammatical changes were incorporated by legal services).

The change in section 14 (originally part of section 13) adds language to integrate the court system's request for a mechanism to allow for a bail forfeiture schedule.

The change in section 27 deletes the imposition of a $300 fine on top of $.05 per pound for overweight violations, and sets the entire fine at $.05 per pound over the authorized weight.

BILL SHEFFIELD
GOVERNOR

SB 382

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 22, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Attached is a bill amending the Weights and Measures Act, AS 45.75.

In 1982, the overweight and oversize motor vehicle program was transferred from the Department of Public Safety to the Department of Commerce and Economic Development. This transfer included the duties of operating vehicle weighing stations, issuing permits for overweight and oversize vehicles, and enforcing the vehicle size, weight, and load limits established by the Department of Transportation and Public Facilities (DOTPF). (Ch. 77, SLA 1982)

The 1982 transfer of duties was accomplished only by repealing AS 28.05.011(8) and adding a paragraph (25) to the general duties of the Department of Commerce and Economic Development listed in AS 44.33.020. This bill completes the transfer by also adding those duties to the Weights and Measures Act (secs. 2 and 4 of the bill). The bill also decreases the frequency of required inspections and tests of all weights and measures from semiannual to annual (sec. 8 of the bill). More frequent inspections and tests can still be made in problem areas, however.

Section 13 of the bill clarifies that the commissioner of commerce and economic development may authorize department employees to arrest or issue citations to persons who violate the DOTPF vehicle size, weight, and load limits, the provisions of an overweight or oversize vehicle permit, or department regulations. It also specifies procedures and rules governing those citations. This eliminates an ambiguity and possible loophole left after the 1982 transfer of enforcement authority to the department.

Section 26 of the bill amends AS 45.75.380 to increase the current maximum fine for all weights and measures offenses

GOVERNOR'S TRANSMITTAL LETTER

from $200 (or five cents a pound for overweight vehicle offenses) to a $300 fine (plus five cents a pound for overweight vehicle offenses). By making these offenses subject to the violation penalty set out in AS 12.55.035(b)(5), they are like AS 28.40.050(c)'s "infractions," and the possibility of imprisonment would be dropped, as would the increase in penalties for subsequent convictions. This change conforms to the new Criminal Code (AS 11) and the Code of Criminal Procedure (AS 12) and will provide a more effective deterrent to weights and measures violations. Severe penalties and certainty of conviction are two deterrents to unlawful conduct. It is felt that there is a greater probability of conviction under the "infraction" approach and that it would be the more effective deterrent to the various weights and measures offenses -- both statutory and regulatory. Also, under AS 45.75.130(g) (in sec. 13 of the bill), failure to respond to a citation for one of these violations would be a class B misdemeanor; cf. AS 12.25.230.

Most of the bill, including secs. 1 -- 3 and 5 -- 26, clarifies a confusing approach taken by the 1961 legislature which passed the Weights and Measures Act. For reasons which are not now clear, and which, to the extent that we can guess what they were, no longer apply, AS 47.75.030 states that the commissioner of commerce and economic development is the director of weights and measures, and throughout the chapter many references are made to the director. To avoid confusion with the director of the division of measurement standards, who is currently assigned to administer the Act, this bill changes all of those references to the director to be references to the commissioner.

The bill also makes "housekeeping" amendments to clean up outdated language and to correct several citations.

All of these changes in the Weights and Measures Act will increase the effectiveness and efficiency of implementation of the Act, especially the overweight and oversize vehicle program.

Sincerely,

Bill Sheffield
Governor

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

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Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Committee staff
Date: Friday, February 8, 1985
Re: Proposed amendments to SB 82

Attached you will find two amendments to SB 82 proposed for consideration by the committee this afternoon. The first would re-write language regarding violations to allow the court system to process citations through a bail forfeiture schedule. Attached to the amendment are copies of three occurrences of bail forfeiture mechanisms for similar violations. This amendment should answer the first concern expressed by Karla Forsythe of the Alaska Court System - that without a bail forfeiture provision the court system would be overloaded. This was detailed in the letter you should have received earlier today from this staff.

The second proposed amendment would reduce the fine for overweight violations from "up to $300 plus 5 cents per pound" to " 5 cents per pound over the authorized weight." This amendment reverts the penalty back to what it now reads in statute, as well as to answer the court system's second concern - that higher fines constitutionally propel the violation into a criminal offense status.

Both of these amendments have been approved in concept by the director of the division of measurement standards.

AMENDMENT NO 1

PROPOSED AMENDMENT

TO

SB 82 - Weights and measures cleanup bill

On Page 7, line 4, Delete

Line 4 beginning with "A citation issued..."

and Lines 5 through 9 in their entireties;

On Page 7, line 16, Delete

Subsection (d) in its entirety;

On Page 8, line 2, Delete

Subsections (f) and (g) in their entireties.
Renumber remaining subsections of Section 13 as appropriate

On Page 8, line 13, add a new Section 14 to read:

"* Sec. 14. AS 45.75 is amended by adding a new subsection to read:

Sec. 45.75.135. FORM AND ISSUANCE OF CITATION. (a) When an authorized employee stops or contacts a person concerning a violation, the employee may issue a citation to the person. The person receiving the citation may not be required to endorse the citation.

(b) The supreme court shall specify by rule or order those violations that are appropriate for disposition without court

appearance, and shall establish a schedule of bail amounts. The maximum bail forfeiture amount for an offense may not exceed the maximum fine specified by law for that offense. If the violation for which the citation is issued may be disposed of without court appearance, the issuing employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(c) A person cited for a violation for which a bail forfeiture amount has been established under (b) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the offense is filed by the employee

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited

(d) When bail has been forfeited under (c) of this section, a judgment of conviction shall be entered. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact.

(e) If the person cited fails to pay the bail forfeiture amount established under (b) of this section or to appear in court as required, the citation is considered a summons for a misdemeanor.

(f) Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail forfeiture amount for that offense established under (b) of this section."

And renumber the remaining sections accordingly

Article 4. Disposition of Certain Vehicle and Traffic Offenses.

Section
151. Form and issuance of citation

Sec. 28.05.151. Form and issuance of citation. (a) When a person is arrested or cited for the commission of a vehicle or traffic offense which is a misdemeanor or an infraction, the arresting or citing officer shall, except when otherwise required by law or the immediate circumstances, issue a citation to the person arrested or cited. The person receiving the citation may not be required to endorse the citation.

(b) The state supreme court shall determine by rule or order those vehicle and traffic offenses that are amenable to disposition without court appearance and shall establish a schedule of bail amounts, not to exceed fines prescribed by law, for each offense. If the offense for which the citation is issued is one which may be disposed of without court appearance, the citing officer shall write on the citation the amount of bail applicable to the cited offense.

(c) A person cited for a motor vehicle or traffic offense for which a bail amount has been established under (b) of this section may, within five days from the date of the citation, mail or personally deliver to the clerk of the court having jurisdiction over the place where the offense occurred

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation signed by the person on an appropriate blank on the citation indicating the person's waiver of appearance, plea of no contest, and direction to forfeit the bail.

(d) When bail has been forfeited under this section, a judgment of conviction shall be entered. Bail forfeited under this section is a complete satisfaction for the offense, and the offender shall be given a receipt stating that fact.

(e) If the person cited fails to pay the bail amount or appear in court as required, the citation shall be considered a summons as for a charge of a misdemeanor and the person shall be proceeded against in the manner prescribed by law. However, the maximum penalty which may be imposed for the original offense may not exceed the bail amount for that offense set out in the schedule of bail amounts as determined by the supreme court under (b) of this section.

(f) A municipality shall adopt a citation form which complies with the requirements of this section and is at least equivalent to that adopted by the commissioner under AS 28.05.041. (§ 6 ch 178 SLA 1978)

VEHICLE & TRAFFIC OFFENSES

Sec. 16.05.160. Duty to arrest. Each peace officer designated in AS 16.05.150 shall arrest a person violating a provision of this title except AS 16.51 and AS 16.52, or any regulation adopted under this title except AS 16.51 and AS 16.52, in the peace officer's presence or view, and shall take the person for examination or trial before an officer or court of competent jurisdiction unless in the judgment of the peace officer it would be in the state's best interest to issue a warning or a citation under AS 16.05.165. (§ 21 art I ch 94 SLA 1959; am § 5 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, substituted "a provision of this title except AS 16.51 and AS 16.52, or any regulation adopted under this title except AS 16.51 and AS 16.52" for "this chapter, or any regulation made under this chapter," deleted "immediately" preceding "for examination or trial," and added the language beginning "unless in the judgment of the peace officer" at the end of the section.

Sec. 16.05.165. Form and issuance of citation. (a) When a peace officer stops or contacts a person concerning a violation of this title except AS 16.51 and AS 16.52 or of a regulation adopted under this title except AS 16.51 and AS 16.52 that is a misdemeanor, the peace officer may, in the officer's discretion, issue a citation to the person as provided in AS 12.25.180.

(b) The supreme court shall specify by rule or order those misdemeanors that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. Before establishing or amending the schedule of bail amounts required by this subsection, the supreme court shall appoint and consult with an advisory committee consisting of two officers of the division of fish and wildlife protection of the Department of Public Safety, two representatives of the Department of Fish and Game, two district court judges, and the chairpersons of the House and Senate Judiciary Committees of the legislature. The maximum bail amount for an offense may not exceed the maximum fine specified by law for that offense. If the misdemeanor for which the citation is issued may be disposed of without court appearance, the issuing peace officer shall write on the citation the amount of bail applicable to the violation.

(c) A person cited for a misdemeanor for which a bail amount has been established under (b) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the peace officer

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(d) When bail has been forfeited under (c) of this section, a judgment of conviction shall be entered. Forfeiture of bail and all seized items is a complete satisfaction for the misdemeanor. The clerk of the court accepting the bail shall provide the offender with a receipt stating that fact.

FISH & GAME CITATIONS

(e) If the person cited fails to pay the bail amount established under (b) of this section or to appear in court as required, the citation is considered a summons for a misdemeanor.

(f) Notwithstanding other provisions of law, if a person cited for a misdemeanor for which a bail amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail amount for that offense established under (b) of this section. (§ 6 ch 132 SLA 1984)

Effective dates. — Section 30, ch. 132, SLA 1984, makes this section effective July 3, 1984, in accordance with AS 01.10.070(c).

Sec. 16.05.170. Power to execute warrant. Each peace officer designated in AS 16.05.150 may execute a warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of this title except AS 16.51 and AS 16.52, and may, with a search warrant, search any place at any time. The judge of a court having jurisdiction may, upon proper oath or affirmation showing probable cause, issue a warrant in all cases. (§ 21 art I ch 94 SLA 1959; am § 7 ch 132 SLA 1984)

Effect of amendments. — The 1984 amendment, effective July 3, 1984, substituted "this title except AS 16.51 and AS 16.52" for "this chapter" in the first sentence.

Sec. 16.05.180. Power to search without warrant.

NOTES TO DECISIONS

Applied in Gudjonnson v. State, Ct. App. Op. No. 275 (File Nos. 7291, 7292), 667 P.2d 1254 (1983).

Sec. 16.05.190. Seizure and disposition of equipment.

NOTES TO DECISIONS

Applied in Jordan v. State, Ct. App. Op. No. 360 (File No. 7782), P.2d (1984).

Sec. 16.05.195. Forfeiture of equipment.

NOTES TO DECISIONS

Due process requirements.

Where the seizure of a fishing vessel is authorized by a judicially approved warrant issued upon probable cause and

(1) an employee of the department authorized by the commissioner;

(2) a police officer in the state;

(3) any other person authorized by the commissioner.

(b) Each person designated in (a) of this section may, when enforcing the provisions of this chapter or a regulation adopted under this chapter,

(1) execute a warrant or other process issued by an officer or court of competent jurisdiction;

(2) administer or take an oath, affirmation or affidavit; and

(3) arrest or issue a citation to a person who violates a provision of this chapter or a regulation adopted under this chapter. (§ 1 ch 161 SLA 1970; am § 2 ch 102 SLA 1984)

Effect of amendments. — The 1984 amendment, effective June 15, 1984, inserted "or issue a citation to" in paragraph (3) of subsection (b).

Sec. 41.21.960. Form and issuance of citation. (a) When a peace officer stops or contacts a person concerning the commission of a misdemeanor offense committed within a park or recreational facility subject to the department's supervision, the officer may issue a citation to the person, subject to the provisions of AS 12.25.180 — 12.25.230. The person receiving the citation may not be required to endorse the citation.

(b) The state supreme court shall identify those offenses that are amenable to disposition without court appearance and shall establish by rule or order a schedule of bail amounts, not to exceed fines prescribed by law, for those offenses. Before establishing or amending the schedule of bail amounts required by this subsection, the supreme court shall appoint and consult with an advisory committee consisting of two persons from the Department of Natural Resources, two district court judges, one member of the House Resources Committee, and one member of the Senate Resources Committee of the legislature. If the offense for which the citation is issued is one that may be disposed of without court appearance, the citing officer shall write on the citation the amount of bail applicable to the cited offense.

(c) A person cited for an offense for which a bail amount has been established under (b) of this section may, within 15 days from the date of the citation, mail or personally deliver to the clerk of the court having jurisdiction over the place where the offense occurred

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating the offender's waiver of appearance, plea of no contest, and direction to forfeit the bail and any items seized from the offender.

(d) When bail has been forfeited under this section, a judgment of conviction shall be entered. Bail forfeited under this section and the forfeiture of items seized from the offender is a complete satisfaction for

PARKS VIOLATIONS

the offense, and the clerk of the court shall provide the offender with a receipt stating that fact.

(e) If the person cited fails to pay the bail amount or appear in court as required, the citation shall be considered a summons for a misdemeanor charge and the offender shall be proceeded against in the manner prescribed by law.

(f) Notwithstanding other provisions of law, if a person cited for a misdemeanor for which a bail amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail amount for that offense established under (b) of this section. (§ 3 ch 102 SLA 1984)

Effective dates. — Section 4, ch. 102, SLA 1984, makes this section effective June 15, 1984, in accordance with AS 01.10.070(c).

Chapter 30. Area Redevelopment.

Section

20. Powers of the board of directors

Sec. 41.30.020. Powers of the board of directors. The board of directors may, in making loans under AS 41.30.040:

(1) cooperate with political subdivisions, communities, and area development organizations, industries, enterprises, and persons in their efforts to promote the expansion of industrial and commercial activities in a redevelopment area;

(2) in the manner most advantageous to the state, dispose of an evidence of debt, a contract, a claim, personal property, or a security assigned to or held by it in connection with a loan made or an evidence of indebtedness purchased by it;

(3) collect or compromise obligations assigned to or held by it, or refer them to the Department of Law for suit or collection;

(4) manage, improve, or sell real property acquired by it. (§ 1 ch 83 SLA 1964)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Chapter 35. Alaska Historic Preservation Act.

Section

45. Fees for guided tours through historical sites

Sec. 41.35.045. Fees for guided tours through historical sites. (a) The department may establish and collect fees for guided tours through historical sites.

AMENDMENT NO 2

PROPOSED AMENDMENT

TO

SB 82 - Weights and measures cleanup bill

On Page 15, line 7,

Delete subsection (b) in its entirety, and insert in its place:

(b) Notwithstanding the maximum fine provided for infractions under (a) of this section, for the violation of regulations or special permits issued governing vehicle weight limits, overweight penalties shall be imposed at the rate of five cents for each pound of weight over the authorized weight limit for that vehicle.

COMMITTEE SUBSTITUTE FOR SB 491 (L & C) IS A BILL WHICH AMENDS THE WEIGHTS AND MEASURES ACT, AS 45.75.

IN 1982, THE OVERWEIGHT AND OVERSIZE MOTOR VEHICLE PROGRAM WAS TRANSFERRED FROM THE DEPARTMENT OF PUBLIC SAFETY TO THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT. THIS TRANSFER INCLUDED THE DUTIES OF OPERATING VEHICLE WEIGHING STATIONS, ISSUING PERMITS FOR OVERWEIGHT AND OVERSIZE VEHICLES, AND ENFORCING THE VEHICLE SIZE, WEIGHT , AND LOAD LIMITS.

THE 1982 TRANSFER OF DUTIES WAS ACCOMPLISHED ONLY BY ADDING A PARAGRAPH TO THE GENERAL DUTIES TO THE DEPARTMENT OF COMMERCE. CSSB 491 COMPLETES THE TRANSFER BY ALSO ADDING THOSE DUTIES TO THE WEIGHTS AND MEASURES ACT.

SECTION 13 OF THIS LEGISLATION CLARIFIES THAT THE COMMISSIONER OF COMMERCE MAY AUTHORIZE DEPARTMENT EMPLOYEES TO ISSUE CITATIONS TO PERSONS WHO VIOLATE THE DOT/PF VEHICLE SIZE, WEIGHT, AND LOAD LIMITS, THE PROVISIONS OF AN OVERWEIGHT OR OVERSIZE VEHICLE PERMIT, OR DEPARTMENT REGULATIONS. THIS ELIMINATES AN AMBIGUITY AND LOOPHOLE LEFT AFTER THE 1982 TRANSFER OF ENFORCEMENT AUTHORITY TO THE DEPARTMENT.

SECTIONS 26 AND 27 OF CSSB 491 STATES THE PENALTY FOR ALL WEIGHTS AND MEASURES OFFENSES IS A CLASS B MISDEMEANOR PLUS

FIVE CENTS A POUND FOR OVERWEIGHT VEHICLE OFFENSES. THIS CHANGE CONFORMS TO THE NEW CRIMINAL CODE AND WILL PROVIDE A MORE EFFECTIVE DETERRENT TO WEIGHTS AND MEASURES VIOLATIONS. CURRENTLY, MANY PEOPLE ARE TOO WILLING TO RISK CITATION FOR VIOLATIONS BECAUSE OF THE LOW MAXIMUM PENALTIES.

ALL OF THESE CHANGES IN THE WEIGHTS AND MEASURES ACT WILL INCREASE THE EFFECTIVENESS AND EFFICIENCY OF IMPLEMENTATION OF THE ACT, ESPECIALLY THE OVERWEIGHT AND OVERSIZE VEHICLE PROGRAM. THEREFORE, I URGE YOUR PASSAGE OF CSSB 491.

Support By Dept. of Commerce
Albert Thackeray

ADDITIONAL INFORMATION

1) THE CHANGES MADE IN THE COMMITTEE SUBSTITUTE INCLUDE

A) PG 6, LINE 29 - DELETED "ARREST OR" SO THE DEPT REPRESENTATIVE CAN GIVE A CITATION FOR A VIOLATION, BUT CANNOT ARREST THE INDIVIDUAL

B) PG 12, LINE 1 - MADE THE PENALTY A CLASS B MISDEMEANOR INSTEAD OF THE ORIGINAL CLASS A MISDEMEANOR

C) PG 14, LINES 3-8 - ADDED SECTION 27 WHICH STATES THAT FIVE CENTS A POUND CAN BE ASSESSED FOR OVERWEIGHT VEHICLE OFFENSE IN ADDITION TO THE FINE ESTABLISHED AS A CLASS B MISDEMEANOR

2) CSSB 491 DECREASES THE FREQUENCY OF REQUIRED INSPECTIONS AND TESTS OF ALL WEIGHTS NAD MEASURES FROM SEMI-ANNUAL TO ANNUAL. MORE FREQUENT INSPECTIONS AND TESTS CAN STILL BE MADE IN PROBLEM AREAS, HOWEVER.

3) SECTIONS 1 - 3 AND 5 - 26 CLARIFIES A CONFUSING APPROACH TAKEN BY THE 1961 LEGISLATION WHICH FIRST ENACTED THE WEIGHTS AND MEASURES ACT. FOR REASONS WHICH ARE NOT NOW CLEAR, THE COMMISSIONER OF COMMERCE

IS THE DIRECTOR OF WEIGHTS AND MEASURES AND THROUGHOUT THE CHAPTER MANY REFERENCES ARE MADE TO THE DIRECTOR. TO AVOID CONFUSION, CSSB 491 CHANGES ALL OF THOSE REFERENCES TO THE DIRECTOR TO BE REFERENCES TO THE COMMISSIONER.

Changes on pgs. 6, 12, 14

Folta
3/7/84

Original sponsor: Rules/Governor

BY THE LABOR AND COMMERCE COMMITTEE

IN THE SENATE

CS FOR SENATE BILL NO. 491 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to weights and measures; and providing for an effective date."

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

* Section 1. AS 45.75.030 is amended to read:

Sec. 45.75.030. STATE DIRECTOR AND INSPECTORS OF WEIGHTS AND MEASURES. The commissioner of commerce and economic development is ex officio state director of weights and measures. The commissioner may delegate this authority, and [DIRECTOR] may appoint state inspectors.

* Sec. 2. AS 45.75.040 is amended to read:

Sec. 45.75.040. GENERAL POWERS AND DUTIES OF COMMISSIONER [DIRECTOR]. The commissioner [DIRECTOR] is the custodian of the state standards of weight and measure and of the other standards and equipment provided for by this chapter, and [. THE DIRECTOR] shall keep accurate records of the standards and equipment. The commissioner [DIRECTOR] shall operate motor vehicle weigh stations; establish fees for and issue overweight and oversize vehicle permits; enforce this chapter; implement AS 44.33.020(25); and [. HE SHALL] supervise the weights and measures offered for sale, sold, or in use in the state.

* Sec. 3. AS 45.75.050(a) is amended to read:

(a) The commissioner [DIRECTOR] shall adopt [ISSUE] regulations for the enforcement of this chapter in accordance with the Administrative Procedure Act (AS 44.62). These have the effect of law.

* Sec. 4. AS 45.75.050(b) is amended to read:

(b) The regulations may include

(1) standards of net weight, measure, or count, and reasonable standards of fill, for any commodity in package form;

(2) rules governing the technical and reporting procedures to be followed, and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties;

(3) exemptions from the sealing or marking requirements of AS 45.75.120 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question; [AND]

(4) with respect to classes of weights and measures of a character that annual retesting is unnecessary to continued accuracy, exemptions from the requirements of AS 45.75.070 and 45.75.080 for annual testing, and schedules fixing the frequency of required retests for classes of devices exempted; and

(5) provisions governing the enforcement of the size, weight, and load limitations established under AS 19.10.060; the issuance of, and the enforcement of the terms of, permits for overweight and oversize vehicles; and the operation of weigh stations.

* Sec. 5. AS 45.75.050(d) is amended to read:

(d) The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments to them, as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 and supplements to it, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and regulations for commercial weighing and measuring devices of the state except as specifically modified, amended, or rejected by a regulation adopted [ISSUED] by the commissioner [DIRECTOR].

* Sec. 6. AS 45.75.060 is amended to read:

Sec. 45.75.060. OFFICE AND FIELD [WORKING] STANDARDS AND EQUIPMENT. The commissioner [STATE] shall maintain [SUPPLY THE DIVISION OF WEIGHTS AND MEASURES WITH] a duplicate set of state standards of weight and measure, referred to in this chapter as office standards. The commissioner [STATE] shall also supply field standards and the equipment that [WHICH] is necessary to carry out this chapter. The office standards and field standards shall be verified upon their initial receipt and at least once each year afterward. The office standards shall be verified by direct comparison with the state standards. The field standards shall be verified by comparison with the office standards.

* Sec. 7. AS 45.75.070 is amended to read:

Sec. 45.75.070. TESTING AND INSPECTION OF LOCAL STANDARDS AND WEIGHTS AND MEASURES AT STATE-SUPPORTED INSTITUTIONS. (a) At least once every five years, the commissioner [DIRECTOR] shall test the standards of weight and measure obtained by a city that [WHICH] has appointed a sealer of weights and measures, and shall approve them if they are correct. The commissioner [DIRECTOR] shall inspect the standards at least once every two years.

(b) The commissioner [DIRECTOR] shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution maintained by money appropriated by the legislature, and shall report the commissioner's [HIS] findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

* Sec. 8. AS 45.75.080(a) is amended to read:

(a) The commissioner [DIRECTOR] may inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or

exposed for sale. The commissioner [DIRECTOR] shall, at least annually [SEMIANNUALLY AND MORE OFTEN AS HE CONSIDERS NECESSARY], inspect and test, to ascertain if they are correct, all weights and measures commercially used

(1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight or of measure;

(2) in computing the basic charge or payment for services rendered on the basis of weight or of measure or count; or

(3) in determining weight or measurement when a charge is made for this determination.

* Sec. 9. AS 45.75.090 is amended to read:

Sec. 45.75.090. INVESTIGATIONS. The commissioner [DIRECTOR] shall investigate complaints of violations of this chapter, and shall [, UPON HIS OWN INITIATIVE,] conduct other [THE] investigations that the commissioner [WHICH HE] considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination, [AND] on possible violations of this chapter and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

* Sec. 10. AS 45.75.100 is amended to read:

Sec. 45.75.100. INSPECTION OF PACKAGES. (a) The commissioner [DIRECTOR] shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with law. When packages or amounts of commodities do not contain the amounts represented, or are kept, offered, or exposed for sale in violation of law, the commissioner [DIRECTOR] may order them off sale and may mark

or tag them to show they are illegal. The commissioner [DIRECTOR] may use recognized sampling procedures. Compliance of a given lot of packages shall be determined on the basis of the result obtained on a sample selected from and representative of the lot.

(b) A [NO] person may not

(1) sell, or keep, offer, or expose for sale in intrastate commerce a package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section until the package or amount of commodity has been brought into full compliance with all legal requirements; or

(2) dispose of a package or amount of commodity that is ordered off sale or marked or tagged as provided in this section and that does not meet legal requirements, except with the specific approval of the commissioner [DIRECTOR].

* Sec. 11. AS 45.75.110(a) is amended to read:

(a) The commissioner [DIRECTOR] may issue stop-use orders, stop-removal orders, and removal orders for weights and measures used or capable of being used commercially. The commissioner [DIRECTOR] may issue stop-removal orders and removal orders for packages or amounts of commodities kept, offered, or exposed for sale whenever the commissioner [HE] considers it necessary or expedient in enforcing this chapter.

* Sec. 12. AS 45.75.120 is amended to read:

Sec. 45.75.120. DISPOSITION OF CORRECT AND INCORRECT APPARATUS. (a) The commissioner [DIRECTOR] shall approve for use and seal or mark with appropriate devices the weights and measures that the commissioner [WHICH HE] finds upon inspection and test to be correct as provided in AS 45.75.050, and shall reject and mark or tag as "rejected" the weights and measures that are found [WHICH HE FINDS], upon

inspection or testing [TEST], to be incorrect as provided in AS 45.-75.050 but that [WHICH] in the commissioner's [HIS] best judgment may be satisfactorily repaired [ARE SUSCEPTIBLE OF SATISFACTORY REPAIR]. Sealing [THIS SEALING] or marking is not required for weights and measures exempted by regulation [OF THE DIRECTOR].

(b) The commissioner [DIRECTOR] shall condemn, and may seize and destroy weights and measures found to be incor RY REPAIR]. Weights and the commissioner's [HIS] best judgment, canno of this section may be repaired [ARE NOT SUSCEPTIBLE OF SATISFACTORY r [DIRECTOR] if not cor- measures that [WHICH] are rejected under (a) of d or disposed of contrary confiscated and destroyed by the commissioner [I rected as required by AS 45.75.180 or if used or to the requirements of AS 45.75.180. T OF ENTRY AND STOPPAGE.

* Sec. 13. AS 45.75.130 is amended to read: ny other law dealing with

Sec. 45.75.130. POLICE POWERS AND RIGHT O CTOR] has special police (a) In the enforcement of this chapter and any o thout formal warrant, any weights and measures, the commissioner [DIRECTOR se as evidence, without powers. The commissioner [HE] may arrest, withou and measures or amounts person violating the law, and seize for use offered, or exposed for formal warrant, incorrect or unsealed weights an rming the commissioner's or packages of commodity, used, retained, offe ay enter, without formal sale, or sold in violation of law. In performi any person and require [HIS] duties, the commissioner [DIRECTOR] may e ace. warrant, any structure or premises, and stop an f Commerce and Economic the pe son [HIM] to proceed to a specified place. oner to enforce the size,

(b) An emplo yee of the Department of C epartment of Transporta- Development who is authorized by the commissioner issue a citation to weight, and load limitations adopted by the Department of Transporta- tion and Public Facilities under AS 19.10.060 may issue a citation to

a person who violates (1) any of those limitations, (2) the terms of an overweight or oversize vehicle permit issued under AS 44.33.020(25) and AS 45.75.040, or (3) the provisions of regulations adopted under AS 44.33.020(25) and AS 45.75.050(b)(5). Citations issued under this subsection shall be treated as specified by AS 12.25.180 - 12.25.230 for citations issued by a peace officer.

* Sec. 14. AS 45.75.140 is amended to read:

Sec. 45.75.140. POWERS AND DUTIES OF INSPECTORS [DEPUTY DIRECTOR AND INSPECTOR]. The powers and duties of the commissioner [DIRECTOR] specified in AS 45.75.070, 45.75.080, 45.75.090, 45.75.100, 45.75.120, 45.75.130, and 45.75.170 may [, AND 45.75.380 SHALL] also be exercised by [THE DEPUTY DIRECTOR AND] inspectors, when acting under the instructions and at the direction of the commissioner [DIRECTOR].

* Sec. 15. AS 45.75.150 is amended to read:

Sec. 45.75.150. APPOINTMENT OF CITY SEALERS AND DEPUTY SEALERS OF WEIGHTS AND MEASURES. (a) A city may appoint a sealer of weights and measures, and the deputy sealers of weights and measures it needs. If the city appoints a sealer, the city [IT] shall obtain at its expense the standards of weight and measure [WEIGHTS AND MEASURES] and the additional equipment, for use in the enforcement of this chapter in the city, that [WHICH] the commissioner [DIRECTOR] prescribes.

(b) When the standards of weight and measure provided by a city are examined and approved by the commissioner [DIRECTOR], they are the official standards for the city. At least every five years, the sealer shall make or arrange to have made comparisons between the sealer's [HIS] field standards and appropriate standards of a higher order belonging to the sealer's [HIS] city or to the state in order to maintain the field standards in accurate condition.

* Sec. 16. AS 45.75.160 is amended to read:

Sec. 45.75.160. CITY SEALERS AND DEPUTY SEALERS. The sealer of a city, and the sealer's [HIS] deputy [SEALER] when acting under the sealer's [HIS] instructions and [AT HIS] direction, have the same powers and shall perform the same duties within the city as those granted to [AND IMPOSED UPON] the commissioner [DIRECTOR] by AS 45.75.080 - 45.75.130 and 45.75.380.

* Sec. 17. AS 45.75.170 is amended to read:

Sec. 45.75.170. CONCURRENT JURISDICTION. In each city having a sealer of weights and measures, the commissioner [DIRECTOR] has concurrent authority to enforce this chapter.

* Sec. 18. AS 45.75.180 is amended to read:

Sec. 45.75.180. DUTY OF OWNERS OF INCORRECT APPARATUS. Weights and measures rejected by the commissioner [DIRECTOR] or a sealer remain subject to the control of the rejecting authority until suitable repair or disposition of them is made as required by this section. The owner of a rejected weight and measure shall correct it within 30 days or a longer period authorized by the rejecting authority, [;] or [,] may dispose of it in the manner authorized by the rejecting authority. Rejected weights and measures may not again be used commercially until officially reexamined [RE-EXAMINED] and found to be correct or until specific written permission for their use is issued by the rejecting authority.

* Sec. 19. AS 45.75.190(c) is amended to read:

(c) The commissioner [DIRECTOR] may adopt [ISSUE] reasonable regulations necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative.

* Sec. 20. AS 45.75.200(c) is amended to read:

(c) Under (a)(1) of this section the commissioner [DIRECTOR]

shall, by regulation, establish

(1) reasonable variations or tolerances to be allowed, that [WHICH] may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure,

(2) exemptions [EXEMPTION] as to small packages, and

(3) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at the time of sale to the consumer.

* Sec. 21. AS 45.75.220 is amended to read:

Sec. 45.75.220. MISLEADING PACKAGES. A [NO] commodity in package form may not be so wrapped, or put in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container may not fall below the reasonable standard of fill that [WHICH] the commissioner [DIRECTOR] prescribes for the commodity.

* Sec. 22. AS 45.75.282(b) is amended to read:

(b) One of the tickets provided for in (a) of this section shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or surrendered, on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR,] or an inspector, or a sealer [,] or a deputy sealer, who may [,IF HE WANTS TO] retain it as evidence and, if it is retained, shall issue a weight slip in place of it.

* Sec. 23. AS 45.75.290(b) is amended to read:

(b) One of the tickets provided for under (a) of this section

shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR] or an inspector, or a sealer or deputy sealer, who may [, IF HE DESIRES TO] retain it as evidence and [, SHALL] issue a weight slip in place of it for delivery to the purchaser. If the purchaser carries away the [HIS] purchase, the vendor is required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered to the purchaser [HIM].

* Sec. 24. AS 45.75.300 is amended to read:

Sec. 45.75.300. TEXTILE PRODUCTS. (a) It is unlawful to keep for the purpose of sale, offer or expose for sale, or sell textile yard goods put up or packaged in advance of sale in a bolt or roll, or any other textile product put up or packaged in advance of sale in any other unit, for wholesale or retail sale, unless the bolt or roll, or other unit is definitely, plainly, and conspicuously marked to show its net measure in terms of yards or its net weight, in terms of avoirdupois pounds or ounces, subject to the following limitations and requirements:

(1) a unit of twine or cordage may be marked to show its net measure in terms of feet; readywound bobbins not sold separately are not required to be individually marked, but the package containing the bobbins shall be marked to show the number of bobbins contained in it and the net weight or measure of the thread on each bobbin; a unit of sewing, basting, mending, darning, crocheting, tatting, hand-knitting, or embroidery thread or yarn, except nylon hand-knitting yarn, that is not composed in whole or in part of wool, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the

spool or other holder; a retail unit of a textile product sold only for household use consisting of a package containing two or more similar individual units that are not sold separately shall be marked to show the number of individual units in the package and the net weight or net measure of the product in each individual unit, but this does not apply where the individual units are separately marked; a unit of yarn, composed in whole or in part of wool, sold to consumers for handiwork, shall be marked to show the net weight of the yarn, except that any such unit of tapestry, mending, or embroidery yarn, the net measure of which does not exceed 50 years, may be marked to show its linear measure only;

(2) the marking required by this section shall in all cases be in combination with the name and place of business of the manufacturer, packer, or distributor of the product, or a trademark, symbol, brand, or other mark that identifies the manufacturer, packer, or distributor;

(3) reasonable tolerances shall be permitted, and these shall be included in regulations <u>adopted</u> for the enforcement of this section.

<u>(b) This</u> [THAT ARE ISSUED BY THE DIRECTOR; (4) THIS] section does not apply to the following textile products when sold at wholesale in bulk by net weight: cordage, agricultural bag sewing threads, twines, yarns that are to be processed, and yarns that are to be industrially converted into end-use products.

* Sec. 25. AS 45.75.330 is amended to read:

Sec. 45.75.330. INJUNCTION. The <u>commissioner</u> [DIRECTOR] may apply to a court for a temporary or permanent injunction restraining a person from violating a provision of this chapter.

* Sec. 26. AS 45.75.380 is amended to read:

Sec. 45.75.380. OFFENSES AND PENALTIES. It is a class B misdemeanor for a person to perform any of the following acts [A PERSON WHO, BY HIMSELF OR BY HIS SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF ANOTHER, PERFORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDEMEANOR AND UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A FINE OF NOT LESS THAN $20 NOR MORE THAN $200, OR BY IMPRISONMENT FOR NOT MORE THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT CONVICTION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN $50 NOR MORE THAN $500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]:

(1) uses or has in possession for the purpose of using for any commercial purpose specified in AS 45.75.080, sells, offers, or exposes for sale, or hire, or has in possession for the purpose of selling or hiring, an incorrect weight or measure or a device or instrument used to or calculated to falsify a weight or measure;

(2) uses or has in possession for current use, in buying or selling a commodity or thing, or for hire or award, or in the computation of a basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for determination, a weight or measure that has not been tested and sealed by the appropriate authority within one year, (A) unless written notice is given to the appropriate authority to the effect that the weight or measure is available for examination, or is due for reexamination [RE-EXAMINATION], as the case may be, (B) unless specific written permission to use the weight or measure is received from the appropriate authority, or (C) unless the weight or measure is exempt from sealing or annual testing requirements by AS 45.75.080 or by a regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

(3) disposes of a rejected [OR CONDEMNED] weight or measure in a manner contrary to law or regulation;

(4) removes from a weight or measure, contrary to law or regulation, a tag, seal, or mark placed on it by the appropriate authority;

(5) sells or [,] offers [OR EXPOSES] for sale less than the quantity the person [HE] represents of a commodity, thing, or service;

(6) takes more than the quantity the person [HE] represents of a commodity, thing, or service when, as buyer, the person [HE] furnished the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(7) keeps for the purpose of sale, advertises, or offers [OR EXPOSES] for sale, or sells a commodity, thing, or service in a condition or manner contrary to law or regulation;

(8) uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position that [WHICH] may reasonably be assumed by a customer;

(9) hinders or obstructs the commissioner, an inspector, a sealer, or a deputy sealer in the performance of official duties under this chapter;

(10) violates a provision of an overweight or oversize permit;

(11) violates a weight, load, or size limitation established under AS 19.10.060 or regulations adopted under AS 19.05.020 or AS 45.75.050(b)(5);

(12) violates a provision of this chapter or of a regulation

adopted under this chapter for which a specific penalty is not prescribed.

* Sec. 27. AS 45.75.380 is amended by adding a new subsection to read:

(b) In addition to the penalty provided for in (a) of this section, a fine of five cents a pound shall be imposed for each pound of weight by which a vehicle exceeds an allowable gross weight limitation established under AS 19.10.060 or regulations adopted by the Department of Transportation and Public Facilities under AS 19.05.020.

* Sec. 28. AS 45.75.390(4) is repealed and reenacted to read:

(4) "commissioner" means the commissioner of commerce and economic development or a designee;

* Sec. 29. AS 28.35.230(e) and AS 45.75.360 are repealed.

* Sec. 30. This Act takes effect immediately in accordance with AS 01.-10.070(c).

DEPARTMENT OF LAW CS FOR SEC. 14 OF SB 82

Sec. 14. AS 45.75 is amended by adding new sections to Article 2 to read:

Sec. 45.75.131. ISSUANCE OF CITATIONS.

(b) An employee of the Department of Commerce and Economic Development who is authorized by the commissioner to enforce the size, weight, and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060 may issue a citation to a person who violates (1) any of those limitations, (2) the terms of an overweight or oversize vehicle permit issued under AS 44.33.020(25) and AS 45.75.040, or (3) the provisions of a regulation adopted under AS 44.33.020(25) and AS 45.75.050(b)(5).

Sec. 45.75.132. FORM AND ISSUANCE OF CITATION. (a) A citation issued under this section must be in writing. A person receiving the citation may not be required to sign a promise to appear in court [ENDORSE IT].

(b) The time specified in the notice to appear on a citation issued under this section must be at least fifteen days [AT LEAST FIVE DAYS, NOT INCLUDING WEEKENDS AND HOLIDAYS,] after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The commissioner is responsible for the issuance of books containing appropriate citations and shall maintain a record of each book and each citation contained in

it. The commissioner shall require and retain a receipt for every book issued to an employee of the department designated by the commissioner to provide investigative service to enforce provisions of this chapter.

(d) An employee who issues a citation under this section shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The employee who issued the citation may not dispose of it or copies of it or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The commissioner shall require the return of a copy of every citation issued under this section and of all copies of every citation that has been spoiled or upon which an entry has been made and not issued to an alleged violator. The commissioner shall also maintain in connection with every citation issued a record of the disposition of the charge by the court in which the original or copy of the citation was deposited.

(f) If the form of citation issued under this section includes information and is sworn to as required under the laws of this state in respect to a complaint charging commission of the offense alleged in the

citation, then the citation when filed with a court having jurisdiction, is considered to be a lawful complaint for the purpose of prosecution.

(g) Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, or bail has been forfeited under AS 45.75.133, a person who fails to appear in court to answer a citation issued under this section, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

Sec. 45.75.133. BAIL FORFEITURE. (a) [(B)] The supreme court shall specify by rule or order those violations that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. The maximum bail forfeiture amount for an offense may not exceed the maximum fine specified by law for that offense. If the violation for which the citation is issued may be disposed of without court appearance, the issuing employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(b) [(C)] A person cited for a violation for which a bail forfeiture amount has been established under (b) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the employee

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(c) [(D)] When bail has been forfeited under (b) [(C)] of this section, a judgment of conviction shall be entered. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact.

(d) [(E)] A [IF THE] person cited who fails to pay the bail forfeiture amount established under (b) of this section or to appear in court as required, is guilty of a class B misdemeanor [THE CITATION IS CONSIDERED A SUMMONS FOR A MISDEMEANOR].

(e) [(F)] Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (b) of this section appears in court and is found guilty, the penalty that is imposed for the offense may not exceed the bail forfeiture amount for that offense established under (b) of this section.

Adoption of Necessary Regulation

Sec. 19.10.060. Regulation of weight and load of vehicles and use of highways during certain seasons. The department, with respect to highways under its jurisdiction, may

(1) establish limitations on weight, size, and load of vehicles;

(2) *[Repealed, § 25 ch 144 SLA 1977.]*

(3) prohibit the operation or impose restrictions on vehicular use of highways during certain seasons of the year. (§ 5 art III title II ch 152 SLA 1957; am § 1 ch 55 SLA 1963; am § 25 ch 144 SLA 1977; am § 2 ch 77 SLA 1982)

Cross references. For the duties of the Department of Commerce and Economic Development to operate weighing stations and enforce weight and load limitations based upon directions of the Department of Transportation and Public Facilities, see AS 44.33.020(25).

Effect of amendments. — The 1982 amendment inserted "size" in paragraph (1).

Sec. 19.05.020. Regulations. The department shall adopt regulations necessary to carry out the purpose of chs. 5 — 25 of this title. (§ 1 art III title I ch 152 SLA 1957)

Opinions of attorney general. — The department has authority to require contractors to set up a system of prequalification of contractors as a prerequisite for bidding on state construction projects, and under such system to require contractors to furnish periodic and financial statements. —

1959 Op. Att'y Gen., No. 27.

The department would not be required to follow the Administrative Procedure Act (AS 44.62.010 — 44.62.650) in adopting regulations to implement a program of prequalification of contractors. 1959 Op. Att'y Gen., No. 27.

A policy of publishing regulations concerning bidding and letting of contracts in the Administrative Code is consistent with the Alaska Administrative Procedure Act (AS 44.62.010 — 44.62.650), since these regulations are regulations in which an important portion of the public has a vital interest and since they are of great use to the portion of the public interested in dealing and contracting with the state. 1959 Op. Att'y Gen., No. 27.

PENALTIES FOR A VIOLATIC

...subsection (g) the court may not impose a concurrent sentence. However, if the defendant's conduct falls within paragraphs (1), (2) or (3) of subsection (g) the court is authorized to impose concurrent sentences. (Griffith v. State, Ct. App. Op. No. 331 (File No. A-47), 675 P.2d 662 (1984).

Where defendant's various check forgery cases violated similar societal interests, he could therefore receive concurrent sentences. Winfree v. State, Ct. App. Op. No. 378 (File No. A-156), P.2d (1984).

Sec. 12.55.030. Discharge of indigents imprisoned for nonpayment of fine. [Repealed, § 16 ch 53 SLA 1973.]

Sec. 12.55.035. Fines. (a) Upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden its payment will impose. No defendant may be imprisoned solely because of inability to pay a fine.

(b) Upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for murder in the first or second degree, sexual assault in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) $50,000 for a class A, B, or C felony;

(3) $5,000 for a class A misdemeanor;

(4) $1,000 for a class B misdemeanor;

(5) $300 for a violation.

(c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) $100,000; or

(2) an amount which is three times the pecuniary gain realized by the defendant as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. (§ 12 ch 166 SLA 1978; am § 17 ch 45 SLA 1982; am § 26 ch 143 SLA 1982)

Cross references. — For classification of offenses, see AS 11.81.250; for sentences of imprisonment for felonies, see AS 12.55.125; for sentences of imprisonment for misdemeanors, see AS 12.55.135; for sentences for violations, see AS 12.55.140.

Effect of amendments. — The first 1982 amendment, in subsection (b)(1), deleted "or" preceding "kidnapping" and added "or misconduct involving a controlled substance in the first degree."

The second 1982 amendment inserted "sexual assault in the first degree" in paragraph (1) of subsection (b).

While neither 1982 amendment gave effect to the other, both have been given effect in paragraph (b)(1), set out above.

Sec. 44.33.010. Commissioner of commerce and economic development. The principal executive officer of the Department of Commerce and Economic Development is the commissioner of commerce and economic development. (§ 14 ch 64 SLA 1959; am § 6 ch 186 SLA 1960; am § 95 ch 218 SLA 1976)

Collateral references. — 15A Am. Jur. 2d, Commerce, § 1 et seq.; 1 and 2 Am. Jur. 2d, Administrative Law, § 1 et seq.; 63 Am. Jur. 2d, Public Funds, § 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, § 22.

15 C.J.S., Commerce, § 1 et seq.; 73 C.J.S. Public Administrative Law, § 1 et seq.

Sec. 44.33.020. Duties of department. The Department of Commerce and Economic Development shall

(1) administer the state programs relating to commerce, enforce the laws relating to these programs, and adopt regulations under these laws;

(2) register corporations;

(3) collect corporation franchise taxes;

(4) enforce state laws regulating public utilities and other public service enterprises, banking and securities, insurance, and other businesses and enterprises touched with a public interest;

(5) make veterans' loans;

(6) inspect weights and measures;

(7) promote and develop civil aviation;

(8) furnish the budgeting, clerical and administrative services for regulatory agencies and professional and occupational licensing boards not otherwise provided for;

(9) *[Repealed, E.O. No. 39 § 13 (1977).]*

(10) *[Repealed, E.O. No. 33 (1968).]*

(11) before the commencement of each calendar quarter, furnish lending institutions, title insurance companies, mortgage companies and clerks of the respective superior courts with the 12th Federal Reserve District discount rate that is to be used during that calendar quarter for computing the maximum rate of interest under AS 45.45.010(b);

(12) conduct studies, enter into contracts and agreements, and make surveys relating to the economic development of the state and, when appropriate, assemble, analyze, and disseminate the findings obtained;

(13) provide factual information and technical assistance for potential industrial and commercial investors;

(14) receive gifts, grants, and other aid that facilitate the powers and duties of the department from agencies and instrumentalities of the United States or other public or private sources;

(15) establish and activate programs to achieve balanced economic development in the state and advise the governor on economic development policy matters;

(16) formulate a continuing program for basic economic development and for the necessary promotion, planning and research that will advance the economic development of the state;

(17) cooperate with private, governmental and other public institutions and agencies in the execution of economic development programs;

(18) review the programs and annual reports of other departments and agencies as they are related to economic development and prepare an annual report on the economic growth of the state;

(19) administer the economic development programs of the state;

(20) perform all other duties and powers necessary or proper in relation to economic development and planning for the state;

(21) request tourism-related businesses in the state to provide data regarding occupancy levels, traffic flow and gross receipts and to participate in visitor surveys conducted by the department; data collected under this paragraph which discloses the particulars of an individual business is not a matter of public record and shall be kept confidential; however, this restriction does not prevent the department from using the data to formulate tourism economic impact information including expenditure patterns, tax receipts and fees, employment and income attributable to tourism, and other information considered relevant to the planning, evaluation and policy direction of tourism in the state.

(22) *[Repealed, E.O. No. 47, § 6 (1980).]*

(23) administer the program of state assistance for the construction and development of cultural facilities in accordance with AS 44.33.401 — 44.33.417;

(24) provide administrative and budgetary services to the Real Estate Commission (AS 08.88) as requested by the commission;

(25) operate motor vehicle weighing stations, issue special written permits authorizing the operation of overweight and oversize vehicles, establish fees for the overweight and oversize vehicle special permits, enforce the size, weight, and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060, and establish regulations relating to pilot car services and the enforcement of the size, weight, and load limitations adopted under AS 19.10.060;

(26) administer the Alaska Foreign Offices established by AS 44.33.530. (§ 14 ch 64 SLA 1959; am § 6 ch 186 SLA 1960; am § 2 ch 1 SLA 1961; am § 2 ch 55 SLA 1963; am § 2 ch 70 SLA 1965; am E.O. No. 33 (1968); am § 4 ch 94 SLA 1969; am § 6 ch 207 SLA 1975; am § 1 ch 116 SLA 1976; am § 96 ch 218 SLA 1976; am E.O. No. 39, § 13 (1977); am E.O. No. 40, § 2 (1979); am § 4 ch 62 SLA 1979; am E.O. No. 47, § 6 (1980); am § 33 ch 167 SLA 1980; am § 1 ch 77 SLA 1982; am E.O. No. 57, § 2 (1984); am § 1 ch 120 SLA 1984)

Cross references. — As to establishing limitations on weight and load of vehicles, see AS 19.10.060(1).

Effect of amendments. — Section 6, E.O. No. 47 (1980) repealed paragraph (22).

Section 33, ch. 167, SLA 1980, added paragraph (24).

The 1982 amendment added paragraph (25).

The first 1984 amendment added paragraph (26).

The second 1984 amendment substituted "Offices" for "Office" in paragraph (26).

Editor's notes. — The duties, powers, and responsibilities in respect to the accumulation, analysis, and reporting of commercial and industrial statistics, the promotion of the economic and tourist development of the state, the granting of industrial tax incentives, the tourist attraction development program, and the tourism advisory board were transferred from the Department of Commerce to the Department of Economic Development and Planning by ch. 159 SLA 1962 (AS 44.45), that was repealed by § 1 ch. 207 SLA 1975.

Legislative history reports. — For report on ch. 116, SLA 1976 (SCSHB 730), see 1976 House Journal, p. 696.

Sec. 44.33.025. Recording. [Repealed, E.O. No. 47, § 6 (1980).]

Sec. 44.33.110. Civil Air Patrol. [Repealed, E.O. No. 33 (1968). For current provisions, see AS 26.05.345.]

IDENTIFICATION

BILL NAME
"An Act relating to weights and measures"

BILL NUMBER
SB 82

DATE INTRODUCED
1/22/85

RELATED BILLS PENDING

SPONSOR(S)
Rules - Gov

REFERRALS
Trans, Labor & Commerce, Finance

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes, by Trans Staff

SPONSOR CONTACTED FOR BACKUP MATERIALS
Joe Swanson - DOC-EO
~~Carla~~

AGENCY RESPONSE
Transmittal letter from Gov, sufficient

LEGAL DIVISION SUMMARY
No

DEPT OF LAW SUMMARY
No

FISCAL NOTE
Yes, enclosed in Referral

OTHER INTERESTED LEGISLATORS NOTIFIED

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES
SB 491 13th Legislature

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
Carla Forsythe - General Council to Ak court system.
Ray Gillespee - Office of the Governor
Peter Froehlich - Assistant attorney general
Katherine Wallin - DCED Liason

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes - 2-8-85

DATE & PLACE SET
Yes - Friday 8 February - Butrovich 3:30

STAFF MEMO TO COMMITTEE
Yes.

TELECONFERENCE
No

BACKGROUND MATERIAL DISTRIBUTED
Yes 2-7-85

PSA/PRESS RELEASE
No

LIST OF WITNESSES
Joe Swanson

SUGGESTED AMENDMENTS/CS DRAFTED

Introduced: 2/14/84
Referred: Labor and Commerce and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 491

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to weights and measures; and providing for an effective date."

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

* Section 1. AS 45.75.030 is amended to read:

Same

Sec. 45.75.030. STATE DIRECTOR AND INSPECTORS OF WEIGHTS AND MEASURES. The commissioner of commerce and economic development is ex officio state director of weights and measures. The commissioner may delegate this authority, and [DIRECTOR] may appoint state inspectors.

* Sec. 2. AS 45.75.040 is amended to read:

Same

Sec. 45.75.040. GENERAL POWERS AND DUTIES OF COMMISSIONER [DIRECTOR]. The commissioner [DIRECTOR] is the custodian of the state standards of weight and measure and of the other standards and equipment provided for by this chapter, and [. THE DIRECTOR] shall keep accurate records of the standards and equipment. The commissioner [DIRECTOR] shall [operate motor vehicle weigh stations; establish fees for and issue overweight and oversize vehicle permits; enforce this chapter; implement AS 44.33.020(25); and [. HE SHALL] supervise the weights and measures offered for sale, sold, or in use in the state.

Deleted

* Sec. 3. AS 45.75.050(a) is amended to read:

Same

(a) The commissioner [DIRECTOR] shall adopt [ISSUE] regulations for the enforcement of this chapter in accordance with the Administrative Procedure Act (AS 44.62). These have the effect of law.

* Sec. 4. AS 45.75.050(b) is amended by adding a new paragraph to read:

(5) provisions governing the enforcement of the size,

weight, and load limitations established under AS 19.10.060; the issuance of, and the enforcement of the terms of, permits for overweight and oversize vehicles; and the operation of weigh stations.

* Sec. 5. AS 45.75.050(d) is amended to read:

(d) The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments to them, as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 and supplements to it, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and regulations for commercial weighing and measuring devices of the state, except as specifically modified, amended, or rejected by a regulation adopted [ISSUED] by the commissioner [DIRECTOR].

* Sec. 6. AS 45.75.060 is amended to read:

Sec. 45.75.060. OFFICE AND FIELD [WORKING] STANDARDS AND EQUIPMENT. The commissioner [STATE] shall maintain [SUPPLY THE DIVISION OF WEIGHTS AND MEASURES WITH] a duplicate set of state standards of weight and measure, referred to in this chapter as office standards. The commissioner [STATE] shall also supply field standards and the equipment [which] is necessary to carry out this chapter. The office standards and field standards must [SHALL] be verified upon their initial receipt and at least once each year afterward. The office standards must [SHALL] be verified by direct comparison with the state standards. The field standards must [SHALL] be verified by comparison with the office standards.

* Sec. 7. AS 45.75.070 is amended to read:

Sec. 45.75.070. TESTING AND INSPECTION OF LOCAL STANDARDS AND WEIGHTS AND MEASURES AT STATE-SUPPORTED INSTITUTIONS. (a) At least once every five years, the commissioner [DIRECTOR] shall test the

standards of weight and measure obtained by a city which has appointed a sealer of weights and measures, and shall approve them if they are correct. The commissioner [DIRECTOR] shall inspect the standards at least once every two years.

(b) The commissioner [DIRECTOR] shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution maintained by money appropriated by the legislature, and shall report the commissioner's [HIS] findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

* Sec. 8. AS 45.75.080(a) is amended to read:

(a) The commissioner [DIRECTOR] may inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. The commissioner [DIRECTOR] shall, at least annually [SEMIANNUALLY AND MORE OFTEN AS HE CONSIDERS NECESSARY], inspect and test, to ascertain if they are correct, all weights and measures commercially used

(1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight or of measure;

(2) in computing the basic charge or payment for services rendered on the basis of weight or of measure or count; or

(3) in determining weight or measurement when a charge is made for this determination.

* Sec. 9. AS 45.75.090 is amended to read:

Sec. 45.75.090. INVESTIGATIONS. The commissioner [DIRECTOR] shall investigate complaints of violations of this chapter, and shall [, UPON HIS OWN INITIATIVE,] conduct other [THE] investigations that the commissioner [HE] considers appropriate and advisable to develop

information on prevailing procedures in commercial quantity determination [AND] on possible violations of this chapter; and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

* Sec. 10. AS 45.75.100 is amended to read:

Sec. 45.75.100. INSPECTION OF PACKAGES. (a) The commissioner [DIRECTOR] shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with law. When packages or amounts of commodities do not contain the amounts represented, or are kept, offered, or exposed for sale in violation of law, the commissioner [DIRECTOR] may order them off sale and may mark or tag them to show they are illegal. The commissioner [DIRECTOR] may use recognized sampling procedures. Compliance of a given lot of packages must [SHALL] be determined on the basis of the result obtained on a sample selected from and representative of the lot.

(b) [NO] person may not

(1) sell, or keep, offer, or expose for sale in intrastate commerce a package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section until the package or amount of commodity has been brought into full compliance with all legal requirements; or

(2) dispose of a package or amount of commodity that is ordered off sale or marked or tagged as provided in this section and that does not meet legal requirements, except with the specific approval of the commissioner [DIRECTOR].

* Sec. 11. AS 45.75.110(a) is amended to read:

(a) The commissioner [DIRECTOR] may issue stop-use orders,

stop-removal orders, and removal orders for weights and measures used or capable of being used commercially. The commissioner [DIRECTOR] may issue stop-removal orders and removal orders for packages or amounts of commodities kept, offered, or exposed for sale whenever the commissioner [HE] considers it necessary or expedient in enforcing this chapter.

* Sec. 12. AS 45.75.120 is amended to read:

Sec. 45.75.120. DISPOSITION OF CORRECT AND INCORRECT APPARATUS. (a) The commissioner [DIRECTOR] shall approve for use and seal or mark with appropriate devices the weights and measures that [which] the commissioner [HE] finds upon inspection and test to be correct as provided in AS 45.75.050, and shall reject and mark or tag as "rejected" the weights and measures that [which] are found [HE FINDS], upon inspections or testing [TEST], to be incorrect as provided in AS 45.75.050 but which in the commissioner's [HIS] best judgment may be satisfactorily repaired [ARE SUSCEPTIBLE OF SATISFACTORY REPAIR]. This sealing or marking is not required for weights and measures exempted by regulation [OF THE DIRECTOR].

(b) The commissioner [DIRECTOR] shall condemn, and may seize and destroy weights and measures found to be incorrect that [which], in the commissioner's [HIS] best judgment, cannot be satisfactorily repaired [ARE NOT SUSCEPTIBLE OF SATISFACTORY REPAIR]. Weights and measures which are rejected under (a) of this section may be confiscated and destroyed by the commissioner [DIRECTOR] if not corrected as required by AS 45.75.180 or if used or disposed of contrary to the requirements of AS 45.75.180.

* Sec. 13. AS 45.75.130 is amended to read:

Sec. 45.75.130. POLICE POWERS AND RIGHT OF ENTRY AND STOPPAGE. (a) In the enforcement of this chapter and any other law dealing with

weights and measures, the commissioner [DIRECTOR] has special police powers. The commissioner [HE] may arrest, without formal warrant, any person violating the law, and seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity, used, retained, offered, or exposed for sale, or sold in violation of law. In performing [his] duties, the commissioner [DIRECTOR] may enter, without formal warrant, any structure or premises, and stop any person and require the person [him] to proceed to a specified place.

(b) An employee of the Department of Commerce and Economic Development who is authorized by the commissioner to enforce the size, weight, and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060 may arrest or issue a citation to a person who violates (1) any of those limitations, (2) the terms of an overweight or oversize vehicle permit issued under AS 44.33.020(25) and AS 45.75.040, or (3) the provisions of regulations adopted under AS 44.33.020(25) and AS 45.75.050(b)(5). [Citations issued under this subsection must be treated as specified by AS 12.25.180 -- 12.25.230 for citations issued by a peace officer.]

* Sec. 14. AS 45.75.140 is amended to read:

Sec. 45.75.140. POWERS AND DUTIES OF INSPECTORS [DEPUTY DIRECTOR AND INSPECTOR]. The powers and duties of the commissioner [DIRECTOR] specified in AS 45.75.070, 45.75.080, 45.75.090, 45.75.100, 45.75.120, 45.75.130, and 45.75.170 may [, AND 45.75.380 SHALL] also be exercised by [THE DEPUTY DIRECTOR AND] inspectors, when acting under the instructions and at the direction of the commissioner [DIRECTOR].

* Sec. 15. AS 45.75.150 is amended to read:

Sec. 45.75.150. APPOINTMENT OF CITY SEALERS AND DEPUTY SEALERS OF WEIGHTS AND MEASURES. (a) A city may appoint a sealer of weights

and measures, and the deputy sealers of weights and measures it needs. If the city appoints a sealer, it shall obtain at its expense the standards of weight and measure [WEIGHTS AND MEASURES] and the additional equipment, for use in the enforcement of this chapter in the city, which the commissioner [DIRECTOR] prescribes.

(b) When the standards of weight and measure provided by a city are examined and approved by the commissioner [DIRECTOR], they are the official standards for the city. At least every five years, the sealer shall make or arrange to have made comparisons between the sealer's [HIS] field standards and appropriate standards of a higher order belonging to the sealer's [HIS] city or to the state, in order to maintain the field standards in accurate condition.

* Sec. 16. AS 45.75.160 is amended to read:

Sec. 45.75.160. CITY SEALERS AND DEPUTY SEALERS. The sealer of a city, and the sealer's deputy [SEALER] when acting under the sealer's [HIS] instructions and [AT HIS] direction, have the same powers and shall perform the same duties within the city as those granted to and imposed upon the commissioner [DIRECTOR] by AS 45.75.080 -- 45.75.130 and 45.75.380.

* Sec. 17. AS 45.75.170 is amended to read:

Sec. 45.75.170. CONCURRENT JURISDICTION. In each city having a sealer of weights and measures, the commissioner [DIRECTOR] has concurrent authority to enforce this chapter.

* Sec. 18. AS 45.75.180 is amended to read:

Sec. 45.75.180. DUTY OF OWNERS OF INCORRECT APPARATUS. Weights and measures rejected by the commissioner [DIRECTOR] or a sealer remain subject to the control of the rejecting authority until suitable repair or disposition of them is made as required by this section. The owner of a rejected weight and measure shall correct it

within 30 days or a longer period authorized by th. rejecting authority, [;] or [,] may dispose of it in the manner authorized by the rejecting authority. Rejected weights and measures may not again be used commercially until officially re-examined and found to be correct or until specific written permission for their use is issued by the rejecting authority.

* Sec. 19. AS 45.75.190(c) is amended to read:

(c) The commissioner [DIRECTOR] may adopt [ISSUE] reasonable regulations necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative.

* Sec. 20. AS 45.75.200(c) is amended to read:

(c) Under (a)(1) of this section the commissioner [DIRECTOR] shall, by regulation, establish

(1) reasonable variations or tolerances to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure,

(2) exemption as to small packages, and

(3) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at the time of sale to the consumer.

* Sec. 21. AS 45.75.220 is amended to read:

Sec. 45.75.220. MISLEADING PACKAGES. [NO] commodity in package form may be ~~so~~ not wrapped, or put in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents

of the package, and the contents of a container may not fall below the reasonable standard of fill [which] That the commissioner [DIRECTOR] prescribes for the commodity.

* Sec. 22. AS 45.75.282(b) is amended to read:

(b) One of the tickets provided for in (a) of this section shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or surrendered, on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR,] or an inspector, or a sealer [,] or a deputy sealer, who may [,IF HE WANTS TO] retain it as evidence and, if it is retained, shall issue a weight slip in place of it.

* Sec. 23. AS 45.75.290(b) is amended to read:

(b) One of the tickets provided for under (a) of this section shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR] or an inspector, or a sealer or deputy sealer, who may [, IF HE DESIRES TO] retain it as evidence and [, SHALL] issue a weight slip in place of it for delivery to the purchaser. If the purchaser carries away the [HIS] purchase, the vendor is required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered to the purchaser [HIM].

* Sec. 24. AS 45.75.300(3) is amended to read:

(3) reasonable tolerances shall be permitted, and these must [SHALL] be included in regulations adopted for the enforcement of this section [THAT ARE ISSUED BY THE DIRECTOR];

* Sec. 25. AS 45.75.330 is amended to read:

Sec. 45.75.330. INJUNCTION. The commissioner [DIRECTOR] may apply to a court for a temporary or permanent injunction restraining a

person from violating a provision of this chapter.

* Sec. 26. AS 45.75.380 is amended to read:

Sec. 45.75.380. OFFENSES AND PENALTIES. It is a class A misdemeanor for a person to perform any of the following acts or otherwise to violate a provision of this chapter [A PERSON WHO, BY HIMSELF OR BY HIS SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF ANOTHER, PERFORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDEMEANOR AND UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A FINE OF NOT LESS THAN $20 NOR MORE THAN $200, OR BY IMPRISONMENT FOR NOT MORE THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT CONVICTION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN $50 NOR MORE THAN $500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]:

(1) uses or has in possession for the purpose of using for any commercial purpose specified in AS 45.75.080, sells, offers, or exposes for sale, or hire, or has in possession for the purpose of selling or hiring, an incorrect weight or measure or a device or instrument used to or calculated to falsify a weight or measure;

(2) uses or has in possession for current use, in buying or selling a commodity or thing, or for hire or award, or in the computation of a basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for determination, a weight or measure that has not been tested and sealed by the appropriate authority within one year, (A) unless written notice is given to the appropriate authority to the effect that the weight or measure is available for examination, or is due for re-examination, as the case may be, (B) unless specific written permission to use the weight or measure is received from the appropriate authority, or (C) unless the weight or measure is exempt from sealing or annual testing requirements by

AS 45.75.080 or by a regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

(3) disposes of a rejected weight or measure in a manner contrary to law or regulation;

(4) removes from a weight or measure, contrary to law or regulation, a tag, seal, or mark placed on it by the appropriate authority;

(5) sells, offers or exposes for sale less than the quantity he represents of a commodity, thing, or service;

(6) takes more than the quantity [he] represents of a commodity, thing, or service when, as buyer, [he] furnished the weight or measure by means of which the amount of the commodity, thing, or service is determined;

(7) keeps for the purpose of sale, advertises, or offers [or exposes] for sale, or sells a commodity, thing, or service in a condition or manner contrary to law or regulation;

(8) uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer;

[(9)] (9) violates a provision of this chapter or of a regulation adopted under this chapter for which a specific penalty is not prescribed;

(10) hinders or obstructs the commissioner, an inspector, a sealer, or a deputy sealer in the performance of official duties under this chapter;

(11) violates a provision of an overweight or oversize permit;

(12) violates a weight, load, or size limitation established under AS 19.10.060 or regulations adopted under AS 19.05.020 or 45.-75.050(b)(5).

* Sec. 27. AS 45.75.390(4) is repealed and reenacted to read:

(4) "commissioner" means the commissioner of commerce and economic development or a designee;

* Sec. 28. [AS 28.35.230(e)] and AS 45.75.360 are repealed.

* Sec. 29. This Act takes effect immediately in accordance with AS 01.-10.070(c).

and of the other standards and equipment provided for by this chapter. The director shall keep accurate records of the standards and equipment. The director shall enforce this chapter. He shall supervise the weights and measures offered for sale, sold, or in use in the state. (§ 8 ch 101 SLA 1961)

Sec. 45.75.050. Adoption of regulations. (a) The director shall issue regulations for the enforcement of this chapter in accordance with the Administrative Procedure Act (AS 44.62). These have the effect of law.

(b) The regulations may include

(1) standards of net weight, measure, or count, and reasonable standards of fill, for any commodity in package form;

(2) rules governing the technical and reporting procedures to be followed, and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties;

(3) exemptions from the sealing or marking requirements of AS 45.75.120 with respect to weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question; and

(4) with respect to classes of weights and measures of a character that annual retesting is unnecessary to continued accuracy, exemptions from the requirements of AS 45.75.070 and 45.75.080 for annual testing, and schedules fixing the frequency of required retests for classes of devices exempted.

(c) The regulations shall include specifications, tolerance, and regulations for weights and measures of the character of those specified in AS 45.75.030, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are of such construction that they are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (3) that facilitate the perpetration of fraud.

(d) The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments to them, as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 and supplements to it, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and regulations for commercial weighing and measuring devices of the state, except as specifically modified, amended, or rejected by a regulation issued by the director.

(e) For the purposes of this chapter, apparatus is correct when it conforms to the requirements adopted in accordance with this section; other apparatus is considered incorrect. (§ 9 ch 101 SLA 1961)

Bannister
2/13/85 ✓✓

Original sponsor: Rules/Governor

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 82 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to weights and measures; and providing for an effective date."

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

* Section 1. AS 45.75.030 is amended to read:

Sec. 45.75.030. STATE DIRECTOR AND INSPECTORS OF WEIGHTS AND MEASURES. The commissioner of commerce and economic development is ex officio state director of weights and measures. The commissioner may delegate this authority, and [DIRECTOR] may appoint state inspectors.

* Sec. 2. AS 45.75.040 is amended to read:

Sec. 45.75.040. GENERAL POWERS AND DUTIES OF COMMISSIONER [DIRECTOR]. The commissioner [DIRECTOR] is the custodian of the state standards of weight and measure and of the other standards and equipment provided for by this chapter, and [. THE DIRECTOR] shall keep accurate records of the standards and equipment. The commissioner [DIRECTOR] shall enforce this chapter, implement AS 44.33.020(25), and [. HE SHALL] supervise the weights and measures offered for sale, sold, or in use in the state.

* Sec. 3. AS 45.75.050(a) is amended to read:

(a) The commissioner [DIRECTOR] shall adopt [ISSUE] regulations necessary for the enforcement of this chapter in accordance with the Administrative Procedure Act (AS 44.62). These have the effect of law.

* Sec. 4. AS 45.75.050(b) is amended to read:

(b) The regulations may include

(1) standards of net weight, measure, or count, and reasonable standards of fill, for a [ANY] commodity in package form;

(2) rules governing the technical and reporting procedures to be followed, and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties;

(3) exemptions from the sealing or marking requirements of AS 45.75.120 for [WITH RESPECT TO] weights and measures of a character or size that sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question; [AND]

(4) for [WITH RESPECT TO] classes of weights and measures of a character that annual retesting is unnecessary to continued accuracy, exemptions from the requirements of AS 45.75.070 and 45.75.080 for annual testing, and schedules fixing the frequency of required retests for classes of devices exempted;

(5) in the implementation of AS 44.33.020(25), provisions governing the enforcement of the size, weight, and load limitations established under AS 19.10.060; the issuance of, and the enforcement of the terms of, permits for overweight and oversize vehicles; and the operation of weigh stations.

* Sec. 5. AS 45.75.050(d) is amended to read:

(d) The specifications, tolerances, and regulations for commercial weighing and measuring devices, together with amendments to them, as recommended by the National Bureau of Standards and published in National Bureau of Standards Handbook 44 and supplements to it, or in any publication revising or superseding Handbook 44, are the specifications, tolerances, and regulations for commercial weighing and measuring devices of the state, except as specifically modified, amended, or rejected by a regulation adopted [ISSUED] by the

commissioner [DIRECTOR].

* Sec. 6. AS 45.75.060 is amended to read:

Sec. 45.75.060. OFFICE AND FIELD [WORKING] STANDARDS AND EQUIPMENT. The commissioner [STATE] shall maintain [SUPPLY THE DIVISION OF WEIGHTS AND MEASURES WITH] a duplicate set of state standards of weight and measure, referred to in this chapter as office standards. The commissioner [STATE] shall also supply field standards and the equipment that [WHICH] is necessary to carry out this chapter. The commissioner shall verify the office standards and field standards on [SHALL BE VERIFIED UPON] their initial receipt and at least once each year afterward. The commissioner shall verify the office standards [SHALL BE VERIFIED] by direct comparison with the state standards. The commissioner shall verify the [THE] field standards [SHALL BE VERIFIED] by comparison with the office standards.

* Sec. 7. AS 45.75.070 is amended to read:

Sec. 45.75.070. TESTING AND INSPECTION OF LOCAL STANDARDS AND WEIGHTS AND MEASURES AT STATE-SUPPORTED INSTITUTIONS. (a) At least once every five years, the commissioner [DIRECTOR] shall test the standards of weight and measure obtained by a city that [WHICH] has appointed a sealer of weights and measures, and shall approve them if they are correct. The commissioner [DIRECTOR] shall inspect the standards at least once every two years.

(b) The commissioner [DIRECTOR] shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution maintained by money appropriated by the legislature, and shall report the commissioner's [HIS] findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

* Sec. 8. AS 45.75.080(a) is amended to read:

(a) The commissioner [DIRECTOR] may inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. The commissioner [DIRECTOR] shall, at least annually [SEMIANNUALLY AND MORE OFTEN AS HE CONSIDERS NECESSARY], inspect and test, to ascertain if they are correct, all weights and measures commercially used

(1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight or of measure;

(2) in computing the basic charge or payment for services rendered on the basis of weight or of measure or count; or

(3) in determining weight or measurement when a charge is made for this determination.

* Sec. 9. AS 45.75.090 is amended to read:

Sec. 45.75.090. INVESTIGATIONS. The commissioner [DIRECTOR] shall investigate complaints of violations of this chapter, and shall [, UPON HIS OWN INITIATIVE,] conduct other [THE] investigations that the commissioner [WHICH HE] considers appropriate and advisable to develop information on prevailing procedures in commercial quantity determination, [AND] on possible violations of this chapter, and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

* Sec. 10. AS 45.75.100 is amended to read:

Sec. 45.75.100. INSPECTION OF PACKAGES. (a) The commissioner [DIRECTOR] shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale to determine whether they contain the amounts represented and whether they are kept, offered, or exposed for sale in accordance with law. When packages or amounts of commodities do not contain the amounts

represented, or are kept, offered, or exposed for sale in violation of law, the commissioner [DIRECTOR] may order them off sale and may mark or tag them to show they are illegal. The commissioner [DIRECTOR] may use recognized sampling procedures. The commissioner shall determine the compliance [COMPLIANCE] of a given lot of packages [SHALL BE DETERMINED] on the basis of the result obtained on a sample selected from and representative of the lot.

(b) A [NO] person may not

(1) sell, or keep, offer, or expose for sale in intrastate commerce a package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section until the package or amount of commodity has been brought into full compliance with all legal requirements; or

(2) dispose of a package or amount of commodity that is ordered off sale or marked or tagged as provided in this section and that does not meet legal requirements, except with the specific approval of the commissioner [DIRECTOR].

* Sec. 11. AS 45.75.110(a) is amended to read:

(a) The commissioner [DIRECTOR] may issue stop-use orders, stop-removal orders, and removal orders for weights and measures used or capable of being used commercially. The commissioner [DIRECTOR] may issue stop-removal orders and removal orders for packages or amounts of commodities kept, offered, or exposed for sale whenever the commissioner [HE] considers it necessary or expedient in enforcing this chapter.

* Sec. 12. AS 45.75.120 is amended to read:

Sec. 45.75.120. DISPOSITION OF CORRECT AND INCORRECT APPARATUS. (a) The commissioner [DIRECTOR] shall approve for use and seal or mark with appropriate devices the weights and measures that the

commissioner [WHICH HE] finds on [UPON] inspection and test to be correct as provided in AS 45.75.050, and shall reject and mark or tag as "rejected" the weights and measures that are found [WHICH HE FINDS], upon inspections or testing [TEST], to be incorrect as provided in AS 45.75.050 but which in the commissioner's [HIS] best judgment may be satisfactorily repaired [ARE SUSCEPTIBLE OF SATISFACTORY REPAIR]. This sealing or marking is not required for weights and measures exempted by regulation [OF THE DIRECTOR].

(b) The commissioner [DIRECTOR] shall condemn, and may seize and destroy weights and measures found to be incorrect that [WHICH], in the commissioner's [HIS] best judgment, cannot be satisfactorily repaired [ARE NOT SUSCEPTIBLE OF SATISFACTORY REPAIR]. Weights and measures that [WHICH] are rejected under (a) of this section may be confiscated and destroyed by the commissioner [DIRECTOR] if not corrected as required by AS 45.75.180 or if used or disposed of contrary to the requirements of AS 45.75.180.

* Sec. 13. AS 45.75.130 is amended to read:

Sec. 45.75.130. POLICE POWERS AND RIGHT OF ENTRY AND STOPPAGE. In the enforcement of this chapter and [ANY] other laws [LAW] dealing with weights and measures, the commissioner [DIRECTOR] has special police powers. The commissioner [HE] may arrest, without formal warrant, a [ANY] person violating the law, and seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity, used, retained, offered, or exposed for sale, or sold in violation of law. In performing these [HIS] duties, the commissioner [DIRECTOR] may enter, without formal warrant, a [ANY] structure or premises, and stop any person and require the person [HIM] to proceed to a specified place.

* Sec. 14. AS 45.75 is amended by adding new sections to article 2 to

read:

Sec. 45.75.131. ISSUANCE OF CITATIONS. An employee of the Department of Commerce and Economic Development who is authorized by the commissioner to enforce the size, weight, and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060 may issue a citation to a person who violates

(1) a load limitation;

(2) the terms of an overweight or oversize vehicle permit issued under AS 44.33.020(25) and AS 45.75.040; or

(3) the provisions of a regulation adopted under AS 44.33.-020(25) and AS 45.75.050(b)(5).

Sec. 45.75.132. FORM AND ISSUANCE OF CITATION. (a) A citation issued under this section must be in writing. A person receiving the citation is not required to sign a promise to appear in court.

(b) The time specified in the notice to appear on a citation issued under this section must be at least 15 days after the issuance of the citation, unless the person cited requests an earlier hearing.

(c) The commissioner is responsible for the issuance of books containing appropriate citations and shall maintain a record of each book and each citation contained in it. The commissioner shall require and retain a receipt for every book issued to an employee of the department designated by the commissioner to provide investigative service to enforce provisions of this chapter.

(d) An employee who issues a citation under this section shall deposit the original or a copy of the citation with a court having jurisdiction over the alleged offense. Upon its deposit with the court, the citation may be disposed of only by trial in the court or other official action taken by the magistrate, judge, or prosecutor. The employee who issued the citation may not dispose of it or copies

of it or of the record of its issuance except as required under this subsection and (e) of this section.

(e) The commissioner shall require the return of a copy of every citation issued under this section and of all copies of every citation that has been spoiled or on which an entry has been made and not issued to an alleged violator. The commissioner shall also maintain in connection with every citation issued a record of the disposition of the charge by the court in which the original or copy of the citation was deposited.

(f) If the form of citation issued under this section includes the essential facts constituting the offense charged and is sworn to as required under the laws of this state for a complaint charging commission of the offense alleged in the citation, the citation when filed with a court having jurisdiction, is considered to be a lawful complaint for the purpose of prosecution.

(g) Unless the citation has been voided or otherwise dismissed by the magistrate, judge, or prosecutor, or bail has been forfeited under AS 45.75.133, a person who fails to appear in court to answer a citation issued under this section, regardless of the disposition of the charge for which the citation was issued, is guilty of a class B misdemeanor.

Sec. 45.75.133. BAIL FORFEITURE. (a) The supreme court shall specify by rule or order those violations that are appropriate for disposition without court appearance, and shall establish a schedule of bail amounts. The maximum bail forfeiture amount for an offense may not exceed the maximum fine specified by law for that offense. If the person who has been cited can dispose of the violation without court appearance, the issuing employee shall write on the citation the amount of bail forfeiture applicable to the violation.

(b) A person cited for a violation for which a bail forfeiture amount has been established under (a) of this section may, within 15 days after the date of the citation, mail or personally deliver to the clerk of the court in which the citation is filed by the employee

(1) the amount of bail indicated on the citation for that offense; and

(2) a copy of the citation indicating that the right to an appearance is waived, a plea of no contest is entered and the bail is forfeited.

(c) When the cited person has forfeited bail under (b) of this section, the court shall enter a judgment of conviction. Forfeiture of bail is a complete satisfaction for the violation. The clerk of the court accepting the bail forfeiture shall provide the offender with a receipt stating that fact.

(d) A cited person who fails to pay the bail forfeiture amount established under (a) of this section or to appear in court as required, is guilty of a class B misdemeanor.

(e) Notwithstanding other provisions of law, if a person cited for a violation for which a bail forfeiture amount has been established under (a) of this section appears in court and is found guilty, the court may not impose a penalty that exceeds the bail forfeiture amount for that offense established under (a) of this section.

* Sec. 15. AS 45.75.140 is amended to read:

Sec. 45.75.140. POWERS AND DUTIES OF INSPECTORS [DEPUTY DIRECTOR AND INSPECTOR]. The powers and duties of the commissioner [DIRECTOR] specified in AS 45.75.070 - 45.75.100, 45.75.120, [AS 45.75.070,] 45.75.130, and 45.75.170 may [, AND 45.75.380 SHALL] also be exercised by [THE DEPUTY DIRECTOR AND] inspectors, when acting under the instructions and at the direction of the commissioner [DIRECTOR].

* Sec. 16. AS 45.75.150 is amended to read:

Sec. 45.75.150. APPOINTMENT OF CITY SEALERS AND DEPUTY SEALERS OF WEIGHTS AND MEASURES. (a) A city may appoint a sealer of weights and measures, and the deputy sealers of weights and measures it needs. If the city appoints a sealer, the city [IT] shall obtain at its expense the standards of weight and measure [WEIGHTS AND MEASURES] and the additional equipment, for use in the enforcement of this chapter in the city, which the commissioner [DIRECTOR] prescribes.

(b) When the standards of weight and measure provided by a city are examined and approved by the commissioner [DIRECTOR], they are the official standards for the city. At least every five years, the sealer shall make or arrange to have made comparisons between the sealer's [HIS] field standards and appropriate standards of a higher order belonging to the sealer's [HIS] city or to the state, in order to maintain the field standards in accurate condition.

* Sec. 17. AS 45.75.160 is amended to read:

Sec. 45.75.160. CITY SEALERS AND DEPUTY SEALERS. The sealer of a city, and the sealer's [HIS] deputy [SEALER] when acting under the sealer's [HIS] instructions and [AT HIS] direction, have the same powers and shall perform the same duties within the city as those granted to and imposed upon the commissioner [DIRECTOR] by AS 45.75.-080 - 45.75.130 and 45.75.380.

* Sec. 18. AS 45.75.170 is amended to read:

Sec. 45.75.170. CONCURRENT JURISDICTION. In each city having a sealer of weights and measures, the commissioner [DIRECTOR] has concurrent authority to enforce this chapter.

* Sec. 19. AS 45.75.180 is amended to read:

Sec. 45.75.180. DUTY OF OWNERS OF INCORRECT APPARATUS. Weights and measures rejected by the commissioner [DIRECTOR] or a sealer

remain subject to the control of the rejecting authority until suitable repair or disposition of them is made as required by this section. The owner of a rejected weight and measure shall correct it within 30 days or a longer period authorized by the rejecting authority, [;] or [,] may dispose of it in the manner authorized by the rejecting authority. The owner of rejected [REJECTED] weights and measures may not use them again [BE USED] commercially until the rejected weights and measures are officially reexamined [RE-EXAMINED] and found to be correct or until specific written permission for their use is issued by the rejecting authority.

* Sec. 20. AS 45.75.190(c) is amended to read:

(c) The commissioner [DIRECTOR] may adopt [ISSUE] reasonable regulations necessary to assure that a seller determines the amounts of commodity sold [ARE DETERMINED] in accordance with good commercial practice and in an accurate and informative manner [AND ARE SO DETERMINED AND REPRESENTED AS TO BE ACCURATE AND INFORMATIVE].

* Sec. 21. AS 45.75.200(c) is amended to read:

(c) Under (a)(1) of this section the commissioner [DIRECTOR] shall, by regulation, establish

(1) reasonable variations or tolerances to be allowed, that [WHICH] may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure,

(2) exemptions for [EXEMPTION AS TO] small packages, and

(3) exemptions for [AS TO] commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at

the time of sale to the consumer.

* Sec. 22. AS 45.75.220 is amended to read:

Sec. 45.75.220. MISLEADING PACKAGES. A [NO] commodity in package form may not be so wrapped, or put in a container so made, formed, or filled as to mislead the purchaser about [AS TO] the quantity of the contents of the package, and the contents of a container may not fall below the reasonable standard of fill that [WHICH] the commissioner [DIRECTOR] prescribes for the commodity.

* Sec. 23. AS 45.75.282(b) is amended to read:

(b) The vendor shall retain one [ONE] of the tickets provided for in (a) of this section [SHALL BE RETAINED BY THE VENDOR,] and shall deliver the other [SHALL BE DELIVERED] to the purchaser at the time of delivery of the commodity, or surrender the other [SURRENDERED], on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR,] or an inspector, or a sealer[,] or a deputy sealer, who may [, IF HE WANTS TO] retain it as evidence and, if it is retained, the commissioner or deputy sealer [,] shall issue a weight slip in place of it.

* Sec. 24. AS 45.75.290(b) is amended to read:

(b) The vendor shall retain one [ONE] of the tickets provided for under (a) of this section [SHALL BE RETAINED BY THE VENDOR] and shall deliver the other [SHALL BE DELIVERED] to the purchaser at the time of delivery of the fuel, or shall surrender it, [BE SURRENDERED,] on demand, to the commissioner [DIRECTOR, OR THE DEPUTY DIRECTOR] or an inspector, or a sealer or deputy sealer, who may [, IF HE DESIRES TO] retain it as evidence and [, SHALL] issue a weight slip in place of it for delivery to the purchaser. If the purchaser carries away the [HIS] purchase, the vendor is required only to give to the purchaser at the time of sale a delivery ticket stating the number of

pounds of fuel delivered to the purchaser [HIM].

* Sec. 25. AS 45.75.300 is amended to read:

Sec. 45.75.300. TEXTILE PRODUCTS. It is unlawful for a person to keep for the purpose of sale, offer or expose for sale, or sell textile yard goods put up or packaged in advance of sale in a bolt or roll, or another [ANY OTHER] textile product put up or packaged in advance of sale in another [ANY OTHER] unit, for wholesale or retail sale, unless the person definitely, plainly and conspicuously marks the bolt or roll, or other unit [, IS DEFINITELY, PLAINLY, AND CONSPICUOUSLY MARKED] to show its net measure in terms of yards or its net weight, in terms of avoirdupois pounds or ounces, subject to the following limitations and requirements:

(1) a unit of twine or cordage may be marked to show its net measure in terms of feet; readywound bobbins not sold separately are not required to be individually marked, but the package containing the bobbins shall be marked to show the number of bobbins contained in it and the net weight or measure of the thread on each bobbin; a unit of sewing, basting, mending, darning, crocheting, tatting, hand-knitting, or embroidery thread or yarn, except nylon hand-knitting yarn, that is not composed in whole or in part of wool, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the spool or other holder; a retail unit of a textile product sold only for household use consisting of a package containing two or more similar individual units that are not sold separately shall be marked to show the number of individual units in the package and the net weight or net measure of the product in each individual unit, but this does not apply where the individual units are separately marked; a unit of yarn, composed in whole or in part of wool, sold to consumers

for handiwork, shall be marked to show the net weight of the yarn, except that a [ANY SUCH] unit of tapestry, mending, or embroidery yarn that [THE NET MEASURE OF WHICH] does not exceed 50 yards in net measure, may be marked to show its linear measure only;

(2) the marking required by this section shall in all cases be in combination with the name and place of business of the manufacturer, packer, or distributor of the product, or a trademark, symbol, brand, or other mark that identifies the manufacturer, packer, or distributor;

(3) reasonable tolerances shall be permitted, and the commissioner shall include reasonable tolerances [THESE SHALL BE INCLUDED] in regulations adopted for the enforcement of this section [THAT ARE ISSUED BY THE DIRECTOR];

(4) this section does not apply to the following textile products when sold at wholesale in bulk by net weight: cordage, agricultural bag sewing threads, twines, yarns that are to be processed, and yarns that are to be industrially converted into end-use products.

* Sec. 26. AS 45.75.330 is amended to read:

Sec. 45.75.330. INJUNCTION. The commissioner [DIRECTOR] may apply to a court for a temporary or permanent injunction restraining a person from violating a provision of this chapter.

* Sec. 27. AS 45.75.380 is amended to read:

Sec. 45.75.380. OFFENSES AND PENALTIES. (a) A person commits a violation subject to the penalty specified in AS 12.55.035(b)(5) if the person does one or more of the following acts [A PERSON WHO, BY HIMSELF OR BY HIS SERVANT, OR AGENT, OR AS THE SERVANT OR AGENT OF ANOTHER, PERFORMS ANY ONE OF THE FOLLOWING ACTS IS GUILTY OF A MISDEMEANOR AND UPON A FIRST CONVICTION OF THE VIOLATION IS PUNISHABLE BY A FINE OF NOT LESS THAN $20 NOR MORE THAN $200, OR BY IMPRISONMENT FOR

NOT MORE THAN THREE MONTHS, OR BY BOTH. UPON A SECOND OR SUBSEQUENT CONVICTION, THE PERSON IS PUNISHABLE BY A FINE OF NOT LESS THAN $50 NOR MORE THAN $500, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH]:

(1) uses or has in possession for the purpose of using for a [ANY] commercial purpose specified in AS 45.75.080, sells, offers, or exposes for sale, or hire, or has in possession for the purpose of selling or hiring, an incorrect weight or measure or a device or instrument used to or calculated to falsify a weight or measure;

(2) uses or has in possession for current use, in buying or selling a commodity or thing, or for hire or award, or in the computation of a basic charge or payment for services rendered on the basis of weight or measurement, or in the determination of weight or measurement when a charge is made for determination, a weight or measure that has not been tested and sealed by the appropriate authority within one year, (A) unless the person gives written notice [IS GIVEN] to the appropriate authority to the effect that the weight or measure is available for examination, or is due for reexamination [RE-EXAMINATION], as the case may be, (B) unless the person receives specific written permission to use the weight or measure [IS RECEIVED] from the appropriate authority, or (C) unless the weight or measure is exempt from sealing or annual testing requirements by AS 45.75.080 or by a regulation adopted [OF THE DIRECTOR ISSUED] under AS 45.75.050;

(3) disposes of a rejected or condemned weight or measure in a manner contrary to law or regulation;

(4) removes from a weight or measure, contrary to law or regulation, a tag, seal, or mark placed on it by the appropriate authority;

(5) sells or[,] offers [OR EXPOSES] for sale less than the

quantity the person [HE] represents of a commodity, thing, or service;

(6) takes more than the quantity the person [HE] represents of a commodity, thing, or service when, as buyer, the person [HE] furnished the weight or measure that the seller used to determine [BY MEANS OF WHICH] the amount of the commodity, thing, or service [IS DETERMINED];

(7) keeps for the purpose of sale, advertises, or offers [OR EXPOSES] for sale, or sells a commodity, thing, or service in a condition or manner contrary to law or regulation;

(8) uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that a customer may accurately read, from a position that may reasonably be assumed by a customer, its indications [MAY BE ACCURATELY READ] and observe the weighing or measuring operation [OBSERVED FROM SOME POSITION WHICH MAY REASONABLY BE ASSUMED BY A CUSTOMER];

(9) hinders or obstructs the commissioner, an inspector, a sealer, or a deputy sealer in the performance of official duties under this chapter;

(10) violates a provision of an overweight or oversize vehicle permit issued under AS 44.33.020(25);

(11) violates a weight, load, or size limitation established under AS 19.10.060 or a regulation adopted under AS 19.05.020, AS 44.33.020(25), or AS 45.75.050(b)(5);

(12) violates a provision of this chapter or of a regulation adopted under this chapter for which a specific penalty is not prescribed.

(b) Notwithstanding the maximum fine for a violation provided under (a) of this section, the commissioner shall impose on a person

who violates a regulation or special permit governing the weight limit of a motor vehicle a maximum penalty of $.05 for each pound of weight over the authorized weight limit for the vehicle.

* Sec. 28. AS 45.75.390(4) is repealed and reenacted to read:

(4) "commissioner" means the commissioner of commerce and economic development or the commissioner's designee;

* Sec. 29. AS 28.40.050(e) and AS 45.75.360 are repealed.

* Sec. 30. This Act takes effect immediately in accordance with AS 01.-10.070(c).

REPEALED

§ 28.40.050 § 28.40.050

(e) Notwithstanding the maximum fine provided for infractions under (c) of this section, for the violation of regulations or special permits issued governing vehicle weight limits, overweight penalties shall be imposed at the rate of five cents for each pound of weight over the authorized weight limit for that vehicle. (§ 50-1-8 ACLA 1949; am § 12 ch 241 SLA 1976; am §§ 22, 23 ch 144 SLA 1977)

Revisor's notes. — Formerly AS 28.35.230. Renumbered in 1984.

Sec. 45.75.360. Hindering or obstructing officer and penalty. A person who hinders or obstructs the director, the deputy director, or an inspector, or a sealer or deputy sealer, in the performance of his official duties, is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $20 nor more than $200, or by imprisonment for not more than three months, or by both. (§ 37 ch 101 SLA 1961)

SB

103

File 1

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM January 31, 1985

SUBJECT: Senate Bill 103 as amending initiative 83-02

TO: Senator Jack Coghill

FROM: George W. Edwards GWE
Legislative Counsel

This is in response to your research request concerning the constitutional implications of Senate Bill 103 as an amendment to initiative 83-02 regarding the termination of the Alaska Transportation Commission.

Article XI, section 6 of the Alaska Constitution states that an initiative passed into law may not be repealed by the legislature for two years. It further states that such an initiative may be amended at any time.

This legislative power to amend has been broadly defined by the Alaska supreme court as a check or balance against the initiative process lest the process otherwise result in the frustration of sound government (see Warren v. Boucher 543 P2d 731 (Alaska, 1975) and Warren v. Thomas 568 P2d 400 (Alaska, 1977). While the amendment process may not be employed by the legislature to so emasculate an initiative as to effectively repeal it, it may legitimately be used to clarify the law or to effectuate the intent of the electorate.

In order to determine the appropriateness of an amendment to an initiative the language and intent of the initiative and the language and effect of the amendment must be considered. If the amendatory language may be interpreted not to vitiate the intent of the initiative, the court is likely to approve the legislature's right to adopt the language.

Initiative 83-02 was concerned with, among other things, abolishing the ATC for the purpose of eliminating legalized price-fixing and tariffs. It proposed that other government

agencies could insure transportation safety standards and that financial responsibility of commercial carriers should be overseen by the Department of Public Safety. Senate bill 103 does not appear to incorporate any price support or tariff provisions which would conflict with the intent of the initiative. It contains provisions concerning financial responsibility and safety which are consistent with the terms of the initiative. It goes beyond the literal terms of the initiative in requiring both bonds to protect shippers and equipment registration, but these provisions serve a rational purpose and are not in conflict with the apparent intent of the initiative.

In summary, Senate Bill 103 does not appear to violate the constitutional provision concerning the amendment of initiatives.

GWE:csh
c2/199

BILL SHEFFIELD
GOVERNOR

dl103

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 25, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill authorizing the Department of Public Safety (DPS) to regulate the safety of motor carrier and air carrier operations. This bill amends AS 42.30.200, enacted by the Alaska Transportation Commission (ATC) initiative in the last general election, and creates several new sections in AS 42.30.

The intent of this legislation is to allow DPS to maintain an adequate level of safety requirements for commercial air and motor vehicle operations after the ATC's authority to do so is abolished. This is consistent with the portion of the initiative's statement of purpose that acknowledges that "other government agencies can insure safety standards while allowing persons to contract freely for services." The initiative has already authorized DPS to establish financial responsibility requirements and to enforce them. AS 42.30.200. This bill goes further by adding other sections to AS 42.30 to require registration of air and certain motor carriers and compliance with motor vehicle safety regulations or federal aircraft safety rules for those carriers.

The bill forbids certain motor carriers and air carriers to operate in Alaska without complying with its provisions. Proposed AS 42.30.195. The definitions for motor and air carriers, motor vehicles, aircraft, etc. are found in proposed AS 42.30.270, and were adapted from the definitions in the Motor Freight Carrier Act (AS 42.10.420) and the Air Commerce Act of 1960 (AS 02.05.250). The definitions differ from their predecessors in two ways: the four categories of motor carriers formerly recognized have been deleted and the term "motor carrier" now includes buses. Proposed AS 42.30.197 incorporates the provisions of AS 42.10.020 exempting certain vehicles from

coverage, and adds exemptions for school buses and for buses with a seating capacity of fewer than 16 persons.

The financial responsibility statute enacted by the initiative is clarified by a few amendments. AS 42.30.200. To conform the statute's terminology to other sections of the bill, the phrase "a person who carries passengers or freight for hire intrastate" is changed to "a person operating as a motor carrier or a person engaged in air commerce." A provision from AS 02.05.136 has been added, requiring 30 days' notice to DPS before insurance or surety bonds may be cancelled. The requirement that regulations be adopted under AS 42.30.200 was also added.

Proposed AS 42.30.205 gives the department the discretionary power to adopt regulations requiring carriers to obtain bonding. This provision is modeled after AS 42.10.100 and is intended to protect the public that uses the carrier's services. In keeping with the practice set up by AS 42.10.113, motor carriers are required to place their identification on their motor vehicles. Proposed AS 42.30.210.

The bill creates a new system of carrier registration. Unlike the ATC's system of issuing permits or certificates based on public convenience and necessity, this registration plan does not economically regulate entry into air or motor commerce. An intrastate motor carrier that is required to register will be registered if three simple conditions are met: the carrier shows proof of financial responsibility (which AS 42.30.200 already requires) and bonding (if required by regulation), and provides proof of compliance with safety regulations. Proposed AS 42.30.215. This latter element will be met by having all vehicles inspected by the department, or an authorized representative, once every six months, as provided in proposed AS 42.30.230(b). The inspections would be performed free of charge by a nonuniformed DPS employee. An interstate motor carrier will register its Interstate Commerce Commission (ICC) authority under proposed AS 42.30.220 just as it did under AS 42.10.135. Interstate carriers will be required to comply with Alaska's safety regulations and obtain bonding, if directed by regulation, but they will not be subject to this bill's insurance or inspection rules because those matters are governed by federal authority. An air carrier registers by providing proof of insurance, bonding, and compliance with federal safety laws. Proposed AS 42.30.225. As was set out in AS 02.05.090, air carriers must also register each aircraft used and pay an annual aircraft registration fee.

Proposed AS 42.30.225(e) and (f).

Proposed AS 42.30.235 gives DPS the abilit[illegible] adopt regulations, under the Administrative Procedure Act, to carry out the bill's provisions. Other than the definitions portion, the remainder of the bill deals with enforcement and penalties for operating in violation of the provisions of this bill. If any carrier operates without the necessary insurance or bonding, or if an air carrier fails to register its aircraft, the carrier's registration can be summarily suspended, with an administrative hearing provided within 10 days. Proposed AS 42.30.240(a). This is similar to the ATC's stop-order authority in AS 42.07.181. There are three other bases for revocation, although they are not grounds for pre-hearing suspension: intentional misrepresentation of a material fact in obtaining registration; intentional failure to comply with the provisions of this bill or regulations adopted under them; and failure to pay applicable fees. Proposed AS 42.30.240(b). Carriers with a suspended registration may cure the defect any time before the hearing, or after a hearing and before registration is revoked. Proposed AS 42.30.240(c). However, if registration is revoked for any reason, the carrier must pay fees and reapply to become registered again. Revocations are appealable to the superior court. Proposed AS 42.30.240(d).

In addition to the ability to administratively handle violations by lifting a carrier's registration, DPS may also pursue enforcement actions in court. Under proposed AS 42.30.245(a)(4), designated representatives of the department may issue citations for violation of the commercial motor vehicle safety regulations. The department may pursue an action in superior court to enforce its statutes and regulations (proposed AS 42.30.245(b)) and seek a misdemeanor conviction or payment of civil penalties where applicable. Proposed AS 42.30.250 and 42.30.255. A knowing act or omission in violation of any of this bill's provisions is a misdemeanor punishable by a fine of not more than $500, and payment of the costs of prosecution. Proposed AS 42.30.250 (modeled after AS 42.10.393 and AS 02.05.230). Carriers who operate without the necessary insurance or bonding while their registration is suspended, or who operate without obtaining registration or while registration is revoked, are subject to a civil penalty equal to the amount of revenue earned as a result of their operation, or up to $1,000, whichever is greater. Proposed AS 42.30.255 (comparable to AS 42.10.394 and AS 02.05.231). Aircraft or motor vehicles used in commerce before registration is obtained, or after regis-

tration is revoked, may be seized by DPS. The court may order the aircraft or vehicle forfeited to the state, or may release it to the offending carrier upon payment of civil or criminal penalties. Proposed AS 42.30.245(c).

The initiative's action in abolishing the ATC and in effecting the economic deregulation of the transportation industry in Alaska creates a new era for both Alaska's residents and its industry. I believe that it is important that the legislative and executive branches of government cooperate to the fullest extent to establish a program that achieves the intent of the initiative and provides an adequate level of safety to protect the general public. I am willing to explore with the legislature other approaches to accomplishing this objective.

I urge prompt consideration of this measure before February 28, 1985 so that the roads and skies will remain safe for business and the public.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/~~Resolution~~ No.: SB103

Title: "...:Public Safety to reg. safety of commerical vehicles..."

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Public Protection

ERU, Program or Subprogram(s) Affected: Division of Motor Vehicles - Commercial Vehicle Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		250.0	250.0	250.0	250.0	250.0
200 TRAVEL		3.0	3.2	3.4	3.6	3.8
300 CONTRACTUAL		66.0	53.6	56.3	59.1	62.1
400 SUPPLIES		7.0	7.4	7.8	8.2	8.6
500 EQUIPMENT		30.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		356.0	314.2	317.5	320.9	324.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	356.0	314.2	317.5	320.9	324.5
FEDERAL FUNDS					
OTHER					
TOTAL	356.0	314.2	317.5	320.9	324.5

POSITIONS:

FULL-TIME	6.0	6.0	6.0	6.0	6.0
PART-TIME					
TEMPORARY					

ANALYSIS: Attach a separate page if necessary

Prepared By: Marcia Lynn McKenzie Phone: 465-4349

Division: Administrative Services Date: 1/22/85

Approved by Commissioner: Robert J. Sundberg Date: 1/22/85

Agency: Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

COST ANALYSIS

The following costs are for administration of permitting, certification, bonding and insurance. These costs are in addition to the positions and funding included in the Governor's budget which are for vehicle safety inspections.

Personal Services		$250.0
1 Administrative Support Center Supervisor	Range 14	
4 Administrative Support Technicians	Range 12	
1 Accounting Technician II	Range 14	

It is anticipated that the positions, located in Anchorage, will be transferred from the ATC component, along with needed office equipment (desks, chairs, etc.). Minimal overtime and negotiated one-time compensatory payments are included.

Travel		3.0
Contractual Services		66.0
Telephone, postage, etc.	$25.0	
Printing of applications, forms, advertisements, etc.	8.0	
Space Lease	15.0	
Maintenance on data/word processing equipment	1.3	
Copier costs	3.0	
Professional fees (Dept. of Law)	12.0	
Risk Management	1.7	
Supplies and Materials		7.0
Office and library supplies		
Equipment		30.0
Data/word processors		
TOTAL		$356.0

For FY 87, space lease costs are transferred to the Department of Administration. A five percent annual inflation adjustment is applied beginning in FY 87.

05-12-04-06-00 (00-00-0-00-00-C0) STATE OF ALASKA -- COMPONENT BUDGET SUMMARY 17:51 12/21/84

AGENCY: DEPARTMENT OF PUBLIC SAFETY
CATEGORY: PUBLIC PROTECTION

PROGRAM: MOTOR VEHICLES
SUB-PROGRAM: COMMERCIAL VEHICLE SAFETY

EXPENDITURES & FUNDING	(18) FY83 ACT	(01) FY84 ACT	(02) FY85 ATH	(03) ADJ BASE	(04) FORMULA	(05) INCREMNT	(06) REQUEST	(08) GOVERNOR	(09) HOUSE	(10) SENATE	(11) C. C.	(12) BILLS	(13) LEG.REC
				FISCAL YEAR 1985									
01 PERS. SERV.				536.4			536.4	536.4					
02 TRAVEL				25.0			25.0	25.0					
03 CONTRACTUAL				100.0			100.0	100.0					
04 COMMODITIES				6.5			6.5	6.5					
05 EQUIPMENT													
06 LANDS/BLDGS													
07 GRANTS, CLMS													
08 MISC.													
** TOTAL EXPEND				667.9			667.9	667.9					
09 I-A TRANSFER				46.5			46.5	46.5					
1004 GEN FUND				667.9			667.9	667.9					
15 FULL TIME				11.0			11.0	11.0					
16 PART TIME													
17 TEMPORARY													
18 STAFF MONTHS				132.0			132.0	132.0					

AGENCY: DEPARTMENT OF PUBLIC SAFETY
CATEGORY: PUBLIC PROTECTION

PROGRAM: MOTOR VEHICLES
SUB-PROGRAM: COMMERCIAL VEHICLE SAFETY

* * * * * * * * * * GOVERNOR ANALYSIS * * * * * * * * * *

OBJECT GROUP	VARIATION		DESCRIPTION: GOVERNOR ($667.9) VERSUS FY85 ATH ($0.0)
01 PERS. SERV.	536.4	100.0%	TRANSFER FROM THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT (DCED), ALASKA TRANSPORTATION COMMISSION (ATC), FOR THE COMMERCIAL VEHICLE SAFETY PROGRAM $536.4.
02 TRAVEL	25.0	100.0%	TRANSFER FROM DCED, ATC, FOR THE COMMERCIAL VEHICLE SAFETY PROGRAM $25.0.
03 CONTRACTUAL	100.0	100.0%	TRANSFER FROM DCED, ATC, FOR THE COMMERCIAL VEHICLE SAFETY PROGRAM $100.0.
04 COMMODITIES	6.5	100.0%	TRANSFER FROM DCED, ATC, FOR THE COMMERCIAL VEHICLE SAFETY PROGRAM $6.5.
** TOTALS	667.9	100.0%	

Testimony prepared for the
Senate Transportation Commitee
regarding Senate Bill 103 by
the Alaska Air Carriers Association

February 28, 1985

Mr. Chairman and members of the Senate Transportation Committee, my name is Bob Jacobsen and I am here today on behalf of the Alaska Air Carriers - an association comprised of 115 member air service companies throughout Alaska.

I would like to begin by commending the Committee for its early review of this matter both because it is of great concern to our association and because of the February 28 deadline after which the Alaska Transportation Commission will no longer be in existence.

On Friday, I was present for the testimony of Representative Marrou regarding the intent of people who voted for the initiative which abolished A.T.C. We appreciate Representative Marrou's efforts to remove unnecessary regulatory constraints which impede free competition among air carriers. But it is also important for the Committee to recognize that among the people I know who voted in favor of the initiative, including some members of our organization, did so to express opposition to an overemphasis by A.T.C. on economic regulation and underemphasis on safety and fitness which are and should continue to be a primary concern of government. The only safe conclusion to draw when trying to figure out the intent of the initiative's supporters is that they believe in greater freedom of competition in the transportation industry and what they hope will be lower freight and passenger cost. That is the only common thread which ties the motor carriers, air carriers, and Jones Act (water) carriers together in the initiative.

We feel that it would be a mistake to conclude that Alaskans are no longer concerned with safety or that the initiative standing alone will assure that the transportation industry is as safe as possible. For this reason, we appreciate the efforts of Governor Sheffield in introducing legislation which we feel is necessary to protect public safety.

While we agree with the intent of Senate Bill 103, we do have some suggestions which we think will simplify and improve it.

First, the registration, insurance provisions, and proof of FAA certification, as they apply to the air carriers are similar to the occupational licensing function of the Department of Commerce. We believe the registration of air carriers would be handled by that Department more efficiently and at lower cost than by the Department of Public Safety.

Second, the minimum liability insurance which is currently required by A.T.C. for air carriers is $100.000 per seat (non-certificated carriers). The minimum liability insurance which must be carried by certificated carriers is $300,000 per seat. I have been advised by an attorney in Anchorage knowledgeable in this jurisdiction that the average death settlement in 1982 was approximately $250,000. Rather than allow the minimum liability insurance requirement to be set by regulation, we suggest you consider this and recommend that you establish it by statute.

When the federal government recently deregulated the airline industry, the same issues were addressed as those now before the committee. In the decision to sunset the Civil Aeronautics Board (C.A.B.), it was decided by Congress that the economic regulatory function of the agency would be discontinued, but that oversight of fitness and financial responsibility for certificated carriers be transferred to the federal Department of Transportation. The certification process requires an application, an operations and business plan, and a declaration of previous accidents, consumer complaints, and judgements awarded against the applicant. The application is reviewed and awarded based on fitness to operate, not upon the competitive effects of the business.

Because we recognize that the line between economic regulation and public safety - one key aspect of which is financial responsibility and fitness to operate - is not easy to define with precision; and because we also feel strongly that legislation should be in place February 28 to protect public safety, we do not believe it is possible to tackle this issue without risk of delay beyond that date. Therefore, we strongly urge the Committee to consider an amendment which would require the administration to undertake an interim study which would:

1. Examine the federal certification process for scheduled carriers to determine which aspects are desirable to incorporate in the state registration process in the interest of public safety.
2. Examine the impact of deregulation on rural air service to determine whether measures designed to insure reliability of service are necessary.

The results of this study would be reported back to the next session of the legislature with recommendations.

We also recommend to you that because of some fundamental differences between the air and trucking industries, that you divide the Governor's bill into two separate bills.

Last, Mr. Chairman, we sympathize with your task in reducing state expenditures this year to bring them in line with available revenues. In FY 85, A.T.C. was budgeted at $1.4 million. We feel that the Governor's bill with the amendments we have suggested could be administered by the Department of Commerce for a much smaller budget.

Part 103—Ultralight Vehicles

Subpart A—General

§ 103.1 Applicability.

This Part prescribes rules governing the operation of ultralight vehicles in the United States. For the purposes of this Part, an ultralight vehicle is a vehicle that:

(a) Is used or intended to be used for manned operation in the air by a single occupant;

(b) Is used or intended to be used for recreation or sport purposes only;

(c) Does not have any U.S. or foreign airworthiness certificate; and,

(d) If unpowered, weighs less than 155 pounds; or

(e) If powered:

(1) Weighs less than 254 pounds empty weight, excluding floats and safety devices which are intended for deployment in a potentially catastrophic situation;

(2) Has a fuel capacity not exceeding 5 U.S. gallons;

(3) Is not capable of more than 55 knots calibrated airspeed at full power in level flight; and

(4) Has a power-off stall speed which does not exceed 24 knots calibrated airspeed.

§ 103.3 Inspection requirements.

(a) Any person operating an ultralight vehicle under this Part shall, upon request, allow the Administrator, or his designee, to inspect the vehicle to determine the applicability of this Part.

(b) The pilot or operator of an ultralight vehicle must, upon request of the Administrator, furnish satisfactory evidence that the vehicle is subject only to the provisions of this Part.

§ 103.5 Waivers.

No person may conduct operations that require a deviation from this Part except under a written waiver issued by the Administrator.

§ 103.7 Certification and registration.

(a) Notwithstanding any other section pertaining to certification of aircraft or their parts or equipment, ultralight vehicles and their component parts and equipment are not required to meet the airworthiness certification standards specified for aircraft or to have certificates of airworthiness.

(b) Notwithstanding any other section pertaining to airman certification, operators of ultralight vehicles are not required to meet any aeronautical knowledge, age, or experience requirements to operate those vehicles or to have airman or medical certificates.

(c) Notwithstanding any other section pertaining to registration and marking of aircraft, ultralight vehicles are not required to be registered or to bear markings of any type.

Subpart B—Operating Rules

§ 103.9 Hazardous operations.

(a) No person may operate any ultralight vehicle in a manner that creates a hazard to other persons or property.

(b) No person may allow an object to be dropped from an ultralight vehicle if such action creates a hazard to other persons or property.

§ 103.11 Daylight operations.

(a) No person may operate an ultralight vehicle except between the hours of sunrise and sunset.

(b) Notwithstanding paragraph (a) of this section, ultralight vehicles may be operated during the twilight periods 30 minutes before official

sunrise and 30 minutes after official sunset or, in Alaska, during the period of civil twilight as defined in the Air Almanac, if:

(1) The vehicle is equipped with an operating anticollision light visible for at least 3 statute miles; and

(2) All operations are conducted in uncontrolled airspace.

§ 103.13 Operation near aircraft; Right-of-way rules.

(a) Each person operating an ultralight vehicle shall maintain vigilance so as to see and avoid aircraft and shall yield the right-of-way to all aircraft.

(b) No person may operate an ultralight vehicle in a manner that creates a collision hazard with respect to any aircraft.

(c) Powered ultralights shall yield the right-of-way to unpowered ultralights.

§ 103.15 Operations over congested areas.

No person may operate an ultralight vehicle over any congested area of a city, town, or settlement, or over any open air assembly of persons.

§ 103.17 Operations in certain airspace.

No person may operate an ultralight vehicle within an airport traffic area, control zone, terminal control area, or positive control area unless that person has prior authorization from the air traffic control facility having jurisdiction over that airspace.

§ 103.19 Operations in prohibited or restricted areas.

No person may operate an ultralight vehicle in prohibited or restricted areas unless that person has permission from the using or controlling agency, as appropriate.

§ 103.21 Visual reference with the surface.

No person may operate an ultralight vehicle except by visual reference with the surface.

§ 103.23 Flight visibility and cloud clearance requirements.

No person may operate an ultralight vehicle when the flight visibility or distance from clouds is less than that in the following table, as appropriate:

Flight Altitudes	*Minimum Flight Visibility*	*Minimum Distance from Clouds*
1,200 feet or less above the surface regardless of MSL altitude:		
(1) Within controlled airspace—	3 statute miles	500 feet below 1,000 feet above 2,000 feet horizontal.
(2) Outside controlled airspace:	1 statute mile	Clear of clouds.
More than 1,200 feet above the surface but less than 10,000 feet MSL:		
(1) Within controlled airspace—	3 statute miles	500 feet below 1,000 feet above 2,000 feet horizontal.
(2) Outside controlled airspace—	1 statute mile	500 feet below 1,000 feet above 2,000 feet horizontal.
More than 1,200 feet above the surface and at or above 10,000 feet MSL:	5 statute miles	1,000 feet below 1,000 feet above 1 statute mile horizontal.

Drew - for 401 Application

IN ADDITION TO THE INFORMATION ASKED FOR IN PART 204.5, PLEASE INCLUDE THE FOLLOWING INFORMATION WITH YOUR PART 204 FITNESS DATA:

1) A brief description of each accident or incident involving the carrier seven (7) years prior to filing date of application.

   A) Date of accident or incident.

   B) Location of accident or incident.

   C) Aircraft registration number (N#).

   D) FAA and/or NTSB file number if known.

   E) Name of pilot or other employees involved.

   F) Finding of FAA/NTSB if applicable.

   G) Positive actions taken by carrier as result of accident or incident.

ALSO, PLEASE INCLUDE THE FOLLOWING INFORMATION SO THAT THE BOARD MAY MAKE A RELIABILITY FINDING IN ADDITION TO A FITNESS DETERMINATION:

1) Carrier's systemwide on-time and completion record for the preceding year.

2) Availability of back-up aircraft. (If the aircraft used in your proposed scheduled service are down, does your fleet contain back-up aircraft, or would you be able to charter like aircraft to perform the scheduled service).

3) Fuel availability. (A brief description of carrier's contracts with fuel suppliers).

INDEX OF APPENDICES

Appendix	Title
A	Data Required by Section 204.5
B	Affidavit of Citizenship
C	Key Personnel
D	List of Stockholders
E	Financial Statements
F	Aircraft Operated
G	Affidavits of Aircraft Safety Compliance
H	Statements Regarding Consumer Complains
I	Illustrative Description of Service
J	Projected Balance Sheet
K	Operating Authority

SAMPLE OUTLINE
OF

LETTER OF INTENT
(ON COMPANY LETTERHEAD)

COMPANY NAME

Type of Operations:

Type and Class of Aircraft:

Area of Operation:

Organizational Personnel:

Estimated Date for Submitting:

Formal Application _____
Operations Manual _____
Training Program _____
Proving Test Proposals _____
Operations Specifications _____
Maintenance Program _____
Maintenance Manual _____

Date Ready For Certification Inspection _____

SIGNATURE OF COMPANY OFFICIAL

Make an appointment with both the Principal Airworthiness Inspector and the Principal Operations Inspector for briefing.

CAB AUTHORITY *(298)*

2a. TYPE OF INSPECTION				*Instructions: Complete all items for original amendment, or base inspection. Complete applicable items coded (*) for ramp inspection.*	2b. PLACE OF INSPECTION
	ORIGINAL		BASE		
	AMENDMENT		RAMP		

3. PERSONNEL	TOTAL NO.	PILOT(S)-IN-COMMAND*	SECOND PILOT(S)*	MECHANIC(S)	OTHER(S)

4. AIRCRAFT*	MAKE AND MODEL	REG. NO	OWNERSHIP		HOURS SINCE LAST 100 HR. INSPECTION	DATE OF LAST ANNUAL INSPECTION	AIRCRAFT CONDITION
			OWNED	LEASED			

5. TRIP DATA*	FROM	TO	DISPATCHER'S NAME
	ESTIMATED FLIGHT TIME	FUEL ABOARD	CREW ON-DUTY TIME	CREW FLIGHT TIME

	(For compliance, check "Yes," or "No")	YES	NO
6. ADMINISTRATIVE	A. Operating Certificate & Specifications		
	B. Aircraft Requirements*		
	C. Current List of Aircraft		
	D. Current Pilot Records		
	E. Operation/Maintenance/Company Manual		
7. PERSONNEL	A. Airmen Qualification, Competency and Proficiency*		
	B. Check Airman Authorizations		
	C. Training Requirements		
	D. Autopilot Authorization*		
8. DISPATCH	A. Clearance: Required: ☐ Yes ☐ No Filed: ☐ Yes ☐ No		
	B. Weather Reports and Forecasts*		
	C. Required Operating Information*		
	D. Fuel Requirements*		
	E. Load Manifest*		
	F. Weight and Balance Control*		
	G. Airworthiness Check*		
	H. Area of Operations		
	I. Alternate Airport*		

	(For compliance, check "Yes," or "No")	YES	NO
9. A/C REQUIREMENTS	A. Operating Limitations/Flight Manual*		
	B. Performance Requirements*		
	C. Inspection and Maintenance*		
	D. Maintenance Facilities & Personnel		
	E. Aircraft Log & Maintenance Records*		
	F. Service Difficulties Reported		
	G. Fueling Procedures*		
10. AIRCRAFT & EQUIPMENT	A. Dual Controls*		
	B. Equipment Requirements: General*		
	C. Turbine Aircraft Requirements		
	D. Night or VFR Over-the-Top*		
	E. IFR Requirements*		
	F. Radio & Navigational Equipment*		
	(1) VFR Night, Over-the-Top		
	(2) Extended Overwater or IFR		
	G. Fire Extinguishers*		
	H. Overwater, Emergency, & Evacuation*		
	I. Icing Conditions*		
	J. Oxygen Requirements*		
	K. Simulator		

11. REMARKS *(Attach supplemental sheet, if necessary)*

12. SIGNATURE	TITLE	OFFICE	DATE

TEAR OFF BEFORE USE

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

SUPPLEMENTAL INFORMATION

APPLICATION FOR AIR TAXI COMMERCIAL OPERATOR (ATCO) CERTIFICATION UNDER FAR 135 - PRIVACY ACT

The information on the accompanying form is solicited under the authority of the Federal Aviation Regulations, Part 135.

Submission of the information is mandatory.

The purpose of this information is to evaluate and establish eligibility for certification.

The data will be used for record keeping and statistical purposes.

Incomplete submission may result in delay or denial of your request(s).

FAA Form 8000-6 (1-83)

Detach this part before using form below

No certificate may be issued unless a completed application form has been received (14 C.F.R. 135).

US Department of Transportation
Federal Aviation Administration

APPLICATION FOR AIR TAXI COMMERCIAL OPERATOR *(ATCO)* CERTIFICATE UNDER FAR 135

Form Approved:
O.M.B. No. 2120-0039

Submit in triplicate (3) to appropriate FAA District Office

1. APPLICATION IS HEREBY MADE FOR *("X" applicable box)*
☐ ISSUANCE ☐ AMENDMENT OF ATCO CERTIFICATE

2. NAME, ADDRESS, AND ZIP CODE OF APPLICANT

TELEPHONE *(Include area code)*

2a. OPERATING AS
☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION
☐ OTHER *(Specify)*:

	Yes	No
2b. U.S. CITIZENSHIP AS DEFINED IN FAR 135		
2c. PROOF OF REGISTRATION *(CAB Part 253)*		
2d. HOLD A COMMERCIAL OPERATING CERTIFICATE *(If "Yes," state Regulation(s) under which issued)*:		

3. PRINCIPAL OPERATIONS BASE *(Airport, City, State)*

4. PRINCIPAL MAINTENANCE BASE *(Airport, City, State)*

5. NAME OF ☐ DIRECTOR OF OPERATIONS ☐ CHIEF PILOT

PHONE *(Include area code)*

6. NAME OF ☐ DIRECTOR OF MAINTENANCE ☐ CHIEF MECHANIC

PHONE *(Include area code)*

7. OPERATION AUTHORIZATIONS REQUESTED *(Use separate line for each different authorization requested)*

AIRPLANE	HELICOPTER	SINGLE ENGINE LAND	SINGLE ENGINE SEA	MULTIENGINE LAND	MULTIENGINE SEA	PASSENGERS 9 OR LESS	PASSENGERS 10 TO 19	PASSENGERS 20 TO 30	JET	T PROP	RECIP	VFR	IFR	DAY	NIGHT	PASSENGER	CARGO	COMMUTER	AIRMAIL	OFF-AIRWAYS	AUTO-PILOT	RNAV	MLS	

8. AREA OF OPERATION
☐ CONTINENTAL U.S.
☐ SPECIFIC AREAS
☐ INTERNATIONAL *(List countries)*

9. AIRCRAFT TO BE USED *(List one aircraft only in each category and class)*

REGISTRATION NUMBER	MAKE	MODEL	CATEGORY AND CLASS	OWNERSHIP ("X" one)		EQUIPPED FOR ("X" applicable items)			
				Owned	Agreement or Lease *(Attach copy)*	VFR DAY	VFR NIGHT	IFR DAY	IFR NIGHT

10. CERTIFICATION — I certify these statements and the attachments hereto are true and correct

SIGNATURE OF APPLICANT	TITLE	DATE

RECORD OF ACTION—FOR FAA USE ONLY

11. INSPECTOR'S RECOMMENDATIONS *(If additional space is required, attach 8 x 10½ sheet of paper)*

12. INSPECTORS' SIGNATURES	OPERATIONS	MAINTENANCE	AVIONICS
13. APPROVAL	COMMENTS		

SB

103

File 2

"An Act relating to transportation safety and financial responsibility; and providing for an effective date."

* Sec. 1. AS 42.30.200 is amended to read:

Sec. 42.30.200. FINANCIAL RESPONSIBILITY. (a) A person who carries passengers or freight for hire intrastate shall procure and maintain security in an amount determined by the Department of Commerce and Economic Development (PUBLIC SAFETY) as necessary for the reasonable protection of the public against damages or injury caused by the person.

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) A policy of insurance, surety bond, or other form of security is not cancellable on less than 30 days' written notice to the department. This requirement must be clearly stated in the policy or endorsement. The 30-day notice period is measured from the date upon which the department receives notice.

(d) The department may authorize enforcement officers to enforce this section and shall adopt regulations necessary to implement this section.

(e) A person who violates this section is guilty of a class B misdemeanor.

(f) This section does not apply to persons who carry passengers for hire in motor vehicles weighing 5000 pounds or less.

* Sec. 2. AS 42.30 is amended by adding a new section to read:

Section 42.30.225. CERTIFICATION OF COMPLIANCE OF AIR CARRIERS. (a) A person may not engage in air commerce without obtaining a certificate of compliance from the Department of Commerce and Economic Development. The department shall issue a certificate of compliance upon application and presentation of

(1) proof of financial responsibility required under AS 42.30.200;

(2) proof of compliance with Federal Aviation Administration requirements, and, where applicable, federal certification for scheduled airline service.

(b) The certificate of compliance under (a) of this section shall be renewed annually.

(c) Each aircraft owned or leased by a person subject to the provisions of this section must have a certificate of compliance issued by the department before the aircraft is used in air commerce. These certificates are valid for a period of 12 months following the date of certification. The certificate must be displayed on the aircraft so that it is visible to boarding passengers.

(d) Federally-certificated interstate carriers that provide intrastate service between points in the state on their interstate or foreign routes, and who use, for that intrastate service, aircraft based

primarily outside the state, must also obtain a certificate of compliance for each aircraft used in intrastate service.

(e) Use of an aircraft in air commerce prior to obtaining a certificate of compliance required under (a) of this section may be cause for suspension or revocation of the certificate.

(f) An air carrier, who before the effective date of this Act, obtained a certificate to operate from the Alaska Transportation Commission, is not required to obtain a certificate of compliance under (a) of this section until the date on which the insurance policy on each aircraft must be renewed.

(g) The department may authorize enforcement officers to enforce this section and shall adopt regulations necessary to implement this section.

Sec. 42.30.270. DEFINITIONS. For the purposes of AS 42.30.200 - 42.30.270,

(1) "air carrier" means a person undertaking to engage in air commerce, whether directly or indirectly, or by lease, contract, or any other arrangement, and whether over regular or irregular routes;

(2) "air commerce" means carriage by aircraft of persons or property, for compensation or hire, in intrastate commerce, including the carriage by aircraft of persons or property which move partly by aircraft and partly by other forms of transportation.

(3) "aircraft" means a device used or designed for flight in the air;

(4) "department" means the Department of Commerce and Economic Development;

(5) "freight" has the same meaning as "property";

(6) "property" means all commodities, articles, and cargo, of whatever nature or value, excluding garbage, refuse, trash, or other waste material;

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

mtg agenda

M E M O R A N D U M

To: Transportation Committee Members

From: Chairman Coghill

Date: Monday, January 21, 1985

Re: Today's meeting

DOT Commissioner Knapp is scheduled for this afternoon's meeting, and the subject of discussion should follow the general line brought up by questions raised by members at our initial meeting:

- cataloguing of the state's highways
- ~~city/state~~/federal relationship regarding Anchorage roads
- ~~Alaska Marine Highway~~ -
- ~~Capital Project Cleanup~~ -

Interstate

SB

103

File 3

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

To: Committee members
From: Chairman Coghill
Date: Wednesday, February 6, 1985
Re: Draft CS for SB 103

The attached draft is considerably different from the last draft the committee discussed in that the new one considers certification of air carriers, as well as motor vehicle safety, and takes a different approach to vehicle inspections. The proposed CS can be broken down into three components: a revision of the financial reponsibility language enacted by the initiative; a simple certification process for air carriers; and a mechanism providing state certification of motor vehicle safety inspection stations and mechanics.

In section 1, the initiative language is amended by moving oversight responsibility to Commerce, rather than Public Safety, and authorizing the department to adopt regulations implementing the section. Section 2 then adds language to require that the insuring company give the department 30-days notice before cancelling a policy; it sets out a violation of the financial responsibility requirement as a class B misdemeanor; and it specifies that the section apply only to persons carrying freight or passengers for hire in certain vehicles and aircraft. The intention of this last provision is to exempt taxicabs, hot air balloons, ultralights, etc.

Section 3 establishes a certificate of compliance under DCED for air carriers. This annual certificate would be issued for each aircraft used in air commerce, and would be issued upon application and showing proof of financial responsibility and proof of compliance with FAA requirements. The certificate would have to be displayed for boarding passengers to read, and interstate carriers would be required to obtain the certificates for the aircraft they use intrastate. The certificate could be revoked if it was shown that the aircraft had been used in commerce before the certificate was obtained; however, current ATC-authorized carriers would not have to certify their aircraft until the renewal dates on their insurance policies. This is to avoid an annual crush of renewals on the department.

The cs then defines "air carrier", "air commerce", "aircraft", "department", "freight", and "property".

Section 4 adds to the duties of the commissioner of Commerce and Economic Development the duty to implement the financial responsibility requirements of the initiative.

Section 5 of the current draft provides an immediate effective date.

The third component of the issue, truck safety inspections, is currently being written into the cs by legal services, so a rough draft of the proposal is included.

The essence of this approach, noticeably divergent from the previous truck inspection program as proposed by the division of measurement standards, is to place the responsibility and mechanism for inspection into the private sector.

The proposal would require trucks and trailers to be inspected once a year, and would exempt government vehicles.

A program of certification for official inspection stations and qualified mechanics would be established, with the authority in DCED to revoke or suspend the permits of station operators and inspectors who were not conducting their permitted functions as required. A hearing board would be established to hear appeals of permit-holders whose permits had been revoked or suspended.

The draft further describes how the certificate would be issued, and that records of inspections would be kept and could be audited by the state.

Sanctions are provided for falsely representing to be an inspection station, use of counterfeit certificates of inspection and misuse of certificates. Violation of the section would be a misdemeanor.

A final section defines "motor vehicle".

14-0443
Moen
2/4/85

Motor Carrier

IN THE SENATE BY COGHILL

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to transportation safety and financial responsibility; and providing for an effective date."

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

* Section 1. AS 42.30.200 is amended to read:

Sec. 42.30.200. FINANCIAL RESPONSIBILITY. (a) A person who carries passengers or freight for hire intrastate shall procure and maintain security in an amount determined by the Department of Commerce and Economic Development [PUBLIC SAFETY] as necessary for the reasonable protection of the public against damages or injury caused by the person.

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize enforcement officers to enforce this section and ~~shall~~ may adopt procedural regulations necessary to implement this section.

* Sec. 2. AS 42.30.200 is amended by adding new subsections to read:

provides intrastate service between points in the state on an interstate or foreign route, and who uses, for that intrastate service, aircraft based primarily outside the state, must also obtain a certificate of compliance for each aircraft used in intrastate service.

(e) Use of an aircraft in air commerce prior to obtaining a certificate of compliance required under (a) of this section may be cause for suspension or revocation of the certificate.

(f) An air carrier, who before the effective date of this Act, obtained a certificate to operate from the Alaska Transportation Commission, is not required to obtain a certificate of compliance under (a) of this section until the date on which the insurance policy on each aircraft must be renewed.

(g) The department may authorize enforcement officers to enforce this section and ~~shall~~ may adopt procedural regulations necessary to implement this section.

Sec. 42.30.270. DEFINITIONS. In AS 42.30.200 - 42.30.270,

(1) "air carrier" means a person undertaking to engage in air commerce, whether directly or indirectly, or by lease, contract, or any other arrangement, and whether over regular or irregular routes;

(2) "air commerce" means carriage by aircraft of persons or property, for compensation or hire, in intrastate commerce, including the carriage by aircraft of persons or property that move partly by aircraft and partly by other forms of transportation;

(3) "aircraft" means a device used or designed for flight in the air;

(4) "department" means the Department of Commerce and Economic Development;

(5) "freight" has the same meaning as "property";

(6) "property" means all commodities, articles, and cargo, of whatever nature or value, excluding garbage, refuse, trash, or other waste material.

* Sec. 4. AS 44.33.020 is amended by adding a new paragraph to read:

(27) implement the financial responsibility requirements for motor vehicles and air carriers under AS 42.30.200 - 43.30.270.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.-10.070(c).

DRAFT

* Sec.___. AS 42.30 is amended by adding new sections to read:

ARTICLE 6. MOTOR VEHICLE SAFETY INSPECTIONS

Sec. 42.30.300. MOTOR VEHICLE SAFETY INSPECTIONS. (a) The Department of Commerce and Economic Development shall require that every motor vehicle in this state be inspected at least once a year and that an official certificate of inspection and approval be obtained for each vehicle passing inspection.

(b) The commissioner of the Department of Commerce and Economic Development may adopt procedural regulations necessary to implement this section.

Sec. 42.30.310. EXEMPTIONS. A motor vehicle is exempt from the requirements of AS 42.30.300 if it is owned and operated by the United States, the state, or a borough, city, town or municipality in the state or by a department of any of them.

Sec. 42.30.320. OFFICIAL INSPECTION STATIONS. (a) The department shall issue permits and furnish instructions and all necessary forms to official stations for the inspection of motor vehicles as requested and the issuance of official certificates of inspection and approval.

(b) Application for permit shall be made upon an official form and shall be granted only when the department is satisfied that the station is properly equipped and has competent personnel to make inspections and adjustments. No official inspection station permit shall be issued or renewed unless a certified official inspection mechanic is employed at that station. The department before issuing a permit may require the applicant to file a bond conditioned that it will make compensation for any damage to a vehicle occurring during an inspection or adjustment due to negligence on the part of an applicant or its employees.

(c) No permit for an official inspection station shall be assigned or transferred or used at any location other than the location

designated and an official inspection station permit shall be posted in a conspicuous place at the designated location.

(d) The department shall supervise and inspect official inspection stations and shall suspend or revoke any permit issued to a station which it finds not properly equipped, staffed or conducted.

(e) Upon notice of suspension or revocation of a license the operator shall immediately terminate all inspection activities, and on demand by the department return all inspection stickers, license and supplies. The department shall issue a receipt for all unused inspection stickers.

(f) An operator of an official inspection station whose permit has been suspended or revoked under this section shall be given a hearing, provided a written request is filed with the department within ten days after suspension or revocation.

Sec. 42.30.330. CERTIFICATION OF MECHANICS. (a) No mechanic shall conduct motor vehicle inspections at an official inspection station unless certified as to training, qualifications and competence by the department.

(b) The department shall supervise mechanics certified under this section and may suspend the certification issued to a mechanic if it finds that the mechanic has improperly conducted inspections or has violated or failed to comply with any of the provisions of this section or regulations adopted under it.

(c) Any mechanic whose certificate has been denied or suspended under this section shall be given a hearing, provided a written request is filed with the commissioner within ten days after denial or suspension.

Sec. 42.30.340. HEARING BOARD. (a) There is hereby created the Safety Inspection Station and Mechanic's Hearing Board, consisting of the commissioner of the Department of Commerce and Economic Development,

the commissioner of the Department of Transportation and Public Facilities, and the Attorney General, or their designees.

(b) The hearing board shall be convened at the request of the commissioner of the Department of Commerce and Economic Development and shall hear all evidence and information regarding the suspension and revocation of an official inspection station license. The hearing board shall make written findings and conclusions pursuant to which an order shall be issued affirming, denying or modifying the action taken by the department.

(c) The order of the hearing board shall be subject to judicial review in the manner provided by law.

Sec. 42.30.350. ISSUANCE OF CERTIFICATE OF INSPECTION. (a) The person operating an official inspection station shall issue a certificate of inspection and approval upon an official form to the owner of a motor vehicle only upon inspecting the motor vehicle and determining that its equipment is in good condition and proper adjustment and that it is mechanically sound.

(b) The person operating an official inspection station shall make a record of each inspection performed at the station and the department may audit the records of an official inspection station at any time.

Sec. 42.30.360. FALSELY REPRESENTING TO BE AN OFFICIAL STATION. (a) No person shall in any manner represent any place as an official inspection station unless the station is operating under a valid permit issued by the department.

(b) No person shall issue a certificate of inspection and approval unless holding a valid permit to do so.

Sec. 42.30.370. COUNTERFEIT CERTIFICATES OF INSPECTION. (a) No person shall make, issue, or knowingly use any imitation or counterfeit of an official certificate of inspection.

(b) No person shall display or cause or permit to be displayed upon any vehicle any certificate of inspection and approval knowing the certificate is fictitious or issued for another vehicle or issued without an inspection having been made.

Sec. 42.30.380. VIOLATION A MISDEMEANOR. A person who violates this section is guilty of a class B misdemeanor.

Sec. 42.30.390. DEFINITIONS. In AS 42.30.300 - 42.30.380 "motor vehicle" means

(1) a truck of more than 10,000 pounds unladen gross vehicle weight used upon any public highway of this state; and

(2) a trailer of more than 5,000 pounds unladen gross vehicle weight used upon any public highway of this state.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

DAILY AGENDA

Senate Transportation Committee

February 6, 1985 3:30 p.m.

Room 205, Capitol Building-Butrovich Room

TOPICS

Commissioner Knapp, Department of Transportation

Consolidation of Road Building Authority

Briefing on SB 103

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
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Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
465-4921

Butrovich Room 3:30
Capitol Room 205 M-W-F

Monday, February 11, 1985
Alaska Railroad Overview
Frank Turpin, Railroad Corporation President

Wednesday, February 13, 1985
SB 103 Regulation of Safety on Motor and Air Carriers

Friday, February 15, 1985
Overview of Alaska Ferry System-Ferry Terminals

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

SENATE TRANSPORTATION COMMITTEE
465-4745

Butrovich Room 3:30
Capitol Room 205 M-W-F

Monday, February 4, 1985
**SB 103 Regulation of Safety on Motor and Air Carriers

Wednesday, February 6, 1985
Commissioner Knapp, Department of Transportation
Consolidation of Overlapping Road Building Authority

Friday, February 8, 1985
**SB 82 Relating to Weights and Measures
Overview on Highway Shoulder Widening

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
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Senate Committee on Transportation

MEMORANDUM

TO: Committee Members

FROM: Senator Coghill

DATE: February 13, 1985

RE: CS SB 103

Sectional Analysis of 2/13 Draft of CS for SB 103

Section 1

Amends th language of the initiative to set the required insurance amounts by statute at $200,000 for property damage, $500,000 bodily injury for motor vehicles and $300,000 per seat bodily injury for aircraft.

Subsection (c) changes "enforcement officers" to "department personnel", and allows the department to adopt necessary regulations.

Section 2

Adds three new subsections to the financial responsibility section to:(d) disallow cancellation of insurance without 30 day notice to the department; (e) make a violation of the requirement to have insurance a class B misdemeanor with a minimum $500 fine; and (f) applies the section only to certain types of vehicles and aircraft.

Section 3

Establishes a certification of compliance for air carriers. This establishes a certificate of compliance under DCED for air carriers. This annual certificate would be issued for each aircraft used in air commerce, and would be issued upon application and showing proof of financial responsibility and proof of compliance with FAA requirements. The certificate

would have to be displayed for boarding passengers to read, and interstate carriers would be required to obtain the certificates for the aircraft they use intrastate. The certificate could be revoked it it was shown that the aircraft had been used in commerce before the certificate was obtained; however, current ATC-authorized carriers would not have to certify their aircraft until the renewal dates on their insurance policies. This is to avoid an annual crush of renewal on the department.

Article 6 is added to AS 42.30 establishing a program of motor vehicle inspections.
.300 requires all motor vehicles to be inspected once a year, with an annually renewable certificate of inspection. The certificate would be carried in the vehicle, and stickers placed on the outside. The commissioner could adopt regulations to implement the program.
.310 exempts US government vehicles
.320 describes the process for permitting inspection stations, allows the department to monitor a station's work, and suspend or revoke the permit if necessary. A process is then established by which a suspension or revocation may be appealed.
.330 Describes the process for certifying a vehicle inspectors.
.340 Establishes a hearing board within DCED to mitigate disputed revocations and suspensions.
.350 Describes how certificates of inspection will be issued, and that a station operator will keep records, audible by the department.
.360 prohibits falsely representing to be an official inspection station.
.370 prohibits the manufacture, issuance or use of counterfeit certificates of inspection.
.380 makes it a class B misdemeanor to violate the section.
.390 Defines "air commerce", "aircraft", "department", "freight", and "motor vehicle".

Section 4

Adds implementation of the financial responsibility requirements to the duties of the commissioner of DCED.

Section 5

Provides an immediate effective date.

SB

103

File 4

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

3/26/85

Date APRIL 8, 1985

Mr. President

The Committee on TRANSPORTATION considered CSHB 133(Fin) am transportation safety and financial responsibility; efd.

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

[ ] do pass

[ ] do pass with attached amendment(s)

[X] replace with/or adopt CS for CSHB 133 (TRANS)
[ ] new title
[ ] same title and recommends _____

[WAIVED] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Paul Fischer

Joe Josephson

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/29/85

Date _____

Mr. President

The Committee on TRANSPORTATION considered SB 103

providing authority for the Department of Public Safety to regulate safety of motor carrier and air carrier operations; and.

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

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

_____

_____

_____

_____

_____

_____

MEMBERS HAVING
OTHER RECOMMENDATIONS

_____

_____

_____

_____

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_____

_____

_____

_____
Chairman

_____
Chairman recommendation

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

To: Committee members
From: Committee staff
Date: February 20, 1985
Re: Proposed amendments for CSSB 103

Attached are a group of amendments which will be discussed at this afternoon's meeting on SB 103, along with pertinent background materials and statements. The chairman would like to move as expeditiously as possible on these proposed changes, many of which were discussed in concept at last week's meeting on SB 103. As you will recall, the committee adopted the draft cs last week as our working document, so these amendments are keyed to that draft (also attached).

There may be an additional amendment or two coming, specifically one which will define "for commercial purposes" as used in amendment number xx1.

Additionally, we have included a copy of the proposed letter of intent, which now also covers an inquiry into the Essential Air Service problem.

Finally, we have included a copy of the fiscal note for the cs as we received it yesterday from the department of commerce and economic development. It includes all of their back-up material.

PROPOSED

LETTER OF INTENT

To Accompany SB 103

It is the intent of the Legislature that a study be undertaken by legislative staff to determine 1.) the effects of deregulation on air transportation service to the bush, and what measures, if any, the Legislature ought to address to ensure a minimally acceptable level of service to those areas of the state; 2.) the effects of early phase-out of the 406 Essential Air Service subsidies by the federal government on air service to rural Alaska; 3.) what federal safety regulations are applicable to Alaska intrastate air commerce, and which, if any, ought to be incorporated into the State's certification of compliance program; and 4.) the efficiency and effectiveness with which the Department of Commerce and Economic Development has established a motor vehicle safety inspection program. The results of this study shall be reported to the Second Session of the Fourteenth Alaska Legislature not later than the tenth day after it convenes.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 103

Title: An Act . . . to regulate safety of motor carriers . . . .

Sponsor: Rules Committee

Requestor: Governor

Date of Request:

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Public Safety

BRU, Program or Subprogram(s) Affected: Division of Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	128.5	338.5				
200 TRAVEL	10.0	30.0				
300 CONTRACTUAL	55.0	40.8				
400 SUPPLIES	2.5	3.5				
500 EQUIPMENT	15.0	8.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	211.0	420.8				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	211.0	420.8				
FEDERAL FUNDS						
OTHER						
TOTAL	211.0	420.8				

POSITIONS:

FULL-TIME	7	7				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached.

Prepared By: Joseph L. Swanson, Director Phone: 345-7750

Division: Measurement Standards Date: 2/17/85

Approved by Commissioner: Loren H. Lounsbury Date: 2/19/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

1724W21985a

SB 103
ANALYSIS

ASSUMPTIONS

This analysis was prepared with the understanding that the intent of the bill was to establish regulations and procedures to:

1. Administer the financial responsibility provisions of AS 42.30.200 - 42.30.225.

2. Administer the motor vehicle safety inspection program to be performed by private industry.

PROGRAM SUMMARY

1. Positions

New Positions:	1 Administrative Officer I 2 Administrative Assistants I 3 Clerk Typists III
Existing Positions:	Convert 5 existing seasonal weigh station operators to permanent full-time employees.

2. Other expenditures

Travel:	Funds were included to provide for travel for remote locations to verify adherence to the provisions of AS 42.30 and to participate in the annual Commercial Vehicle Safety Alliance (CVSA) conference.
Contractual Services:	The listed funds are required to cover the costs for communications, printing forms, certificates of compliance, certificates of inspection, permits to operate, inspection certifications, and regulations and procedures; maintenance of agency equipment, vehicle costs, and equipment rental.
Commodities:	Specified costs are for operating supplies.
Equipment:	Costs are for the acquisition of computer terminals and replacement of existing equipment.

3. The funding projections were based upon the assumption that the following equipment be transferred from the Alaska Transportation Commission:

   - Wang word/data processing system with associated work sations and printer.
   - telex/telecopier equipment
   - typewriters
   - file cabinets
   - book cases
   - vehicles
   - desks and chairs
   - copy machine

   It is essential that this equipment be transferred in order for the program to function effectively for the above stated costs.

1724W21985a

FY '85

1.	POSITION TITLE: ADMINISTRATIVE OFFICER I			RANGE/STEP: 17A	BARG. UNIT: S	PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 3	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT: 7	LEG.		
3.	CONFIRMATION LEVEL		ADDITION: XX						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	8,439	
6.	Benefits	985	
7.	Supplemental Benefits	517	
8.	Fixed Benefits	1,052	
9.	TOTAL PERSONAL SERVICES	01	11.0
10.	Travel	02	10.0
11.	Contractual	03	55.0
12.	Commodities	04	2.5
13.	Equipment	05	15.0
14.	Other		
15.	TOTAL COST		93.5

	RECEIPT CODE	FUNDING SOURCE		AMOUNT
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	93.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER ___ - ___ - ___ - ___ - ___

JUSTIFICATION

This position will be responsible for supervising the administrative center of the division which will include the new statewide financial responsibility and safety programs and incorporate the existing permit program for cross-utilization of personnel.

The responsibilities will include drafting recommended procedures, monitories program activities, analyzing results, developing corrective procedures, and reporting results to the agency head.

The position will be required to assist in the development of the regulations drafted to administer the programs and will supervise their implementation. The implementation will entail establishing and maintaining cooperative working relationship with the regulated industries, other governmental agencies, and our department. The position will also be responsible for developing and maintaining the information necessary to evaluate the results of the programs.

REQUEST FOR NEW POSITION

AGENCY: Commerce & Economic Development

PROGRAM:

BRU:

COMPONENT:

Page of

Revised Date

FY 86

FY '85

1.	POSITION TITLE: ADMINISTRATIVE ASSISTANT I			RANGE/STEP: 12A	BARG. UNIT: G	PAGE/LINE	COV.	APPROV. / DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 6	RP NUMBER	PCN NUMBER	ORG PRIORITY	LOCATION: EBA	ELECTION DISTRICT: 7	LEG.
3.	CONTINUATION LEVEL		ADDITION: XX					

4. Type of Expenditure	1	2	3 Amount
	PERSONAL SERVICES		
5.	Salary	11,838	
6.	Benefits	1,740	
7.	Supplemental Benefits	726	
8.	Fixed Benefits	1,476	
9.	Total Personal Services	01	15.8
10.	Travel	02	-0-
11.	Contractual	03	-0-
12.	Commodities	04	-0-
13.	Equipment	05	-0-
14.	Other		
15.	Total Cost		15.8

	Receipt Code	Funding Source		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	15.8
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

These two positions will function as the working supervisors of the financial responsibility and motor vehicle safety programs. As such, they will ensure adherence to established procedures and will be responsible for monitoring the results produced and collect data and prepare reports for management's use. They will be required to be aware of industry reeds and recommend improved procedures to achieve the stated goals and objectives in an efficient and cost effective manner. As the working supervisors, they will be the initial contact person for the regulated industries when problems arise. A great deal of judgment and tact will have to be exercised to achieve the desired results with minimum disruption of the effected agencies.

REQUEST FOR NEW POSITION

AGENCY: Commerce & Economic Development

PROGRAM:

BRU:

COMPONENT:

Page of

Revised Date

FY 86

3-11361/831-13

FY '85

1.	POSITION TITLE: CLERK TYPIST III			RANGE/STEP	BARG. UNIT: 8A	PAGE/LINE: G	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT: 7	LEG.		
3.	CONFIRMATION LEVEL		ADDITION: XX		JUSTIFICATION				

These four positions will be responsible for reviewing and processing the various documents required to administer the financial responsibility and motor vehicle safety programs. The duties will include responding to requests for program requirements information, applications, updating agency records to reflect current status of regulated agencies, and processing program information reports. These personnel will be assisting industry, wherever necessary in complying with the provisions of appropriate statutes and regulations.

4.	Type of Expenditure	1	2	3 Amount
	PERSONAL SERVICES			
5.	Salary		18,636	
6.	Benefits		3,321	
7.	Supplemental Benefits		1,142	
8.	Fixed Benefits		2,324	
9.	TOTAL PERSONAL SERVICES		01	25.4
10.	Travel		02	-0-
11.	Contractual		03	-0-
12.	Commodities		04	-0-
13.	Equipment		05	-0-
14.	Other			
15.	TOTAL COST			25.4

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	25.4
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR OMB USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

REQUEST FOR NEW POSITION

AGENCY: Commerce & Economic Development

PROGRAM:

BRU:

COMPONENT:

Page of

Revised Date

FY 86

1-11361/7/83-13

FY '85

1.	POSITION TITLE: WEIGH STATION OPERATOR I			RANGE/STEP: 12	BARG. UNIT: G	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONFIRMATION LEVEL		ADDITION						

4.	Type of Expenditure	1	2	Amount 3
	PERSONAL SERVICES			
5.	Salary			
6.	Benefits			
7.	Supplemental Benefits			
8.	Fixed Benefits			
9.	Total Personal Services		01	-0-
10.	Travel		02	-0-
11.	Contractual		03	-0-
12.	Commodities		04	-0-
13.	Equipment		05	-0-
14.	Other			
15.	TOTAL COST			-0-

	Receipt Code	Funding Source		Amount
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	-0-
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BDM USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This proposal entails changing the status of five existing positions from permanent part-time (seasonal) to permanent full-time.

These seasonal positions are presently authorized for an average of four months each to operate the fixed weigh stations during the spring and summer peak truck traffic periods.

We recommend changing the status of the positions to PFT in FY '85, but not funding the positions until FY '86. This will allow an appropriate amount of time to establish the safety program and initiate the procedures that will generate the workload for these positions.

The inspectors will be located as follows:

PCN	LOCATION
085074	Fairbanks
085078	Fairbanks
085079	Sterling
085080	Anchorage
08-5088	Anchorage

The inspectors will continue to operate the fixed weigh stations during peak traffic periods and will be used to monitor the motor vehicle safety program through field verification of inspection stations and inspection personnel.

REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM

BRU

COMPONENT

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Revised Date

FY 86

FY '86

1.	POSITION TITLE: ADMINISTRATIVE OFFICER I			RANGE/STEP: 17A	BARG. UNIT: S	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT: 7	LEG.		
3.	CONFIGURATION LEVEL: XX	ADDITION							

4. Type of Expenditure	1	2	3 Amount
PERSONAL SERVICES			
5. Salary		35,076	
6. Benefits		4,374	
7. Supplemental Benefits		2,150	
8. Fixed Benefits		3,980	
9. Total Personal Services	01		45.6
10. Travel	02		30.0
11. Contractual	03		40.8
12. Commodities	04		3.5
13. Equipment	05		8.0
14. Other			
15. Total Cost			127.8

	Receipt Code	Funding Source		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	127.8
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER ___ ___ - ___ ___ - ___ ___ - ___ ___ - ___ ___

JUSTIFICATION

This position will be responsible for supervising the administrative center of the division which will include the new statewide financial responsibility and safety programs and incorporate the existing permit program for cross-utilization of personnel.

The responsibilities will include drafting recommended procedures, monitories program activities, analyzing results, developing corrective procedures, and reporting results to the agency head.

The position will be required to assist in the development of the regulations drafted to administer the programs and will supervise their implementation. The implementation will entail establishing and maintaining cooperative working relationship with the regulated industries, other governmental agencies, and our department. The position will also be responsible for developing and maintaining the information necessary to evaluate the results of the programs.

REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM

BRU

COMPONENT

Page of

Revised Date

FY 86

FY '86

1.	POSITION TITLE: ADMINISTRATIVE ASSISTANT I			RANGE/STEP: 12A	ORG. UNIT: G	PAGE/LINE	CON.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 24	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION: EBA	ELECTION DISTRICT: 7	LEG.		
3.	CONFIRMATION LEVEL: XX	ADDITION							

4.	Type of Expenditure	1	2	Amount 3
	PERSONAL SERVICES			
5.	Salary		49,728	
6.	Benefits		7,035	
7.	Supplemental Benefits		3,048	
8.	Fixed Benefits		6,201	
9.	Total Personal Services	01		66.0
10.	Travel	02		-0-
11.	Contractual	03		-0-
12.	Commodities	04		-0-
13.	Equipment	05		-0-
14.	Other			
15.	Total Cost			66.0

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	66.0
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSR USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

These two positions will function as the working supervisors of the financial responsibility and motor vehicle safety programs. As such, they will ensure adherence to established procedures and will be responsible for monitoring the results produced and collect data and prepare reports for management's use. They will be required to be aware of industry needs and recommend improved procedures to achieve the stated goals and objectives in an efficient and cost effective manner. As the working supervisors, they will be the initial contact person for the regulated industries when problems arise. A great deal of judgment and tact will have to be exercised to achieve the desired results with minimum disruption of the effected agencies.

REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM

BRU

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Revised Date

FY 86

1-111617/821-13

FY '86

1.	POSITION TITLE CLERK TYPIST III			RANGE/STEP	BARG. UNIT 8A	PAGE/LINE G	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 48	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT 1	LEG.		
3.	CONTINUATION LEVEL XX	ADDITION							

JUSTIFICATION

These four positions will be responsible for reviewing and processing the various documents required to administer the financial responsibility and motor vehicle safety programs. The duties will include responding to requests for program requirements information, applications, updating agency records to reflect current status of regulated agencies, and processing program information reports. These personnel will be assisting industry, wherever necessary in complying with the provisions of appropriate statutes and regulations.

4.	TYPE OF EXPENDITURE	1 / 2	AMOUNT 3
	PERSONAL SERVICES		
5.	Salary	78,288	
6.	Benefits	13,402	
7.	Supplemental Benefits	4,799	
8.	Fixed Benefits	9,763	
9.	Total Personal Services	01	106.34
10.	Travel	02	-0-
11.	Contractual	03	-0-
12.	Commodities	04	-0-
13.	Equipment	05	-0-
14.	Other		
15.	Total Cost		106.3

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	106.3
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR BSR USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM

BRU

COMPONENT

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Revised Date

FY 86

1-133617/830-13

FY '86

1.	POSITION TITLE: WEIGH STATION OPERATOR I			RANGE/STEP: 12	BARG. UNIT: G	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION: PFT	STAFF MONTHS: 40	RP NUMBER	PCN NUMBER	ORG PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONFIRMATION TEST: XX	ADDITION							

4. Type of Expenditure	1 / 2	3 Amount
PERSONAL SERVICES		
5. Salary	90,699	
6. Benefits	11,547	
7. Supplemental Benefits	5,560	
8. Fixed Benefits	11,722	
9. Total Personal Services	01	119.5
10. Travel	02	-0-
11. Contractual	03	-0-
12. Commodities	04	-0-
13. Equipment	05	-0-
14. Other		
15. Total Cost		119.5

	Receipt Code	Funding Source		Amount
16.		Federal Receipts	1002	
17.		C.F. Match	1003	
18.		General Funds	1004	119.5
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER — — - — — - — — - — — - — —

JUSTIFICATION

This proposal entails changing the status of five existing positions from permanent part-time (seasonal) to permanent full-time.

These seasonal positions are presently authorized for an average of four months each to operate the fixed weigh stations during the spring and summer peak truck traffic periods.

We recommend changing the status of the positions to PFT in FY '85, but not funding the positions until FY '86. This will allow an appropriate amount of time to establish the safety program and initiate the procedures that will generate the workload for these positions.

The inspectors will be located as follows:

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085074	Fairbanks
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08-5088	Anchorage

The inspectors will continue to operate the fixed weigh stations during peak traffic periods and will be used to monitor the motor vehicle safety program through field verification of inspection stations and inspection personnel.

REQUEST FOR NEW POSITION

AGENCY Commerce & Economic Development

PROGRAM

BRU

COMPONENT

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Revised Date

FY 86

I-11351/821-13

amend sb 103 xx0

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 1, line 13, between the words "following" and "amounts",

Insert the word "minimum"

This amendment was suggested by legal services, and should have been included in the draft in the first place. It would have the effect of allowing a person to have more insurance than is required by the section.

amend sb 103 xx1

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 1, line 12, following the word "intrastate",

Insert the following language:

"or a person who carries freight in a motor vehicle for commercial purposes"

This amendment was suggested by the representative of the trucking association, and would have the effect of requiring the higher insurance or financial responsibility requirements for all trucks engaged in commerce, not just those for hire. Currently "private carriers" are not effected by ATC insurance requirements, and without this amendment trucking activities outside the "for hire" realm would continue to not be required to carry as high a level of insurance as this bill sets. They would, in fact, have only an insurance requirement at the same minimum as automobiles under the recently passed mandatory liability insurance law.

amend sb 103 xx2

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 2, line 8, delete the word "This",

and insert in its place:

"For insurance policies submitted as proof of responsibility required under AS 42.30.225(a)(1) this"

This amendment was suggested by the air carriers' representative, and would have the effect of allowing current insurance policies, which do not have the 30-day notice language stated in them, to remain in effect until their renewal date. Without this change, a policy-holder would be in violation unless he renewed all policies on the effective date of the Act.

amend sb 103 xx3

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On Page 2, line 11, and

On Page 7, line 1, delete both occurrences of the word "knowingly".

This amendment has been suggested in conversations with the administration, and would have the effect of making it possible to prosecute the violations to which the two sections refer. Without the change, the commissioner of public safety says, it would be nearly impossible to prove the violation was knowingly done.

amend sb 103 xx4

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 2, line 19, delete the word "engage"

and insert in its place: "use an aircraft"

This amendment has been suggested by staff, and would have the effect of focussing the requirement for a certificate of compliance on the aircraft, rather than on the air service operation. This would help to clear up any further confusion as to whether the certificates are for individual aircraft or for an entire business.

amend sb 103 xx5

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 2, line 28, following the period (.), insert:

"The annual fee for a certificate of compliance shall be $50."

This amendment was suggested by the A.G.'s staff, and would have the effect of recapturing some of the revenue which would be lost to the State with the repeal of AS 02.05.090(f). These fees currently range from $25 to $600, depending on the size of the aircraft.

amend sb 103 xx6

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 3, line 24, delete the word "in", and insert in its place:

"on the public highways of"

This amendment has been suggested by staff, and would have the effect of clarifying that the vehicle inspection program is intended to cover only vehicles operating on the state's roads.

amend sb 103 xx7

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 3, line 25, following the period (.), insert a new sentence:

"A certificate of vehicle registration may not be issued to a motor vehicle under AS 28.10.041(a)(4) without a current certificate of inspection if the motor vehicle is required to obtain a certificate of inspection under this section."

This amendment has been suggested by staff, and would have the effect of requiring the truck to pass an inspection before the State would either issue or renew the vehicle registration. AS 28.10.041 (a)(4), a copy of which is attached, allows DMV to deny the issuance of a vehicle registration for vehicles it determines to be unsafe. This would provide one more check to ensure the inspections were being done.

(b) At the time of application for registration or renewal of registration, the department shall provide the applicant written information explaining the state's financial responsibility law, the mandatory automobile insurance requirement, and potential penalties for failure to comply with the law. (§ 7 ch 178 SLA 1978; am §§ 4, 17 ch 70 SLA 1984)

Effect of amendments. — The 1984 amendment, effective January 1, 1985, added subsection (b).

Postponed amendments. — Section 17, ch. 70, SLA 1984, effective January 1, 1989, repeals subsection (b).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 51 to 54.

60 C.J.S., Motor Vehicles, § 101.

Sec. 28.10.030. Unregistered vehicles. [Repealed, § 7 ch 178 SLA 1978.]

Sec. 28.10.031. Temporary permits. (a) When application, accompanied by the proper fee and tax, has been made for the registration of a vehicle, the vehicle may be driven pending the issuance of a certificate of registration by displaying a temporary permit issued by the department.

(b) A licensed vehicle dealer may issue to the purchaser of a vehicle sold by the dealer a temporary permit to drive the vehicle. A permit is effective for a period not to exceed 30 days. The commissioner shall adopt regulations governing the issuance of permits under this section.

(c) A person may not operate a vehicle under an expired permit issued under this section. (§ 7 ch 178 SLA 1978)

Sec. 28.10.040. Registration. [Repealed, § 7 ch 178 SLA 1978.]

Sec. 28.10.041. Grounds for refusing registration. (a) The department may refuse to register a vehicle if

(1) the application contains a false or fraudulent statement;

(2) the applicant fails to furnish information required by the department;

(3) the applicant is not entitled to the issuance of a certificate of title or registration under this chapter;

(4) the vehicle is determined to be mechanically unsafe to be driven or moved on a highway, vehicular way or area, or other public property in this state;

(5) the department has reasonable grounds to believe that the vehicle was stolen or fraudulently acquired or that the granting of registration would be a fraud against the rightful owner or other person having a valid lien upon the vehicle;

(6) the registration of the vehicle has been suspended or revoked for any reason under the laws of this state;

(7) the required fees, taxes, motor freight carrier fees or bus transportation fees have not been paid;

amend sb 103 xx8

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 3, line 26, delete the word "once" and insert in its place:

"twice"

This amendment has been suggested by the administration and by the trucking association and would have the effect of requiring every truck to be inspected at least twice each year. These groups feel that the safety inspection program would be more effective with this change.

amend sb 103 xx9

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 3, line 27, delete the sentence which reads:

"A certificate of inspection must be carried in the vehicle for which the certificate of inspection is issued."

This amendment has been suggested by staff and was adopted by the House Transportation Committee and would have the effect of removing an apparent redundancy. The division of measurement standards has indicated that they can get all the information needed on a sticker, and there is no need for a paper certificate to be carried in the cab of the truck.

amend sb 103 xx10

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 5, line 26, through page 6, line 9, delete:

Section 42.30.340 in its entirety.

This amendment was adopted by the House Transportation Committee in its cs, and would have the effect of eliminating the hearing board for appeals to administrative revocations or denials of permits for inspectors and inspection stations. There are less cumbersome ways of dealing with appeals, and the administration has indicated they would prefer to simply appoint a hearing officer - their commissioners are too busy hustling from one board or commission meeting as it is.

amend sb 103 xx11

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 7, line 25, add a new section 4 to read:

"* Sec. 4. Notwithstanding AS 42.30.200(a)(3) enacted by sec. 1 of this Act, until July 1, 1985, a person to whom AS 42.30.200 applies may maintain a minimum security in the amount of $100,000 per seat for bodily injury or death in a single occurrence if a person operates an aircraft."

And renumber remaining sections accordingly.

This amendment was suggested at the last committee meeting to cover those ATC-authorized air carriers now operating and who are required to have only the $100,000 per seat minimum. Without a change such as this, on the effective date of the Act, all those air taxi operators would be required to upgrade to $300,000. An additional concern is that if current charter operators are allowed to continue at the $100,000 level until their insurance policy must be renewed, new entrants into the market would be at a disadvantage by having to maintain the new, higher level of protection.

amend sb 103 xx13

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 4, line 23, between the words "may" and "enter",

Insert "inspect a motor vehicle or"

This amendment has been suggested by the administration and would have the effect of allowing the department to inspect the work of a State-certified vehicle inspector to determine if the vehicle was indeed safe.

amend sb 103 xx14

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 4, line 3, between the words "regulations" and "necessary",

Insert: "appropriate to achieve reciprocity with other western states and"

The concept of this amendment has been suggested by the administration, and would have the effect of giving the department some guideline as to inspection standards to adopt. They have suggested that the bill direct the department to adopt current ATC regulations, but it may be a better idea to tie the standards to the Commercial Vehicle Safety Alliance, which many of the western states are adopting, without actually naming the CVSA in the statute.

amend sb 103 xx15

PROPOSED AMENDMENT

TO CSSB 103 (Draft)

On page 7, line 17, add a new subsection (5) to read:

"(5) "for commercial purposes" means for which the person receives direct monetary compensation, ~~or for which the person receives no direct monetary compensation but are incidental to and done in the furtherance of the person's primary business activity;~~"

Amend Suggested by Faiks → Moved by Abood

And renumber remaining subsections accordingly.

This amendment is a definition made necessary by amendment number 1 which creates the phrase "for commercial purposes" to include in the financial responsibility section those persons who are now considered "private carriers" by the ATC.

Moen
2/13/85

Original sponsor: Rules/Governor

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 103 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to transportation safety and financial responsibility; and providing for an effective date."

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

* Section 1. AS 42.30.200 is amended to read:

Sec. 42.30.200. FINANCIAL RESPONSIBILITY. (a) A person who carries passengers or freight for hire intrastate XX) shall procure and maintain security in XXO the following amounts:

(1) $200,000 for property damage in a single occurrence;

(2) $500,000 for bodily injury or death in a single occurrence if a person operates a motor vehicle; and

(3) $300,000 per seat for bodily injury or death in a single occurrence if a person operates an aircraft [AN AMOUNT DETERMINED BY THE DEPARTMENT OF PUBLIC SAFETY AS NECESSARY FOR THE REASONABLE PROTECTION OF THE PUBLIC AGAINST DAMAGES OR INJURY CAUSED BY THE PERSON].

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize department personnel [ENFORCEMENT OFFICERS] to enforce this section and may adopt procedural regulations necessary to implement this section.

* Sec. 2. AS 42.30.200 is amended by adding new subsections to read:

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days' written notice to the department. XX2 This requirement must be clearly stated in the policy or endorsement. The 30-day notice period is measured from the date on which the department receives notice.

(e) A person who XX3 [knowingly] violates (a) of this section is guilty of a class B misdemeanor and is punishable by a fine of not less than $500 or more than $1,000.

(f) This section applies only to a person who carries passengers or freight for hire in a motor vehicle weighing 10,000 pounds or more, or a propeller or jet-powered aircraft.

* Sec. 3. AS 42.30 is amended by adding new sections to read:

Sec. 42.30.225. CERTIFICATION OF COMPLIANCE OF AIR CARRIERS. (a) A person may not XX4 [engage] in air commerce without obtaining a certificate of compliance from the department. The department shall issue a certificate of compliance upon application and presentation of

(1) proof of financial responsibility required under AS 42.30.200;

(2) proof of compliance with Federal Aviation Administration requirements, and, where applicable, federal certification for scheduled airline service.

(b) A person who receives a certificate of compliance under (a) of this section shall renew the certificate annually. XX5

(c) Each aircraft owned or leased by a person subject to the

provisions of this section must have a certificate of compliance issued by the department before the aircraft is used in air commerce. The certificate is valid for a period of 12 months following the date of certification. The certificate must be displayed on the aircraft so that is is visible to boarding passengers.

(d) A federally-certificated interstate air carrier that provides intrastate service between points in the state on an interstate or foreign route, and who uses, for that intrastate service, aircraft based primarily outside the state, must also obtain a certificate of compliance for each aircraft used in intrastate service.

(e) Use of an aircraft in air commerce before obtaining a certificate of compliance required under (a) of this section may be cause for suspension or revocation of the certificate.

(f) An air carrier, who before the effective date of this Act, obtained a certificate to operate from the Alaska Transportation Commission, is not required to obtain a certificate of compliance under (a) of this section until the date on which the insurance policy on each aircraft must be renewed.

(g) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

ARTICLE 6. MOTOR VEHICLE SAFETY INSPECTIONS.

Sec. 42.30.300. MOTOR VEHICLE SAFETY INSPECTIONS. (a) A motor vehicle may not be operated [in] this state without a certificate of inspection. An owner of a motor vehicle shall renew a certificate of inspection at least [once] a year at an official inspection station under AS 42.30.320. A certificate of inspection must be carried in the vehicle for which the certificate of inspection is issued. An owner of a motor vehicle shall display a sticker of inspection visible

from outside the vehicle in a location determined by the department.

(b) The commissioner of commerce and economic development may adopt procedural regulations necessary to implement this section.

Sec. 42.30.310. EXEMPTIONS. A motor vehicle is exempt from the requirements of AS 42.30.300 if it is owned by the government of the United States of America.

Sec. 42.30.320. OFFICIAL INSPECTION STATIONS. (a) A person may not operate an inspection station without a permit from the department. The department shall approve an application for permit to operate an inspection station if

(1) the department determines the inspection station has proper equipment and competent personnel; and

(2) a certified vehicle inspector under AS 42.30.330 is employed at the inspection station.

(b) After the department approves an application for permit to operate an official inspection station under (a) of this section, it shall provide the applicant with a permit, certificates of inspection, and inspection stickers.

(c) Upon receipt of a permit from the department under (c) of this section, the operator of an official inspection station shall post the permit in a conspicuous place at the location designated by the department.

(d) The department may enter the premises of the operator of an official inspection station at any time to inspect the work of the certified vehicle inspectors under AS 42.30.330 or to determine if the operator continues to meet the requirements of this section.

(e) The department shall suspend or revoke a permit of an operator of an official inspection station if the operator fails to meet the requirements of this section.

(f) Upon notice of suspension or revocation of a permit under (e) of this section, the operator of an official inspection station shall immediately terminate all inspection activities, and on demand by the department, return the permit and all certificates of inspection. The department shall issue a receipt for all unused certificates of inspection.

(g) If a permit is suspended or revoked under (e) of this section, the department shall give an operator of an official inspection station a hearing, upon written request filed with the department within 10 days after suspension or revocation.

(h) A permit to operate an official inspection station may not be assigned, transferred, or used at a location other than the location designated by the department.

Sec. 42.30.330. CERTIFICATION OF VEHICLE INSPECTORS. (a) A person may not conduct a motor vehicle inspection at an official inspection station under AS 42.30.320 unless certified as a vehicle inspector by the department.

(b) The department may suspend the certification issued to a vehicle inspector under (a) of this section if the vehicle inspector improperly conducted inspections or failed to comply with a provision of this section or regulations adopted under it.

(c) If a certificate is denied or suspended under (b) of this section the department shall give a vehicle inspector a hearing upon written request filed with the commissioner within 10 days after denial or suspension.

XX10

Sec. 42.30.340. HEARING BOARD. (a) There is created in the department the Vehicle Safety Hearing Board. The members of the hearing board are the commissioner of commerce and economic development, the commissioner of transportation and public facilities, and

the attorney general, or their designees.

(b) At the request of the commissioner of the department the hearing board shall convene and hear the evidence and information relevant to the suspension and revocation of an official inspection station permit. The hearing board shall make written findings and conclusions to support its order affirming, denying or modifying the action taken by the department.

(c) The order of the hearing board is subject to judicial review in the manner provided by law.

Sec. 42.30.350. ISSUANCE OF CERTIFICATE OF INSPECTION. (a) A person operating an official inspection station shall issue a certificate of inspection to the owner of a motor vehicle after determining the motor vehicle is in a safe and mechanically sound condition.

(b) A person operating an official inspection station shall keep a record of each inspection performed at the station and the department may audit the records of an official inspection station at any time.

Sec. 42.30.360. FALSELY REPRESENTING TO BE AN OFFICIAL STATION. (a) A person may not represent a place as an official inspection station unless the station is operating under a valid permit issued by the department under AS 42.30.320.

(b) A person may not issue a certificate of inspection unless holding a valid permit under AS 42.30.320.

Sec. 42.30.370. COUNTERFEIT CERTIFICATES OF INSPECTION. (a) A person may not make, issue, or knowingly use an imitation or counterfeit of an official certificate of inspection.

(b) A person may not knowingly display or issue a certificate of inspection on a motor vehicle unless the motor vehicle has met the requirements of AS 42.30.350.

Sec. 42.30.380. VIOLATION A MISDEMEANOR. A person who [knowingly] violates a provision of AS 42.30.300 - 42.30.370 is guilty of a class B misdemeanor.

Sec. 42.30.390. DEFINITIONS. In AS 42.30.200 - 42.30.390,

(1) "air carrier" means a person undertaking to engage in air commerce, whether directly or indirectly, or by lease, contract, or any other arrangement, and whether over regular or irregular routes;

(2) "air commerce" means carriage by aircraft of persons or freight, for compensation or hire, in intrastate commerce, including the carriage by aircraft of persons or freight that move partly by aircraft and partly by other forms of transportation;

(3) "aircraft" means a device used or designed for flight in the air;

(4) "department" means the Department of Commerce and Economic Development;

(5) "freight" means all commodities, articles, and cargo, of whatever nature or value, excluding garbage and trash;

(6) "motor vehicle" means

(A) a truck of more than 10,000 pounds unladen gross vehicle weight used upon a public highway of this state; and

(B) a trailer registered in this state of more than 5,000 pounds unladen gross vehicle weight and used upon a public highway of this state.

* Sec. 5. AS 44.33.020 is amended by adding a new paragraph to read:

(27) implement the financial responsibility requirements for motor vehicles and air carriers under AS 42.30.200 - 43.30.270.

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

SB

112

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

To: Sen. Coghill

From: Committee Staff

Date: Thursday, January 31, 1985

Re: Inappropriate referral

The attached bill, SB 112 - "An Act relating to criminal trespass", may have been referred to our committee in error. As you see, it deals with trespassing in a vehicle with the intent to commit a crime. You may want to speak with Senator Rodey, chairman of the judiciary committee about this bill, but it seems inappropriate for our committee.

WAIVED 1-31-85

SB

114

IDENTIFICATION

BILL NAME

"An Act relating to the registration of heavy vehicles; P&D"

BILL NUMBER

SB 114

DATE INTRODUCED

1/30/85

RELATED BILLS PENDING

SPONSOR(S)

Rules/Gov

REFERRALS

Finance, State Affairs

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS

FISCAL NOTE

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS

HEARING PREPARATION

CHAIRMAN BRIEFED

DATE & PLACE SET

STAFF MEMO TO COMMITTEE

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES

SUGGESTED AMENDMENTS/CS DRAFTED

REQUESTED PROCEDURE TO MOVE COMMITTEE SUBSTITUTE FOR SB 114

- AFTER THE SENATE SECRETARY BRINGS UP THE SB 114 AS THE "NEXT ORDER OF BUSINESS", AND SAYS SHE HAS ONE COMMITTEE SUBSTITUTE ON HER DESK,

- MOVE AND ASK UNANIMOUS CONSENT THAT THE TRANSPORTATION COMMITTEE SUBSTITUTE BE ADOPTED.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

To: Committee members

From: Committee staff

Date: March 18, 1985

Re: SB 114

SB 114 is scheduled to be heard by the committee this afternoon. This bill proposes to amend AS 28.10.021 (motor vehicle registration) by requiring the Department of Public Safety to verify that federal heavy vehicle use taxes have been paid, for those vehicles required to do so, before the department can issue a regisration for the vehicle. As the Governor's transmittal letter points out, if this change to the State's law is not made, the federal government may withhold 25% of federal funds for highway construction.

In your folder you have a copy of the bill, a copy of the federal statute making the bill necessary, a DPS fiscal note and analysis, and position papers from DPS and DOT/PF. Also included is a proposed amendment suggested by Jim Fischer of the Attorney General's office, which would delete references to requirements of the now defunct Alaska Transportation Commission.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

3/5/85

Date MARCH 12, 1985

Mr. President

The Committee on TRANSPORTATION considered SB 114

relating to registration of heavy vehicles; efd.

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

[ ] do pass

[ ] do pass with attached amendment(s)

[✓] replace with/or adopt CS for SB 114 (TRANSPORTATION)

[ ] new title

[✓] same title and recommends DO PASS

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Do Pass

Chairman recommendation

Outline about SB 114

1. This legislation is required by passage of Federal legislation in 1982. That enactment was the Surface Transportation Assistance Act of 1982.

2. When Congress passed the 1982 statute it included a provision which could penalize a state for up to 25% of its federal highway aid money. To avoid such a penalty the state must check to see if the federal heavy vehicle use taxes have been paid. If the federal taxes have not been paid, then the state must refuse to register those heavy vehicles on which no use taxes have been paid.

3. Alaska statutes presently lack any provision which permits the Division of Motor Vehicles to refuse registration for failure to show evidence of payment of federal heavy use taxes. To grant such authority to the Division of Motor Vehicles is the reason SB 114 is now before the legislature. This authority should be in place not later than October 1, 1985 the deadline set by the federal government.

Other questions:

(a) Doesn't the proposed enactment place Alaska in the position of collecting federal taxes?

Answer: No. IRS must continue to collect but if a truck owner, for example, doesn't show a receipt (Form 2290), demonstrating the tax has been paid to it, then the truck cannot be registered in Alaska. The state does not have to handle any money for the federal government.

(b) Doesn't this measure require Alaska to be an indirect tax collector?

Answer: It can be argued that that is what occurs. However, it is mandatory under the federal law.

(c) Will the proposed measure place additional demands on the staff of the Division of Motor Vehicles (DMV)?

Answer: Yes, it is an extra step for registration of a heavy vehicle truck (GVW 55,000 pounds). DMV employees will probably have to answer questions which should logically be directed to the IRS. However, if an Alaskan doesn't understand the heavy vehicle tax law when applying to DMV, then state officials should be ready to respond to inquiries which should really be answered by federal employees.

Offered: 3/19/85
Referred: Finance

Original sponsor: Rules/Governor

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 114 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the registration of heavy vehicles; and providing for an effective date."

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

* Section 1. AS 28.10.021(a) is amended to read:

(a) The owner of a vehicle subject to registration shall apply for registration under this chapter by properly completing the form prescribed by the commissioner under AS 28.05.041. Before the issuance of a certificate of registration by the department, the owner shall pay all registration fees and taxes required under this chapter and federal heavy vehicle use taxes required under 26 U.S.C. 4481 (Internal Revenue Code of 1954) [AND ALASKA MOTOR FREIGHT CARRIER AND BUS TRANSPORTATION FEES REQUIRED UNDER AS 42,] and shall comply with any other applicable statutes and regulations.

* Sec. 2. AS 28.10.041 is amended by adding a new subsection to read:

(c) The department shall refuse to register a vehicle subject to the federal heavy vehicle use tax required by 26 U.S.C. 4481 (Internal Revenue Code of 1954) if the applicant fails to furnish proof, in the form prescribed by the U.S. Secretary of the Treasury, that the tax has been paid.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 1/30/85
Referred: State Affairs, Transportation and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 114

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the registration of heavy vehicles; and providing for an effective date."

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

* Section 1. AS 28.10.021(a) is amended to read:

(a) The owner of a vehicle subject to registration shall apply for registration under this chapter by properly completing the form prescribed by the commissioner under AS 28.05.041. Before the issuance of a certificate of registration by the department, the owner shall pay all registration fees and taxes required under this chapter, [AND] Alaska motor freight carrier [AND BUS TRANSPORTATION] fees required under AS 42, and federal heavy vehicle use taxes required under sec. 4481 of the Internal Revenue Code of 1954 (26 U.S.C.), and shall comply with any other applicable statutes and regulations.

* Sec. 2. AS 28.10.041 is amended by adding a new subsection to read:

(c) The department shall refuse to register a vehicle subject to the federal heavy vehicle use tax required by sec. 4481 of the Internal Revenue Code of 1954 (26 U.S.C.) if the applicant fails to furnish proof of payment, in the form prescribed by the U.S. Secretary of the Treasury, that the tax has been paid.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

BILL SHEFFIELD
GOVERNOR

SB 114

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 30, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will authorize the division of motor vehicles (DMV), Department of Public Safety, to refuse to register heavy trucks and trailers if the owner of the heavy vehicle does not furnish proof that applicable federal heavy use taxes have been paid. This authorization is necessary to protect Alaska's full apportionment of federal highway funds.

In 1982 the U.S. Congress adopted the Surface Transportation Assistance Act of 1982. The Act increases, as of July 1, 1984, the heavy vehicle use tax which heavy trucks and trailers must pay under sec. 4481 of the Internal Revenue Code of 1954. Section 143 of the Act (23 U.S.C. sec. 141(d)) authorizes the federal government to withhold up to 25 percent of a state's apportionment of federal highway funds during any year in which heavy vehicles subject to such taxation may be registered in the state without presenting proof of payment of these taxes. The present federal law requires that this proof-of-payment requirement must be effective no later than January 1, 1985.

In order to prevent the loss of these federal highway funds, this bill authorizes DMV to refuse to register a heavy vehicle unless the owner provides proof that the required federal tax has been paid. If an applicant fails to provide the required proof of payment, the applicant's vehicle will not be registered. The State of Alaska is not required to enforce or collect the federal tax.

At line 15, the bill also makes an incidental amendment (deletion of "and bus transportation") to recognize the 1980 repeal of AS 42.15, the chapter on bus transportation to which this provision refers.

GOVERNOR'S LETTER OF TRANSMITTAL

ch 114

I anticipate that Department of Public Safety personnel will be working with legislative committees on possible amendments to the bill, which may be necessitated by pending federal procedural instructions.

In order to avoid the loss of federal funding needed for Alaska's highway system, I urge your passage of this bill.

Sincerely,

Bill Sheffield
Governor

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill 114

APPROVED: R. J. Knapp
Commissioner

TITLE: An act relating to the registration of heavy vehicles; and providing for an effective date.

DATE: March 1, 1985

The Alaska Department of Transportation and Public Facilities urges speedy passage of Senate Bill (SB) 114. SB 114 enables the Division of Motor Vehicles in the Department of Public Safety to require proof-of-payment of the federal heavy vehicle use tax before registering heavy vehicles in the State of Alaska. The heavy vehicle use tax is one of a number of user fees that fund highway improvements through the federal Highway Trust Fund. The State of Alaska receives a very favorable distribution from the Highway Trust Fund; this distribution is over nine times the amount collected through federal taxes on highway use in Alaska.

If SB 144 is not enacted, Alaska will be subject to a reduction in our Interstate apportionments from the highway trust fund. This reduction in funds will hurt the Department's efforts to improve Alaska's Interstate System, consisting of the Parks, Alaska, Glenn and Tok Cut-off highways and portions of the Richardson, Seward, and Sterling highways. The Department estimates that withholding, when applied, will cost the state over $10 million a year in Interstate apportionments. In a time of declining oil revenues and pressing road improvement needs, the state can ill afford any loss of federal-aid highway funds.

For further information call Susan Fleischhauer at 465-3900.

DOT/PF POSITION PAPER

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 114

SUPPORT

February 6, 1985

SB 114, An Act relating to the registration of heavy vehicles and providing for an effective date.

The United State Congress has amended the United States Code to reflect the Secretary of Transportation shall reduce the state's apportionment for federal-aid highway funds in any fiscal year beginning after October 1, 1985, if a vehicle subject to the use tax may be lawfully registered in the state without having presented proof of payment of the use tax.

Enforcement of a federal law by state registration processes is not a desirable use of state resources. However, the alternative, a loss of 25 percent of federal highway funds, leaves the state little choice. The state is not required to enforce or collect the federal tax but only to verify it has been paid before the vehicle is registered.

Therefore, it is felt this bill should be passed this session to bring Alaska in compliance with the federal requirement and avoid loss of the federal-aid highway funds.

ROBERT J. SUNDBERG
Commissioner

DPS POSITION PAPER

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/~~Resolution No.~~ SB 110

Title: An Act relating to the registration of heavy vehicles

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Public Safety

Program Category Affected: Life and Property Protection

BRU, Program or Subprogram(s) Affected: Division of Motor Vehicles

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		8.8	9.3	9.9	10.5	11.1
200 TRAVEL						
300 CONTRACTUAL		7.4	5.5	5.8	6.1	6.5
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		16.2	14.8	15.7	16.6	17.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		16.2	14.8	15.7	16.6	17.6
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME Seasonal		1	1	1	1	1
TEMPORARY		✓				

ANALYSIS: Attach a separate page if necessary

Will require proof of IRS filing or payment of the Federal Heavy Truck Use Tax prior to registration for all motor vehicles with a gross vehicle weight (GVW) of 33,000 lbs or over. Alaska vehicle classifications are based on unladen weight rather than GVW, so it is not possible to determine exactly how many vehicles are affected, but an estimate based on unladen weight would be 2,500 to 3,500 vehicles.

Prepared By: Charles R. Hosack Phone: 269-5561

Division: Motor Vehicles Date: 10-15-84

Approved by Commissioner: [signature] Date: 10/16/84

Agency: Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

DPS FISCAL NOTE

HEAVY VEHICLE USE TAX

ANALYSIS (Continued)

Notification to vehicle owners and collection of the proper forms would require a special mailing, and individual handling. Most of these vehicles are commer ial vehicles registered during December, so one position working four months, October through January, would be able to accomplish most of the work and the rest would be absorbed by existing positions.

Cost detail for the program is as follows:

100	Motor Vehicle Representative I, Range 8, 4 months		8.8
300	Mailing Cost	1.4	
	Forms	1.0	
	Data Processing Programming	2.0	
	Data Processing Maintenance	3.0	
		7.4	7.4
			16.2

An inflation factor of 6% has been applied to costs beyond FY86.

TITLE OF INCREMENT/DECREMENT:
FN - Heavy Vehicle Registration

AGENCY CONTACT/PHONE NUMBER:
John H. Lucking/269-5551

DESCRIBE WHY THIS INCREMENT/DECREMENT IS NEEDED AND WHAT IT PURCHASES:

Proposed legislation would amend AS 28.10.021 dealing with vehicle registration to ensure that the vehicle owner has complied with federal regulations requiring that a heavy vehicle use tax be paid if applicable prior to State registration.

Notification to vehicle owners and collection of the proper forms would require a special mailing and individual handling. Most of the affected vehicles are commercial vehicles registered during December, so one seasonal position working four months (October-January) would be able to accomplish most of the additional workload involved in administering the change in Statute.

Costs are projected as follows:

100	One seasonal Motor Vehicle Rep I, Range 8, 4 months		8.8
300	Mailing Cost	1.4	
	Forms	1.0	
	Data Processing Programming	2.0	
	Data Processing Maintenance	3.0	
	Subtotal		7.4
	TOTAL COSTS		16.2

CODE	EXPENDITURE BY OBJECT	AGENCY REQ.	GOV'S REQ.
100	Personal Services	8.8	
200	Travel		
300	Contractual Services	7.4	
400	Supplies		
500	Equipment		
600	Lands, Buildings, Etc.		
700	Grants, Claims, Etc.		
800	Miscellaneous		
	TOTAL	16.2	
	I-A Transfer (NON-ADD)		
1002	Federal Receipts		
1003	General Fund Match		
1004	General Fund	16.2	
1005	I-A Receipts		
1028	Program Receipts		
	Other		

POSITION INFORMATION	PFT		
	XXX Seasonal	1.0	
	Non Permanent		
	Staff Months	4.0	

- ☐ Enhance Existing Service Compared to FY 85
- ☒ New Service Compared to FY 85
- ☐ Continuation of FY 85 Service Level
- ☐ Formula Program

IMPACT FROM CAPITAL PROJECT (NAME)

Chapter_____ SLA_____ Page/Line_____

C5 INCREMENT/DECREMENT REQUEST

Agency Priority 34 of 35

(6/84) AC5

AGENCY Department of Public Safety

PROGRAM Life & Property Protection

BRU Division of Motor Vehicles

COMPONENT Vehicle Services

PROJECT

PAGE ____ OF ____

REVISED DATE

FY 86

Southern Illinois Builders Ass'n v. Ogilvie, C.A. Ill.1972, 471 F.2d 680.

2. Power of states

State officials were authorized to prescribe number of minority trainees to be employed by contractor in connection with highway construction projects. Schlafly v. Volpe, C.A.Ill.1974, 495 F.2d 273.

§ 141. Enforcement of requirements

(a) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all speed limits on public highways in accordance with section 154 of this title. The Secretary shall not approve any project under section 106 of this title in any State which has failed to certify in accordance with this subsection.

(b) Each State shall certify to the Secretary before January 1 of each year that it is enforcing all State laws respecting maximum vehicle size and weights permitted on the Federal-aid primary system, the Federal-aid urban system, and the Federal-aid secondary system, including the Interstate System in accordance with section 127 of this title.

(c) (1) Each State shall submit to the Secretary such information as the Secretary shall, by regulation, require as necessary, in his opinion, to verify the certification of such State under subsection (b) of this section.

(2) If a State fails to certify as required by subsection (b) of this section or if the Secretary determines that a State is not adequately enforcing all State laws respecting such maximum vehicle size and weights, notwithstanding such a certification, then Federal-aid highway funds apportioned to such State for such fiscal year shall be reduced by amounts equal to 10 per centum of the amount which would otherwise be apportioned to such State under section 104 of this title.

(3) If within one year from the date that the apportionment for any State is reduced in accordance with paragraph (2) of this subsection the Secretary determines that such State is enforcing all State laws respecting maximum size and weights, the apportionment of such State shall be increased by an amount equal to such reduction. If the Secretary does not make such a determination within such one-year period, the amounts so withheld shall be reapportioned to all other eligible States.

(d) The Secretary shall reduce the State's apportionment of Federal-aid highway funds under section 104(b)(5) of this title in an amount up to 25 per centum of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which heavy vehicles, subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1954, may be lawfully registered in the State without having presented proof of payment, in such form as may be prescribed by the Secretary of the Treasury, of the use tax imposed by section 4481 of such Code. Amounts withheld from apportionment to a State under this subsection shall be apportioned to the other States pursuant to the formulas of section 104(b)(5) of this title and shall be available in the same manner and to the same extent as other Interstate funds apportioned at the same time to other States.

(Added Pub.L. 93-643, § 107(a), Jan. 4, 1975, 88 Stat. 2284, and amended Pub.L. 95-599, Title I, § 123(d), Nov. 6, 1978, 92 Stat. 2702; Pub.L. 97-424, Title I, § 143, Jan. 6, 1983, 96 Stat. 2129.)

References In Text. Section 4481 of the Internal Revenue Code of 1954, referred to in subsec. (d), is section 4481 of Title 26, Internal Revenue Code.

Prior Provisions. A prior section 141, Pub.L. 90-495, § 35(a), Aug. 23, 1968, 82 Stat. 836, providing for real property acquisition policies, was repealed by Pub.L. 91-646, Title III, § 306, Jan. 2, 1971, 84 Stat. 1907, and is now covered by sections 4651(1), (3), and (5) and 4655(1) of Title 42, The Public Health and Welfare.

1983 Amendment. Subsec. (b). Pub.L. 97-424, § 143, added subsec. (d).

1978 Amendment. Pub.L. 95-599 redesignated existing provisions as subsecs. (a) and (b) and added subsec. (c).

Effective Date of 1978 Amendment. Section 123(e) of Pub.L. 95-599, formerly set out as a note under this section, providing that subsec. (c)(2) and (3) of this section be applicable to certifications required by this section to be filed on or after Jan. 1, 1980, was repealed by Pub.L. 96-106, § 12, Nov. 9, 1979, 93 Stat. 798.

Enforcement of Vehicle Weight Limitations. Section 123(a) to (c) of Pub.L. 95-599 provided that:

"(a) Not later than the one-hundred-eightieth day after the date of enactment of this section [Nov. 6, 1978], the Secretary of Transportation, hereunder referred to as the 'Secretary', in consultation with each State shall inventory the existing system of penalties for violations of vehicle weight

FEDERAL STATUTE

laws, rules, and regulations on any portion of any Federal-aid system in such State. Each State shall annually thereafter report to the Secretary its current inventory.

"(b)(1) Not later than the one-hundred-eightieth day after the date of enactment of this section [Nov. 6, 1978], the Secretary, in consultation with each State, shall inventory the existing system in such State for the issuance of special permits. Each State shall annually thereafter report to the Secretary its current inventory.

"(2) For purposes of this subsection, the term "special permit" means a license or permit issued pursuant to State law, rule, or regulation which authorizes a vehicle to exceed the weight limitation for such vehicle established under State law, rule, or regulation.

"(c) Not later than January 1 of the second calendar year which begins after the date of enactment of this section [Nov. 6, 1978] and each calendar year thereafter the Secretary shall submit to Congress an annual report together with such recommendations as the Secretary deems necessary on (1) the latest annual inventory of State systems of penalties required by subsection (a) of this section; (2) the latest annual inventory of State systems for the issuance of special permits required by subsection (b) of this section; (3) the annual certification submitted by each State required by section 141(b) of title 23, United States Code [subsec. (b) of this section]."

Legislative History. For legislative history and purpose of Pub.L. 93-643, see 1974 U.S. Code Cong. and Adm. News, p. 8011. See, also, Pub.L. 95-599, 1978 U.S. Code Cong. and Adm. News, p. 6575; Pub.L. 97-424, 1982 U.S. Code Cong. and Adm. News, p. 3639.

Code of Federal Regulations

Size and weight, see 23 CFR 657.1.
Speed limits, see 23 CFR 659.1.

§ 142. Public transportation

(a)(1) To encourage the development, improvement, and use of public mass transportation systems operating motor vehicles (other than on rail) on Federal-aid highways for the transportation of passengers (hereafter in this section referred to as "buses"), so as to increase the traffic capacity of the Federal-aid systems for the movement of persons, the Secretary may approve as a project on any Federal-aid system the construction of exclusive or preferential high occupancy vehicle lanes, highway traffic control devices, bus passenger loading areas and facilities (including shelters), and fringe and transportation corridor parking facilities to serve high occupancy vehicle and public mass transportation passengers, and sums apportioned under section 104(b) of this title shall be available to finance the cost of projects under this paragraph. If fees are charged for the use of any parking facility constructed under this section, the rate thereof shall not be in excess of that required for maintenance and operation of the facility and the cost of providing shuttle service to and from the facility (including compensation to any person for operating the facility and for providing such shuttle service).

(2) In addition to the projects under paragraph (1), the Secretary may, beginning with the fiscal year ending June 30, 1975, approve as a project on the Federal-aid urban system, for payment from sums apportioned under section 104(b)(6) of this title, the purchase of buses, and, beginning with the fiscal year ending June 30, 1976, approve as a project on the Federal-aid urban system, for payment from sums apportioned under section 104(b)(6) of this title, the construction, reconstruction, and improvement of fixed rail facilities, including the purchase of rolling stock for fixed rail, except that not more than $200,000,000 of all sums apportioned for the fiscal year ending June 30, 1975, under section 104(b)(6) shall be available for the payment of the Federal share of projects for the purchase of buses.

(b) Sums apportioned in accordance with paragraph (5) of subsection (b) of section 104 of this title shall be available to finance the Federal share of projects for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle routes or lanes. Routes constructed under this subsection shall not be subject to the third sentence of section 109(b) of this title.

(c) Whenever responsible local officials of an urbanized area notify the State highway department that, in lieu of a highway project the Federal share of which is to be paid from funds apportioned under section 104(b)(6) of this title for the fiscal years ending June 30, 1974, and June 30, 1975, their needs require a nonhighway public mass transit project involving the construction of fixed rail facilities, or the purchase of passenger equipment, including rolling stock for any mode of mass transit, or both, and the State highway department determines that such public mass transit project is in accordance with the planning process under section 134 of this title and is entitled to priority under such planning process, such public mass transit project shall be submitted for approval to the Secretary. Approval of the plans, specifications, and estimates for such project by the Secretary shall be deemed a

From A.G.'s Office

Proposed Amendment to SB 114 - ". . . relating to the registration of heavy vehicles. . ."

On line 14, page 1 after the word "chapter" delete the ","; delete all language on line 15, page 1; and on line 16, page 1 delete the language "required under AS 42,"

PROPOSED AMENDMENT

SB

115

Offered: 2/11/85
Referred: Transportation

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 115 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to land use and disposal near a highway right-of-way; and providing for an effective date."

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

* Section 1. AS 19.40.200 is amended by adding new subsections to read:

(b) The prohibition on disposal of state land under (a) of this section does not apply to a

(1) disposal necessary for an oil and gas lease under AS 38.05.180;

(2) a state lease or materials sale necessary for exploration, development, production, or transportation of oil and gas north of 68 degrees north latitude or reconstruction or maintenance of the highway.

(c) Before the sale of materials under (b)(2)of this section to a private entity or person or to a state agency the state shall give due consideration to the availability of materials from private sources in the area where the materials are needed.

* Sec. 2. AS 19.40.210 is amended to read:

Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road vehicles are prohibited on land within five miles of the right-of-way of the highway. However, this prohibition does not apply <u>to off-road vehicles necessary for oil and gas exploration, development, production, or transportation or</u> to a person who holds a mining claim in the vicinity of the highway and who must use land within five miles of the right-of-way of the highway to gain access to <u>the</u> [HIS] mining claim.

AMENDMENT TO CSSB 115 (Res)

line 16,page 1: After "oil and gas" insert:"north of 68 degrees north latitude,"

JUSTIFICATION:

This amendment would limit the changes in the law to the region containing lease sale 47 which is the lease sale that prompted the Department of Natural Resources to request this statutory change.

Reconstruction or maintenance would be allowed along the whole of the highway under this provision, and thereby allow for sales of gravel.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D U M

February 7, 1985

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources Committee

RE: Proposed CS for SB 115 (Resources) "An Act relating to oil and gas exploration along highway rights-of-ways"

In 1980 the legislature passed AS 19.40.200 and .210. These sections prohibit the disposal of state land within five miles of the Dalton Highway and also prohibit the use of off-road vehicles in this same area.

Oil and gas lease sale 47 (Kuparuk Uplands) is currently scheduled to be given final notice March 22, 1985 and to take place May 21, 1985. This sale contains approximately 611,840 acres. Approximately 230,000 acres or 52 of the 113 tracts that will make up this sale are within this five mile border of the highway. If the existing statutes are not modified, these tracts could not be included in the lease sale.

The Senate Resources Committee at the request of the Department of Natural Resources, Division of Oil and Gas, introduced SB 115 to remedy this problem. A proposed committee substitute for that bill is included in this packet. The purpose of the committee substitute is the same as the original bill, it avoids, however, the words "land disposal" and confusion which had occurred over the meaning of those words.

The CS also adds an effective date clause and a sentence which deals with the state purchase and sale of materials (gravel).

The wording of the proposed committee substitute has been developed by working with representatives of the Division of Oil and Gas, the House Special Committee on Oil and Gas, Senator Ferguson's office, the Alaska Environmental Lobby and representatives of several oil companies.

BACKGROUND ON SB 115
DEPARTMENT OF NATURAL RESOURCES
February 8, 1985
Senate Resources Committee

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.

- Material (sand and gravel) sales are made to private entities under AS 38.05.110-120 for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance under AS 38.05.810 (public and charitable use).

- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.

- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985,and contains approximately 611,840 acres. Of that total, about 230,000 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.

- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.

- Several existing material sales to the Department of Transportation and Public Facilities, and current pending applications for continued materials requirements of Alyeska will be in jeopardy.

Supplemental Information on SB 115

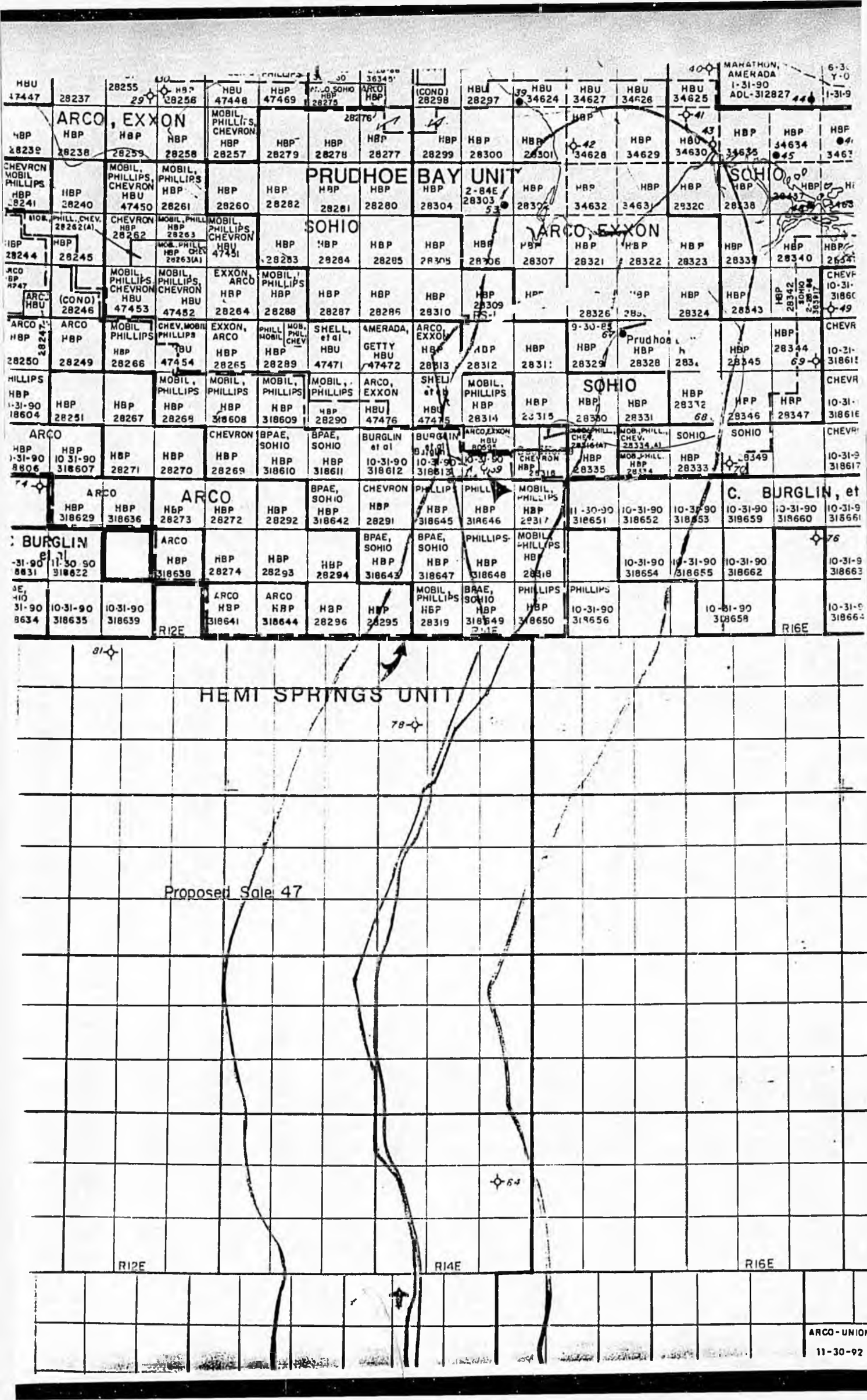
The following two issues were raised after packets had been distributed to committee members yesterday after noon.

1) Oil and Gas Lease Sale 31 (Prudhoe Bay Uplands) was held September 16, 1980. AS 19.40.200 has an effective date of October 5, 1980. All except one of the lease award notices were sent to successful bidders on September 23, 1980. One award notice was issued October 7, 1980.

In order to remove any possible legal cloud regarding the leases, the Department of Natural resources, upon the advice of the Attorney General's Office, recommends that SB 115 be made retroactive to October 5, 1980.

If the committee does wish to include the retroactive effective date in the committee substitute, appropriate draft language is attached to this memo.

2) A representative of the Yukon Pacific Pipeline Company telephoned committee staff with a concern about whether communications equipment associated with the project could be installed within the right-of-way under the language of SB 115. The Department of Law has given a verbel opinion that the language of the proposed committee substitute would allow communications equipment related to oil and gas activities. It was suggested by the representative of Yukon-Pacific that the committee might wish to include a broader exemption for communication activities in the pipeline corrider within the committee substitute. If the committee wishes to do this, appropriate language is attached to this memo.


PRUDHOE BAY UNIT
SOHIO
ARCO, EXXON
HEMI SPRINGS UNIT
Proposed Sole 47
R12E
R14E
R16E
ARCO - UNION
11-30-92

Sand - 300'/°Lat

BACKGROUND ON HB 143
DEPARTMENT OF NATURAL RESOURCES
February 6, 1985
House Oil and Gas and Resources Committees

DISPOSALS UNDER AS 38 NECESSARY FOR OIL AND GAS DEVELOPMENT:

- Oil and gas leases under AS 38.05.180 convey exploratory drilling rights and production rights for any oil and gas discovered.

- Material (sand and gravel) sales under AS 38.05.110-.120 are needed for roads, drill pads, offshore artificial drilling islands, causeways, and other facilities. "Sales" are also made to the Department of Transportation and Public Facilities for highway reconstruction and maintenance.

- Oil and gas pipeline right-of-way leases under AS 38.35 are the required authorization to construct an oil or gas pipeline on or across state land.

- Leases under AS 38.05.070 are held by private service companies and contractors in the Prudhoe Bay Industrial Tract Subdivision. These companies and contractors sell, rent, and repair equipment and provide services to oil and gas lessees. Alyeska Pipeline Service Co. also holds leases (for example, construction camp site).
  ie West Dock / Deadhorse / KIC (Kuparuk Industrial Secto) - ,510

ACTIVITIES IMMEDIATELY AFFECTED BY THE PROPOSED LEGISLATION:

- Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985, and contains approximately 611,840 acres. Of that total, about 230,00 acres (52 of the 113 tracts) are within five miles of the highway and would have to be deleted from the sale without the proposed clarification of existing statute. Final notice of Sale 47 is scheduled to be given March 22, 1985.

- Seismic exploration using off-road vehicles is currently prohibited within the 10-mile corridor.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate
Committee on Resources

M E M O R A N D \ M

February 8, 1985

TO: All Members
Senate Resources Committee

FROM: Staff, Senate Resources

RE: SB 115 "An Act relating to oil and gas exploration along highway rights-of-way."

Supplemental Information on SB 115

The following two issues were raised after packets had been distributed to committee members yesterday afternoon.

1) Oil and Gas Lease Sale 31 (Prudhoe Bay Uplands) was held September 16, 1980. AS 19.40.200 has an effective date of October 5, 1980. All except one of the lease award notices were sent to successful bidders on September 23, 1980. One award notice was issued October 7, 1980.

In order to remove any possible legal cloud regarding the leases, the Department of Natural Resources, upon the advice of the Attorney General's Office, recommends that SB 115 be made retroactive to October 5, 1980.

If the committee does wish to include the retroactive effective date in the committee substitute, appropriate draft language is attached to this memo.

2) A representative of the Yukon Pacific Pipeline Company telephoned committee staff with a concern about whether communications equipment associated with the project could be installed within the right-of-way under the language of SB 115. The Department of Law has given a verbal opinion that the language of the proposed committee substitute would allow communications equipment related to oil and gas activities. The Department of Law advised that to make certain there was no question on this issue, a letter of intent should be adopted specifying that communication facilities related to oil and gas projects are among the allowed uses. Such a letter of intent is attached.

It was suggested by the representative of Yukon-Pacific that the committee might wish to include a broader exemption for communication activities in the pipeline corridor within the committee substitute. If the committee wishes to do this, appropriate language is available and the letter of intent would not be needed. This type of broadening, however, may jeopardize the support of some of the parties with whom the committee substitute has been developed.

SENATE AMENDMENT

By _____

To: CS SENATE BILL No. 115 (Resources)

To: _____ HOUSE BILL No. _____

PAGE: 2 LINE: 2

Sec. 4. This Act is retroactive to October 5, 1980.

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate
Committee on Resources

February 8, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SB 115

It is the intent of the Senate Resources Committee that leases necessary for communication equipment or facilities related to oil or gas activity is included as allowable under Section 1(b)(2) of CS SB 115 (Resources).

_____

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

TO: Committee Members

FROM: Committee Staff BL

DATE: 2-15-85

RE: SB 115 Rights of Way for Oil and Gas Exploration

Enclosed is the backup for Senate Bill 115 from the first committee of referal, Resources. Their analysis of the bill and the back up is thorough. The committee staff does not see anything substantial that we can add to the bill analysis at this time.

Offered: 2/11/85
Referred: Transportation

Original sponsor: Resources Committee

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 115 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to land use and disposal near a highway right-of-way; and providing for an effective date."

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

* Section 1. AS 19.40.200 is amended by adding new subsections to read:

(b) The prohibition on disposal of state land under (a) of this section does not apply to a

(1) disposal necessary for an oil and gas lease under AS 38.05.180;

(2) a state lease or materials sale necessary for exploration, development, production, or transportation of oil and gas or reconstruction or maintenance of the highway.

(c) Before the sale of materials under (b)(2)of this section to a private entity or person or to a state agency the state shall give due consideration to the availability of materials from private sources in the area where the materials are needed.

* Sec. 2. AS 19.40.210 is amended to read:

Sec. 19.40.210. PROHIBITION OF OFF-ROAD VEHICLES. Off-road vehicles are prohibited on land within five miles of the right-of-way of the highway. However, this prohibition does not apply <u>to off-road vehicles necessary for oil and gas exploration, development, production, or transportation or</u> to a person who holds a mining claim in the vicinity of the highway and who must use land within five miles of the right-of-way of the highway to gain access to <u>the</u> [HIS] mining claim.

* Sec. 3. This Act is retroactive to October 5, 1980.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
BETTYE FAHRENKAMP, Vice Chairman
JACK COGHILL
DICK ELIASON
VIC FISCHER
RICK HALFORD
FRED ZHAROFF

POUCH V
JUNEAU, ALASKA. 99811
(907) 465-4907

Senate
Committee on Resources

February 8, 1985

COMMITTEE ON RESOURCES
LETTER OF INTENT
FOR
SB 115

It is the intent of the Senate Resources Committee that leases necessary for communication equipment or facilities related to oil or gas activity is included as allowable under Section 1(b)(2) of CS SB 115 (Resources).

_____

Senator Arliss Sturgulewski
Chairman, Senate Resources Committee

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 115

Title: Exploration and Development in Highway Rights-of-Way

Sponsor:

Requestor: Sen. Sturgulewski

Date of Request: 1/31/85

FISCAL DETAIL

Agency Affected: Natural Resources

Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected: Minerals and Energy Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ned Farquhar — Phone: 465-2400

Division: Commissioner's Office — Date: January 31, 1985

Approved by Commissioner: [signature] — Date: January 31, 1985

Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☒ 1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☐ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 12, 1985

The Honorable Arliss Sturgulewski, Chairman
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

FEB 14 1985

Re: CSSB 115 (Res)

Dear Senator Sturgulewski:

Kay Brown, director of the division of oil and gas, has asked us to respond to your inquiry whether there would be any negative legal implications from the retroactive application of the proposed amendments to AS 19.40.200 - 19.40.210 contained in the referenced bill. 1/ We believe that there would not.

Although retrospective laws are generally not favored, curative legislation is encouraged. Here, the legislation is in part being proposed to validate certain existing AS 38.05 disposals and off-road vehicle activities which might otherwise be void for failure to conform with the existing proscriptions of

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1/ You will recall that the inquiry was made at your meeting of February 8, at which time Ms. Brown proposed that the provisions of CSSB 115 (Res) be made retroactive. We had earlier advised Ms. Brown that any question regarding the validity of existing uses of state land along the Dalton Highway could be resolved in the context of an attorney general's opinion. However, on February 4, it was brought to our attention that at least one existing oil and gas lease would be void unless made valid by retroactive application of the proposed amendments contained in the bill.

AS 19.40.200 - 19.40.210. These disposals and activities were authorized by state officials under the mistaken belief that the provisions of AS 19.40.200 - 19.40.210 were limited in scope to certain circumstances of primary concern to the legislature when the original Act was passed, namely, the prohibition of cabin site and other land surface disposals under AS 38.05 and of hunting with ORVs along the Haul Road corridor. The plain language of the statute, however, exceeds this narrow application, even though a broad interpretation reportedly was not the legislature's original intent.

Nevertheless, even curative legislation must comply with certain legal requirements. Among these is the requirement of AS 01.10.090 for an express statement of retroactivity. The legislative drafting manual suggests that language providing for retroactive application of a bill be set out in a separate section immediately preceding the effective date section, and that the retroactive section and the sections of the bill that are to be retroactive have immediate effective dates. Thus, CSSB 115 (Res) should contain an additional section to read:

* Sec. 3. Sections 1 - 2 of this Act are retroactive to October 5, 1980. 2/

From a constitutional standpoint, a curative Act may not impair the obligation of contracts, take property without due process of law, or interfere with purely judicial matters. We are not aware of any potential problems arising in these three areas of concern if the presently proposed amendments to AS 19.40.200 - 19.40.210 are made retroactive to the effective date of the original Act. To the contrary, retroactive application will avoid the possibility of finding invalid existing uses of state land previously authorized by state officials.

In sum, we are of the opinion that CSSB 115 (Res), which grants new rights rather than takes away existing rights,

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2/ The present Section 3, providing for an immediate effective date, would be renumbered Section 4.

will present no negative legal implications if its provisions are applied retroactively. To the contrary, because of the uncertain validity of some existing uses of state land, we strongly encourage inclusion in the bill of a retrospective clause such as the one we have suggested.

Very truly yours,

NORMAN GORSUCH
ATTORNEY GENERAL

A. E. Prezyna

By: Ann E. Prezyna
Assistant Attorney General

AEP/ma

cc: Kay Brown, Director
Division of Oil and Gas
Department of Natural Resources

Arthur H. Peterson
Assistant Attorney General
Department of Law - Juneau

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

OFFICE OF THE COMMISSIONER

January 31, 1985

The Honorable Arliss Sturgulewski
Chairman, Senate Resources Committee
Pouch V
Juneau, AK 99811

Dear Senator Sturgulewski:

The Department of Natural Resources is requesting amendment of AS 19.40.200 and AS 19.40.210 to allow oil and gas exploration and development within five miles of the right-of-way of the Dalton Highway (North Slope Haul Road).

The statute presently prohibits the disposal of state land under AS 38 and use of off-road vehicles within five miles of the highway. "State land" under AS 38 includes oil and gas leases for exploration and production rights.

Although the department does not believe it was the intent of the 1980 Legislature to prohibit oil and gas activities along the highway, the statute as presently written may be interpreted to have that effect. Oil and Gas Lease Sale 47 (Kuparuk Uplands) is tentatively scheduled for May 21, 1985 and contains approximately 611,840 acres. Of that total, some 230,000 acres (52 of the 113 tracts) are within the five-mile corridor and will have to be deleted from the sale without clarification of the statutes cited above. Final notice of Sale 47 is scheduled to be given March 22, 1985.

I appreciate the willingness of your Committee to introduce SB 115, which would rectify the apparent oversight. Thank you in advance for your consideration and timely action on the bill.

Sincerely,

Esther C. Wunnicke
Commissioner

10-J9LH

[illegible] participation in the construction and maintenance of local service roads under AS 19.30.111 — 19.30.241. (§ 2 ch 84 SLA 1971)

Chapter 35. Relocation Assistance.

Section
10 — 100. [Repealed]

Sec. 19.35.010 — 19.35.100.

Repealed by § 2 ch 41 SLA 1971.

Editor's notes. — The repealed chapter derived from § 1, ch. 60, SLA 1969; §§ 50, 51, ch. 69, SLA 1970.

Section 3, ch. 41, SLA 1971, provides: "This Act is retroactive to January 2, 1971."

Chapter 40. James Dalton Highway.

Section
10. Declaration of policy
15. Highway named
20. Contractual authority
30. Undertakings of contractors
40. Exemption
50. Highway width
60. Conditions to be met
65. Regulations and penalties
70. Conflict with other laws
80. Definitions
100. Use of the highway by industrial or commercial traffic
110. Public use of a portion of the highway
120. Closure of the highway to traffic
200. Prohibition on disposal of land within five miles of the highway
210. Prohibition of off road vehicles

Sec. 19.40.010. Declaration of policy. (a) The legislature finds and declares that there is an immediate need for a public highway from the Yukon River to the Arctic Ocean and that this public highway should be constructed by the State of Alaska at this time because

(1) it will assist in the fulfillment of the Constitution of the State of Alaska, art. VIII, § 1, in which it is provided that it is the policy of the state to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest;

(2) it will provide the first year-round, overland route from north of the Yukon River to the Arctic Ocean, and will consequently result in the completion of a highway from the Pacific Ocean to the Arctic Ocean;

(3) it is in conformity with the policy of the Federal-Aid Highway Act of 1956, 23 U.S.C. 101(b), in which it is declared to be in the national interest to accelerate the construction of certain highways which are of primary importance to the national defense;

(4) it will benefit local and interstate commerce because the area north of the Yukon River is rich in natural resources but is inaccessible at the present time because of the lack of roads and this inaccessibility prohibits the successful use of the natural resources of this area;

(5) it is consonant with the Constitution of the State of Alaska, art. VIII, § 2, in which it is provided that the legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the state, including land and waters, for the maximum benefit of its people, because the highway will benefit not only local and interstate commerce but will also augment the revenues of the state and result in conservation of natural resources, for example, by facilitating a system of forest fire suppression.

(b) It is the sense of the legislature that the construction of the highway will not impair the natural wilderness adjacent to the highway and will not unreasonably interfere with subsistence hunting, fishing, trapping and gathering.

(c) It is the intent of the legislature that the state shall be reimbursed for the cost plus interest of constructing the public highway from the Yukon River to the Arctic Ocean.

(d) It is the intent of the legislature that employment of Alaska residents be encouraged and that the provisions of AS 36.10.010 — 36.10.110 be complied with. (§ 1 ch 231 SLA 1970)

Editor's notes. — AS 36.10.110, referred to in subsection (d), was repealed by § 17, ch. 142, SLA 1972.

Sec. 19.40.015. Highway named. The highway is named the James Dalton Highway. (§ 2 ch 10 SLA 1981)

Editor's notes. — Section 1, ch. 10, SLA 1981 provides: "FINDINGS AND INTENT. The legislature finds that James Dalton's exploration of the North Slope and his report on petroleum possibilities there contributed greatly to the subsequent development of the area, including the construction of the North Slope haul road. Therefore the legislature finds it appropriate that James Dalton be remembered by naming the North Slope haul road after him."

Sec. 19.40.020. Contractual authority. (a) Subject to (b) of this section, the department may contract for the construction of a secondary highway from the Yukon River to the Arctic Ocean. The department may request bids and award contracts for the construction of the highway, or it may elect to directly negotiate contracts for the construction of the highway if it appears to be in the best interests of the state. The provisions of AS 36.10 govern in employment practices on all work authorized by this chapter.

(b) The authority granted under (a) of this section may not be exercised until the state enters into a contract with the participants in the Trans Alaska Pipeline System or other organization formed for the purpose of transporting oil by pipeline from the North Slope (that area of Alaska lying north of 68° latitude). The contract shall provide for reimbursement to the state by the participants, jointly and severally, in the Trans Alaska Pipeline System or other organization formed for

see 3rd page for affected statutes

transporting oil by pipeline, of the full amount of the of construction plus interest on the state's expenditures f seven and one-half per cent per year. Complete t together with interest must be made within five years f the contract. The state may, with the agreement of the lect to construct an oil pipeline from the North Slope. In provisions of this subsection requiring reimbursement

ract with the participants shall include such additional litions as appear to be in the best interests of the state. ayments made under such a contract shall be deposited ccount which will be used for disbursements to the ed with construction of the highway. Disbursements to hall be made on order of the commissioner of transpor- lic facilities on presentation of a proper voucher or the a voucher by an employee of the department authorized ertify as to such payment. (§ 1 ch 231 SLA 1970; am r No. 39, § 11 (1977))

ndments. The 1977 cuted a reference to the nsportation and public facilities for a reference to the commissioner of highways in the third sentence of subsection (c).

30. **Undertakings of contractors.** The department, in ds or individual sureties required by AS 36.25.010, may e undertakings which include the same essential provi- ds or individual sureties required by AS 36.25.010 and factory to the department. (§ 1 ch 231 SLA 1970)

40. **Exemption.** The Alaska Net Income Tax Act and ness License Act do not apply to any money received contractor from the state under a highway construction ized under this chapter if the money is to be paid to a r work performed under the construction contract. The by the subcontractors is subject to the Alaska Net t, the Alaska Business License Act and any other taxes. (§ 1 ch 231 SLA 1970)

50. **Highway width.** In accordance with AS 19.10.015, s highway is designated as 200 feet. (§ 1 ch 231 SLA

60. **Conditions to be met.** Construction authorized 020 — 19.40.050 may not be undertaken until all of the tions are met:
on by the commissioners of the Department of Natural the Department of Fish and Game that adequate pre- een taken to protect and preserve the total ecology of sed;

(2) certification by the commissioner of the Department of Transportation and Public Facilities that the road design and construction methods will cause minimal landscape defacement or environmental degradation by erosion or waste disposal;

(3) certification by the commissioner of the Department of Health and Social Services that adequate and reasonable precautions have been taken for the prevention of pollution during construction and subsequent public use;

(4) all certifications, as well as the rules, regulations, contract provisions, specifications, inspection procedures and programs necessary to implement and accomplish AS 19.40.020 — 19.40.050 shall be filed with the governor's office and published;

(5) the governor has approved all certifications and supporting material submitted to him under (4) of this section as being in the best public interest, and has certified that the contract required by AS 19.40.020 has been executed. (§ 1 ch 231 SLA 1970; am § 6 ch 104 SLA 1971; am Executive Order No. 39, § 11 (1977))

Effect of amendments. — The 1977 amendment substituted a reference to the Department of Transportation and Public Facilities for a reference to the Department of Highways in paragraph (2).

Sec. 19.40.065. Regulations and penalties. All departments and agencies of the state are given the specific authority to adopt under the Administrative Procedure Act (AS 44.62) emergency, temporary and permanent regulations necessary to accomplish the purposes of AS 19.40.020 — 19.40.050. The violation of any regulation adopted under AS 19.40.020 — 19.40.050 is a misdemeanor and upon conviction the person is punishable by a fine of not more than $10,000 for each offense. (§ 1 ch 231 SLA 1970)

Sec. 19.40.070. Conflict with other laws. In the event of a conflict between this chapter and any other law of this state, the provisions of this chapter govern and supersede any such other law. (§ 1 ch 231 SLA 1970)

Sec. 19.40.080. Definitions. In this chapter

(1) "department" means the Department of Transportation and Public Facilities;

(2) "highway" means the secondary highway from the Yukon River to the Arctic Ocean. (§ 1 ch 231 SLA 1970; am Executive Order No. 39, § 11 (1977))

Effect of amendments. — The 1977 amendment substituted a reference to the Department of Transportation and Public Facilities for a reference to the Department of Highways in paragraph (1).

. **Use of the highway by industrial or commer-**
he department shall maintain the highway and keep
ial or commercial traffic throughout the year.
or commercial travel" means
essary and related to resource exploration and
support of those activities, if the individual engaged
s has all necessary permits; or
sary and related to access by local residents to their

ers engaged in commerce which are common carriers
rs regulated by the Alaska Transportation Commis-
.10. (§ 3 ch 177 SLA 1980)

Public use of a portion of the highway. The
maintain the section of the highway between the
Dietrich Camp and shall keep that section of the
use by the public between June 1 and September 1
177 SLA 1980; AS 19.40.120)

- This section was renumbered by the revisor of statutes pur-
40.120 but was suant to AS 01.05.031.

Closure of the highway to traffic. The provisions
ply to the closure of the highway by the department.
1980; AS 19.40.110)

This section was renumbered by the revisor of statutes pur-
40.110 but was suant to AS 01.05.031.

Prohibition on disposal of land within five
ay. The state may not dispose of state land under
thin five miles of the right-of-way of the highway.
980)

reports. For 1781. For attorney general's opinion
ing SCS HB am S advising the governor that the house and
1980 House Jour- senate did not pass the same bill, see Op.
Senate Journal, p. Atty. Gen. July 1, 1980.

Prohibition of off-road vehicles. Off-road vehi-
on land within five miles of the right-of-way of the
, this prohibition does not apply to a person who
im in the vicinity of the highway and who must use
iles of the right-of-way of the highway to gain access
n. (§ 5 ch 177 SLA 1980; AS 19.40.200(b))

This section was renumbered by the revisor of statutes pur-
).200(b) but was suant to AS 01.05.031.

Relevant Statutes

Chapter 45. Miscellaneous Provisions.

Section
01. Definitions
02. Penalties
15. Highway construction near airports

Sec. 19.45.001. Definitions. In AS 19.05 — 19.40

(1) "commissioner" means the commissioner of transportation and public facilities;

(2) "construction" or any derivation means construction, reconstruction, alteration, improvement or major repair;

(3) "controlled-access facility" means a highway especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have either no right or easement or only a controlled right or easement of access, light, air, or view;

(4) "cost of change, relocation, or removal" means the entire cost incurred by the utility properly attributed to the change, relocation, or removal of a facility, less any costs for improvements or upgrading over and above the cost of a functionally equal facility; if a facility is to be relocated and replaced with new equipment, there shall also be subtracted from the entire cost any salvage value derived from the old facility;

(5) "department" means the Department of Transportation and Public Facilities;

(6) "excess lands" means land acquired by the state in excess of land required for a highway, when the remaining portion of a parcel of land so acquired is left in such shape or condition as to be of little or no value to its owner, or to give rise to claims or litigation concerning severance or other damage;

(7) "federal-aid primary, federal-aid secondary, and interstate system" include any highway which is a part of the federal-aid systems as provided in the Federal-Aid Highway Act of 1956, and any laws amending or supplementing it;

(8) "highway" includes a highway (whether included in primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;

(9) "maintenance" means the preservation of each type of highway, roadside structure and facility as nearly as possible in its original condition as constructed, or as subsequently improved, and the operation of highway facilities and services to provide satisfactory and safe highways;

(10) "municipality" means an incorporated city or political subdivision which has jurisdiction over highways in its incorporated area;

Title 19: Highways and Ferries

(11) Repealed by § 6 ch 233 SLA 1968.

(12) "utility" includes railroads and all publicly, privately, or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, telecommunications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, and other similar commodities, including publicly owned fire and police signal systems and street lighting systems;

(13) "encroachment" means and includes a tower, pole, pole line, pipe, pipeline, driveway, private road, fence, billboard, stand or building, or a structure or object of any kind which is or has been placed in, on, under or over a portion of a highway or road. (§ 1 ch 57 SLA 1961; § 3 art I title I ch 152 SLA 1957: am § 3 ch 124 SLA 1959: am § 1 ch 122 SLA 1960; § 1 art V title II ch 152 SLA 1957; § 3 (14) art I title I ch 152 SLA 1957: added by § 2 ch 122 SLA 1960; § 2 ch 59 SLA 1949; am § 1 ch 86 SLA 1953; am §§ 4, 5 ch 49 SLA 1963; am § 6 ch 233 SLA 1968; am § 29 ch 32 SLA 1971; am § 1 ch 64 SLA 1971; am §§ 1, 2 ch 106 SLA 1977; am Executive Order No. 39, § 11 (1977); AS 19.05.130)

Revisor's notes. — This section derives from AS 19.05.130 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Effect of amendments. — The first 1977 amendment substituted the language beginning "facility, less any costs for improvements" and ending "subtracted from the entire cost" for "utility after deducting any increase in the value of the new facility and" in paragraph (4) and rewrote paragraph (12).

The second 1977 amendment substituted references to the commissioner of transportation and public facilities and to the Department of Transportation and Public Facilities for references to the commissioner of highways and to the Department of Highways in paragraphs (1) and (5), respectively.

Legislative history reports. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

NOTES TO DECISIONS

Applied in State v. I'Anson, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 188 (1974).

Sec. 19.45.002. Penalties. A person who violates any provision of chs. 5-25 of this title is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $500, or by imprisonment in jail for a period not to exceed one year, or by both. (§ 7 art VII title II ch 152 SLA 1957; AS 19.05.140)

Revisor's notes. — This section derives from AS 19.05.140 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Cross references. — As to sentences for misdemeanors, see AS 12.55.135.

Collateral references. — 25 Am. Jur., Highways and Streets, § 73.

SB

141

File 1

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Chairman Coghill
Date: February 19, 1985
Re: SB 141, Relinquishment of rights-of-way

As the attached background information will show, SB 141 is intended to release the State's claim to certain portions of highway rights-of-way which were not clearly identified in land patents. This has given rise to the problem faced by many landowners who live or hold land adjacent to highways the State now wishes to upgrade, straighten or expand and who have been or could be abruptly and without compensation deprived of land they assumed was theirs, and which their legal documents have not identified as belonging to the government.

These rights-of-way were withdrawn by the federal government through public land orders or as a result of various Acts of Congress during territorial days, and did not necessarily make their way either to the homesteaders' patents or the district recorders' offices. This has subsequently caused heavy liabilities for the state's title insurance companies, who traditionally insure property based upon what has been recorded at the recorder's office, not upon what has been published in the Federal Register.

As this problem has evolved, the State Supreme Court has ruled that the State's claims to the rights-of-way are valid, and therefore, title insurers are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. Of course, this presumes that the property-owner has title insurance. In the many instances where the property-owner does not, he or she is simply out of luck, and has no recourse to gain compensation.

The background material will more completely go into the history of the problem, however, a brief explanation of the enormous fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they have figured the repurchase price at top market value, and of the entire width of right-of-way (in other words, the entire 300 or 500 feet, not just the portion they will actually need to expand a road).

COMMITTEE STAFF SYNOPSIS

MEMORANDUM RE HOUSE BILL

TO RELINQUISH RIGHTS-OF-WAY

Alaska achieved statehood twenty-five years ago. Before stathood the Department of Interior, through certain Pulic Land Orders, took rights-of-way for roads from landowners without compensating the landowners. Since statehood the Department of Transportation and Public Facilities (DOTPF), acting for the State of Alaska, is still taking private property without compensating the landowners.

In 1966, the Alaska State Legislature enacted Ch. 92 (HB 415 am) which prohibited such takings by the State. The purpose of the law was to "alleviate economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska [for] which no compensation is paid to the person holding title to the land." The Legislature prohibited any further utilization of rights-of-way pursuant to various Public Land Orders and federal acts.

At the time of Statehood the State received a quit claim deed from the federal government conveying to the State certain roads built by the United States. DOTPF claims that the quit claim deed also conveyed certain easements or rights-of-way that were not described therein but included in Public Land Orders that were not even recorded in the various Recorders Offices throughout the state. DOTPF presently claims a right to highway rights-of-way varying in width from 100 to 300 feet surrounding

PROPONENT'S SUMMARY

every major highway in the state and a smaller easement for most of the local roads throughout the state. When DOTPF determines that it needs to expand or modify an existing roadway where it claims a right-of-way exists by virtue of the federal government, it does so without paying compensation to the landowner for the value of the property taken.

The reservations for rights-of-way and easements were made by the federal government between 1947 and 1956. They were set forth in a series of Public Land Orders (namely PLO 601, 757, and 1613) and a Department of Interior Order (DO 2665) which were not recorded in District Recorders Offices in Alaska but were published in the Federal Register, which was a publication utilized by federal agencies.

The rights-of-way and reservations were not specifically included in the patents issued to homesteaders in Alaska. Homesteaders in Alaska were not informed of the existence of the easements and rights-of-way at the time they were issued patents and did not know the federal government was claiming a portion of their property for highway purposes. Now DOTPF is claiming right-of-way easements in the same way by virtue of the quit claim deed mentioned above.

No landowner or member of the public can know where DOTPF claims a right-of-way easement because those easements are not recorded and are not shown on plats available in the Recorder's Offices.

The Supreme Court of Alaska, in State v. A.L.T.A., has held that the easements are valid. The decision is wrong and must be reversed through the enactment of a law that will relinquish these easements and require DOTPF to pay just compensation for lands taken by them.

TAKING OF RIGHTS-OF-WAY WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff, the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1960's the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner had filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand bought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 141

Title: An Act releasing claims of State land within certain rights of way

Sponsor: Cochill

Requestor:

Date of Request: February 15, 1985

FISCAL DETAIL

Agency Affected: Transportation & Public Facili

Program Category Affected: Design and Construction

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		75	75	75	75	75
200 TRAVEL		15	15	15	15	15
300 CONTRACTUAL		1,750	1,750	1,750	1,750	1,750
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		225,500	225,500	225,500	225,500	225,500
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		227,340	227,340	227,340	227,340	227,340
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		227,340	227,340	227,340	227,340	227,340
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached Analysis

Prepared By: Milton H. Lentz Phone: 465-2985

Division: Standards & Technical Services HQ Date: February 14, 1985

Approved by Commissioner: Date: 2/15/85

Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

DOT/PF FISCAL NOTE

7/1/84

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill No. 141

TITLE: An Act releasing claims of the State to land within certain rights of way

APPROVED: R. J. Knapp
Commissioner

DATE: 2-15-85

The Department of Transportation and Public Facilities opposes Senate Bill 141. This bill would have a major negative impact on the State of Alaska. It could restrict our ability to serve the public effectively and create a heavy financial burden for the State. In addition, there is a concern that, if this bill is enacted into law, it will jeopardize present or future federal-aid participation in highway rights of way.

The validity of these easements has been reviewed by the U.S. Supreme Court and the passage of this bill would reverse any legal grounds already established through the judicial system.

For further information call Susan Fleischhauer at 465-3900.

ANALYSIS OF FISCAL NOTE FOR SENATE BILL 141

This bill would relinquish highway easements created by the federal government under several laws and land orders. Most of the highway rights of way in the State would be affected. This bill would relinquish or vacate all those rights of way except those portions which are physically occupied on the effective date of the Act. Under this Act, the adjacent landowners would immediately become owners of the affected rights of way except those portions between slopes and ditches.

The enactment of this bill would put the Department in the position of having to purchase any rights of way needed for planned expansion, maintenance (brush cutting and snow storage), protection of utility permit areas, permitted encroachments, etc.

The cost of almost all future upgrading or widening of existing highways and the building of planned highways would be increased drastically because of the expense of acquiring additional right of way. This bill would also affect federal funding on federal-aid projects. It is the Federal Highway Administration's position that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from lands subject to the reservation contained in the 1947 Act.

This fiscal note is based on the following assumptions:

1. Primary highways normally control 300-foot rights of way in general but physically occupy 100 feet for the actual roadway.

2. Secondary highways normally control 200-foot rights of way but physically occupy 60 feet for the actual roadway.

3. The State would have to reacquire approximately one half the relinquished rights of way for planned expansion, maintenance, clear zones, utility permits, etc. This would have to be done as expeditiously as possible to satisfy maintenance agreement obligations with the federal government on federal-aid highways.

U.S. Department of Transportation
Federal Highway Administration

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

February 19, 1985

HRW-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

We have reviewed Senate Bill #141 introducted in the State Senate February 8, 1985. This Bill is similar to previously introduced legislation and we still have the following concerns:

1. If the right-of-way remaining will only include the road shoulders and the ditching, several problems are envisioned. There may not be sufficient sight distance to provide for the safety of the traveling public, as you would be unable to clear vegetation on the inside of curves. You would be unable to clean ditches and maintain structures without encroaching on other properties. There would be no mechanism to prevent construction of facilities next to the traveled way.

2. It was the intent of the Federal Government in estabishing Public Land Orders to provide land for highway construction at no additional expense to the states or the United States. If the State of Alaska should choose to abandon this right, and later find that this right-of-way is necessary for the construction or operation of the highway, there can be no Federal reimbursement for funds expended by the State of Alaska for reacquisition.

Sincerely yours,

Barry F. Morehead

Barry F. Morehead
Division Administrator

FHWA BILL ANALYSIS

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

March 5, 1985

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Request for Opinion on SB 141
Our File: 366-380-85

Dear Mr. Call:

This letter is in response to your request for our analysis of SB 141 which has as its subject matter Public Land Orders 601, 757, 1613 and Department Order 2665.

Public Land Orders 601, 757, 1613 and Department Order 2665 are responsible for the creation of 80 percent of the public road rights-of-way in Alaska. Moreover, the legal validity of the rights-of-way and easements created by these land orders was upheld by the Alaska Supreme Court against numerous legal challenges raised by the Alaska Land Title Association in a case that went all the way up to the U.S. Supreme Court. See Alaska Land Title Association v. State of Alaska, 667 P.2d 714 (Alaska 1983), cert. denied, 104 S.Ct. 704 (1984).

The effect of SB 141 would be to require the state to vacate and relinquish to certain private landowners significant portions of public highway rights-of-way that were created by PLO 601, PLO 757, PLO 1613 and D.O. 2665. Specifically, those portions of the rights-of-way not physically occupied on the effective date of the bill would have to be relinquished by the state.

There are at least two major legal concerns raised by this bill. The first involves article IX, section 6, of the Alaska Constitution. This provision reads as follows:

> Section 6. PUBLIC PURPOSE. No tax shall be levied, or appropriation of public money made, or

ATTORNEY GENERAL'S OPINION

public property transferred, nor shall the public credit be used, except for a public purpose.

The easement rights created by PLO 601, PLO 757, PLO 1613, and D.O. 2665 are held in common by the general public. These rights, therefore, are a form of public property. The clear effect of Senate Bill 141 is to transfer this public property to certain private individuals. This is so because the bill, while relinquishing public road easements held in common by the general public, bestows the right to the fair market value of these easements upon those private landowners whose property was previously subject to them. See sections 2 and 3 of SB 141. The bill, in effect, transfers public property to private individuals who would not pay anything to the state for the value of the rights transferred to them. Such a transfer, on its face, would appear to violate the public purpose provision of the state Constitution. This is underscored by the fact that the public, if it requires the vacated road easement area for future road improvement, must purchase it back from private ownership. Only these private individuals would benefit from this arrangement and the repurchase costs would probably be significant. Thus, it is difficult to understand how this bill would not violate the public purpose requirement of article IX, section 6, of the Alaska Constitution that must be met whenever public property is transferred. 1/

A second legal difficulty concerns article 1, section 1, of the Alaska Constitution. This provision provides that all persons are entitled to equal rights under the law and, conversely, prohibits unfair distinctions between classes of persons.

1/ Because this bill would eliminate significant portions of public road easements, it would most likely have a negative effect on public access to various areas of the state. As a result, SB 141 appears to be inconsistent with article VIII, sections 1 and 2 of the Alaska Constitution. Article VIII, Section 1 states that it is the policy of the state "to encourage the settlement of its lands and development of its resources by making them available for maximum use consistent with the public interest." Article VIII, section 2 requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."

See Ale v. State, 484 P.2d 677 (Alaska 1971); Leege v. Martin, 379 P.2d 447 (Alaska 1963) .

The effect of this bill is to divest the general public of its right to utilize significant portions of the public road easements created by public land orders. Since the effect of this divestment would be to eliminate the public's right to claim these public road easements, only those private individuals owning land fronting on the public roads created by these land orders would benefit from this divestment. That is to say, after the effective date of this bill, the public, acting through the state, would have to purchase from this class of individuals the right to use the same public road easements that were previously owned by the public.

In sum, as matters stand now, the public road rights granted by these land orders are owned by all members of the public in common. Should this bill become law, it would mean that the cash value of these rights, rights which were formerly held by all, would be granted to a class of property owners, i.e., those individual property owners fortunate enough to own land fronting on the very roadways created by these public land orders. Thus the practical effect of this bill is to take away potentially valuable property rights owned by the general public as a whole and bestow the right to the fair market value of these rights upon a class of private individuals. Since article I, section 1 of the Alaska Constitution adopts the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," the granting of special privileges by this bill to a particular class at the expense of the public may very well violate this provision.

At present, only one class of persons exists relative to the public road easements created by these public land orders. This class is made up of members of the general public who own these public road easements in common. Should this bill become law, these easement rights would, in effect, be taken from the general public. 2/ The right to the cash value of these public road easement rights would then be bestowed, not on the general

---

2/ This "taking" from each member of the public by itself may violate article XIII, section 16 of the Alaska Constitution which provides that "no person shall be involuntarily divested of . . . his interests in lands . . ." unless the divestment is for a public purpose and he is paid just compensation.

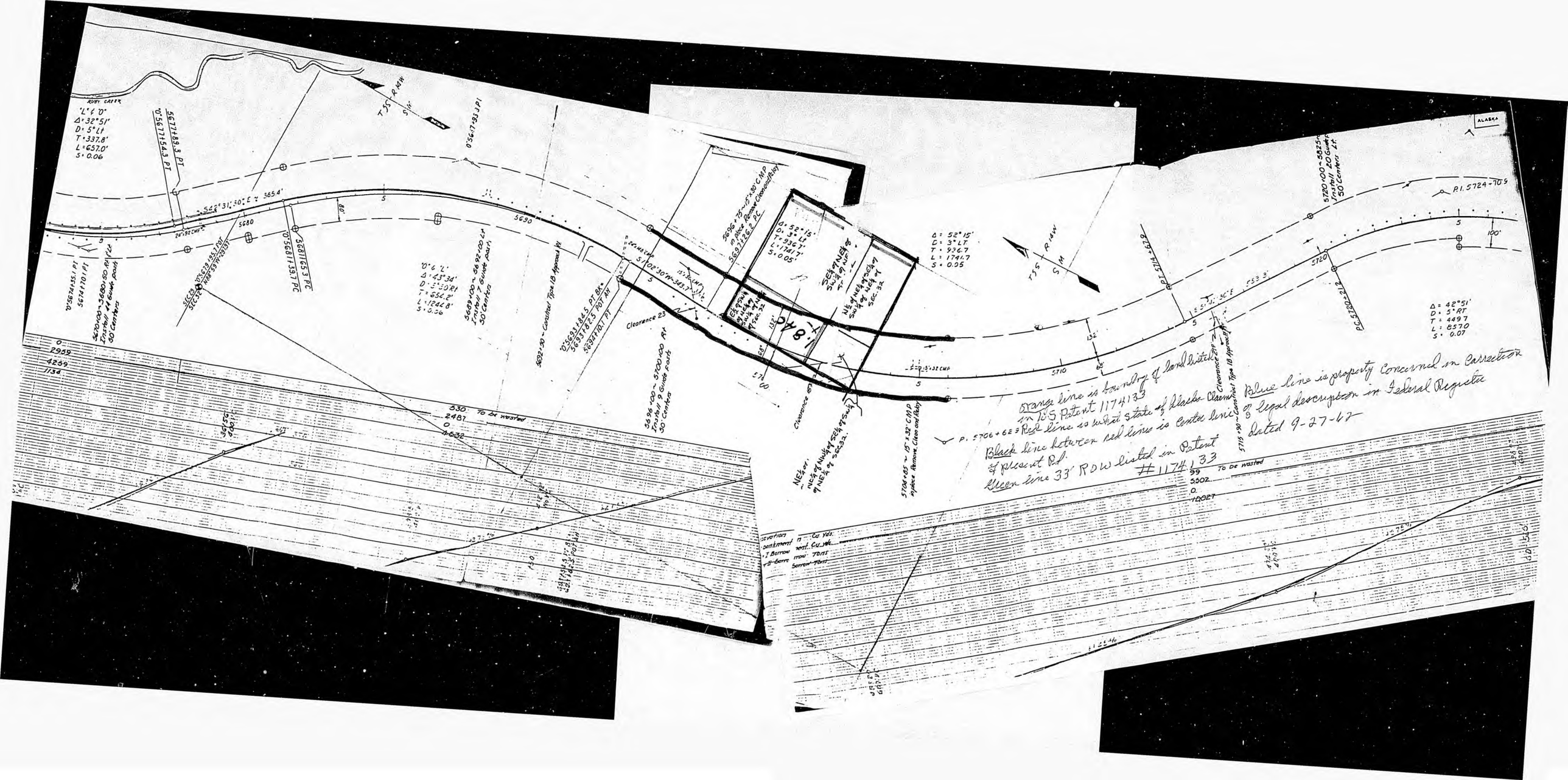
public as a whole, but on a special class of property owners. This bill, in effect, would create two classes of persons: the class of all those members of the general public who do not own real property fronting on the roadways created by the public land orders and the class of those property owners who do own property fronting on the roadways created by these public land orders. This latter class would then be given the right to the fair market value of the easements previously owned by the entire public. It is likely that such discriminatory treatment is barred by article I, section 1, of the Alaska Constitution.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jack McGee
Jack B. McGee
Assistant Attorney General

JBM:ebc:prm


Orange line is boundary of Land District
in US Patent 1174133
Red line is United State of Alaska Clearance Line
Blue line is property concerned in correction
Black line between red line is Center line of present Rd.
Green line 33' ROW listed in Patent #1174133
Legal description in Federal Register Dated 9-27-67
ALASKA
T.55 R.44W
T.55 R.43W
S.M.
RIVER CREEK
Δ = 52°15'
D = 3° LT
T = 936.7
L = 1744.7
S = 0.95
Δ = 42°51'
D = 5° RT
T = 449.7
L = 837.0
S = 0.07
P.I. 5724+70.9
P.I. 5706+62.3
P.I. 5715+80
P.I. 5704+05
P.I. 5692+50
P.I. 5720+21.2
P.T. 5717+64.78
5720.00 ~ 5825.00 Install 40 Guide Posts 50 Centers Ft
5692.00 ~ 5700.00 Install 9 Guide Posts 50 Centers
5698.00 ~ 5700.00 Install 9 Guide Posts 50 Centers
5670.00 ~ 5680.00 Install 11 Guide Posts 50 Centers
5704+05 ~ 5° x 32' CMP replace Remove Clean and Relay
5696+75 ~ 5°x30' CMP replace Remove Clean and Relay
Clearance 23
Clearance 69
Clearance 57
Clearance 132
Clearance 135
Clearance 60
Clearance 100
Clearance 80
Clearance 65
Clearance 18
Clearance 15
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Clearance

IN THE SENATE BY COGHILL

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of transportation and public facilities shall vacate and relinquish to the adjoining property owners any and all rights-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant

structure.

* Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The vacated and relinquished right-of-way under sec. 2 of this Act may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

* Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not divest the state of its interest in a right-of-way to land or require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act divest the state of an interest in an easement of specific width set out in the original patent from the state or federal government.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

* Sec. 5. APPLICATION TO FEDERAL LAND. The provisions of this Act do not divest the state of its interest in a right-of-way that affects land in which fee title is, on the effective date of this Act, vested in the United States of America.

* Sec. 6. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

TAKING OF RIGHTS-OF-WAY WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff, the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1[illegible] the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner had filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand bought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.

U.S. Department of Transportation
Federal Highway Administration

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

March 8, 1985

HDA-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

The enclosed is a paper Gary Wilson did for me explaining the differences in 1947 Act easements and Public Land Order (PLO) easements. Since the 1947 Act easements in essence no longer exist I think it would be helpful to all of us if discussions, including examples, only referred to PLO easements.

Our office would certainly be willing to work with you in resolving this issue. The resolution would seem to tie in with your plan to develop an immediate, intermediate, and long term program of proposed improvement projects. Once this is done you could determine which of the proposed improvements involve PLO easements. We could then agree to the number of lanes needed, and a typical section, including shoulders and ditches; plus any additional areas needed to maintain your roadway. Lands beyond what we agree are needed could then be unencumbered by PLO easements.

The mechanics of how this could be recorded needs to be explored. For instance, could the right-of-way lines be established from areial photography and mathematical calculations? Would something like this be recordable? If so, this could be done rather quickly. However, if a physical survey is needed I can see this resolution would be quite costly and time consuming.

If at some later date it was determined lands outside our agreed to right-of-way limits were needed for a roadway improvement, we would participate in the acquisition even though it may be lands previously included in Public Land Orders.

Sincerely yours,

Barry F. Morehead

Barry F. Morehead
Division Administrator

COPY

Enclosure

FHWA PLO ANALYSIS

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: Senate Bill 141

Date: March 7, 1985

From: Division Right-of-Way Officer
Juneau, Alaska

Reply to Attn. of: HRW-AK
013

To: Mr. Barry F. Morehead
Division Administrator
Federal Highway Admininstration
Alaska Division
Juneau, Alaska

The testimony and material presented at the Senate Committee hearing on March 6, 1985 confused Public Land Order (PLO) right-of-way with "47 Act" right-of-way. The pertinent differences that were not explained are:

"47 Act":

1. Was established by an Act of Congress effective 7/24/47 and codified into 48 USC, Section 321.d. It reserved from subsequent lands patented, a right-of-way. The right-of-way was available to the United States or any state created out of the Territory of Alaska.

2. It was repealed by Public Law 86-70, the Alaska Omnibus Act, effective July 1, 1959, however, the reservation contained in patents issued between 1947 and 1959 remained valid.

3. It was specifically noted in patents issued between 1947 and 1959.

4. Specific areas or locations were not identified in the patents.

5. The State of Alaska relinquished their right to any unutilized reservations by the Alaska Right-of-Way Act of 1966.

6. The Federal Government relinquished their right to any unutilized reservations by Section 138 of the Federal-aid Highway Act of 1970.

PLO: 1. Established a withdrawal from Public domain which was subsequently changed to an easement and established and/ or revised corridor widths by:

Executive Order 9145 dated 4/23/42.
PLO 12 dated 7/20/42
PLO 84 dated 1/28/43
PLO 270 dated 4/5/45
PLO 386 dated 7/31/47
PLO 601 dated 8/10/49
PLO 757 dated 10/16/51
Secretarial Order 2665 dated 10/16/51
Amendment #1 to 2665 dated 7/17/52
Amendment #2 to 2665 dated 9/15/56
PLO 1613 dated 4/7/58

The above were issued by the Executive Branch rather than the Congress.

2. They established the original corridor for the Alaska and Glenn Highways. They withdrew from Public Domain a specific width corridor along existing highways. They changed the withdrawals to easements.

3. The withdrawals or easements were not identified in patents issued by the Federal Government nor were they recorded.

4. The withdrawals or easements were not affected by the Alaska Right-of-Way Act of 1966 or Section 138 of the Federal-Aid Highway Act of 1970. The hearings and introductory remarks pertaining to these pieces of legislation always referred to 48 USC, Section 321d or the "47 Act" with no mention of Public Lands Orders.

In summary, the "47 Act" reserved an area from the land patented but did not identify where it was. The PLO's created an easement over the land and located it by designating the highway name and corridor width.

The question of payments and reimbursement was raised but not sufficiently answered.

Prior to 1966:

the State of Alaska did not pay for land utilized under provisions of the "47 Act" or within the PLO corridors. Since there was no expense, there was no federal-aid reimbursement.

From 1966 to 1970:

the State of Alaska paid fair market value for right-of-way covered by the "47 Act" but there was no federal-aid reimbursement for these expenses (see attached listing of parcels and amounts expended prior to 5/1/67).

The State of Alaska did not pay for land within the PLO corridors.

From 1970 to the present

the State of Alaska has paid fair market value for right-of-way covered by "47 Act" and federal-aid funds have participated in the expense.

The State of Alaska has not paid for land within the PLO corridors.

Gary E. Wilson

Attachment

1/64)

MEMORANDUM State of Alaska

TO: William J. Niemi
Interim Regional Administrator
Federal Highway Administration
Juneau

DATE: May 1, 1967

FILE NO: 23-2900

ATTN: Calvin Ringgenberg
Regional R/W Officer

SUBJECT: Small Tracts and Right of Way Act

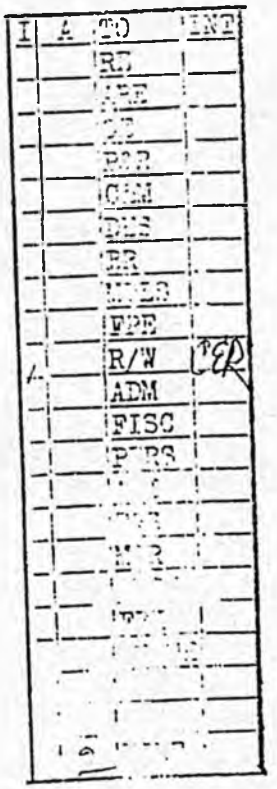
FROM: Dick Chitty
Chief Right of Way Agent
Department of Highways
Juneau

~~[illegible]~~
061 - cross reference
to 062

We have enclosed a copy of our listing of parcels for which land payments have been made in accordance with the State Supreme Court Opinion No. 322 for Small Tracts as well as the Right of Way Act as passed by the 1966 Legislature. The listing as submitted is subject to change as it has been necessary to obtain additional title information on some projects and parcels.

Additional listings will be furnished on a monthly basis as requested in your memorandum of April 7, 1967.

Attachments: As stated



PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0461(1)	10	X		$ 2,300.00	
Ninilchik	16	X		625.00	
	4	X		65.00	
S-0490(2)	30		X	176.40	
North Kenai Road	12		X	205.83	
	15		X	206.25	
	17		X	165.00	
	20		X	206.25	
	32		X	139.65	$1,800.00
	24		X	173.25	
	72L	X		2,226.00	1,000.00
	11		X	165.53	
	18		X	247.50	
	23		X	123.25	
	34		X	147.50	66.53
	4	X		772.87	
	9		X	209.10	
	10		X	208.00	
	13		X	165.00	
	14		X	206.25	
	16		X	247.50	
	19		X	206.25	
	21		X	173.25	
	22		X	173.25	
	25		X	173.25	
	26		X	151.80	
	27		X	151.80	
	28		X	173.25	
	29		X	174.30	
	31		X	139.65	
	33		X	200.40	
	70	X		1,898.20	
	70C	X		825.00	
	70D	X		127.60	
	72	X		7,384.50	
	62		X	2,225.00	
	63	X		3,000.00	
	63A	X		132.00	
	63B	X		75.00	
	66	X		2,350.00	
	69	X		3,038.00	229.00
	70A	X		1,125.00	
	70B	X		800.00	
	72B	X		70.00	
	72E	X		240.00	
	72H	X		459.00	177.00
	72J	X		740.00	230.00

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0490(2)	72M	X		$1,042.50	$ 500.00
	72G	X		330.00	
	72N	X		341.00	
	72K	X		330.00	
	72A	X		975.00	135.00
	65	X		1,682.00	
	72F	X		354.00	
	72D	X		1,050.00	
	59	X		650.00	
	67	X		150.00	
S-0501(1)	30		X	1,250.00	
Girdwood -	7		X	137.84	
Alyeska	15		X	193.42	
	17		X	195.05	
	26		X	368.47	
	14		X	194.23	
	21		X	255.80	
	6		X	289.70	
	16		X	195.86	
	23		X	239.89	
	24		X	276.85	
S-0512(2)	1109		X	629.75	
O'Malley Road	1067		X	755.70	
	1110		X	2,516.33	
	1111		X	755.70	
	1114		X	629.75	
	1402		X	629.75	
	1120		X	7,000.00	
S-0547(6)	16		X	1,222.84	4,980.96
Lake Otis Road	17		X	1,023.56	
(Tudor to	10		X	586.73	
Dowling)	22		X	6,263.75	
	4	X		34.50	
	9		X	925.65	
	11		X	806.70	
	12		X	648.00	
	14		X	970.00	
	15		X	562.50	
	19		X	1,056.00	
S-0520(8)	5A	X		475.00	
Dimond Blvd	5B	X		790.00	
(Jewel Lake West)	20	X		1,700.00	
	5	X		1,500.00	
	5C	X		545.00	
	5D	X		1,625.00	
	8	X		1,100.00	
	10		X	1,450.00	
	4	X		875.00	
	7		X	650.00	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0549(1) Abbot Road (4 Miles South of Anchorage)	12		X	$ 276.00	
	13		X	296.22	
	14		X	296.22	
	15		X	265.88	
	16		X	265.88	
	17		X	296.22	
	18		X	296.22	
	19		X	463.59	
S-0959(1) North Douglas Highway	12		X	33.43	
	15		X	40.80	
	16A		X	41.15	
	17A		X	29.48	
	20A		X	570.06	
	21		X	223.52	
	22		X	186.00	
	23		X	165.76	
	28		X	56.65	
	29		X	54.79	
S-0970(2) Fritz Cove Road (Juneau)	6		X	116.76	
	7		X	275.04	
	9		X	1,342.00	
	10		X	2,044.50	
	15		X	16.63	
	17		X	32.55	
	18		X	26.39	
	22		X	1,252.80	
	23		X	1,037.70	
	24		X	494.96	
	24A		X	186.90	
	28		X	1,276.92	
F-021-1(3) Visibility to Soldotna	096	X		1,623.65	
F-021-1(14) Homer Streets & Homer Spit	6		X	1,323.00	
	7		X	652.40	
	8		X	652.40	
	9		X	1,401.00	
	22		X	320.00	
	23		X	3,431.00	
	25		X	5,813.00	
	27		X	3,440.98	
	28		X	1,197.70	
	20		X	2,070.00	
	21		X	241.00	
	20A		X	35.00	
	17		X	2,314.00	
	18A		X	384.00	
	26 & 27A		X	1,128.57	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
F-062-4(11)	29	X			
Shaw Creek 6	31	X		$966.85	
	28			765.50	
Eielson AFB (Fairbanks)	30		X	903.87	
	32		X	440.00	
	33		X	529.65	
			X	701.80	
F-095-8(5)	13	X			
Tureen Outer Drive				5,252.00	

1947 act land $54,681.17

Small Tracts $ 85,402.16

54,681.17

Total to May 1, 1967 $140,083.33

PERCENTAGE OF AREA SUBJECT TO PLO TAKINGS WITHOUT COMPENSATION.

Due to the existing Alaska Supreme Court cases indicating that land homesteaded after August 10, 1949 may have the easements taken without compensation, the following are best guess estimates of land in the following areas that would be subject to taking without compensation:

Anchorage - 60%-75%

Kenai - 90%

Fairbanks - 5%-10%

Juneau - 5%-10%

As you can see in the Anchorage and Kenai areas, this means that the majority of the land bordering these roads may be taken without any compensation whatsoever.

% EFFECTED LAND

OWNERS V. MORTGAGEE'S TITLE INSURANCE POLICY

A point was made at the Hearing 3-6-85 for Senate Bill 141 that banks required insurance policies on most of the urban transactions. However, there is a basic distinction between an owner's policy and a bank's policy known as a mortgagee's policy. The owner's policy insures title to be in the name of the fee owner of the property, e.g. John Smith. The mortgagee's policy does not insure title is held in any particular person, but only insures that the mortgage to the bank has a certain priority as to other recorded instruments. Many times an owner pays for a mortgagee's policy, but does not pay for an owner's policy whereby he is not insured and in fact if loss occurs to the lending institute, the title insurance company may sue the owner under the doctrine of subrogation to recover any losses. Often times, a mortgagee's policy is the only one acquired and that owner's go uninsured as to their property. This is especially true in more rural areas.

TITLE INSURANCE

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 19, 1984

RECEIVED
MAR 7 1985
GROH, EGGERS & PRICE

The Honorable Frank Murkowski
United States Senate
317 Hart Building
Washington, DC 20510

Dear Frank:

I have been informed that representatives of the Alaska Land Title Association (ALTA) may ask you to consider introducing legislation concerning highway easements created by public land orders and department orders issued by the Department of Interior from 1943 through 1958. I am writing to let you know of our strong opposition to such legislation, for the reasons detailed below.

The central issue is whether existing State and federal statutes limit the State's right to utilize public road easements granted by particular public land orders and department orders. The Alaska Supreme Court has clearly disagreed with ALTA's view that existing laws (the Alaska Right-of-Way Act of 1966 and AS 34.15.290) prohibit the State from utilizing the powers granted in Public Land Order 601 and Department Order 2665 to expand or widen public roads. In January 1984, the U.S. Supreme Court denied ALTA's request to review the Alaska Supreme Court decision.

With statehood, the road powers originally granted by a series of Department of Interior public land orders and department orders were transferred to the State. In 1966, the Alaska Legislature limited those powers. The Alaska Legislature has recently considered legislation further limiting those powers but has not acted on it to date. We believe that federal legislation in this area would be an unwarranted intrusion into matters best addressed, if necessary, at the State level.

The Alaska Department of Transportation and Public Facilities estimates that the total monetary impact to the State's road program could ultimately reach several hundred million dollars if the ALTA proposal were enacted.

GOVERNOR'S LETTER

Property owners purchase title insurance precisely to protect themselves from the problems presented by the present situation. To enact legislation absolving the title industry of its responsibilities for this issue would simply shift the costs that the private entity has agreed to bear by contract on to the public.

The Alaska Supreme Court's decision in this matter also determined that the publication of the Department of the Interior orders in the Federal Register provided proper notice and that the title industry should have been cognizant of the effect of the orders. It should be noted that title companies now exempt these rights-of-way from their insurance policies. Consequently, they have already taken steps to limit their contractual liability.

I appreciate your consideration of our views. Please let me know if you have any questions or comments.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

cc: The Honorable Ted Stevens
United States Senator

The Honorable Don Young
United States Representative

The Honorable Norman Gorsuch
Attorney General

The Honorable Richard Knapp
Commissioner
Department of Transportation
and Public Facilities

Mr. John W. Katz
Director, Washington D.C. Office

FEDERAL ACT OF 1947

[CHAPTER 313]

AN ACT

July 24, 1947
[H. R. 1554]
[Public Law 229]

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

48 U. S. C. §§ 321a-327.

Reservation of right-of-way for roads, etc.

"SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

Payment for value of crops, etc.

Approved July 24, 1947.

FEDERAL AID HIGHWAY ACT - 1970

ALASKAN ASSISTANCE

Sec. 138. (a) Subsection (b) of section 7 of the Federal Aid Highway Act of 1966 is amended to read as follows:

"(b) There is hereby authorized to be appropriated for construction of Federal-aid highways of the State of Alaska, out of the Highway Trust Fund and in addition to funds otherwise made available to the State of Alaska under title 23, United States Code, $20,-

43. 23 U.S.C.A. § 307(b). 44. 23 U.S.C.A. § 606.

000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973."

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321 (d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

FEDERAL ACTS OF 1947 & 1970

HIGHWAY RIGHT-OF-WAY

I. Alaska Highway

II. Through Roads

a. Richardson Highway

b. Glenn Highway

c. Haines Highway

d. Seward-Anchorage Highway (exclusive of that part thereof within boundaries of the Chugach National Forest)

e. Anchorage-Lake Spenard Highway

f. Fairbanks-College Highway

III. Feeder Roads

a. Abbert Road

b. Taylor Highway

c. Palmer-Matanuska-Wasilla-Knik Road

d. Glenn Highway Junction-Fishook Junction-Wasilla-Knik Road

e. Slana-Nebsana Road

f. University-Ester Road

g. Kenai Junction-Kenai Road

h. Manley Hot Springs-Eureka Road

i. Paxon-McKinley Park Road

j. Iditarod-Flat Road

k. North Park Boundary-Kantishna Road

l. Nome-Council Road

m. Seward Peninsula-Tram Road

n. Northway Junction-Airport Road

o. Palmer-Finger Lake-Wasilla Road

p. Central-Circle Hot Springs-Portage Creek Road

q. Sterling Landing-Ophir Road

r. Dillingham-Wood River Road

s. Nome-Bessie Road

IV. Local Roads (unidentified by name; 50 feet either side of center line right-of-way)

LIST OF
THROUGH & FEEDER ROADS

197 376

110005

Anchorage 073311

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), the claim of Vernon Lenne Lofstedt has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Seward Meridian, Alaska.

T. 12 N., R. 3 W.,

Sec. 33, Lot 191.

The area described contains 2.50 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management: Dependent Resurvey officially filed April 14, 1952.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305). Excepting and reserving, also, to the United States, all oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land.

Reserving unto the United States, its permittees or licensees, the right to enter upon, occupy and use, any part or all of said lands for the purposes provided in the Act of June 30, 1920, (41 Stat. 1065) and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1935 (49 Stat. 846).

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FOURTH day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-FIVE and of the Independence of the United States the one hundred and EIGHTIETH.

For the Director, Bureau of Land Management.

By Rose M. Beall
Acting Chief, Patents Section

ANCHORAGE PRECINCT, ANCHORAGE, ALASKA

1/2 5 22 JAN 1 4 1956

FILED FOR RECORD DISTRICT REC.

Mr. Lofstedt

Patent Number 1151792

1955 PATENT WITH 33' RIGHT-OF-WAY
AND R.O.W. FROM 1947 FEDERAL ACT

SO a 326

BUREAU OF LAND MANAGEMENT

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of May 20, 1862, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Grant Henry Forsythe has been established and that the requirements of law pertaining to the claim have been met, for the following-described land

Seward Meridian, Alaska.
T. 12 N., R. 3 W.,
Sec. 14, W½NW¼,
Sec. 23, W½NE¼.

The area described contains 160 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to all vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945); and (3) the reservation of a right-of-way for roads, roadways, highways, transmission lines, or dams, or appurtenant structures constructed or to be constructed by or under authority of the United States or by any State organized out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305); excepting and reserving also, to the United States, pursuant to section 2 of the act of August 1, 1946 (60 Stat., 760, 42 U. S. C. sec. 1905), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

← (3). 1947 R.O.W.

3/2 2.75

Filed for record at Anchorage, Alaska, this 15 day of OCT 1952 A.D. 3:30 P M
By Grant Forsythe Mail to: Box 1453.
At Anch. and mail to Lo
District Recorder

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of July 16, 1948 (62 Stat., 476, 43 U. S. C. sec. 1201), in the name of the United States, causes these letters to be made Patent, and the seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FIFTEENTH day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-TWO and of the Independence of the United States the one hundred and SEVENTY-SEVENTH.

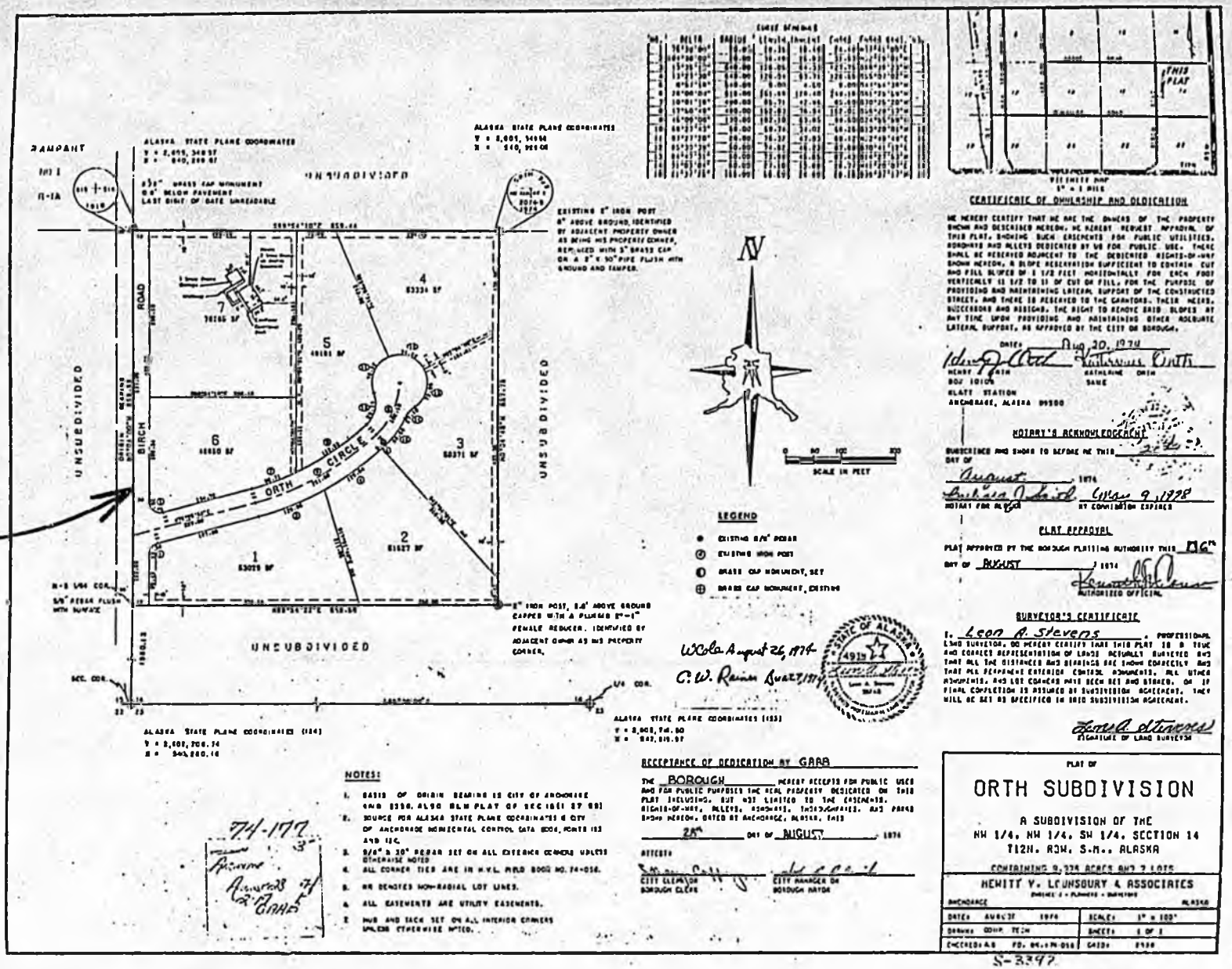
For the Director, Bureau of Land Management.

By Melvin R. Jeffery
Acting Chief, Patents Section

RECORD OF PATENTS. Patent Number 1136555

1952 BIRCH ROAD PATENT

CHRIS WYATT HOME - LOT 6



CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON, WE HEREBY REQUEST APPROVAL OF THIS PLAT, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, ROADWAYS AND ALLEYS DEDICATED BY US FOR PUBLIC USE. THERE SHALL BE RESERVED ADJACENT TO THE DESIGNATED RIGHTS-OF-WAY SHOWN HEREON, A SLOPE RESERVATION SUFFICIENT TO CONTAIN CUT AND FILL SLOPES OF 1 1/2 FEET HORIZONTALLY FOR EACH FOOT VERTICALLY OR LESS TO 33 OF CUT OR FILL, FOR THE PURPOSE OF PROVIDING AND MAINTAINING LATERAL SUPPORT OF THE CONSTRUCTED STREET, AND THERE IS RESERVED TO THE GRANTORS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, THE RIGHT TO REMOVE SAID SLOPES AT ANY TIME UPON PROVIDING AND MAINTAINING OTHER ADEQUATE LATERAL SUPPORT, AS APPROVED BY THE CITY OR BOROUGH.

DATED: Aug 30, 1974

Henry Orth — Katherine Orth
HENRY ORTH — KATHERINE ORTH
BOX 10104 — WIFE
ESSO STATION
ANCHORAGE, ALASKA 99510

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME THIS 30th DAY OF August, 1974

Barbara J. Laird — My Comm Exp 9, 1978
NOTARY FOR ALASKA — MY COMMISSION EXPIRES

PLAT APPROVAL

PLAT APPROVED BY THE BOROUGH PLATTING AUTHORITY THIS 26th DAY OF AUGUST, 1974

Kenneth Stevens
AUTHORIZED OFFICIAL

SURVEYOR'S CERTIFICATE

I, Leon A. Stevens, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF LANDS ACTUALLY SURVEYED BY ME THAT ALL THE DISTANCES AND BEARINGS ARE SHOWN CORRECTLY AND THAT ALL PERMANENT EXTERIOR CONTROL MONUMENTS, ALL OTHER MONUMENTS, AND LOT CORNERS HAVE BEEN SET AND STAKED, OR IF FINAL COMPLETION IS ASSURED BY SUBDIVISION AGREEMENT, THEY WILL BE SET AS SPECIFIED IN SAID SUBDIVISION AGREEMENT.

Leon A. Stevens
SIGNATURE OF LAND SURVEYOR

Wola August 26, 1974
C.W. Rainwater 8/27/74

STATE OF ALASKA — 4939 — LEON A. STEVENS — 5949

NOTES:

1. BASIS OF ORIGIN BEARING IS CITY OF ANCHORAGE NAD 1930, ALSO BLM PLAT OF SEC 1651 ET SEQ
2. SOURCE FOR ALASKA STATE PLANE COORDINATES IS CITY OF ANCHORAGE MONUMENTAL CONTROL DATA BOOK, POINTS 113 AND 114.
3. 5/8" x 30" REBAR SET ON ALL EXTERIOR CORNERS UNLESS OTHERWISE NOTED
4. ALL CORNER TIES ARE IN H.V.L. FIELD BOOK NO. 74-056.
5. NR DENOTES NON-RADIAL LOT LINES.
6. ALL EASEMENTS ARE UTILITY EASEMENTS.
7. MAG AND TACK SET ON ALL INTERIOR CORNERS UNLESS OTHERWISE NOTED.

74-177
Assessor's Plat

ACCEPTANCE OF DEDICATION BY GAAB

THE BOROUGH HEREBY ACCEPTS FOR PUBLIC USES AND FOR PUBLIC PURPOSES THE REAL PROPERTY DEDICATED ON THIS PLAT INCLUDING, BUT NOT LIMITED TO THE EASEMENTS, RIGHTS-OF-WAY, ALLEYS, ROADWAYS, INGRESS/EGRESS, AND PARKS SHOWN HEREON, DATED AT ANCHORAGE, ALASKA, THIS 28th DAY OF AUGUST, 1974

ATTEST:

CITY CLERK OR BOROUGH CLERK — CITY MANAGER OR BOROUGH MAYOR

PLAT OF

ORTH SUBDIVISION

A SUBDIVISION OF THE
NW 1/4, NW 1/4, SW 1/4, SECTION 14
T12N, R3W, S.M., ALASKA

CONTAINING 9.334 ACRES AND 7 LOTS

HEWITT V. LOUNSBURY & ASSOCIATES
ENGINEERS - PLANNERS - SURVEYORS
ANCHORAGE — ALASKA

DATE: AUGUST 1974		SCALE: 1" = 100'	
DRAWN: COMP. TECH		SHEET: 1 OF 1	
CHECKED: A.S.	FD. 84-4 PP 056	CASE: 5338	

S-3347

SB

141

File 2

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Chairman Coghill
Date: February 19, 1985
Re: SB 141, Relinquishment of rights-of-way

As the attached background information will show, SB 141 is intended to release the State's claim to certain portions of highway rights-of-way which were not clearly identified in land patents. This has given rise to the problem faced by many landowners who live or hold land adjacent to highways the State now wishes to upgrade, straighten or expand and who have been or could be abruptly and without compensation deprived of land they assumed was theirs, and which their legal documents have not identified as belonging to the government.

These rights-of-way were withdrawn by the federal government through public land orders or as a result of various Acts of Congress during territorial days, and did not necessarily make their way either to the homesteaders' patents or the district recorders' offices. This has subsequently caused heavy liabilities for the state's title insurance companies, who traditionally insure property based upon what has been recorded at the recorder's office, not upon what has been published in the Federal Register.

As this problem has evolved, the State Supreme Court has ruled that the State's claims to the rights-of-way are valid, and therefore, title insurers are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. Of course, this presumes that the property-owner has title insurance. In the many instances where the property-owner does not, he or she is simply out of luck, and has no recourse to gain compensation.

The background material will more completely go into the history of the problem, however, a brief explanation of the enormous fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they have figured the repurchase price at top market value, and of the entire width of right-of-way (in other words, the entire 300 or 500 feet, not just the portion they will actually need to expand a road).

Memo - short history

Introduced: 2/8/85
Referred: Transportation and Resources

IN THE SENATE BY COGHILL

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of transportation and public facilities shall vacate and relinquish to the adjoining property owners any and all rights-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant

structure.

* Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The vacated and relinquished right-of-way under sec. 2 of this Act may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

* Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not divest the state of its interest in a right-of-way to land or require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act divest the state of an interest in an easement of specific width set out in the original patent from the state or federal government.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

* Sec. 5. APPLICATION TO FEDERAL LAND. The provisions of this Act do not divest the state of its interest in a right-of-way that affects land in which fee title is, on the effective date of this Act, vested in the United States of America.

* Sec. 6. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 141

Title: An Act releasing claims of State land within certain rights of way

Sponsor: Coghill

Requestor:

Date of Request: February 15, 1985

FISCAL DETAIL

Agency Affected: Transportation & Public Facilit

Program Category Affected: Design and Construction

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		75	75	75	75	75
200 TRAVEL		15	15	15	15	15
300 CONTRACTUAL		1,750	1,750	1,750	1,750	1,750
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		225,500	225,500	225,500	225,500	225,500
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		227,340	227,340	227,340	227,340	227,340
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		227,340	227,340	227,340	227,340	227,340
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached Analysis

Prepared By: Milton H. Lentz

Phone: 465-2985

Division: Standards & Technical Services HQ

Date: February 14, 1985

Approved by Commissioner:

Date: 2/15/85

Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Fiscal Note

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill No. 141

TITLE: An Act releasing claims of the State to land within certain rights of way

APPROVED: R. J. Knapp
Commissioner

DATE: 2-15-85

The Department of Transportation and Public Facilities opposes Senate Bill 141. This bill would have a major negative impact on the State of Alaska. It could restrict our ability to serve the public effectively and create a heavy financial burden for the State. In addition, there is a concern that, if this bill is enacted into law, it will jeopardize present or future federal-aid participation in highway rights of way.

The validity of these easements has been reviewed by the U.S. Supreme Court and the passage of this bill would reverse any legal grounds already established through the judicial system.

DOT Position Paper

For further information call Susan Fleischhauer at 465-3900.

ANALYSIS OF FISCAL NOTE FOR SENATE BILL 141

This bill would relinquish highway easements created by the federal government under several laws and land orders. Most of the highway rights of way in the State would be affected. This bill would relinquish or vacate all those rights of way except those portions which are physically occupied on the effective date of the Act. Under this Act, the adjacent landowners would immediately become owners of the affected rights of way except those portions between slopes and ditches.

The enactment of this bill would put the Department in the position of having to purchase any rights of way needed for planned expansion, maintenance (brush cutting and snow storage), protection of utility permit areas, permitted encroachments, etc.

The cost of almost all future upgrading or widening of existing highways and the building of planned highways would be increased drastically because of the expense of acquiring additional right of way. This bill would also affect federal funding on federal-aid projects. It is the Federal Highway Administration's position that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from lands subject to the reservation contained in the 1947 Act.

This fiscal note is based on the following assumptions:

1. Primary highways normally control 300-foot rights of way in general but physically occupy 100 feet for the actual roadway.

2. Secondary highways normally control 200-foot rights of way but physically occupy 60 feet for the actual roadway.

3. The State would have to reacquire approximately one half the relinquished rights of way for planned expansion, maintenance, clear zones, utility permits, etc. This would have to be done as expeditiously as possible to satisfy maintenance agreement obligations with the federal government on federal-aid highways.

DOT Fiscal Note Summary

Introduced: 4/29/85
Referred: Transportation

IN THE SENATE BY COGHILL

SENATE JOINT RESOLUTION NO. 26

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the payment of just compensation to landowners for certain rights-of-way across land in Alaska.

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

WHEREAS the Federal Government created certain rights-of-way for highway purposes across land in the state under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613; and

WHEREAS the rights-of-way created by the Federal Government were not identified in the patents issued to Alaska homesteaders nor were the original homesteaders informed as to the location or true width of the rights-of-way claimed for highway purposes by the Federal Government across their land; and

WHEREAS the original homesteaders and their successors in interest have had no knowledge of the claim of the Federal Government to the rights-of-way along or across their properties and have often utilized and improved the portion of the right-of-way claimed by the Federal Government; and

WHEREAS the enforcement of the rights-of-way would be unfair to homesteaders who entered their property between August 1949 and Alaska statehood in 1959; and

WHEREAS the rights-of-way created by the Federal Government were not recorded in any territorial or state recording office for the purpose of public notice; and

WHEREAS the right to utilize the rights-of-way for highway purposes

was conveyed to the state in 1959; and

WHEREAS the United States Department of Transportation has declined to pay federal highway funds to the state to allow the state to pay just compensation to the landowners whose properties are affected by the rights-of-way; and

WHEREAS U.S. Senator Ted Stevens has attempted in the Federal Aid Highway Act of 1970, sec. 138, to require the United States Department of Transportation to compensate the State of Alaska for money paid as just compensation for the taking and utilization of the rights-of-way;

BE IT RESOLVED by the Alaska State Legislature that the Alaska delegation to U.S. Congress is urged to introduce and support legislation to require reimbursement by the United States Department of Transportation to the State of Alaska for money paid by the state as just compensation for the use of any right-of-way created, established, or claimed under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613.

COPIES of this resolution shall be sent to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

UNITED STATES

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON

IN REPLY PLEASE REFER TO

☞ 1751330 "F"

JAN 20 1939

The Director,

Division of Territories and Island Possessions.

My dear Dr. Gruening:

Referring to your memorandum under date of December 17, 1938, relative to proposed reservations for the construction of roads, bridges, and trails in the Territory of Alaska, I will be glad to confer with you or your representatives at any time you may so desire.

There is apparently no authority for the issuance of an Executive order for the purpose of imposing a road reservation upon any land in the Territory which may hereafter pass into private ownership, and I am not certain that it would be necessary or advisable to recommend the enactment of legislation for such purpose.

Section 2477, U. S. R. S., provides: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." No action on the part of the Government is deemed necessary to the operation of this statute. This grant becomes effective upon the construction or establishing of the highway in accordance with the State or Territorial laws. No reservation for rights-of-way so acquired is included in the patent when issued for the lands affected. (26 L. D. 446).

The acts of January 27, 1905 (33 Stat. 616), and May 14, 1906 (34 Stat. 192), incorporated in sections 321 to 337 inclusive, of Title 48 U. S. C., provides for the construction and maintenance of roads, trails, and bridges, by the board of road commissioners. A reservation for rights-of-way for roads constructed in pursuance of the provisions of these statutes, may be inserted in patents for the

Rec'd for files
Jan. 14-1939

JOHNSON 1939

lands affected, upon the filing of profile maps showing the location of the road in accordance with instructions of the Department of July 8, 1930.

Section 17 of the act of November 9, 1921 (42 Stat. 212), provides for the granting of public lands or reserved lands of the United States for Federal Aid Highways. Grants under this statute may be acquired by the filing of maps in accordance with the regulation thereunder and the approval of such maps by the Secretary of the Interior. A reservation for rights-of-way acquired under this statute is incorporated in the patent issued for the lands affected.

The width of the rights-of-way which may be acquired under the above-mentioned statutes is not specified. The width of rights-of-way established under section 2477 is governed by the laws of the States or Territories (22 L. D. 145). The width of rights-of-way for roads or highways established or constructed under the provisions of the acts of January 27, 1905, and May 14, 1906, or acquired under section 17 of the Federal Aid Highway Act of November 9, 1921, would seem to be a matter of discretion as to what is deemed reasonably necessary for the construction and proper maintenance of the particular road or highway and governed by the width as surveyed and shown on the profile maps, the maps being evidence of the right-of-way and the basis for insertion of the reservation in any subsequent patent for the lands affected.

With respect to the illustrations given in the correspondence accompanying your letter, it appears quite certain that neither an Executive order nor legislation could afford any relief. In other words, a right-of-way over an area which is embraced in an entry, legally initiated and maintained according to law, is either by agreement with the party having the entry or through condemnation proceedings.

The correspondence accompanying your letter indicates that you are familiar with the instructions issued by the Department on July 8, 1930, in regard to the inclusion of reservations for roads constructed by the Government in all cases where rights of persons seeking to acquire title to any of such lands were initiated subsequent to the construction of the road. In order to put into effect those regulations, this Office must be furnished with maps and field notes of all constructed roads as well as those hereafter completed, so prepared as to make it possible to have proper notes placed on the tract books and adequate reservations inserted in patents. As is

also indicated by your correspondence, this matter was called to the attention of the Secretary of War by the Department on September 3, 1930, but up to this time no maps or field notes pertaining to constructed roads or roads hereafter to be constructed have been received in this office.

We shall be glad to go into these matters more fully in the conference that you have proposed.

The enclosure accompanying your letter is returned herewith.

Very truly yours,

Commissioner.

Enclosure.

The President of the Senate,

United States Senate.

a/2.10,1940

Sir:

I enclose a draft of a bill "To amend an act entitled 'An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes', approved June 30, 1932".

The purpose of the proposed legislation is to protect the interests of the United States in constructing roads in the Territory of Alaska by providing a right-of-way on lands, now public domain, to which patents may in the future be issued.

The Alaska Road Commission, operating under the Department of the Interior by virtue of the Act approved June 30, 1932 (47 Stat. 446), and financed by Federal appropriations, is engaged in the construction and maintenance of roads, roadways, highways, tramways, trails, bridges, and other similar works in that portion of Alaska outside the national forests. The greater part of the area on which the operations of the Alaska Road Commission are conducted is public domain, and the location of rights-of-way on such lands presents no problem growing out of private ownership. For the proper location of the road and in the interest of public service it is necessary in some cases, however, to cross lands to which title has passed from the United States. These instances are becoming more numerous as the population of the Territory increases. Obtaining rights-of-way across privately owned lands has in a number of cases presented difficulties calling for court action and requiring the expenditure of Federal funds.

It is proposed, therefore, that in all patents for lands hereafter taken up in the Territory there shall be inserted a provision reserving to the Government a right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant works or structures constructed or to be constructed by the authority of the United States. A provision accomplishing this may, it is thought, be inserted as an amendment to Section 2 of the Act approved June 30, 1932, supra., and the draft of the bill which I transmit has been written

ICKES 1940

accordingly. The proposed amendment is similar to the provision of the Act of August 30, 1890 (26 Stat. 391), which reserved rights-of-way for canals on lands west of the one hundredth meridian and is also similar to the provisions of the Act of March 12, 1914 (38 Stat. 305), in which rights-of-way for railroads were reserved to the United States in all patents for lands thereafter taken up in the Territory of Alaska.

The Director of the Bureau of the Budget has informed me that there is no objection to the presentation of the proposed legislation to the Congress.

Very truly yours,

(Sgd.) Harold L. Ickes

Secretary of the Interior.

PWG:abc.

Enclosure 1446881.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
DIVISION OF TERRITORIES AND ISLAND POSSESSIONS
WASHINGTON

February 4, 1943.

MEMORANDUM for Mr. Thoron:

The following is an outline of the background in this matter:

The purpose of the proposed legislation is to protect the interests of the United States in constructing roads in the Territory of Alaska by reserving a right-of-way on lands, now public domain, to which patents may in the future be issued.

The Alaska Road Commission, operating under the Department of the Interior by virtue of the Act approved June 30, 1932 (47 Stat. 446), and financed by Federal appropriations, is engaged in the construction and maintenance of roads, roadways, highways, tramways, trails, bridges, and other similar works in that portion of Alaska outside the national forests. The greater part of the area on which the operations of the Alaska Road Commission are conducted is public domain, and the location of rights-of-way on such lands presents no problem growing out of private ownership. For the proper location of the road, and in the interest of public service, it is necessary in some cases, however, to cross lands to which title has passed from the United States. These instances are becoming more numerous as the population of the Territory increases. Obtaining rights-of-way across privately-owned lands has in a number of cases presented difficulties, calling for court action and requiring the expenditure of Federal funds.

A case of this kind occurred two or three years ago in connection with the construction of a bridge across a stream adjoining a certain privately-owned mining claim. The owner of the land claimed that his property was very valuable because of a placer gold mine, and asked an exorbitant price for the right-of-way necessary in connection with the construction of the bridge. This resulted in considerable delay and expense. As a consequence of this and other like instances, the Alaska Road Commission, the Governor of Alaska, and Mr. Parks, the Cadastral Engineer of the Land Office, became convinced that legislation to reserve rights-of-way in future patents of land taken from the public domain, is desirable.

In response to a request from the Road Commission, the proposed legislation was drafted in this Division and submitted to the Department for consideration. It was discussed at a meeting of the Department Legislative Committee, which did not approve favorable action on the bill, presumably because of questions raised in the meeting as to whether legislation of this kind would not have a tendency to retard settlement in Alaska. Suggestion was also made that the bill should provide for payment of damages to crops and improvements on rights-of-way when

HAMPTON 1943

utilized by the United States. Such a provision is included in the most recent draft of the bill. As stated in Mr. Page's memorandum of September 18, apparently it was the opinion of the Legislative Committee that the bill was not of sufficient importance to justify its submission to Congress at that time, as such action might have resulted in deferring more urgent Alaska legislation which the Department proposed to submit.

In view of the foregoing, the bill was not submitted to the last session of Congress, and apparently it is again up for consideration in connection with the legislative program of the Department for the present session.

Ruth Hampton,
Assistant Director.

Noted
B.M.W.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

SEP 21 1949
Alaska Road Commission
Juneau, Alaska

September 19, 1949

Colonel John Noyes
Commissioner of Roads
Alaska Road Commission
Juneau, Alaska

Col. N
AFG OFC
GMT
WHD

Dear Colonel Noyes:

Reference is made to the letter from Mr. Ike P. Taylor, Chief Engineer, Alaska Road Commission, dated July 28, 1948, in which he states in reference to our memorandum of July 25, that:

> "One print each of the plans of all the new roads we have located in the past few years have been forwarded to your Office. Please advise if it is now necessary for the Alaska Road Commission to submit three additional prints of these maps to the District Land Offices concerned with the written application, as outlined in your memorandum.
>
> "For your information, the plan maps of our road locations are on a scale of 400 feet to the inch and one print to cover a road location such as that, for instance, from the Forest Boundary to Homer on the Kenai Peninsula, 129 miles, would require approximately 320 square feet of blueprinting. The three sets required in your memorandum would total approximately 1,000 square feet."

24/226

An examination has been made of the more recent maps of highways filed by the Alaska Road Commission, namely, those of the Fairbanks-Chena Hot Springs, Paxson-McKinley Park, and the Forty Mile roads. These maps are excellent for general information, but they do not show the width or the lateral limits of the right-of-way with relation to the legal subdivisions of the public lands where surveyed. The maps are therefore incomplete for the purpose of notation of the tract book records under departmental instructions of January 13, 1916 (44 L.D. 513), as contemplated by our memorandum of July 25, 1949. Unless the lateral limits are shown, where the lands are surveyed, it cannot be definitely determined, for the purpose of posting, what subdivisions are affected.

As stated by Mr. Taylor, the maps in question are prepared on a scale of 400 feet to the inch. For your purposes these are excellent work scale maps, but for use in district land offices they pose a difficult problem of filing and handling, and the general scale as provided in the Department's rights-of-way

PUCKETT 1949

regulations (43 CFR, Parts 244 and 245) is 1000 and 2000 feet to the inch. If this scale is adopted by the Alaska Road Commission, it would reduce the length and size of the maps and effect a considerable saving in filing space.

We greatly appreciate your sending some of your work maps which have been used in connection with land classification work. These, we believe, are not in the form that can be efficiently used for filing in the District Land Offices.

In connection herewith, attention is called to the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. Sec. 321a, seq.), under which the Alaska Road Commission is authorized to construct roads and highways over public lands in Alaska. This act contemplates that maps of definite location of roads so constructed shall be filed with the Bureau of Land Management. Obviously, the authority to construct roads as provided by the act, necessarily, by implication if not otherwise, authorizes the right to appropriate the rights-of-way for such roads. It is therefore believed that if the maps of the rights-of-way for the roads and highways constructed or established under authority of the 1932 act, showing the width of the rights-of-way appropriated, were filed and recorded in the District Land Office, in accordance with instructions of January 13, 1916 (44 L.D. 513), that the Government's rights in and to the roads and rights-of-way would be amply protected under the act as well as R.S. 2477 (43 U.S.C. Sec. 932), without the necessity of any withdrawals.

Very truly yours,

Lowell M. Puckett

Lowell M. Puckett
Regional Administrator

AB/fp

UNITED STATES
DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
JUNEAU, ALASKA

December 1, 1949

Mr. James P. Davis, Director
Division of Territories and Island Possessions
Department of the Interior
Washington 25, D. C.

My dear Mr. Davis:

At a recent meeting with Mr. Lowell Puckett, Regional Administrator, Bureau of Land Management, the method of handling withdrawals or reservations for roads rights-of-way was fully discussed.

The immediate problem is our deficiency in accurate maps of old roads which are required by the District Land Offices in connection with locating entrymen and in issuance of patents.

It was brought out by Mr. Puckett that because of the language of Public Land Order 601, all entries in surveyed areas affected by a road must be limited to one side only of the existing road. This is because the order used the word "withdrawn" and the Bureau of Land Management has ruled that no new entry can be made covering noncontiguous areas. One solution of the problem has been proposed by Mr. Puckett to his Washington office. Under Land Decisions Volume 43, page 551, it was held that a right-of-way withdrawal did not render the tracts lying on opposite sides of the withdrawn strip non-contiguous, and an entry embracing both sides of such strip should be allowed. I desire to strongly support Mr. Puckett's request and urge favorable consideration. Application of this decision would avoid much present confusion. By the time entrymen apply for patents in future, it is planned to have available in the District Land Offices accurate maps of our roads.

We believe the best solution of this problem would be a revision of Public Land Order 601 to change the language to read "are hereby reserved from all forms of appropriation". This language would be in accordance with the act of July 24, 1947 (Pub. Law 229, 80th Cong., 1st Session, 48 U.S.C., 1946 Ed., Supp. 1, 321D). It is our contention that this law was intended to avoid the difficulty of determining for each entry or patent the exact location of the road. The act provides in part:

"In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have

NOYES 1949

reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska."

It will be noted the act provides for a blanket reservation for rights-of-way for roads constructed or to be constructed. It is our contention that determination of the exact location of a road now existing through an entry made after the date of approval of the act is not necessary. The history of the bill indicates this was one of the specific difficulties to be corrected. The other was to avoid the necessity of obtaining easements for future roads which obviously could not be described in the patent.

The actual width of right-of-way to be reserved is determined by the class of road. It is believed Public Land Order 601 was primarily intended to establish these widths. With this information in the District Land Offices, entrymen or applicants for patent can be informed of the width of right-of-way in each case. It is probable certain roads will be reclassified in the future, in which case the right-of-way width would be changed. It is recommended favorable consideration be given to a revision of Public Land Order 601 to permit the Alaska Road Commission full latitude of operation under Public Law 229.

Sincerely yours,

John R. Noyes
Commissioner of
Roads for Alaska

cc: Mr. Puckett

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

April 3, 1952

Mr. Evander C. Smith
Box 2068
Anchorage, Alaska

Dear Mr. Smith:

By letter of March 29, you asked me to define the maximum legal right-of-way to which the Alaska Road Commission is entitled in those instances where entry was made and residence established prior to the construction of the road, and where subsequent patent contains no provision for road right-of-way.

We are unable to determine that there was a definition of the widths of rights-of-way by regulation or statute prior to Public Land Order 601 of August 10, 1949. Any legal settlement upon the land or filing made upon the land prior to August 10, 1949, in which legal occupancy and filing was carried through to consummation, rendered Public Land Order 601 inoperative, and no claim to a width of right-of-way as defined in Public Land Order 601 can be valid, in our opinion.

The act of July 24, 1947, 61 Stat. 418, 48 U.S.C., Sec. 321d, provided for the reservation of right-of-way for roads in patents and deeds on lands, the rights to which were inaugurated after the effective date of the act. This act did not, however, specify the widths of the rights-of-way.

It would appear that the acquiring of road rights-of-way before July 24, 1947, had been done by amicable agreement or condemnation.

Chapter 19, Session Laws of Alaska 1923, Section 1721, reserved a strip between sections 4 rods wide for public highways with the section line being the center of such highway. However, the 1923 law is listed as invalid in the new Alaska Code and we have been advised by the Attorney General that it is considered that this act is in fact invalid. I know of no test case that has been brought to test the validity of the law.

PUCKETT 1952

I understand that the legislature, at its last session, passed a law designating certain section lines on lands owned by the Territory as highway right-of-way. Perhaps you are more familiar with this act than I.

I am uncertain as to the origin of the adoption of 66 feet as the standard width of right-of-way in Alaska prior to the promulgation of Public Land Order 601. Public Land Order 601, which together with Order No. 2665, enclosed, have established widths of rights-of-way for highways in Alaska.

Very truly yours,

Lowell M. Puckett

Lowell M. Puckett
Regional Administrator

Copy to Commissioner
Alaska Road Commission

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF HIGHWAYS

OFFICE OF THE COMMISSIONER / P. O. BOX 1467 — JUNEAU 99801

July 27, 1971

Re: 1947 Act Lands
00-302

Mr. Francis C. Turner
Federal Highway Administrator
Federal Highway Administration
Nassif Building
400 7th Street, S.W.
Washington, D.C. 20591

THROUGH: Mr. H. G. Tipton
Division Engineer

Dear Mr. Turner:

Reference is made to Mr. Tipton's memorandum of February 12, 1971, concerning participation of federal funds in the 1947 Act lands acquired prior to December 31, 1970. Mr. Tipton's memorandum is in response to our appeal of January 23, 1968, appealing your previous decision of June 30, 1967.

Perhaps a brief history of the 1947 Act reservation and how the reservation was exercised by the State of Alaska would help put our position into perspective.

Prior to the years of World War II, the Territory of Alaska experienced little road construction work. Much of the activity of the Alaska Road Commission and its predecessors was conducted across the public domain and required minimal right of way acquisition. A marked increase in population in the years following the war and a related increase in activities designated to reduce public lands to private ownership increased the frequency with which right of way was necessitated over lands to which title had passed from the United States.

In recognition of this trend and in an attept to reduce the expenditure of governmental funds, Congress passed the 1947 Act effective July 24, 1947.

The effect of this Act was to reserve to the United States or to any State created out of the Territory of Alaska a right of way across lands subsequently passing into private ownership and to thus avoid the necessity of re-acquiring lands for future road construction.

CAMPBELL 1971

The 1947 Act was repealed by Congress effective July 1, 1959. Thus, lands entered or patented after that date are not subject to the act. Title of lands entered or patented from July 24, 1947, to July 1, 1959, continued to remain clouded with the prospect of future road construction causing arbitrary transfers of unspecified portions of said land to the government, without due process or compensation, until April 14, 1966.

It is our position that the 1947 Act did in fact entitle the State of Alaska to utilize the right of way reserved by the act. Specific conveyance to the State at the time of statehood was not necessary because Congress specifically prescribed in the act that the reservation was to be extended to the newly created State of Alaska. The rights of the Federal Government in the 1947 Act rights of way passed to the State at the time of statehood.

The fourth session of the Alaska State Legislature, recognizing the inequalities of the 1947 Act, passed legislation effective April 14, 1966, commonly called the Alaska Right of Way Act of 1966, providing that no agency of the State may take privately owned property by the exercise of the 1947 Act reservation. The legislature's stated purpose was as follows, and I quote:

> 'This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the person holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal act reserve to the United States, or the state created out of the Territory of Alaska, a right of way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United State, would be required to pay just compensation for any land taken for a right of way. It is declared to be the purpose of this act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law."

Subsequent to the enactment of the Alaska Right of Way Act of 1966 the Bureau of Public Roads advised us "that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from land subject to the reservation contained in the 1947 Act." They also stated it would take federal legislation to effectively repeal the reservation.

In response to that statement the late Senator E. L. Bartlett introduced, (for himself and Senator Gruening) Senate Bill 2483 on September 28, 1967. Senator Bartlett's introductory remarks outlined the position of Alaskans affected by the 1947 Act and I quote his remarks from the Congressional Record of the Senate for September 28, 1967:

> "In 1947 Congress enacted a law -- 48, United States Code 321d -- which reserved an undefined highway right of way in all patents for federal public lands in Alaska. This law, commonly referred to as the 1947 Act, has become notorious in Alaska. While seemingly innocuous, the 1947 Act has worked inequities beyond belief as homesteads and other patented lands fall in the paths of urban development and highway improvement projects.
>
> Although the 1947 act was repealed in 1959, all of those persons who received patent to federal lands between 1947 and 1959 still live under the threat that a portion of their land might be taken for highway right of way purposes at any time without compensation. As a matter of fact, a substantial number of rights of way have already been acquired under the 1947 act without compensation to the landowners and many rights of way over such lands will undoubtedly be acquired in the foreseeable future.
>
> The State of Alaska has found a way to compensate patentees for takings under the right of way provision but the Federal Highway Administration refuses on legal grounds to pay the federal share of such compensation.
>
> Mr. President, it is my firm belief that no one could have foreseen the inequities inherent in passage of the 1947 Act. It is also my belief that corrective action is overdue. Therefore, I introduce today for appropriate reference a bill which would vacate and relinquish the reservation of rights of way authorized by the 1947 Act."

Hearings scheduled on Senator Bartlett's bill were cancelled first because of the assassination of Dr. Martin Luther King, Jr., and second because of the assassination of Senator Robert F. Kennedy.

Senator Bartlett's untimely death and Senator Gruening's unsuccessful bid for re-election made it necessary to reintroduce S. 2483. Senator Stevens graciously did this on February 7, 1969.

Alaska's Right of Way Act of 1966 voided the State's rights to utilize right of way over lands subject to the 1947 Act. Section 138(b) of the Federal Aid Highway Act of 1970 vacated and relinquished reserved rights of way not utilized and provided that the reservation merged with the fee and was forever extinguished. We believe it was the intent of Congress to "clear the federal books" by the "housekeeping" Section 138(b) of the Federal Aid Highway Act of 1970 with their full realization that the State of Alaska had extinguished the 1947 Act reservation on April 14, 1966, as it had every right to do.

Unforeseen tragedies delayed Federal action several years causing State expenditures to climb past a million dollars. It was clearly Senator Bartlett's intent in introducing S. 2483 to allow Federal participation in the acquisition of "47 Act" right of way from the April 14, 1966, date.

Acquisition of right of way by the State of Alaska over lands subject to the 1947 Act subsequent to April 14, 1966, was made in accordance with all of the policies and procedures of the Bureau of Public Roads and subsequently the Federal Highway Administration. The rights of way so acquired were incorporated in federal-aid highway projects and therefore should be eligible for federal participation in their acquisition costs.

We respectfully request your further review of your June 30, 1967, and February 12, 1971, decisions and reversal of those decisions to allow federal participation in the acquisition costs of the lands in question.

Very truly yours,

for B. A. Campbell
Commissioner of Highways

cc: Governor William A. Egan
John Havelock, Attorney General
Senator Ted Stevens
Senator Mike Gravel
Representative Nick Begich

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ROBERT T. PRICE
ROBERT P. OWENS

July 24, 1984

Congressman Don Young
House of Representatives
2331 Rayburn Building
Washington, D.C. 20515

Re: Federal Highway Rights-of-Way

Dear Don:

Enclosed you will find copies of correspondence which I have sent to Senators Stevens and Murkowski concerning an extremely serious problem in Alaska. I believe the informational letter to Senator Murkowski and its attachments are self-explanatory.

Once you have had an opportunity to review this, I will be contacting you to ask your support in stopping the State from harming not only our clients, the title insurance industry, but the thousands of Alaskans Statewide who do not have title insurance, many of whom are the original patentees.

Sincerely,

GROH, EGGERS & PRICE

Clifford J. Groh

Michael W. Price

:hf

Encl.

GROH & PRICE 1984

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July 24, 1984

Via DHL

Senator Frank Murkowski
United States Senate
Washington, D.C. 20510

Attention: John Moseman

Re: Federal Highway Easements in Alaska

Dear John:

Thank you for meeting with us during your visit last week in Alaska. It was a pleasure having the opportunity to meet you and we look forward to our future contact. As we discussed, we are presently embroiled in an extremely serious controversy for which we are seeking the aid of the Alaska Congressional Delegation. This letter and its enclosures will assist you in your preliminary investigation into this matter. At your earliest convenience, we would like to discuss the possibility of the introduction and passage of our proposed federal legislation with you, and the other members of the Alaska Congressional Delegation.

As you may recall from our meeting, the difficulty lies in the interpretation of a series of public land orders (PLOs) and department orders (DOs) which were issued by the Department of Interior in the late 1940's and early 1950's. Up through 1947 there existed two methods by which the Federal Government could create highway rights-of-way in Alaska. The first was a 1932 Act which was codified at 48 U.S.C. §321a through §322.1/ Pursuant to that Act the Department of Interior had the right to build and construct roadways in Alaska. Additionally, under 44 L.D. 513 the Department of Interior determined that the Federal Government had the right to establish a roadway by appropriation. That is,

---

1/ A copy of this legislation is attached and identified as Exhibit A. Also attached are the other relevant materials identified as discussed in this letter.

a combination of identifying a potential highway plus the allocation of specific funds from Congress was sufficient to reserve the right in the Federal Government to build the road.

In 1947, Congress, at the urging of the Department of Interior passed an amendment to the 1932 Act which was codified at 48 U.S.C. §321d. (Exhibit B.) Under 48 U.S.C. §321d the Department of Interior was required to place in every patent for land in Alaska taken up thereafter a reservation for a road right-of-way for the Federal Government. It is our opinion that the amendment in 1947 was designed to protect the Federal Government's interest in maintaining the right to build roads into those portions of Alaska which were being taken up by homesteaders and which were not yet subject to a 43 U.S.C. §932 section line dedication or a roadway established by appropriation under 44 L.D. 513. It also served the function of consolidating the power of the Department of Interior under the Act of 1932 by specifically requiring that the reservation be put in the patent so that settlers would be on notice.

In August of 1949, the Department of Interior under PLO 601 withdrew from all forms of appropriation certain rights-of-way for highways in Alaska. (Exhibit C.) Under PLO 601 highway widths of varying amounts were established for through, feeder and local roads. The "local" roads were never identified by name which causes particular problems.

Considerable controversy arose over the fact that PLO 601 was a withdrawal rather than the establishment of an easement or right-of-way. Consequently the Department of Interior published modifications of PLO 601 which culminated in the publication of DO 2665. (Exhibit D.) DO 2665 established easements in lieu of rights-of-way.

In the introductory language of DO 2665 the Secretary of the Interior indicated that he was publishing the order pursuant to 48 U.S.C. §321a. It is our belief that the authority cited by the Secretary deals with only the construction powers under the 1932 Act and must be viewed in the light of the 1947 Amendment which required that such easements and rights-of-way be reserved in the patents. However, it is this one "authority section" which has allowed the Alaska Supreme Court to circumvent both the Alaska and Congressional bills designed to eliminate these easements.

None of the withdrawals and easements created by PLO 601 and its successors including DO 2665 were noted in the patents of homesteaders in Alaska, although, all of the patents which were issued for lands taken up after 1947 contain the reservation required by the 1947 Act and 48 U.S.C. §321d. (Exhibit E, for example.) Further, at least in regard to local roads, there was no identification of the roads or of any record by which a homesteader or other interested individual could determine if his property was effected by such a right-of-way.

In 1959 the United States government quitclaimed its interest in the roads in Alaska to the State. The quitclaim deed does not specifically address the question of whether the Federal Government intended to pass its rights-of-way and reservations under the PLOs and DO 2665. The State of Alaska did not record its quitclaim deed until 1969 and it is impossible by referencing the quitclaim deed to determine whether any given parcel of land in Alaska was affected by the withdrawals or easements for roads.

In the mid 1960's concern over the possibility of the State taking land under the federal easements and rights-of-way surfaced and the State Legislature passed the Right-of-Way Act of 1966 (Exhibit F.) The 1966 Act states that "no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320 §5, as added July 24, 1947, ch. 313, 61 Stat 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal act is void."

The Federal Government also attempted to alleviate the unfairness of the federal reservations and easements for rights-of-way in patents issued to Alaskans between 1947 (the date of the Amendment of the 1932 Act) and 1959 (Alaska Statehood). Section 138(b) of the Federal-Aid Highway Act of 1970 states:

> Any right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant structures reserved by section 321(d) of Title 48, United States Code (61 Stat. 418, 1949), not utilized by the United States or by the State or Territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reser-

vation shall merge with the fee and be forever extinguished.

Unlike the State Right-of-Way Act, the federal legislation does not specifically indicate that it includes all reservations and easements created under the 1932 Act as Amended by the 1947 Act. However, we believe that that proposition is clear, that the 1947 Act was an Amendment to the 1932 Act which created an obligation on the part of the Federal Government to place in the patent a reservation for highway purposes. We have enclosed testimony by both Senator Stevens and State officials which clearly indicate that the State would not be taking the rights-of-way in the future. (Exhibit G.)

The State of Alaska however decided that since the PLOs state they were promulgated under the general authority of the Secretary of Interior and the DO 2665 was "apparently" promulgated under 48 U.S.C. §321a (the 1932 Act) they would attempt to take property despite both the State and Federal Acts designed to end the uncertainty and unfairness which had resulted from the creation of such easements and rights-of-way.

In a case which ultimately reached the Alaska Supreme Court entitled State v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983) (Exhibit H), the Alaska Supreme Court determined that the original withdrawals by PLO 601 culminated in the rights-of-way described in DO 2665. The Court further found that DO 2665 was published pursuant to 48 U.S.C. §321a. The Court determined that 48 U.S.C. §321a was a separate source of power for the Secretary of Interior to create easements from that identified in 48 U.S.C. §321d. That is, the court refused to recognize that the 1947 Act's purpose was to amend the 1932 Act to require that any easement created by the Secretary of Interior under the 1932 Act be placed on the patent.

The court went further to find that the Right-of-Way Act of 1966 passed by the Alaska Legislature applied only to the 1947 Act. This is in contradiction to the clear language of the 1966 Act. As noted earlier the Federal-Aid Highway Act of 1970 §138(b) can be on its face interpreted as applying only to the 1947 Act. Therefore, since the Alaska Supreme Court had already interpreted the 1947 Act as being separate from the 1932 Act the Federal-Aid Highway Legislation was ineffective.

It is interesting to note that the court did allow the one homeowner who is not protected by title insurance to prevail. In

that instance the court found that if the homesteader had entered the property prior to the date of the promulgation of PLO 601 (August 10, 1949) then PLO 601 would not be effective against him. The State has challenged this proposition and believes that a homesteader would not prevail against PLO 601 until the date he received his final certificate, usually significantly later in time from entry. There are currently two cases pending before the Alaska Supreme Court which will address this issue.

The State of Alaska has taken the position that it inherited the Federal Government's rights to the easements and rights-of-way under the PLOs pursuant to the quitclaim deed of 1959. They are further taking the position that even if a road had not been constructed at the time of the PLOs or had been subsequently moved, the State has the right to take the property without payment. The greatest difficulty with defending against this form of arbitrary action is that the PLOs and DOs do not specifically identify where a road is located on an entryman's property.

Additionally, the average landowner has no warning of the existence of a road. Since a significant number of individual homeowners do not have title insurance on their property, they are completely unprotected against the actions of the State. The State has further shown itself to be callous to the rights of such landowners by simply taking their land even in cases where their property would not be subject to the PLO due to entry prior to the effective date of PLO 601. Also, because the State does this on an as needed basis, there is no opportunity for homeowners to be appraised of the problem in advance. Only at the time the State finally determines that it will expand the highway does the homeowner learn that his property is to be taken and even then the only outcry is among a few owners along the proposed road expansion. Thus, the problem goes on without the property owners in Alaska having an opportunity to face the issue all at once.

The problem also extends to title insurance companies. Although contrary to prior decisions in other jurisdictions and the language of Alaska statutes, the Alaska Supreme Court has determined that publication of PLOs in the Federal Register, although not recorded in the recording district, and not describing specific parcels of land are to be considered "public records" for the purposes of determining the meaning of such language in title insurance policies. Title insurance companies have suddenly found themselves to be exposed to a tremendous liability without having initially included such risks in the setting of their premiums.

All sides of the issue agree that potential liability for the cost of all the property which could be seized under the PLOs is in excess of one billion dollars over a long period of time. This is a staggering amount for title insurance companies to incur without having already built the risk factor into their rate setting. Thus, there is a potential threat to the viability of the title insurance industry in Alaska to provide homeowners, businesses and banks with title insurance on an on-going basis.

It is our opinion that federal legislation can be proposed which will provide for adequate protection for Alaskan landowners. We have enclosed a working draft of language for such federal legislation based upon Congress declaring that the utilization of such easements without compensation is a violation of due process under the Fifth Amendment as applied to the State by the Fourteenth Amendment. Our research indicates such an approach would withstand judicial scrutiny. See Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); Katzenbach v. Morgan, 384 U.S. 641 (1965); Ramirez v. Puerto Rico Fire Service, 715 F.2d 694 (1st Cir. 1983) Equal Employment Opportunity Commission v. Elrod, 674 F.2d 601 (7th Cir. 1982).

I want to thank you very much for your assistance in this matter and, as we noted in our meeting, it is not a problem which apparently is going to go away. Hopefully, after your office has had the chance to review the documentary materials you, Senator Stevens and Congressman Young will assist us in this endeavor. Mr. Greg Chapados is working on the problem in Senator Steven's office and I am transmitting a copy of this letter to Congressman Young.

Please let me know if you have any questions and we look forward to hearing from you in the near future.

Sincerely,

GROH, EGGERS & PRICE

Michael W. Price

Clifford J. Groh

:hf

cc: Congressman Don Young
Greg Chapados

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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465-3603

March 14, 1985

Mr. John Manly
Transportation Committee Aide
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Manly:

As you know, our office, at the request of Blake Call, Secretary of the Senate Transportation Committee, reviewed SB 141. A copy of that review dated March 5, 1985 is attached. Senator Faiks of the Transportation Committee has now asked us to review the attached proposed Committee Substitute for Senate Bill 141. This letter is in response to that request.

The issue of the state's right to use public road easements created by certain public road land orders appears to have arisen as the result of the federal government's failure to note these public road easements in federal patents. The State of Alaska, of course, had nothing to do with the issuance of federal patents and even though it appears that the State of Alaska is without fault in this regard, legislation has been proposed that would bar the state from utilizing these public road easements. CSSB 141 is just such a bill; it would prohibit the state from utilizing significant portions of any public road right-of-way created by 48 U.S.C. §§ 321(a) -- 327, Public Land Order 601, Public Land Order 757, Public Land Order 1613 and Department Order 2665. See sec. 2 of CSSB 141. As noted in our review letter dated March 5, 1985, these public land orders are responsible for the creation of 80 percent of the public road rights-of-way in Alaska.

The practical effect of CSSB 141 is identical to that of SB 141. That is, the bill operates to relinquish to private landowners significant portions of publically owned rights-of-way created by the above land orders. The bill provides that those portions of these rights-of-way that were not physically occupied

by a road on the effective date of the bill would have to be purchased back by the state should they subsequently be needed by the state for road improvement. See sec. 3(b) of CSSB 141.

Because CSSB 141 operates to transfer, at no cost, significant portions of publically owned rights-of-way to a particular class of private landowners. CSSB 141 is substantively no different from its predecessor, SB 141. Accordingly, the same legal problems raised in our March 5 review are also raised by CSSB 141. In brief, these difficulties involve, among others, the public purpose provision of article IX, section 6 of the Alaska Constitution as well as the equal rights provision of article 1, section 1 of the Alaska Constitution.

Our conclusion, then, is that CSSB 141, because it would transfer public property at no cost to private owners, would likely violate the public purpose provision of article IX, section 6 of the Alaska Constitution. 1/

—In addition, because CSSB 141 would take away potentially valuable property rights owned by the general public and bestow the right to the fair market value of these rights upon an identifiable class of private individuals, CSSB 141 results in the creation of special privileges for a particular class of individuals. 2/ As a result, CSSB 141 most likely violates the

---

1/ The fact that the state had no responsibility for the issuance of the patents that gave rise to this issue (many of which were issued before statehood) underscores the public purpose objection.

2/ It should also be noted that title companies will also stand to gain certain advantages from this bill. As matters stand now, title companies are contractually obligated to pay damages to title policy holders whose title policies fail to note the existence of public land order rights-of-way. See Alaska Land Title Association v. State, 667 P.2d 714, 725 (Alaska 1983); Hahn v. Alaska Title Guaranty Co., 557 P.2d 143, 146 (Alaska 1976). Should this bill become law, title companies will be relieved of this contractual duty because the state will no longer be able to claim these public land order easements.

discriminatory treatment prohibition of article 1, section 1 of the Alaska Constitution.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jack B. McGee
Assistant Attorney General

JBM:ebc

Enclosure

Moen
3/5/85 ✓

Original sponsor: Coghill

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 141 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring just compensation for the utilization of certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to provide just compensation to landowners in the state who are suffering economic hardship and physical and mental distress by virtue of the state utilizing certain rights-of-way created, withdrawn, or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. TAKING OF PROPERTY WITHOUT COMPENSATION IS BARRED. The state may not take, utilize, or occupy a right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) without payment of just compensation if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure.

* Sec. 3. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act require compensation by the state for taking, utilizing, or occupying an interest in an easement of specific width set out in the original patent from the state or federal government whether or not physically occupied on the effective date of this Act.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land only to the extent that the state actually takes, utilizes, or occupies beyond the physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

* Sec. 4. APPLICATION TO FEDERAL LAND. The provisions of this Act do not require the state to pay compensation for taking, utilizing, or occupying a right-of-way that affects land in which fee title is, on the date of the taking, utilization or occupation, vested in the United States of America.

* Sec. 5. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 6. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

March 5, 1985

x

465-3603

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Request for Opinion on SB 141
Our File: 366-380-85

Dear Mr. Call:

This letter is in response to your request for our analysis of SB 141 which has as its subject matter Public Land Orders 601, 757, 1613 and Department Order 2665.

Public Land Orders 601, 757, 1613 and Department Order 2665 are responsible for the creation of 80 percent of the public road rights-of-way in Alaska. Moreover, the legal validity of the rights-of-way and easements created by these land orders was upheld by the Alaska Supreme Court against numerous legal challenges raised by the Alaska Land Title Association in a case that went all the way up to the U.S. Supreme Court. See Alaska Land Title Association v. State of Alaska, 667 P.2d 714 (Alaska 1983), cert. denied, 104 S.Ct. 704 (1984).

The effect of SB 141 would be to require the state to vacate and relinquish to certain private landowners significant portions of public highway rights-of-way that were created by PLO 601, PLO 757, PLO 1613 and D.O. 2665. Specifically, those portions of the rights-of-way not physically occupied on the effective date of the bill would have to be relinquished by the state.

There are at least two major legal concerns raised by this bill. The first involves article IX, section 6, of the Alaska Constitution. This provision reads as follows:

> Section 6. PUBLIC PURPOSE. No tax shall be levied, or appropriation of public money made, or

public property transferred, nor shall the public credit be used, except for a public purpose.

The easement rights created by PLO 601, PLO 757, PLO 1613, and D.O. 2665 are held in common by the general public. These rights, therefore, are a form of public property. The clear effect of Senate Bill 141 is to transfer this public property to certain private individuals. This is so because the bill, while relinquishing public road easements held in common by the general public, bestows the right to the fair market value of these easements upon those private landowners whose property was previously subject to them. See sections 2 and 3 of SB 141. The bill, in effect, transfers public property to private individuals who would not pay anything to the state for the value of the rights transferred to them. Such a transfer, on its face, would appear to violate the public purpose provision of the state Constitution. This is underscored by the fact that the public, if it requires the vacated road easement area for future road improvement, must purchase it back from private ownership. Only these private individuals would benefit from this arrangement and the repurchase costs would probably be significant. Thus, it is difficult to understand how this bill would not violate the public purpose requirement of article IX, section 6, of the Alaska Constitution that must be met whenever public property is transferred. 1/

A second legal difficulty concerns article 1, section 1, of the Alaska Constitution. This provision provides that all persons are entitled to equal rights under the law and, conversely, prohibits unfair distinctions between classes of persons.

1/ Because this bill would eliminate significant portions of public road easements, it would most likely have a negative effect on public access to various areas of the state. As a result, SB 141 appears to be inconsistent with article VIII, sections 1 and 2 of the Alaska Constitution. Article VIII, Section 1 states that it is the policy of the state "to encourage the settlement of its lands and development of its resources by making them available for maximum use consistent with the public interest." Article VIII, section 2 requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."

See Ale v. State, 484 P.2d 677 (Alaska 1971); Leege v. Martin, 379 P.2d 447 (Alaska 1963) .

The effect of this bill is to divest the general public of its right to utilize significant portions of the public road easements created by public land orders. Since the effect of this divestment would be to eliminate the public's right to claim these public road easements, only those private individuals owning land fronting on the public roads created by these land orders would benefit from this divestment. That is to say, after the effective date of this bill, the public, acting through the state, would have to purchase from this class of individuals the right to use the same public road easements that were previously owned by the public.

In sum, as matters stand now, the public road rights granted by these land orders are owned by all members of the public in common. Should this bill become law, it would mean that the cash value of these rights, rights which were formerly held by all, would be granted to a class of property owners, i.e., those individual property owners fortunate enough to own land fronting on the very roadways created by these public land orders. Thus the practical effect of this bill is to take away potentially valuable property rights owned by the general public as a whole and bestow the right to the fair market value of these rights upon a class of private individuals. Since article I, section 1 of the Alaska Constitution adopts the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," the granting of special privileges by this bill to a particular class at the expense of the public may very well violate this provision.

At present, only one class of persons exists relative to the public road easements created by these public land orders. This class is made up of members of the general public who own these public road easements in common. Should this bill become law, these easement rights would, in effect, be taken from the general public. 2/ The right to the cash value of these public road easement rights would then be bestowed, not on the general

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2/ This "taking" from each member of the public by itself may violate article XIII, section 16 of the Alaska Constitution which provides that "no person shall be involuntarily divested of . . . his interests in lands . . ." unless the divestment is for a public purpose and he is paid just compensation.

public as a whole, but on a special class of property owners. This bill, in effect, would create two classes of persons: the class of all those members of the general public who do not own real property fronting on the roadways created by the public land orders and the class of those property owners who do own property fronting on the roadways created by these public land orders. This latter class would then be given the right to the fair market value of the easements previously owned by the entire public. It is likely that such discriminatory treatment is barred by article I, section 1, of the Alaska Constitution.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:
Jack B. McGee
Assistant Attorney General

JBM:ebc:prm

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ROBERT P. OWENS

July 24, 1984

Via DHL

Senator Frank Murkowski
United States Senate
Washington, D.C. 20510

Attention: John Moseman

Re: Federal Highway Easements in Alaska

Dear John:

Thank you for meeting with us during your visit last week in Alaska. It was a pleasure having the opportunity to meet you and we look forward to our future contact. As we discussed, we are presently embroiled in an extremely serious controversy for which we are seeking the aid of the Alaska Congressional Delegation. This letter and its enclosures will assist you in your preliminary investigation into this matter. At your earliest convenience, we would like to discuss the possibility of the introduction and passage of our proposed federal legislation with you, and the other members of the Alaska Congressional Delegation.

As you may recall from our meeting, the difficulty lies in the interpretation of a series of public land orders (PLOs) and department orders (DOs) which were issued by the Department of Interior in the late 1940's and early 1950's. Up through 1947 there existed two methods by which the Federal Government could create highway rights-of-way in Alaska. The first was a 1932 Act which was codified at 48 U.S.C. §321a through §322.1/ Pursuant to that Act the Department of Interior had the right to build and construct roadways in Alaska. Additionally, under 44 L.D. 513 the Department of Interior determined that the Federal Government had the right to establish a roadway by appropriation. That is,

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1/ A copy of this legislation is attached and identified as Exhibit A. Also attached are the other relevant materials identified as discussed in this letter.

a combination of identifying a potential highway plus the allocation of specific funds from Congress was sufficient to reserve the right in the Federal Government to build the road.

In 1947, Congress, at the urging of the Department of Interior passed an amendment to the 1932 Act which was codified at 48 U.S.C. §321d. (Exhibit B.) Under 48 U.S.C. §321d the Department of Interior was required to place in every patent for land in Alaska taken up thereafter a reservation for a road right-of-way for the Federal Government. It is our opinion that the amendment in 1947 was designed to protect the Federal Government's interest in maintaining the right to build roads into those portions of Alaska which were being taken up by homesteaders and which were not yet subject to a 43 U.S.C. §932 section line dedication or a roadway established by appropriation under 44 L.D. 513. It also served the function of consolidating the power of the Department of Interior under the Act of 1932 by specifically requiring that the reservation be put in the patent so that settlers would be on notice.

In August of 1949, the Department of Interior under PLO 601 withdrew from all forms of appropriation certain rights-of-way for highways in Alaska. (Exhibit C.) Under PLO 601 highway widths of varying amounts were established for through, feeder and local roads. The "local" roads were never identified by name which causes particular problems.

Considerable controversy arose over the fact that PLO 601 was a withdrawal rather than the establishment of an easement or right-of-way. Consequently the Department of Interior published modifications of PLO 601 which culminated in the publication of DO 2665. (Exhibit D.) DO 2665 established easements in lieu of rights-of-way.

In the introductory language of DO 2665 the Secretary of the Interior indicated that he was publishing the order pursuant to 48 U.S.C. §321a. It is our belief that the authority cited by the Secretary deals with only the construction powers under the 1932 Act and must be viewed in the light of the 1947 Amendment which required that such easements and rights-of-way be reserved in the patents. However, it is this one "authority section" which has allowed the Alaska Supreme Court to circumvent both the Alaska and Congressional bills designed to eliminate these easements.

None of the withdrawals and easements created by PLO 601 and its successors including DO 2665 were noted in the patents of homesteaders in Alaska, although, all of the patents which were issued for lands taken up after 1947 contain the reservation required by the 1947 Act and 48 U.S.C. §321d. (Exhibit E, for example.) Further, at least in regard to local roads, there was no identification of the roads or of any record by which a homesteader or other interested individual could determine if his property was effected by such a right-of-way.

In 1959 the United States government quitclaimed its interest in the roads in Alaska to the State. The quitclaim deed does not specifically address the question of whether the Federal Government intended to pass its rights-of-way and reservations under the PLOs and DO 2665. The State of Alaska did not record its quitclaim deed until 1969 and it is impossible by referencing the quitclaim deed to determine whether any given parcel of land in Alaska was affected by the withdrawals or easements for roads.

In the mid 1960's concern over the possibility of the State taking land under the federal easements and rights-of-way surfaced and the State Legislature passed the Right-of-Way Act of 1966 (Exhibit F.) The 1966 Act states that "no agency of the State may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320 §5, as added July 24, 1947, ch. 313, 61 Stat 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal act is void."

The Federal Government also attempted to alleviate the unfairness of the federal reservations and easements for rights-of-way in patents issued to Alaskans between 1947 (the date of the Amendment of the 1932 Act) and 1959 (Alaska Statehood). Section 138(b) of the Federal-Aid Highway Act of 1970 states:

> Any right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant structures reserved by section 321(d) of Title 48, United States Code (61 Stat. 418, 1949), not utilized by the United States or by the State or Territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reser-

> vation shall merge with the fee and be forever extinguished.

Unlike the State Right-of-Way Act, the federal legislation does not specifically indicate that it includes all reservations and easements created under the 1932 Act as Amended by the 1947 Act. However, we believe that that proposition is clear, that the 1947 Act was an Amendment to the 1932 Act which created an obligation on the part of the Federal Government to place in the patent a reservation for highway purposes. We have enclosed testimony by both Senator Stevens and State officials which clearly indicate that the State would not be taking the rights-of-way in the future. (Exhibit G.)

The State of Alaska however decided that since the PLOs state they were promulgated under the general authority of the Secretary of Interior and the DO 2665 was "apparently" promulgated under 48 U.S.C. §321a (the 1932 Act) they would attempt to take property despite both the State and Federal Acts designed to end the uncertainty and unfairness which had resulted from the creation of such easements and rights-of-way.

In a case which ultimately reached the Alaska Supreme Court entitled State v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983) (Exhibit H), the Alaska Supreme Court determined that the original withdrawals by PLO 601 culminated in the rights-of-way described in DO 2665. The Court further found that DO 2665 was published pursuant to 48 U.S.C. §321a. The Court determined that 48 U.S.C. §321a was a separate source of power for the Secretary of Interior to create easements from that identified in 48 U.S.C. §321d. That is, the court refused to recognize that the 1947 Act's purpose was to amend the 1932 Act to require that any easement created by the Secretary of Interior under the 1932 Act be placed on the patent.

The court went further to find that the Right-of-Way Act of 1966 passed by the Alaska Legislature applied only to the 1947 Act. This is in contradiction to the clear language of the 1966 Act. As noted earlier the Federal-Aid Highway Act of 1970 §138(b) can be on its face interpreted as applying only to the 1947 Act. Therefore, since the Alaska Supreme Court had already interpreted the 1947 Act as being separate from the 1932 Act the Federal-Aid Highway Legislation was ineffective.

It is interesting to note that the court did allow the one homeowner who is not protected by title insurance to prevail. In

All sides of the issue agree that potential liability for the cost of all the property which could be seized under the PLOs is in excess of one billion dollars over a long period of time. This is a staggering amount for title insurance companies to incur without having already built the risk factor into their rate setting. Thus, there is a potential threat to the viability of the title insurance industry in Alaska to provide homeowners, businesses and banks with title insurance on an on-going basis.

It is our opinion that federal legislation can be proposed which will provide for adequate protection for Alaskan landowners. We have enclosed a working draft of language for such federal legislation based upon Congress declaring that the utilization of such easements without compensation is a violation of due process under the Fifth Amendment as applied to the State by the Fourteenth Amendment. Our research indicates such an approach would withstand judicial scrutiny. See Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); Katzenbach v. Morgan, 384 U.S. 641 (1965); Ramirez v. Puerto Rico Fire Service, 715 F.2d 694 (1st Cir. 1983) Equal Employment Opportunity Commission v. Elrod, 674 F.2d 601 (7th Cir. 1982).

I want to thank you very much for your assistance in this matter and, as we noted in our meeting, it is not a problem which apparently is going to go away. Hopefully, after your office has had the chance to review the documentary materials you, Senator Stevens and Congressman Young will assist us in this endeavor. Mr. Greg Chapados is working on the problem in Senator Steven's office and I am transmitting a copy of this letter to Congressman Young.

Please let me know if you have any questions and we look forward to hearing from you in the near future.

Sincerely,

GROH, EGGERS & PRICE

Michael W. Price

Clifford J. Groh

:hf

cc: Congressman Don Young
Greg Chapados

TAKING OF RIGHTS-OF-WAY
WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

Historical Road Over View

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff, the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1960's the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner has filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand bought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

M-L 70's State Ignores 1966 Act

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.

MEMORANDUM RE HOUSE BILL

TO RELINQUISH RIGHTS-OF-WAY

Alaska achieved statehood twenty-five years ago. Before stathood the Department of Interior, through certain Pulic Land Orders, took rights-of-way for roads from landowners without compensating the landowners. Since statehood the Department of Transportation and Public Facilities (DOTPF), acting for the State of Alaska, is still taking private property without compensating the landowners.

In 1966, the Alaska State Legislature enacted Ch. 92 (HB 415 am) which prohibited such takings by the State. The purpose of the law was to "alleviate economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska [for] which no compensation is paid to the person holding title to the land." The Legislature prohibited any further utilization of rights-of-way pursuant to various Public Land Orders and federal acts.

At the time of Statehood the State received a quit claim deed from the federal government conveying to the State certain roads built by the United States. DOTPF claims that the quit claim deed also conveyed certain easements or rights-of-way that were not described therein but included in Public Land Orders that were not even recorded in the various Recorders Offices throughout the state. DOTPF presently claims a right to highway rights-of-way varying in width from 100 to 300 feet surrounding

every major highway in the state and a smaller easement for most of the local roads throughout the state. When DOTPF determines that it needs to expand or modify an existing roadway where it claims a right-of-way exists by virtue of the federal government, it does so without paying compensation to the landowner for the value of the property taken.

The reservations for rights-of-way and easements were made by the federal government between 1947 and 1956. They were set forth in a series of Public Land Orders (namely PLO 601, 757, and 1613) and a Department of Interior Order (DO 2665) which were not recorded in District Recorders Offices in Alaska but were published in the Federal Register, which was a publication utilized by federal agencies.

The rights-of-way and reservations were not specifically included in the patents issued to homesteaders in Alaska. Homesteaders in Alaska were not informed of the existence of the easements and rights-of-way at the time they were issued patents and did not know the federal government was claiming a portion of their property for highway purposes. Now DOTPF is claiming right-of-way easements in the same way by virtue of the quit claim deed mentioned above.

No landowner or member of the public can know where DOTPF claims a right-of-way easement because those easements are not recorded and are not shown on plats available in the Recorder's Offices.

The Supreme Court of Alaska, in State v. A.L.T.A., has held that the easements are valid. The decision is wrong and must be reversed through the enactment of a law that will relinquish these easements and require DOTPF to pay just compensation for lands taken by them.

SB

1H1

File 3

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee Members
From: Committee Staff
Date: March 6, 1985
Re: Background material for SB 141

This afternoon at 3:30 the committee will consider SB 141, relinquishing certain rights-of-way of the State. As you will recall, this bill was scheduled for a hearing two weeks ago, and was removed from the committee's calendar at the request of its proponents.

Included with SB 141 in today's packet are the following materials, some of which are duplicative of information you received last time:

- A proposed committee substitute, which takes the approach of, rather than relinquishing all the rights-of-way, requiring instead that the State compensate for the portions of right-of-way they use, as if they had been relinquished.

- The proponents' summary of the issue, and committee staff synopsis of the problem.

- Relevant Federal Acts of 1947 and 1970.

- Two federal patents, dated 1952 and 1955, and a subdivision plat of land patented by the 1952 patent.

- A list of the identified highways effected by this issue.

- DOT/PF fiscal note and bill analysis that the cost to the State would be $227 million annually, and that DOT/PF would rather settle the cases on an individual basis.

- Federal Highway Administration bill analysis that the federal government could not participate in repurchasing the relinquished rights of way.

- Attorney General's opinion that the bill would violate several provisions of the Alaska Constitution.

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MICHAEL P. CONDON
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ROBERT T. PRICE
ROBERT P. OWENS

July 24, 1984

Congressman Don Young
House of Representatives
2331 Rayburn Building
Washington, D.C. 20515

Re: Federal Highway Rights-of-Way

Dear Don:

Enclosed you will find copies of correspondence which I have sent to Senators Stevens and Murkowski concerning an extremely serious problem in Alaska. I believe the informational letter to Senator Murkowski and its attachments are self-explanatory.

Once you have had an opportunity to review this, I will be contacting you to ask your support in stopping the State from harming not only our clients, the title insurance industry, but the thousands of Alaskans Statewide who do not have title insurance, many of whom are the original patentees.

Sincerely,

GROH, EGGERS & PRICE

Clifford J. Groh

Michael W. Price

:hf

Encl.

GROH & PRICE 1984

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July 24, 1984

Via DHL

Senator Frank Murkowski
United States Senate
Washington, D.C. 20510

Attention: John Moseman

Re: Federal Highway Easements in Alaska

Dear John:

Thank you for meeting with us during your visit last week in Alaska. It was a pleasure having the opportunity to meet you and we look forward to our future contact. As we discussed, we are presently embroiled in an extremely serious controversy for which we are seeking the aid of the Alaska Congressional Delegation. This letter and its enclosures will assist you in your preliminary investigation into this matter. At your earliest convenience, we would like to discuss the possibility of the introduction and passage of our proposed federal legislation with you, and the other members of the Alaska Congressional Delegation.

As you may recall from our meeting, the difficulty lies in the interpretation of a series of public land orders (PLOs) and department orders (DOs) which were issued by the Department of Interior in the late 1940's and early 1950's. Up through 1947 there existed two methods by which the Federal Government could create highway rights-of-way in Alaska. The first was a 1932 Act which was codified at 48 U.S.C. §321a through §322.1/ Pursuant to that Act the Department of Interior had the right to build and construct roadways in Alaska. Additionally, under 44 L.D. 513 the Department of Interior determined that the Federal Government had the right to establish a roadway by appropriation. That is,

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1/ A copy of this legislation is attached and identified as Exhibit A. Also attached are the other relevant materials identified as discussed in this letter.

a combination of identifying a potential highway plus the allocation of specific funds from Congress was sufficient to reserve the right in the Federal Government to build the road.

In 1947, Congress, at the urging of the Department of Interior passed an amendment to the 1932 Act which was codified at 48 U.S.C. §321d. (Exhibit B.) Under 48 U.S.C. §321d the Department of Interior was required to place in every patent for land in Alaska taken up thereafter a reservation for a road right-of-way for the Federal Government. It is our opinion that the amendment in 1947 was designed to protect the Federal Government's interest in maintaining the right to build roads into those portions of Alaska which were being taken up by homesteaders and which were not yet subject to a 43 U.S.C. §932 section line dedication or a roadway established by appropriation under 44 L.D. 513. It also served the function of consolidating the power of the Department of Interior under the Act of 1932 by specifically requiring that the reservation be put in the patent so that settlers would be on notice.

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The Federal Government also attempted to alleviate the unfairness of the federal reservations and easements for rights-of-way in patents issued to Alaskans between 1947 (the date of the Amendment of the 1932 Act) and 1959 (Alaska Statehood). Section 138(b) of the Federal-Aid Highway Act of 1970 states:

> Any right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant structures reserved by section 321(d) of Title 48, United States Code (61 Stat. 418, 1949), not utilized by the United States or by the State or Territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reser-

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Unlike the State Right-of-Way Act, the federal legislation does not specifically indicate that it includes all reservations and easements created under the 1932 Act as Amended by the 1947 Act. However, we believe that that proposition is clear, that the 1947 Act was an Amendment to the 1932 Act which created an obligation on the part of the Federal Government to place in the patent a reservation for highway purposes. We have enclosed testimony by both Senator Stevens and State officials which clearly indicate that the State would not be taking the rights-of-way in the future. (Exhibit G.)

The State of Alaska however decided that since the PLOs state they were promulgated under the general authority of the Secretary of Interior and the DO 2665 was "apparently" promulgated under 48 U.S.C. §321a (the 1932 Act) they would attempt to take property despite both the State and Federal Acts designed to end the uncertainty and unfairness which had resulted from the creation of such easements and rights-of-way.

In a case which ultimately reached the Alaska Supreme Court entitled State v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983) (Exhibit H), the Alaska Supreme Court determined that the original withdrawals by PLO 601 culminated in the rights-of-way described in DO 2665. The Court further found that DO 2665 was published pursuant to 48 U.S.C. §321a. The Court determined that 48 U.S.C. §321a was a separate source of power for the Secretary of Interior to create easements from that identified in 48 U.S.C. §321d. That is, the court refused to recognize that the 1947 Act's purpose was to amend the 1932 Act to require that any easement created by the Secretary of Interior under the 1932 Act be placed on the patent.

The court went further to find that the Right-of-Way Act of 1966 passed by the Alaska Legislature applied only to the 1947 Act. This is in contradiction to the clear language of the 1966 Act. As noted earlier the Federal-Aid Highway Act of 1970 §138(b) can be on its face interpreted as applying only to the 1947 Act. Therefore, since the Alaska Supreme Court had already interpreted the 1947 Act as being separate from the 1932 Act the Federal-Aid Highway Legislation was ineffective.

It is interesting to note that the court did allow the one homeowner who is not protected by title insurance to prevail. In

that instance the court found that if the homesteader had entered the property prior to the date of the promulgation of PLO 601 (August 10, 1949) then PLO 601 would not be effective against him. The State has challenged this proposition and believes that a homesteader would not prevail against PLO 601 until the date he received his final certificate, usually significantly later in time from entry. There are currently two cases pending before the Alaska Supreme Court which will address this issue.

The State of Alaska has taken the position that it inherited the Federal Government's rights to the easements and rights-of-way under the PLOs pursuant to the quitclaim deed of 1959. They are further taking the position that even if a road had not been constructed at the time of the PLOs or had been subsequently moved, the State has the right to take the property without payment. The greatest difficulty with defending against this form of arbitrary action is that the PLOs and DOs do not specifically identify where a road is located on an entryman's property.

Additionally, the average landowner has no warning of the existence of a road. Since a significant number of individual homeowners do not have title insurance on their property, they are completely unprotected against the actions of the State. The State has further shown itself to be callous to the rights of such landowners by simply taking their land even in cases where their property would not be subject to the PLO due to entry prior to the effective date of PLO 601. Also, because the State does this on an as needed basis, there is no opportunity for homeowners to be appraised of the problem in advance. Only at the time the State finally determines that it will expand the highway does the homeowner learn that his property is to be taken and even then the only outcry is among a few owners along the proposed road expansion. Thus, the problem goes on without the property owners in Alaska having an opportunity to face the issue all at once.

The problem also extends to title insurance companies. Although contrary to prior decisions in other jurisdictions and the language of Alaska statutes, the Alaska Supreme Court has determined that publication of PLOs in the Federal Register, although not recorded in the recording district, and not describing specific parcels of land are to be considered "public records" for the purposes of determining the meaning of such language in title insurance policies. Title insurance companies have suddenly found themselves to be exposed to a tremendous liability without having initially included such risks in the setting of their premiums.

All sides of the issue agree that potential liability for the cost of all the property which could be seized under the PLOs is in excess of one billion dollars over a long period of time. This is a staggering amount for title insurance companies to incur without having already built the risk factor into their rate setting. Thus, there is a potential threat to the viability of the title insurance industry in Alaska to provide homeowners, businesses and banks with title insurance on an on-going basis.

It is our opinion that federal legislation can be proposed which will provide for adequate protection for Alaskan landowners. We have enclosed a working draft of language for such federal legislation based upon Congress declaring that the utilization of such easements without compensation is a violation of due process under the Fifth Amendment as applied to the State by the Fourteenth Amendment. Our research indicates such an approach would withstand judicial scrutiny. See Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); Katzenbach v. Morgan, 384 U.S. 641 (1965); Ramirez v. Puerto Rico Fire Service, 715 F.2d 694 (1st Cir. 1983) Equal Employment Opportunity Commission v. Elrod, 674 F.2d 601 (7th Cir. 1982).

I want to thank you very much for your assistance in this matter and, as we noted in our meeting, it is not a problem which apparently is going to go away. Hopefully, after your office has had the chance to review the documentary materials you, Senator Stevens and Congressman Young will assist us in this endeavor. Mr. Greg Chapados is working on the problem in Senator Steven's office and I am transmitting a copy of this letter to Congressman Young.

Please let me know if you have any questions and we look forward to hearing from you in the near future.

Sincerely,

GROH, EGGERS & PRICE

Michael W. Price

Clifford J. Groh

:hf

cc: Congressman Don Young
Greg Chapados

SB-141

TAKING OF RIGHTS-OF-WAY WITHOUT COMPENSATION

In recent years there has been a tremendous amount of road construction by the State of Alaska to serve the needs of the State's growing population and economic development. An important part of building new roads and expanding old ones is establishing the right-of-way upon which the road can be constructed. In the Lower 48 and, to some extent in Alaska, when a state wishes to construct a road it purchases the right-of-way across private land either by direct negotiation or by condemnation. Thus, a private land owner whose property is effected by a highway is compensated for the loss of the use of his property.

This is not so for a large number of land owners in Alaska. The State of Alaska has determined that it can take rights-of-way and expand existing roads over private property without compensation to the land owners based upon some obscure federal regulations and statutes, despite the fact the Alaska State Legislature has already made one attempt to prohibit such takings.

In order to understand how the State can claim an easement or right-of-way for highway purposes across private land without paying compensation one must look at the history of road development in Alaska. Prior to 1947, there were two primary ways by which roads could be established. The first was by appropriation. Under the doctrine of appropriation, if the federal government wished to build a road, it could do so on public lands simply by expending money for the construction of the road. As a matter of custom the width of such roads was generally 33 feet either side of the center line.

Roads were also established prior to 1947 under a special federal statute (48 U.S.C. §932) which granted the right to the public to construct highways across vacant and unappropriated federal public lands. Several territorial enactments established a right-of-way along all section lines in the state four rods (66 feet) wide.

Following World War II numerous veterans found Alaska an appealing place to live and migrated to our state, These Homesteaders soon had identified parcels for entry and proceeded to lawfully obtain title to these lands. The Department of Interior which was responsible for the construction of most roads in Alaska through the Alaska Road Commission soon discovered that

its road construction could not keep up with the pace of settlement. Homesteaders would often enter the property before the Alaska Road Commission could build a road by appropriation. Once the homesteader entered the property the right to build a road by appropriation was lost since the property was no longer considered public lands.

To remedy this problem, Congress passed a law in 1947 requiring a general reservation for highway rights-of-way be placed in all patents where the homesteader entered after July 24, 1947. It was envisioned that as the Alaska road network developed in the territory, the Alaska Road Commission could then construct a road across the patented property even though it was no longer in the hands of the federal government.

Unfortunately, the 1947 law did not establish where the roads were or their width. This placed the homesteader at risk, that, at any time in the future, a road could be constructed across his property. In 1949 the Department of Interior attempted to clarify this problem by publishing Public Land Order No. 601 which established the width for various types of roads in Alaska. The Public Land Order withdrew from the public domain strips of land along all highways in Alaska. By withdrawing the strips of land the federal government actually made those portions of federal public lands unavailable for homesteading.

PLO 601 established several classifications of roads. For through roads such as the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cutoff, the right-of-way was 150 feet either side of center line or 300 feet total. For feeder roads such as the Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Porter-Indian Road, etc. the rights-of-way was 100 feet either side of center line or 200 feet total. The last classification was entitled local roads and represented a withdrawal of 50 feet either side of center line or 100 feet total. However, unlike the through roads and feeder roads, local roads were not specifically identified by name.

The problem with PLO 601 was that homesteaders who entered their property after August of 1949 were often not told that their property might be effected by PLO 601.

The BLM was required, because of the withdrawal by PLO 601, to survey those withdrawals and to post them to their plats. Additionally they were required to tell a homesteader who entered the property and who claimed land under his application which was effected by the PLO 601 that his homestead could not include those lands which PLO 601 effected. The BLM did neither. The

cost and manpower involved in identifying and surveying the property effected by the Public Land Orders and posting it to the plats was beyond the physical and fiscal capability of the BLM in the late 40's and early 50's.

As a result of local BLM protest to Washington the Department of Interior recognized the difficulties inherent in the withdrawals under PLO 601. In 1951 therefore they published PLO 757 which ended the withdrawals as to local and feeder roads and simultaneously published Department Order 2665 which converted those withdrawals to easements. Therefore, a homesteader who entered the property after D. O. 2665 could claim up to the center line of a local or feeder road but would take subject to an easement in favor of the federal government. But, as had happened when PLO 601 was in effect, many homesteaders were not informed of the full nature of the federal government's interest in their property. Some homesteaders had the existence of the local or feeder road easement noted in their prepatented documents but many did not. The easement was never noted in the patent that was issued to them.

The last difficulty associated with these rights-of-way was that the withdrawal that had remained in effect as to through roads. Congress in the late 1950's decided to sell the withdrawn land to the adjoining land owners and convert the remaining through road withdrawals to easements. The Department of Interior published Public Land Order 1613 which converted the withdrawals to easements and the underlying fee was to be sold to the then current adjoining land owner.

The Department of Interior did not immediately institute the program because of Statehood in 1959. During the transition phase much of the federal responsibility for highways and highway rights-of-way passed to the State of Alaska. The State claims its interest to the rights-of-way pursuant to a quitclaim deed issued by the Federal Government in 1959. The State did not bother to record the quitclaim deed until 1969. Thus, there was no document of record in a recording district by which the State claimed any title. The United States government had also never placed the easements of record in the territorial commissioner's office (the predecessor to recorders office).

In the mid 1960's the Bureau of Land Management once again rediscovered its obligations under PLO 1613 to convey the land to the adjoining land owner. It sent out to many of the adjoining land owners notices that they had the right to purchase the underlying fee to the highway along their property. Some of the adjoining land owners paid the purchase price. However, because

of the general freeze on the conveyancing of federal lands in Alaska the federal government failed to issue patents to those individuals.

In the last two years the BLM has once again discovered its obligations under PLO 1613 and have now made the property available to the adjoining land owners, but at today's prices. Further, where the 1965 adjoining land owner had filed an application to purchase and paid his purchase price in 1965, the BLM will now issue the patent to him and not the current adjacent land owner. This causes a great concern among current land owners who believed that they owned the property in front of their homes and businesses. It is conceivable that not only will they have an interloper between themselves and the highway but perhaps even a loss of access to their property.

In 1966, the Alaska legislature became aware that the State was building certain roads along these federally created highway rights-of-way without paying compensation. The only land owners which were effected by this unfair taking were those who entered the property after July of 1947 and before statehood. All other Alaskans were entitled to compensation if such a taking occurred on their property.

Representative Hillstrand bought the issue before the Alaska legislature and they virtually unanimously agreed that such a taking was unfair and unjust to the land owners. The legislature in 1966 therefore passed the Right-of-Way Act of 1966 which barred the state from taking any further land under the grants by the federal government. Between 1966 and 1970 the State therefore paid citizens in Alaska for highway construction and expansion on their lands. Indeed, in 1970 the commissioner for the Department of Transportation testified before the United States Congress that the State had paid several million dollars to land owners in compensation for the federal rights-of-way which had been created in the 1940's and 50's.

In the early 1970's however the problem re-emerged. The rapid increase in the population of Alaska and development of its economy required the State to build additional roads and to expand existing roads to accommodate the growth. In the mid 1970's the State once again began to take property under the 1947 Act. When confronted with the 1966 Act which barred the State from taking property without compensation, the State came up with a legal theory circumventing the Act. In the late 1970's and early 1980's several cases went to the Alaska Supreme Court concerning whether the State had a highway right-of-way across private land which it could take without compensation. In each

of those cases the trial court after having heard the evidence and arguments by the State and land owners ruled in favor of the land owners. In each case the Alaska Supreme Court reversed.

The Alaska Supreme Court's reversal rests on two weak premises. First, that the Alaska legislature in 1966 intended only to end those easements under the 1947 act. The Court's second premise was that the 1947 Act was an independent statute and did not modify the prior act authorizing the Secretary of Interior to build roads in Alaska. The Court found that that prior legislation which authorized the Secretary of Interior to build highways in Alaska permitted him to also create easements independent of the fact that Congress in 1947 modified the law to require that those easements be placed in the patent. Since Department Order 2665 states that it is promulgated under the Department of Interior's responsibility to construct roads in Alaska Department Order 2665 survives the 1966 Act and is not affected by it.

The position of the Alaska Supreme Court seems incredible. It is difficult to believe that in 1966 the Alaska Legislature was only doing away with the right of the State to take an easement under the 1947 Act, which was at least identified to the land owner in his patent, and not prohibit the taking of a concurrent easement which was not identified in the land owners patent. Indeed the premise of the Alaska Supreme Court is refuted by the BLM's own memorandum discussing these rights-of-way.

The most burdensome aspect of the highway right-of-way problem lies in the fact that the federal government mishandled the implementation of the programs. The only notice was published in the Federal Register. The Federal Register is a relatively obscure document to most people. Indeed in the late 1940's and 1950's the existence of the Federal Register, let alone the potential impact on their lives was not realized by most people. The rights-of-way were not placed of record against specific parcels and in cases where the statute or land order required that a map be made of the highway and placed of record with the BLM that was often not done. Further, over the years the State of Alaska in upgrading and improving highways has moved the location of the highway. Now it is difficult to know exactly where the highway was in the 1950's to determine how much property could be taken from the land owner without compensation.

Recently the State has aggravated the problem by permitting other activities to take place on the rights-of-way such as bike paths, horse trails, and utility lines but forced the entity

constructing this nonhighway use to place it on the far edge of the easement thus long before the road might have to actually be expanded, if at all, the easement is being utilized and the homeowner suffers from the loss of trees, shrubs, and use of his land as well as any improvements thereon.

It is this combination of factors which makes the taking by the State of Alaska unfair and inequitable. Lack of adequate notice to the original patentee, lack of notice contained in the patent, lack of notice to the general public except as published in the Federal Register, no recording of the easements in the recording district of the territory or State of Alaska, failure of the State of Alaska to record its quitclaim deed until 1969, and the belief that the 1966 Act by the Legislature ended once and for all the controversy, all contribute to make this taking without compensation extremely unfair.

It is clear that the legislative relief is required to close the loopholes created by the Alaska Supreme Court in the 1966 Act. It was unjust and inequitable then and it is unjust and inequitable now.

FEDERAL ACT OF 1947

[CHAPTER 313]

AN ACT

July 24, 1947
[H. R. 1574]
[Public Law 220]

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

48 U. S. C. §§ 321a-327.

Reservation of right-of-way for roads, etc.

"SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

Payment for value of crops, etc.

Approved July 24, 1947.

FEDERAL AID HIGHWAY ACT - 1970

ALASKAN ASSISTANCE

Sec. 138. (a) Subsection (b) of section 7 of the Federal Aid Highway Act of 1966 is amended to read as follows:

"(b) There is hereby authorized to be appropriated for construction of Federal-aid highways of the State of Alaska, out of the Highway Trust Fund and in addition to funds otherwise made available to the State of Alaska under title 23, United States Code, $20,-

43. 23 U.S.C.A. § 307(b). 44. 23 U.S.C.A. § 506.

000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973."

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321 (d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

FEDERAL ACTS OF 1947 & 1970

STATE of Alaska,
Appellant/Cross-Appellee,

v.

ALASKA LAND TITLE ASSOCIATION; Security Title and Trust Company of Alaska; Alaska Title Guaranty Company; Brokers Title Company; Lawyers Title Insurance Agency, Inc.; Safeco Title Agency, Inc.; Fairbanks Title Agency; Valley Title and Escrow Company; First American Title Insurance Company; Transamerica Title Insurance Company; Hansen Associates, an Alaska Limited Partnership; Richard L. Boysen; and Jack White Company, Appellees/Cross-Appellants,

and

Theodore M. Pease, Jr., and Claire V. Pease, Appellees.

TRANSAMERICA TITLE INSURANCE COMPANY, Appellant,

v.

Theodore M. PEASE, Jr., and Claire V. Pease, Appellees.

Nos. 5407, 5408.

Supreme Court of Alaska.

May 27, 1983.

Appellees and Cross-Appellants Petition for Rehearing Denied July 8, 1983.

Appellants and Cross-Appellees Petition for Rehearing Granted July 8, 1983.

As Amended July 8, 1983.

Action was brought for declaratory judgment by association representing various title insurance companies, individual title insurance companies, and several landowners against State, municipality, and others. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., entered judgment against State and title insurance company, and appeal was taken. The Supreme Court, Matthews, J., held that: (1) trial court erred in declaring that State could not take or utilize any portion of property owner's land for local road which was in excess of 33 foot easement; (2) trial court erred in declaring that neither State nor municipality could take any portion of landowner's property for through road which was in excess of easement widths specified in their respective patents without just compensation; and (3) publication in Federal Register imparted constructive notice and served to preclude subsequent innocent purchaser status.

Affirmed in part, reversed in part, and remanded.

Rabinowitz, C.J., dissented in part and filed opinion.

1. Public Lands ⇐135(1)

Right-of-Way Act of 1966, which precludes State from taking privately owned property by election or exercise of reservation to State and that Act shall not be construed to divest State of any right-of-way or other interest in real property which was taken by State, before effective date of Act, by election or exercise of its right to take property through a reservation, was not applicable to State's claim of 50 foot road easement along south boundary of landowner's property, in that easement in question was established by departmental order under authority of statute to which Right-Of-Way Act was inapplicable. 48 U.S.C. (1958 Ed.) §§ 321a, 321d.

2. Public Lands ⇐135(1)

Staking requirement of subsection of department of interior order providing that reservation and rights of way or easements will attach as to all new construction involving public roads in Alaska when survey stakes have been set on ground and notices have been posted at appropriate points along route of new construction specifying type and width of roads was not applicable to road affecting landowner's property, in that road was an existing road when order was promulgated, while subsection by its express terms only applies to new construction.

3. Public Lands ⇐64

Before highway may be created, there must be either some positive act on part of appropriate public authorities of state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

4. Public Lands ⇐135(1)

Staking requirement of department of interior order was inapplicable to certain highway, in that highway was in existence by time of homestead entry of landowners' predecessor. 48 U.S.C. (1958 Ed.) § 321d.

5. Public Lands ⇐135(1)

Trial court erred in declaring that neither State nor municipality could take any portion of landowner's property for through road which was in excess of easement which was specified in their respective patents without just compensation.

6. Public Lands ⇐135(1)

Trial court properly determined that certain landowners were entitled to declaration against State and municipality that neither State nor municipality could take any portion of their properties for through road which was in excess of easement which was specified in their respective patents without just compensation, where landowner's property was entered in 1945, so that it was not hereafter entered for purposes of statute under which mandatory reservation was limited to patents for land hereafter taken up, or located in territory of Alaska. Pickett Act, §§ 1, 2, 43 U.S.C. (1970 Ed.) §§ 141, 142; 48 U.S.C. (1958 Ed.) § 321d.

7. Insurance ⇐426.1

Title insurance company was liable to property owners under policy for value of 17 foot strip taken pursuant to interior department order, in that publication of public land order in Federal Register imparted constructive notice of order as to land it affected.

8. Public Lands ⇐138

Public land orders, which appeared in Federal Register, imparted constructive notice of conflicting deed or encumbrance, thereby preventing property owner from claiming innocent purchaser status.

9. Estoppel ⇐62.2(2)

Because publication of land orders in Federal Register imparted constructive notice of easements which they created, that notice made reliance unreasonable, and thus State was not estopped from claiming any easements under orders here involved.

10. Public Lands ⇐135(1)

By operation of law, land conveyed by the United States is taken subject to previously established rights of way where instruments of conveyance are silent as to the existence of such rights of way.

11. Public Lands ⇐135(1)

No suit to vacate or annul a patent in order to establish a previously existing right-of-way is necessary because patent contains an implied bylaw condition that it is subject to such a right-of-way, and thus statute of limitations expressed by statute providing that suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents did not apply. 43 U.S.C.A. § 1166.

Jack McGee, Asst. Atty. Gen., Wilson Condon, Atty. Gen., Juneau, for appellant/cross-appellee.

David A. Devine and Michael W. Price, Groh, Eggers, Robinson, Price & Johnson, Anchorage, for appellees/cross-appellants.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS and COMPTON, JJ.

OPINION

MATTHEWS, Justice.

This is an action for a declaratory judgment brought by an association representing various title insurance companies, individual title insurance companies, and several landowners against the State of Alaska, the Municipality of Anchorage, and Theo-

dore and Clair Pease. Nine claims for relief were presented.

The first claim sought a determination that a title insurance policy issued by Transamerica Title Insurance Company to the Peases excluded from coverage any rights-of-way created pursuant to certain Interior Department Orders, namely, Public Land Orders 601, 757, 1613, and Departmental Order 2665.

The second claim for relief sought a declaration that claimed easements for "local roads" as defined in DO 2665 could not be used by the State or municipal governments because of the Alaska Right of Way Act of 1966.

The third related to "feeder roads" as defined in PLO 601 and DO 2665, seeking a declaration that rights-of-way for such roads could not be utilized because of the Alaska Right of Way Act of 1966.

The fourth claim for relief concerned property owned by plaintiff Hansen Associates along the Seward Highway. It alleged that the original patentee had made a homestead entry prior to the effective date of the first order involved, PLO 601, and sought a declaration that no through road easement under PLO 601 or any of its successors could be claimed.

The fifth claim for relief referred to a quitclaim deed given on or about April 7, 1959, conveying the United States' interests in the highways in Alaska to the State. The deed was recorded October 2, 1969. This claim sought a declaration that the quitclaim deed would have no effect on bona fide purchasers for value who purchased and recorded prior to the State's recording of the quitclaim deed.

The sixth claim for relief alleged that the failure of the United States or the State to record PLOs 601, 757, and 1613 and DO 2665 in a State recording office rendered any easements that might otherwise have been created by those orders void as against subsequent innocent purchasers for value who first duly recorded their interests.

The seventh claim alleged a theory of estoppel against the State and Municipality, claiming that for twenty years they had allowed property owners to develop property on which they now claim an easement pursuant to PLOs 601, 757, and 1613 and DO 2665, that no notice of such claims had been given, and that individual property owners would be prejudiced if the State and the Municipality were now permitted to utilize such easements.

The eighth claim sought a declaration that no easement could be taken by the State or the Municipality for a local, feeder, or through road under the authority of PLOs 601, 757, and 1613 or DO 2665 because of the Right of Way Act of 1966.

The ninth claim alleged that prior to the quit-claim deed from the United States to the State of April 7, 1959, the United States had patented to private landowners property which included rights-of-way now claimed by the State. A declaration was sought that these patents were conclusive as against the State and that the patents could not be vacated or annulled because of the six year statute of limitations set forth in 43 U.S.C. § 1166.

The Peases cross-claimed against the State, alleging that the State unlawfully claimed a 50 foot road easement along the south boundary of their property whereas only a 33 foot easement was described in the patent from the United States to their predecessor-in-interest. They sought just compensation for the 17 foot difference in the approximate sum of $3,000.00 plus interest from the date of taking. The Peases also counterclaimed against Transamerica, alleging that if the State was entitled to a full 50 foot right-of-way Transamerica would be obliged under the title policy to compensate them for the value of the 17 foot strip.

Before answering, the State filed a motion for a more definite statement requesting legal descriptions of property across which the complaint alleged that the State was claiming rights-of-way. In response, the plaintiffs described the property owned by Hansen Associates along the Seward Highway, with respect to the fourth claim for relief, and property owned by plaintiff

Richard L. Boysen which also lay along the Seward Highway, with respect to the seventh claim. The State then answered the complaint, placing in controversy all the legal theories of the plaintiffs.

The State, all plaintiffs, and the Peases moved for summary judgment as to all claims. The court denied the State's motion, granted the plaintiffs' motion as to the second, third, and eighth claims, and granted the Peases' motion as to their cross-claim and counterclaim. Following entry of a memorandum of decision reflecting these actions the court entered a declaratory judgment containing four numbered paragraphs, which proceed from the abstract to the particular. They are:

1. The State of Alaska and the Municipality of Anchorage are claiming highway easements for local, feeder, and through roads in excess of easement widths specified in patents issued to Alaska property owners. Said easements are claimed by the State or the Municipality pursuant to authority derived from Public Land Orders 601, 757, 1613 and Department Order 2665. For the reasons set forth in the Memorandum of Decision dated May 7, 1980, the court hereby awards Plaintiffs a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that the State and the Municipality may not take or utilize property for local, feeder, or through roads in excess of the widths set forth in the patents to the affected properties without just compensation to the owners of the affected properties unless such local, feeder, or through roads were occupied and staked by the State of Alaska or the Municipality of Anchorage prior to April 14, 1966, or were specifically designated in the patents to the affected real properties.

2. The Plaintiffs Hanson [sic] Associates and Richard L. Boysen are hereby awarded a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that neither the State nor the Municipality can take any portion of their properties for the through road presently known as the Old Seward Highway which is in excess of the easement widths specified in their respective patents without just compensation.

3. The Defendants Pease are hereby awarded a summary judgment on their cross-claim against the State of Alaska declaring that the State may not take or utilize any portion of the Peases' land for the local road presently known as Rabbit Creek Road which is in excess of the 33-foot easement width specified in the patent to the Peases' property without just compensation. The Peases' property is described as Lot 191, Section 33, Township 12 North, Range 3 West, Seward Meridian, Anchorage Recording District, Third Judicial District, State of Alaska.

4. The Defendants Pease are hereby awarded a summary judgment on their counterclaim against Transamerica Title Insurance Company declaring that Transamerica is liable under its title insurance policy issued to the Peases for the taking by the State of Alaska of a 17-foot strip of land for the local road known as Rabbit Creek Road, which 17-foot strip of land was in excess of a 33-foot easement specified in the Peases' patent. However, since the State of Alaska must compensate the Peases for the taking or utilization of said additional 17-foot easement, the Peases shall collect just compensation from the State of Alaska, and upon receipt of said just compensation the Peases shall not be entitled to recover damages from Transamerica Title Insurance Company for said taking of the additional 17-foot strip of property.

The State has appealed from this judgment. The plaintiffs have cross-appealed, claiming that the superior court should have granted them judgment on their fourth, fifth, sixth, seventh, and ninth claims for relief. In addition, Transamerica Title has appealed from the judgment against it in favor of the Peases.

I

THE STATE'S APPEAL AS TO THE PEASES' PROPERTY

We turn first to the appeal of the State as it relates to the Peases' property.

The patent to the 2.5 acre Pease parcel was issued on October 4, 1955, pursuant to the Small Tract Act of 1938, 43 U.S.C. §§ 682a–682e (1938), *repealed by* Pub.L. No. 94–579, Title VII, § 702 (1976). The lot was leased to the Peases' predecessor-in-interest on May 1, 1953. The patent contains two relevant reservations. One is a blanket reservation for roads "constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, . . ." This reservation was made pursuant to 48 U.S.C. § 321d, ch. 313, 61 Stat. 418 (1947), *repealed by* Pub.L. No. 86–70, § 21(d)(7), 73 Stat. 146 (1959), which provides in part:

> In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. . . .

The other relevant reservation in the patent reserves a 33 foot right-of-way for roadway purposes along the south and east boundaries of the tract. Rabbit Creek Road lies on the south boundary of the Peases' property. As this case has been presented all parties have assumed that Rabbit Creek Road was in existence as a local road at all times relevant to the various orders hereafter discussed. We make the same assumption.

In 1978 the State widened Rabbit Creek Road from 66 feet to 100 feet. The road occupied a 33 foot strip on the Peases' property before widening and a 50 foot strip after widening. The State claimed a 50 foot easement on each side of the center line of Rabbit Creek Road, citing PLOs 601 [1] and 757,[2] and DO 2665 [3] as authority for widening the road without compensating the Peases for taking the extra 17 feet.

PLO 601, effective August 10, 1949, withdrew "the public lands in Alaska lying within . . . 150 feet on each side of the center line of all . . . through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, . . . from all forms of appropriation under the public land laws, . . ." and reserved them "for highway purposes." [4]

The Secretary of the Interior promulgated PLO 757 and DO 2665 on October 19, 1951. 16 Fed.Reg. 10,749, 10,752 (1951). DO 2665 was filed first. *Id.* at 10,752. It established, among other things, easements, rather than withdrawals, of 50 feet on each

1. 14 Fed.Reg. 5048 (1949).

2. 16 Fed.Reg. 10,749 (1951).

3. 16 Fed.Reg. 10,752 (1951).

4. 14 Fed.Reg. 5048 (1949). The quoted language is from the sixth paragraph of PLO 601. The sixth paragraph in full states:

> Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:
>
> Through Roads
>
> Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.
>
> Feeder Roads
>
> Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-Indian Road, Edgerton Cut-Off, Tok Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.
>
> Local Roads
>
> All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

Id. at 5048–49 (1949).

side of the center line of each local road and of 100 feet as to each feeder road.[5] PLO 757 amended the sixth paragraph of PLO 601, *see* note 4 *supra*, increasing the withdrawal for the Seward Highway [the Anchorage-Potter-Indian Road in PLO 601] from 100 feet to 150 feet on each side of the center line. 16 Fed.Reg. 10,749, 10,750 (1951). PLO 757 repealed the general withdrawal for local and feeder roads contained in the sixth paragraph of PLO 601, thus effecting a revocation of the 601 withdrawals as to them. However, PLO 757 acknowledged that DO 2665 had already established easements as to feeder and local roads and did not purport to revoke them. The final paragraph of PLO 757 states:

> Easements having been established on the lands released by this order, such lands are not open to appropriation under the public land laws. . . .[6]

5. 16 Fed.Reg. 10,752 (1951). DO 2665 provides:

Rights-of-Way for Highways in Alaska

Section 1. *Purpose.* (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. Authority for these actions is contained in section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a).

Section 2. *Width of public highways.* (a) The width of the public highways in Alaska shall be as follows:

(1) For through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

(2) For feeder roads: Abbott Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nabesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.

(3) For local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

Section 3. *Establishment of rights-of-way or easements.* (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

Section 4. *Road maps to be filed in proper Land Office.* Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public. *Id.*

6. 16 Fed.Reg. 10,749, 10,750 (1951). The text of PLO 757 so far as it is relevant here states:

> The sixth paragraph of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes, commencing with the words "Subject to valid existing rights", is hereby amended to read as follows:
>
> Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes and public lands in Alaska lying within . . . 150 feet on each side of the center line of the . . . Seward-Anchorage Highway . . . are hereby withdrawn from all forms of appropriation under the public-land laws including the mining and mineral-leasing laws, and reserved for highway purposes.
>
> Easements having been established on the lands released by this order, such lands are

Thus one effect of PLO 757 and DO 2665 was to substitute easements for the withdrawals made in PLO 601 as to local and feeder roads.

The State's claim to the full 50 feet, from the center line, of Rabbit Creek Road is in all relevant respects identical to the claim that it successfully asserted in *State, Department of Highways v. Green*, 586 P.2d 595 (Alaska 1978). In *Green*, as in the Peases' claim, the patents were issued by the United States under the Small Tract Act and contained blanket roadway easements under 48 U.S.C. § 321d as well as specific 33 foot easements. The local road in question in both cases was built before DO 2665 was promulgated, and the lease as well as the patent was issued after promulgation of DO 2665. We held in *Green* that DO 2665 was issued pursuant to 48 U.S.C. § 321a, as distinct from 48 U.S.C. § 321d; that DO 2665 was applicable to patents issued under the Small Tract Act; and that the 50 foot right-of-way established by DO 2665 was effective even though only a 33 foot right-of-way was expressed in the patent. 586 P.2d at 600–03.

The superior court reasoned that *Green* was not controlling because of the provisions of the Right-of-Way Act of 1966, ch. 92 S.L.A. 1966.[7] Sections 2 and 3 contain the operative provisions of the Right-of-Way Act of 1966. Section 2 precludes the State from taking "privately owned property by the election or exercise of a reservation to the state acquired under [48 U.S.C. § 321d]," and section 3 provides that the Act shall not be construed to divest the State of "any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under [48 U.S.C. § 321d]." The effective date of the Right-of-Way Act of 1966 was April 14, 1966.

not open to appropriation under the public-land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

Id. at 10,749–50.

7. The Right-of-Way Act of 1966 states:

Section 1. PURPOSE. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

Section 2. TAKING OF PROPERTY UNDER RESERVATION VOID. After the effective date of this Act, no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal Act is void.

Section 3. PROSPECTIVE APPLICATION. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

Section 4. SHORT TITLE. This Act may be cited as the Right-Of-Way Act of 1966.

Section 5. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

[1] The court erred in applying the Right-of-Way Act of 1966 to the Pease case. It is applicable only to interests taken by the State under a blanket reservation created pursuant to 48 U.S.C. § 321d. We held in *Green* that easements established by DO 2665 were established under the authority of section 321a, not section 321d.[8] *Green*, 586 P.2d at 600 n. 17. Further, we held in *State, Department of Highways v. Crosby*, 410 P.2d 724 (Alaska 1966) that § 321d did not apply at all to patents issued under the Small Tract Act. *Id.* at 728.

[2] The superior court also concluded in its Memorandum of Decision that the easement which otherwise would have been created under DO 2665 on Rabbit Creek Road did not come into being "until the right-of-way was staked by the terms of DO 2665." This statement refers to subsection 3(c) of DO 2665, which provides:

> The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.[9]

The superior court's conclusion that the staking requirement of section 3(c) was applicable to Rabbit Creek Road is erroneous. Section 3(c) by its express terms only applies to new construction. Rabbit Creek Road was an existing road when the order was promulgated. As to existing roads, subsection 3(b) of the order establishes a 50 foot easement in the present, rather than the future, tense and contains no call for additional action in order to fix the easement. It states:

> A right-of-way or easement for highway purposes covering the lands embraced in the . . . local roads equal in extent to the width of such roads as established in section 2 of this order, *is hereby established* for such roads over and across the public lands.

16 Fed.Reg. 10,752 (1951) (emphasis added). Subsection (3) of section 2 of DO 2665 set the width of local roads at 50 feet on each side of the center line. Thus, these two sections of DO 2665 established a 50 foot easement for Rabbit Creek Road.

8. A memorandum from the Chief Counsel of the Bureau of Land Management to the Director of the Bureau, dated February 7, 1951, explains well the extent of the authority granted to the Secretary of the Interior under § 321a. The memorandum states in part:

> Prior to the issuance of Public Land Order No. 601 . . ., nearly all public roads in Alaska were protected only by easements. Right-of-way easements were acquired under section 2477 of the Revised Statutes (43 U.S.C. sec. 932) by the construction of roads. This section granted a right-of-way for the construction of highways over public lands not reserved for public uses.
>
> Section 2 of the Act of January 27, 1905 (33 Stat. 616), incorporated with amendments into 48 U.S.C. secs. 321–323, established a Board of Road Commissioners in the then Territory of Alaska to function under the jurisdiction of the Secretary of War. This section provided:
>
> "Sec. 2. * * * The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads and pack trails * * *. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and lay out, * * *."
>
> Section 3 of the Act of August 24, 1912 (37 Stat. 512, 48 U.S.C. secs. 23 and 24), under which Alaska was organized as a Territory, provided that the authority of the legislature of the Territory should not extend to certain statutes of the United States including the Act of January 27, 1905, *supra*, and the several acts amendatory thereof.
>
> Section 2 of the Act of June 30, 1932 (47 Stat. 446, 48 U.S.C. sec. 321a), provides:
>
> "Sec. 2. The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska heretofore administered by said board of road commissioners under the direction of the Secretary of War; * * *."
>
> The authority of the Secretary of the Interior conferred by the above-cited acts to "locate, lay out, construct and maintain" public roads in Alaska clearly implies the right to fix the width of the roads. This width is not fixed by any statute.

9. 16 Fed.Reg. 10,752 (1951). For the full text of DO 2665, *see* note 5 *supra*.

[3] The history of the promulgation of DO 2665 also demonstrates that the staking requirement applies only to new construction, not existing roads. In territorial days road easements were created across public land under 43 U.S.C. § 932, *repealed by* Pub.L. No. 94-579, Title VII, § 706(a) (1976), a statute remarkable for its brevity, which provided:

> The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

This blanket grant had to be accepted. A common method of acceptance was the building of a road by a public authority.[10] But other methods of acceptance were also recognized. As we stated in *Hamerly v. Denton*, 359 P.2d 121 (Alaska 1961) with respect to 43 U.S.C. § 932:

> [B]efore a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention to accept a grant, or there must be public user for such a period of time and under such conditions as to prove that the grant has been accepted.

Id. at 123 (footnote omitted). In *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221 (Alaska 1975), we held that enactment by the territorial legislature of a law dedicating a four rod strip along all section lines for roadway purposes was a positive act of acceptance of the section 932 grant. *Id.* at 1225–26.

When acceptance of the section 932 grant occurred by construction of a road by an appropriate public authority, a question remained regarding the width of the right-of-way thereby created. It was held that the width was not confined necessarily to the traveled portion of the roadway, but that "local laws, customs and usages" would control. *City of Butte v. Mikosowitz*, 39 Mont. 350, 102 P. 593, 595–96 (1909); *see also Ball v. Stephens*, 68 Cal.App.2d 843, 158 P.2d 207, 209 (1945).

One purpose of DO 2665 was to define as a matter of local law or usage the width of roadway easements which had been created by the construction of roads and which would be created in the future by the construction of new roads. The memorandum of February 7, 1951, from the chief counsel of the Bureau of Land Management to the Bureau's director[11] makes this clear:

> Notwithstanding that section 2477 of the Revised Statutes (43 U.S.C. § 932) does not fix the width of the rights-of-way granted by it, the width when fixed by a positive act of the proper State or Territorial authorities has been held valid. *Costain v. Turner* (1949) [72 S.D. 427], 36 N.W.2d 382; *Butte v. Mikosowitz* (1909) [39 Mont. 350], 102 P. 593. In both cases, the width fixed included an area in excess of the beaten path or track. The reasons which sustain the conclusion reached in those cases support the conclusion that in the case of public highways in Alaska constructed or maintained under the jurisdiction of the Secretary of the Interior, the width of the highways may be fixed by that official.

The memo goes on to suggest the publication of an order, which was to become DO 2665, in terms which make it clear that the staking requirement only applies to new construction and not to existing roads:

> The following procedure is suggested for the establishment of highway easements of prescribed widths in Alaska:
>
> (1) The issuance of an order by the Secretary of the Interior to be published in the Federal Register fixing the width for existing roads and the width for new construction, including changes in the location of existing roads, and extensions of such roads. *In the case of new construction, the order can only be effective when the survey stakes have been set on the ground.*

(Emphasis added).

Further, the Superior Court's conclusion that the staking requirement applies to ex-

10. *See Clark v. Taylor*, 9 Alaska 298, 303 (D.Alaska 1938); *Ball v. Stephens*, 68 Cal. App.2d 843, 158 P.2d 207, 209 (1945); *Moulton v. Irish*, 67 Mont. 504, 218 P. 1053, 1054 (1923).

11. An excerpt from this memorandum is quoted at note 8 *supra*.

isting roads as well as to roads to be constructed in the future is in conflict with our holding in *Green, supra*. The local road in question there was constructed before the promulgation of DO 2665. As to the Green parcel, we held that the 50 foot right-of-way was fixed as of the promulgation of the order. *Green*, 586 P.2d at 604.

For these reasons we conclude that the State's appeal with respect to the adverse judgment on the cross-claim of the Peases is well-founded. The third paragraph of the declaratory judgment is therefore reversed. Since the first paragraph of the judgment includes the situation presented in the Pease case, it too must be reversed.

II

THE STATE'S APPEAL AS TO BOYSEN'S PROPERTY

The discussion in this section concerns the plaintiff's eighth claim for relief, which is reflected in the second and third paragraphs of the judgment. This discussion is also relevant to the second claim for relief relating to feeder roads. Because specific facts concerning the Hansen parcel require that it be treated differently, we exclude it from this discussion and focus instead on the Boysen property.

This aspect of the case involves an additional public land order that was not involved in the discussion of the Pease case. This order, PLO 1613, was promulgated April 7, 1958. 23 Fed.Reg. 2376, 2378 (1958). PLO 1613 revoked PLO 601 which, as modified by PLO 757, had withdrawn and reserved for highway purposes 150 feet on each side of the Seward Highway. *Id.* at 2376. PLO 1613 converted the 150 foot Seward Highway right-of-way to an easement of the same width.[12]

The Boysen parcel consists of some 80 acres joining the Seward Highway. The patent was issued to Boysen's predecessor on May 15, 1952, under the Homestead Act. The homestead entry was made January 2, 1951. The patent contains a blanket reservation for road rights-of-way as required by 48 U.S.C. § 321d. *See* page 718 *supra*.

Setting aside the possible effect of the section 321d reservation, the homestead entry of Boysen's predecessor in January 1951 fixes the date from which the property rights of the owners of the parcel are to be measured.[13] As of that date, PLO 601 had withdrawn 100 feet of land from each side of the center line of the Seward Highway. 14 Fed.Reg. 5048 (1949).

The superior court was apparently of the view that unless the State had fully occupied or staked this 100 feet before the effective date of the Right-of-Way Act of 1966, that act eliminated the withdrawal. We disagree.

[4] The Seward Highway was in existence by the time of the homestead entry. The superior court apparently imposed the staking requirement because of section 3 of DO 2665.[14] For the reasons we have expressed with respect to the Peases' property, the superior court's conclusion concerning the applicability of the staking require-

12. 23 Fed.Reg. 2376, 2377 (1958). PLO 1613 provides in pertinent part:

> 1. Public Land Order No. 601 of August 10, 1949, as modified by Public Land Order 757 of October 16, 1951, reserving for highway purposes the public lands of Alaska lying ... within 150 feet on each side of the center line of the ... Seward-Anchorage Highway ... is hereby revoked.
>
> ....
>
> 3. An easement for highway purposes, including appurtenant protective, scenic and service areas, over and across the lands described in paragraph 1 of this order, extending 150 feet on each side of the center line of the highways mentioned therein, is hereby established.
>
> ....
>
> 5. The easements established under paragraphs 3 and 4 of this order shall extend across both surveyed and unsurveyed public lands described in paragraphs 1 and 2 of this order for the specified distance on each side of the center line of the highways ... as those center lines are definitely located as of the date of this order.

Id. at 2376–77.

13. *See* part III *infra*.

14. Subsection (a)(1) of section 1 of DO 2665 recognizes expressly the 150 foot withdrawal for the Seward Highway expressed in PLO 757. *See* note 5 *supra*.

ment to the Seward Highway is erroneous. The Seward Highway was not new construction in 1949, when PLO 601 was promulgated, or in 1951, when DO 2665 was promulgated. It had a fixed location and the boundaries of its right-of-way were ascertainable by referring to the applicable PLO and measuring from its center line.

In addition, the 100 foot right-of-way first created by PLO 601 does not depend for its existence on the reservation placed in the patent under section 321d. PLO 601 was issued pursuant to Executive Order 9337, 8 Fed.Reg. 5516 (1943), under which the President of the United States delegated his authority to the Secretary of the Interior under 43 U.S.C. § 141, ch. 421, § 1, 36 Stat. 847 (1910), *repealed by* Pub.L. No. 94–579, Title VII, § 704(a) (1976), authorizing withdrawal of public lands in Alaska for specified public purposes.[15] As previously noted, the Right-of-Way Act of 1966 applies only to rights-of-way acquired under section 321d reservations.

[5] For the above reasons the second paragraph of the judgment as it relates to the Boysen property must be reversed. The preceding discussion also requires, as did our discussion in part I concerning the Peases' property, reversal of the first paragraph of the judgment. We do not reach the question whether a full 150 foot easement became fixed across the Boysen property by operation of the section 321d patent reservation and promulgation of PLO 757, and thus may be unaffected by the Right-of-Way Act of 1966. This question was not specifically addressed by the superior court nor is it presented in the briefs before us.

III

THE CROSS–APPEAL AS TO THE HANSEN PROPERTY

The patent for the Hansen parcel was issued to Hansen's predecessor-in-interest on June 1, 1950, under the Homestead Act. The homestead entry was made on January 23, 1945, before the promulgation of any of the land orders previously discussed, and before passage of 48 U.S.C. § [illegible]. The patent to the Hansen proper[illegible] does not contain a section 321d reservation.

The PLO 601 withdrawal was expressly subject to "valid existing rights." 14 Fed. Reg. 5048 (1949). Homestead entries have been held to give rise to valid existing rights,[16] although those rights may not in all cases take priority over intervening government acts.[17] Here, however, there is no doubt of the intention to except prior homestead entries from PLO 601. As we have noted, PLO 601 was promulgated pursuant to 43 U.S.C. § 141. 43 U.S.C. § 142 states that "there shall be excepted from the force and effect of any withdrawal made under the provisions of ... section 141 ... all lands which are, on the date of such withdrawal, embraced in any lawful homestead ... entry ...." Since entry was in 1945, and the first withdrawal occurred in 1949, Hansen's predecessor-in-interest, as an entryman, had rights superior to the withdrawals.

[6] Section 321d has no effect on the Hansen property. The mandatory reservation required by this statute was limited to "patents for lands *hereafter* taken up, entered, or located in the Territory of Alaska, ..." (emphasis added). Since the Hansen land was entered in 1945, it was not "hereafter" entered and thus was excluded from the operation of that statute. This is consistent with the absence of the section 321d reservation in the Hansen patent, and also consistent with its presence in the patents to the other two parcels of land involved in this appeal where entry occurred after July

15. The State and the plaintiffs have agreed that PLO 601 is based on Executive Order 9337 which, "in turn, rests on" 43 U.S.C. § 141. We thus have no occasion to consider whether Executive Order 9337 delegated authority to make withdrawals in addition to those authorized by 43 U.S.C. § 141.

16. *Stockley v. United States*, 260 U.S. 532, 540, 43 S.Ct. 186, 188, 67 L.Ed. 390, 394 (1923); *Korf v. Itten*, 64 Colo. 3, 169 P. 148, 150–51 (1917).

17. *Wilbur v. United States ex rel. Stuart*, 53 F.2d 717, 720 (D.C.Cir.1931).

24, 1947, the date on which section 321d was adopted.

Thus, for reasons different from those articulated by the superior court, the second paragraph of the declaratory judgment is affirmed as to the Hansen parcel.

IV

TRANSAMERICA'S LIABILITY

[7] In count I of the complaint, Transamerica sought a declaration absolving it of liability to the Peases under its title insurance policy. The superior court, following *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976), found Transamerica conditionally liable to the Peases for the value of the 17 foot strip arising from DO 2665. In *Hahn* we held that the publication of a public land order, there PLO 601, in the Federal Register imparted constructive notice of the order as to the land it effected. Under the terms of the title policy there involved, the title insurance company was found to be liable. *Id.* at 146. We agree that *Hahn* is squarely controlling.

Transamerica, however, contends that *Hahn* should be overruled. We have considered Transamerica's arguments in support of this position and we are not persuaded that *Hahn* is unsound in any respect. We therefore decline to overrule it. Thus, Transamerica is liable under its policy to the Peases. Paragraph 4 of the declaratory judgment so far as it relates to Transamerica's liability to the Peases is affirmed.

V

CROSS–APPEAL AS TO FIFTH, SIXTH, SEVENTH AND NINTH CLAIMS FOR RELIEF

The plaintiffs claim that the superior court should have granted summary judgment in their favor on their fifth, sixth, seventh and ninth claims for relief. The court made no ruling as to these claims. We review them in accordance with the principle that any ground may be urged on appeal to support a judgment even if it was not accepted by the court in rendering judgment. *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976); *Ransom v. Haner*, 362 P.2d 282, 285 (Alaska 1961).

The fifth and sixth claims are similar because to prevail, a property owner [18] must establish status as a "subsequent innocent purchaser ... in good faith for a valuable consideration" as that term is used in AS 34.15.290. An innocent purchaser must lack "actual or constructive knowledge" of the conflicting deed or encumbrance that the purchaser seeks to avoid. *Sabo v. Horvath*, 559 P.2d 1038, 1043 (Alaska 1976). *Sabo* held that as between two grantees, a prepatent grantee's deed that was recorded before the patent was issued is a "wild deed" and does not give constructive notice to a post-patent grantee who duly records. *Id.* at 1044.

The question here is whether public land orders, which appear in the Federal Register, impart constructive notice, thus preventing the property owner from claiming innocent purchaser status. We have in part IV of this opinion re-affirmed the holding of *Hahn v. Alaska Title Guarantee Co.*, 557 P.2d 143 (Alaska 1976) that publication of a land order in the Federal Register is constructive notice of the order as that term is used in a title insurance policy. That holding is controlling here.

[8] The distinction between *Sabo* and this appeal is that *Sabo* concerns private deeds and this appeal involves a conflict between a government regulation and a patent. Regulations published in the Federal Register take on the character of law. *Farmer v. Philadelphia Electric Co.*, 329 F.2d 3, 7 (3d Cir.1964); *United States v. Messer Oil Corp.*, 391 F.Supp. 557, 561–62 (W.D.Pa.1975). All persons are presumed to know the contents of the law. *See Ferrell v. Baxter*, 484 P.2d 250, 265 (Alaska 1971). In *United States v. Messer Oil Corp.*, the district court indicated that regu-

18. In this somewhat abstract context the term "property owner" should be considered to be a property owner situated as is the plaintiff Boysen, for Hansen has prevailed on other grounds.

lations published in the Federal Register were sufficient notice to allow conviction of a criminal violation. 391 F.Supp. at 562. If Federal Register notice is sufficient for this purpose, it is sufficient notice to a landowner regarding easements that the federal government has reserved across his land. Thus, the publication of the land orders in the Federal Register imparted constructive notice and served to preclude subsequent innocent purchaser status.

In the seventh claim, plaintiffs contend that the State is estopped from claiming any easements under the orders here involved. The State responds that constructive notice defeats the estoppel claim.

[9] Estoppel requires "the assertion of a position by conduct or word, reasonable reliance thereon by another party, and resulting prejudice." *Jamison v. Consolidated Utilities, Inc.*, 576 P.2d 97, 102 (Alaska 1978) (footnote omitted). Plaintiffs claim that the State has asserted by conduct that it claims no easements by allowing the owners to develop their property inconsistently with the easements, and by not recording the land orders. They assert that reasonable reliance on that assertion has taken place. Because we have already found that publication of the land orders imparts constructive notice of the easements which they create, that notice makes plaintiffs' reliance unreasonable. Thus, the estoppel claim lacks merit.

The ninth claim of plaintiffs is based on the fact that the property owners' patents involved here did not expressly refer to any land order easements. Because of this the plaintiffs contend that the property conveyed was conveyed free from such easements. They argue further that as a result suit was required to be brought against the property owners to vacate the patents, and that the time for such a suit is, in all cases now before us, barred by the six year statute of limitations contained in 43 U.S.C. § 1166.[19]

The premise of this argument is that a patent which does not say that it is issued subject to a public easement operates to transfer the property free from the easement. We rejected this premise in *Green*. We held there that an unexpressed DO 2665 easement was effective. *Green*, 586 P.2d at 603.

Similarly, in *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221 (Alaska 1975), we affirmed a trial court ruling that a right-of-way not expressed in a patent was effective:

> At the outset Girves notes that neither her "Notice of Allowance", nor her patent contained any express reservation of rights-of-way in favor of any public body. However, the absence of an express reservation of easement does not preclude the borough from showing that a right-of-way was established prior to the issuance of these documents.

Id. at 1224 (footnote omitted). We cited as authority for that statement *State v. Crawford*, 7 Ariz.App. 551, 441 P.2d 586 (1968). That case aptly states:

> [I]t is also clear from cases decided under 43 U.S.C. § 932 that a subsequent patentee takes subject to previous right-of-ways [sic] established under the grant contained in that federal statute [Citations omitted.] No contrary authority has come to our attention.... The silence of the patents does not preclude the State from showing the full extent of its right-of-way established prior to the time when the patents were issued to plaintiff's predecessors.

Id. at 590.

[10, 11] The above and other authorities[20] establish that, by operation of law,

19. 43 U.S.C. § 1166 provides:

> Suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents.

20. *Bird Bear v. McLean County*, 513 F.2d 190, 192–93 (8th Cir.1975); *Ball v. Stephens*, 68 Cal.App.2d 843, 158 P.2d 207, 210 (1945); *Nicolas v. Grassle*, 83 Colo. 536, 267 P. 196, 197 (1928); *Flint & P.M. Ry. v. Gordon*, 41 Mich. 420, 2 N.W. 648, 655 (1879); *Lovelace v. Hightower*, 50 N.M. 50, 168 P.2d 864, 874 (1946); *Verdier v. Port Royal R.R.*, 15 S.C. 476, 481 (1881); *Costain v. Turner County*, 72 S.D. 427,

land conveyed by the United States is taken subject to previously established rights-of-way where the instrument of conveyance is silent as to the existence of such rights-of-way. No suit to vacate or annul a patent in order to establish a previously existing right-of-way is necessary because the patent contains an implied-by-law condition that it is subject to such a right-of-way.[21] Thus the statute of limitations expressed by 43 U.S.C. § 1166 does not apply.

VI

CONCLUSION

The first paragraph of the judgment is REVERSED. The second paragraph of the judgment is AFFIRMED as to Hansen and REVERSED as to Boysen. The third paragraph of the judgment is REVERSED. The fourth paragraph of the judgment is AFFIRMED as to the Peases' claim against Transamerica. The case is REMANDED for further proceedings consistent with the foregoing.

RABINOWITZ, Chief Justice, dissenting in part.

I find that I am unable to agree with the court's conclusion that the State of Alaska or the Municipality of Anchorage is entitled to claim highway easements in excess of those reserved when the parcels in question were conveyed by patent from the federal government. Before discussing the grounds for my disagreement with the court's ruling, however, I believe that it will be useful to set forth what I consider to be the significant facts.

The principal question in this appeal is whether the state[1] must compensate three landowners for portions of their parcels taken to widen existing roads. The landowners—Theodore and Claire Pease, Richard Boysen, and a limited partnership called Hansen Associates—are the successors in interest to persons who originally acquired the parcels by patent from the federal government. The federal government expressly reserved highway easements or rights-of-way in the Pease and Boysen patents; there were no easements or rights-of-way reserved in the Hansen patent. In each case the state claims a highway easement greater than that reserved in the patent, resting its claims on various now-repealed federal directives which provided arguably that the easements claimed by the state should have been expressly reserved when the parcels were conveyed by patent.[2]

36 N.W.2d 382, 383 (1949); *Wells v. Pennington County*, 2 S.D. 1, 48 N.W. 305, 308 (1891); *Sullivan v. Condas*, 76 Utah 585, 290 P. 954, 957 (1930).

21. Indeed, when the Secretary of the Interior declared these rights-of-way, they vested in the public and there is authority that thereafter the Secretary could not revoke them. In *Walcott Township v. Skauge*, 6 N.D. 382, 71 N.W. 544 (1897), the court, in discussing 43 U.S.C. § 932, stated:

> Highways once established over the public domain under and by virtue of this act, the public at once became vested with an absolute right to the use thereof, *which could not be revoked by the general government*, and whoever thereafter took the title from the general government took it burdened with the highway so established.

Id. at 546 (emphasis added); *accord Bird Bear v. McLean County*, 513 F.2d 190, 192 (8th Cir. 1975); *Wenberg v. Gibbs Township*, 31 N.D. 46, 153 N.W. 440, 441 (1915); *Gustafson v. Gem Township*, 58 S.D. 308, 235 N.W. 712, 713 (1913). *Cf. City of Butte v. Mikosowitz*, 39 Mont. 350, 102 P. 593, 596 (1909) (grant of a roadway under 43 U.S.C. § 932 is to the public, and governmental entities have "supervision and control thereof as trustee for the public, . . ."). That the rights-of-way were established by administrative action rather than public user does not put them on a different footing. *See United States v. Rogge*, 10 Alaska 130, 152–53 (D.Alaska 1941), *aff'd* 128 F.2d 800 (9th Cir.1942).

1. Although the right of the Municipality of Anchorage to claim undisclosed easements is also at issue, I will refer only to the state's rights, for convenience's sake, as the legal issues are the same as to both the state and the municipality.

2. The Pease patent reserved a right-of-way of unspecified location and width under the authority of 48 U.S.C. § 321d, and also reserved a separate 33-foot right-of-way along the south and east boundaries of the parcel. The Peases concede that the state is entitled to the 33-foot right-of-way, and the Alaska Right-of-Way Act of 1966, ch. 92, 1966 Temporary and Special Acts and Resolutions, requires the state to

In my view, the state's reliance upon undisclosed easements, decades after the lands were patented,[3] is foreclosed by both federal and state statutes of limitations governing suits to set aside patents.[4] In addition, I think the landowners are entitled to the protection of Alaska's recording act.[5] Thus, I do not agree with the court's ruling that the state need not compensate the landowners for taking easements which were not expressly reserved in the patents.[6]

In my view, the dispositive legal issue in this appeal should be framed as follows: if the federal government mistakenly issues a patent which purports to convey clear title to lands which should have been withheld for highway easements, is there a time after which the patent may not be challenged notwithstanding the mistake? Because Congress has supplied the answer to this dispositive question in the form of a statute of limitations applicable to suits challenging the validity of patents, I think it is unnecessary to address the array of statutes, Public Land Orders, and Departmental Orders marshalled by the state in defense of the easements that it claims.

Forty-three U.S.C. § 1166 provides that "[s]uits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents."[7] This statute of

compensate the Peases if it uses a section 321d right-of-way notwithstanding the fact that the right-of-way was expressly reserved in the patent. In addition, section 138(b) of the Federal Aid Highway Act of 1970 provides an independent basis for concluding that the state may not claim a section 321d easement. That provision states:

> Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321(d) [sic] of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

Pub.L. No. 91-605, § 138(b), 1970 U.S.Code Cong. & Ad.News 2001, 2029 (uncodified). The state, however, claims yet another easement of fifty feet on the Pease parcel, which is seventeen feet greater than the easement to which the Peases agree the state is entitled. The state claims this fifty-foot easement pursuant to Public Land Orders 601 and 757 and Department Order 2665.

The Boysen patent reserved only a section 321d right-of-way; once again, the state must compensate Boysen if it uses a section 321d right-of-way. The state, however, claims a separate 150-foot easement on the Boysen parcel under the authority of Public Land Order 1613 and Department Order 2665.

As to the Hansen parcel, which is subject to no reserved highway easements or rights-of-way, the state also claims a 150-foot easement under the authority of Public Land Order 1613 and Department Order 2665.

3. The Hansen patent was issued on June 1, 1950; the Boysen patent, on May 15, 1952; the Pease patent, on October 4, 1955. The state did not claim the easements that it now seeks until the mid to late 1970's.

4. 43 U.S.C. § 1166; AS 09.10.230. I do not find it necessary to distinguish or consider the many Alaska cases dealing with the effect of various federal directives, because none of those cases have addressed the statutes of limitations issues.

5. AS 34.15.290.

6. The only federal directive upon which the state relies which was in effect when the Hansen parcel was patented is Public Land Order 601; the remaining directives were not promulgated until after the Hansen patent was issued and cannot, in my view, be applied to alter vested property interests without abridging rights secured by the federal and state constitutions. The withdrawals made by Public Land Order 601 were, however, subject to "valid existing rights," and an entryman's claim is a "valid existing right" which could not be adversely affected by Public Land Order 601. Since the Hansen parcel was entered prior to the promulgation of Public Land Order 601, that parcel is not subject to the withdrawal made by that directive.

7. Admittedly the United States is not a party to this litigation, but this observation does not answer the question of the applicability of the federal statute of limitations. The state, which acquired its interests in federally-created highway easements from the federal government by quitclaim deed, could not have acquired greater rights than its grantor had; the state's rights are merely derivative. A claim that would have been time-barred as to the United States was not revived, nor did the federal statute of limitations cease to run as to viable claims, when the United States transferred its rights to

limitations was enacted because of "the insecurity and loss of confidence of the public in the integrity and value of patent title to public lands, which had been occasioned by conflicting claims . . . which had resulted in many suits being commenced to cancel patents." *United States v. Whited & Wheless, Ltd.*, 246 U.S. 552, 562, 38 S.Ct. 367, 368, 62 L.Ed. 879, 882 (1918). The statute presupposes that the federal government might err and issue a patent to previously reserved lands. As the Supreme Court has explained, "[i]f the act were confined to valid patents it would be almost or quite without use." *United States v. Chandler-Dunbar Water Power Co.*, 209 U.S. 447, 450, 28 S.Ct. 575, 580, 52 L.Ed. 881, 887 (1908). The well-settled rule is that the running of the statute of limitations "makes the title of the patentee good as against the grantor, the United States." *United States v. Eaton Shale Co.*, 433 F.Supp. 1256, 1269 (D.Colo. 1977). If the landowners' patent titles are good as against the original grantor, the United States, then their titles are good as against the state, which acquired its interests, if any, in the patented lands in 1959 by quitclaim deed from the federal government. In my view the effect of the six-year statute of limitations is to validate a mistakenly issued patent after the limitations period has expired.[8] Thus, I would

the state. Stated differently, a time-barred claim is not revived by assigning it to someone to whom the relevant statute of limitations is not applicable. *See, e.g., Stanczyk v. Keefe*, 384 F.2d 707, 708 (7th Cir.1967) (parents could not revive time-barred claim by assigning it to minor child, against whom statute of limitations did not run); *Smith v. Copian County*, 232 Miss. 838, 100 So.2d 614, 616 (1958) (assignee's claim is barred if assignor's rights are barred).

Inherent in my conclusion that 43 U.S.C. § 1166 is applicable is the view that a judicial ruling which declares that a portion of the landowners' patented parcels must be conveyed without compensation to the state, in derogation of the patents themselves, is the functional equivalent of a ruling that portions of the patents be "vacated" or "annulled."

8. *See United States v. Winona & St. Peter R.R. Co.*, 165 U.S. 463, 17 S.Ct. 368, 41 L.Ed. 789 (1897); *United States v. Chandler-Dunbar Water Power Co.*, 209 U.S. 447, 28 S.Ct. 579, 52 L.Ed. 881 (1908). In *Winona* the Court explained:

> Congress evidently recognized the fact that notwithstanding any error in certification or patent there might be rights which equitably deserved protection, and that it would not be fitting for the government to insist upon the letter of the law in disregard of such equitable rights. In the first place, it has distinctly recognized the fact that when there are no adverse individual rights, and only the claims of the government and of the present holder of the title to be considered, it is fitting that a time should come when no mere errors or irregularities on the part of the officers of the land department should be open for consideration. In other words, it has recognized that, as against itself in respect to these land transactions, it is right that there should be a statute of limitations; that when its proper officers, acting in the ordinary course of their duties, have conveyed away lands which belonged to the government, *such conveyance should, after the lapse of a prescribed time, be conclusive against the government, and this notwithstanding any errors, irregularities, or improper action of its officers therein.*

165 U.S. at 475–76, 17 S.Ct. at 370–71, 41 L.Ed. at 795 (emphasis added).

Indeed, so strong is the federal policy of ensuring that federal patents convey unassailable title that the validity of even fraudulently-procured patents may not be challenged after the six-year statute of limitations has run. *See, e.g., United States v. Whited & Wheless, Ltd.*, 246 U.S. 552, 38 S.Ct. 367, 62 L.Ed. 879 (1918). A patentee who procures a patent by fraud has good title after the six-year period has expired, although the statute of limitations does not begin to run until the fraud is discovered. *Exploration Co. v. United States*, 247 U.S. 435, 38 S.Ct. 571, 62 L.Ed. 1200 (1918).

In addition, the federal bona fide purchaser doctrine provides that the validity of an erroneously granted patent may not be challenged once the original patentee conveys the parcel to a bona fide purchaser. *See, e.g., United States v. California & Oregon Land Co.*, 148 U.S. 31, 40–41, 13 S.Ct. 458, 461–462, 37 L.Ed. 354, 359–60 (1893); *Colorado Coal & Iron Co. v. United States*, 123 U.S. 307, 313, 8 S.Ct. 131, 133, 31 L.Ed. 182, 185 (1887). Bona fide purchase from a patentee is a perfect defense to a suit to set aside a patent. *See, e.g., Wright-Blodgett Co. v. United States*, 236 U.S. 397, 35 S.Ct. 339, 59 L.Ed. 637 (1915), which involved a patent obtained by fraud:

> [T]he respect due a patent, the presumption that all the preceding steps required by the law had been observed before its issue, and the immense importance of stability of titles dependent upon these instruments, demand that suit to cancel them should be sustained only by proof which produces conviction. . . . And, *despite satisfactory proof of fraud in*

hold that the federal statute of limitations, 43 U.S.C. § 1166, bars the state's claim to undisclosed easements.[9]

As an independent basis for ruling that the landowners' parcels are free of the easements claimed by the state, I would hold further that the state's claims are barred by AS 09.10.230, which provides in pertinent part:

> No person may bring an action to set aside, cancel, annul, or otherwise affect a patent to lands issued by this state or the United States, or to compel a person claiming or holding under a patent to convey the lands described in the patent or a portion of them to the plaintiff in the action, or to hold the lands in trust for or to the use and benefit of the plaintiff, or on account of any matter, thing, or transaction which was had, done, suffered, or transpired before the date of the patent unless commenced within 10 years from the date of the patent.[10]

This statute, which clearly evinces the legislature's intent that patents be considered conclusive evidence of the title they purport to convey after ten years from the date of issuance, has been the law of the territory and State of Alaska for the better part of a century. In my view it is appropriate to give effect to this long-standing state policy of promoting public confidence in the stability and marketability of patent titles.[11]

obtaining the patent, as the legal title has passed, bona fide purchase for value is a perfect defense.

Id. at 403, 35 S.Ct. at 341, 59 L.Ed. at 640 (citations omitted) (emphasis added).

9. I find the authorities relied upon by the court, *see ante* n. 19, inapposite for two reasons. First, those authorities simply do not address the statute of limitations issue.

Second, many of those authorities involve situations in which, at the time the patent in question was issued, the patented lands had previously been conveyed to or reserved for some third party, such as a railroad or a state. In such situations courts have sometimes concluded that the prepatent interests prevailed over the patentees' claims. In the case at hand, however, the state is not claiming, and cannot claim, that it acquired the easements or rights-of-way prior to the issuance of the patents in question and that the patents were therefore issued in derogation of the state's rights. The claim is not that the federal government had conveyed away parts of the patented parcels to anyone prior to issuing the patents; rather, the gist of the claim is that the federal government mistakenly conveyed by patent, lands that it intended to keep for itself.

In *Cramer v. United States*, 261 U.S. 219, 67 L.Ed. 622, 43 S.Ct. 342, (1923), the Court made precisely this distinction. *Cramer* involved a suit brought by the United States to set aside a patent granted to a railroad covering lands occupied by Indians. The Court distinguished between suits brought by the government to cancel patents and revest title in itself and suits brought so that the parcels could be vested in third parties whose rights had accrued prior to patent. The Court noted that the six-year statute of limitations applies to the former kind of case, but not to the latter:

> The suit is not barred by [now 43 U.S.C. § 1166], limiting the time within which suits may be brought by the United States to annul patents.
>
> The object of that statute is to extinguish any right the *government* may have in the land which is the subject of the patent, not to foreclose claims of third parties. Here the purpose of the annulment was not to establish the right of the United States to the lands, but to remove a cloud upon the possessory rights of its wards. As stated by this court in *United States v. Winona & St. Peter R.R. Co.*, 165 U.S. 463, 475 [17 S.Ct. 368, 370], 41 L.Ed. 789, 795, ... the statute was passed in recognition of "the fact that when there are no adverse individual rights, and only the claims of the government and of the present holder of the title to be considered, it is fitting that a time should come when no mere errors or irregularities on the part of the officers of the Land Department should be open for consideration." After the lapse of the statutory period, the patent becomes conclusive against the government, but not as against claims and rights of others ....

Id. at 233-34, 43 S.Ct. at 346, 67 L.Ed. at 628 (emphasis in original). *See also United States v. Krause*, 92 F.Supp. 756, 766 (W.D.La.1950); *Capron v. Van Horn*, 258 P. 77 (Cal.1927).

10. *See Monroe v. California Yearly Meeting of Friends Church*, 564 F.2d 304, 306 n. 2 (9th Cir.1977).

11. Although the question of the applicability of AS 09.10.230 was not raised below, we have repeatedly stated that "[u]pon appeal, a correct decision of the superior court will be affirmed regardless of whether we agree with the reasons advanced." *Fireman's Fund Am. Ins. Cos. v. Gomes*, 544 P.2d 1013, 1017 n. 12 (Alaska 1978); *Carlson v. State*, 598 P.2d 969, 973 (Alaska 1979); *A & G Constr. Co. v. Reid Bros. Logging Co.*, 547 P.2d 1207, 1211 n. 1 (Alaska 1976).

Finally, I do not agree with the court's holding that Boysen and the Peases are charged with constructive notice of federal directives published in the Federal Register and thus are unable to claim bona fide purchaser status under Alaska's recording act, AS 34.15.290.

Forty-four U.S.C. § 1507 provides that persons are charged with notice of documents filed for publication in the Federal Register "except in cases where notice by publication is insufficient in law." Thus, the pertinent question is whether published notice of federal directives such as Public Land Orders is "insufficient in law" to bind Boysen and the Peases, who did not have actual knowledge of the published directives when they purchased their parcels.[12]

The answer to this question is supplied by federal law,[13] and, as the court notes, there are a number of situations in which notice in the Federal Register is sufficient to bind persons who did not know of the publication. In my view, however, this appeal involves a situation in which notice by publication is "insufficient in law" within the meaning of 44 U.S.C. § 1507.

Our task is to determine whether Congress intended that the sufficiency of published notice of federal directives affecting Alaska real property is to be tested by looking to state law[14] or by applying an independent body of federal common law designed to supplant the state's conveyancing rules.[15] Congress did not address this question when enacting the predecessor to 44 U.S.C. § 1507, but, in my view, had it done so it would not have concluded that lands whose private title began with a patent from the federal government should be subject to different conveyancing standards than neighboring parcels whose title originated elsewhere. I find it difficult to believe that that Congress could have intended to displace established conveyancing law in every state in the union and create a chaotic system in which each state is required to apply different standards to patented parcels than to parcels whose chain of title did not begin with a federal patent. In short, I think that the sufficiency of notice for purposes of 44 U.S.C. § 1507 should be determined by applying state law standards. Since the law of this state does not charge a grantee with notice of prepatent transactions and documents[16] or of instruments not recorded in the chain of title,[17] I would conclude that Boysen and the Peases did not have constructive notice of the easements claimed by the state and thus are protected by AS 34.15.290.

12. Under AS 34.15.290 Boysen and the Peases must prevail as bona fide purchasers unless they are charged with constructive notice of the existence of easements which were not recorded in their chains of title.

Our ruling in *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) does not dispose of this issue because the parties in *Hahn* did not argue, and we did not consider, whether a notice published in the Federal Register might be "insufficient in law."

13. *See, e.g., Ritter v. Morton*, 513 F.2d 942, 946 (9th Cir.1975) (per curiam), *cert. denied*, 423 U.S. 947, 96 S.Ct. 362, 46 L.Ed.2d 281 (1975); *United States v. Boyd*, 458 F.2d 1252, 1254 (6th Cir.1972).

14. *See, e.g., Reconstruction Finance Corp. v. Beaver County*, 328 U.S. 204, 66 S.Ct. 992, 90 L.Ed. 1172 (1946). Congress is, of course, free to adopt state rules as federal law. *See generally* P. Bator, P. Mishkin, D. Shapiro, & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 470-71, 491-94 (2d ed. 1973). The classic example of such an incorporation of states' legal doctrine into federal law is the Federal Tort Claims Act, under which the liability of the United States—a federal question—is determined by applying state substantive law. *See* 28 U.S.C. § 2674; *see also, e.g., Otteson v. United States*, 622 F.2d 516 (10th Cir.1980).

15. *See, e.g., Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573, 87 L.Ed. 838 (1943).

16. *See File v. State*, 593 P.2d 268, 270 (Alaska 1979) ("patent is the highest evidence of title").

17. *See Sabo v. Horvath*, 559 P.2d 1038 (Alaska 1976).

No. 83-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE COMPANY, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Petitioners,

v.

STATE OF ALASKA, THEODORE M. PEASE, JR. and CLAIRE V. PEASE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

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QUESTIONS PRESENTED

The most fundamental principle of real property law in the United States is found in the Fifth Amendment to the United States Constitution:

> "No person . . . shall be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation."

In this case, Petitioners or their predecessors[1] received patent to lands in Alaska which were either silent as to road reservations or, for lands entered after 1947, contained only reservations for roads as authorized by the "act of July 24, 1947 (61 Stat. 418, 48 U.S.C. §321d)."

The court below however found there existed other reservations not reserved in the patents which permit the State Highway Department to take without compensation strips of land as wide as 600 feet.[2]

The Alaska Supreme Court held by interpretation of 48 U.S.C. §321, that such taking was not barred by either the United States Constitution, nor a federal or state statute[3] prohibiting further taking under 48 U.S.C. §321d, by finding a separate easement under 48 U.S.C. §321a.

The properties affected by this decision by the State's own calculation are valued at One Billion Eight Hundred Million Dollars. ($1,800,000,000.00).

Under the circumstances, it is this conflict between federal

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[1] A number of the Petitioners are title insurance companies who, as subrogee on claims, joined this action.

[2] Assuming sixteen-foot lanes, this could result in a highway thirty lanes wide. The minimum right-of-way was one hundred feet wide.

[3] Federal-Aid Highway Act of 1970 §138(b) Pub. L. No. 91-605, 84 Stat. 1713 (1970) and Right-of-Way Act of 1966 ch 2, 92 S.L.A. 1966. Petitioners note that this Court has found the Fifth Amendment to the United States Constitution applicable to the State through the Fourteenth Amendment.

guarantees and the lower court's ruling which raises the following questions:*

1. Did Congress intend to create two separate authorities for easements under the Act of June 30, 1932, Pub. L. No. 218 §§1 and 2, (47 Stat. 446), as amended July 24, 1947, Pub. L. No. 229 §5, 61 Stat. 418 (codified as amended at 48 U.S.C. §§321a-321d), so that State and Congressional acts expressly designed to prohibit further taking of property without compensation were inapplicable?

2. Whether the statute of limitation provision of 43 U.S.C. §1166 is applicable to bar the State of Alaska from taking easements or reservations beyond those provided in the actual patents?

3. Whether Congress intended the limitation unless otherwise "insufficient in law" contained in the Federal Register Act, 44 U.S.C. §1507 to apply to preclude documents published in the Federal Register from being constructive notice to real property transactions absent appropriate recording under the state recording statute?

* In the Alaska Supreme Court the case included an additional Plaintiff, Hansen Associates, an Alaska limited partnership. Hansen Associates not appealing the decision of the Court below.

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No. 83-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE COMPANY, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Petitioners,

v.

STATE OF ALASKA, THEODORE M. PEASE, JR. and CLAIRE V. PEASE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALASKA

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of the State of Alaska entered in this proceeding.

OPINIONS BELOW

The Memorandum of Decision of the State trial court, entered on May 7, 1980 and the judgment entered on May 27,

1980, are unreported. The opinion of the Alaska Supreme Court (and dissent), affirming in part and reversing in part, is published at 667 P.2d 714 (Alaska 1983). Petitions for rehearing were filed by both the Petitioners and Respondents. The Alaska Supreme Court denied the Petition of the Petitioners and granted the petition of the Respondent State of Alaska in an order issued July 8, 1983. The order of the court issued in response to the Petition for Rehearing has not yet been published in the official report. All of the unreported opinions and orders are reproduced in the Appendix A-1 to A-3.

JURISDICTION

The opinion of the Alaska Supreme Court was entered on May 27, 1983. Timely Petitions for Rehearing were filed by both parties. The Alaska Supreme Court denied the petitioners' Petition for Rehearing and granted Respondent's Petition for Rehearing and an Order issued on July 8, 1983 modified its opinion. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

U.S. Const. amend. V

U.S. Const. amend. XIV §1

B. Federal Statutory Provisions

43 U.S.C. §932 repealed by Pub. L. No. 94-579, Title VII §706(a), 90 Stat. 2793 (1976)

43 U.S.C. §1166 (1976)

44 U.S.C. §1507 (1976)

The Act of January 27, 1905, Pub. L. No. 26 §2, 33 Stat. 616 (codified at 48 U.S.C. §322), repealed by Pub. L. No. 86-70 §21(d) (6), 73 Stat. 146 (1959).

The Act of June 30, 1932, Pub. L. No. 218 §§1 &

2, 47 Stat. 446, as amended July 24, 1947, Pub. L. No. 229 §5, 61 Stat. 418 (codified as amended at 48 U.S.C. §§321a-321d) repealed by Pub. L. No. 86-70 §21(d) (7), 73 Stat. 146 (1959)

Federal-Aid Highway Act of 1970 §138(b), Pub. L. No. 91-605, 84 Stat. 1713 (1970)

C. Federal Regulations and Administrative Orders

43 C.F.R. §101.3 (1949)

PLO 601, 14 Fed. Reg. 5048 (1949)

PLO 757, 16 Fed. Reg. 10,749 (1951)

PLO 1613, 23 Fed. Reg. 2376 (1958)

DO 2665, 16 Fed. Reg. 10,752 (1951)

D. State Acts

Right-of-Way Act of 1966, ch. 2, 92 S.L.A. 1966

The full text of these constitutional, statutory and regulatory provisions are included in Appendix B.

STATEMENT

This case presents fundamental issues concerning conflicting claims to property between the State of Alaska and the Petitioners to land conveyed by the United States to the Petitioners or Petitioners' predecessors. Immediately following World War II, numerous individuals, particularly World War II veterans, came to Alaska to avail themselves of the offer by the federal government to establish fee simple ownership in public land. Patents were subsequently issued by the federal government to those individual entrymen who qualified. In the patents the federal government set forth exceptions and reservations to the entrymens' interest, including in most instances, reservations for highways. It is other alleged reservations not set forth in the patents which are the subject of this appeal.

Upon Alaska's entry into the Union in 1959, the federal government executed a quitclaim deed to the State of Alaska conveying all of its interest, if any, in highways and roads contained within the State. For unknown reasons, ten years passed before the quitclaim deed was recorded in 1969. In conjunc-

tion with the development boom in Alaska during the 1970s, the State of Alaska began increasingly to take private property without compensation for expansion of numerous highways throughout the State. The State's claim to take property without compensation was based upon certain land orders and a departmental order issued by the Department of Interior prior to Statehood. In particular, the State relied on Public Land Orders (PLO) 601, 757, 1613 and Departmental Order (DO) 2665[5] published between 1949 and 1958.

Patents issued prior to 1947 were silent as to any reference to withdrawals or easements. Patents after 1947 contained only the general reservation for highways as authorized by "the act of July 24, 1947 (61 Stat. 418, 48 U.S.C. §321d)," but did not identify any width for such reservations. Such were to be established at a later date by the Department of Interior. Petitioners assert the Secretary did this in 1951 by DO 2665.

When the State of Alaska began accelerating its claim in the 1970s based on these withdrawals and easements, numerous land owners found themselves deprived of significant portions of their property without compensation. These property rights which will continue to be taken without compensation are valued by the State of Alaska to be in excess of one billion eight hundred million dollars. Additionally, title insurance companies who had insured some, though not all, of the land sales found themselves burdened with claims which could jeopardize their continued solvency. It is in this context this Petition is filed.

The difficulty with the land order withdrawals and easements is that they were not noted on the patents. Thus, property owners never knew that their land might be subject

[5] Promulgated August, 1949 to withdraw land from any form of homestead entry, PLO 601 established corridors for future highways. These withdrawals extended from six hundred feet for the Alaska Highway to one hundred feet for all "local" roads. In October, 1951, PLO 757 removed the withdrawal for "local" roads, but there was simultaneously established "easements" of the same width under DO 2665. Special legislation was passed in 1956 to authorize PLO 1613 which conceded the remaining withdrawals were unnecessarily wide and created a repurchase program for adjoining landowners, subject to the easements identified in DO 2665.

to a highway easement significantly in excess of that noted in their patents or the official government surveys. Further, the PLO easements and withdrawals were never recorded, surveyed or posted to plats. In fact, it is not even possible to find a list of all "local" roads for which a PLO withdrawal or easement may be claimed. The State itself does not prepare a map showing the location of the withdrawals or easements until it has first decided to expand or improve that particular highway.

For years the State, and the federal government before it, has known that the failure to record, survey, map or note on plats these rights-of-way created serious title problems.[6] However, despite this knowledge, the State has acquiesced in the successive sale and improvement of properties which the State now claims to be subject to the highway reservations.

The decision of the Court below clouds the title to the vast majority of properties adjacent to every road (excluding subdivision roads) within the State of Alaska. The Alaska Supreme Court has taken the position that 48 U.S.C. §321a is a separate grant of authority by Congress to the Secretary of Interior to create an easement independent of the express authority granted under 48 U.S.C. §321d. By this erroneous interpretation of federal law finding an independent easement in 48 U.S.C. §321a, the court below precluded the protection afforded by both federal and State statutes designed to prevent the further exercise of highway reservations without compensation.[7] The ruling of the Court below is unquestionably contrary to the legislative history and language contained within U.S.C. §321a-321d.

Additionally, the Alaska Supreme Court failed to follow numerous decisions of the U.S. Supreme Court that the United States (in this case Alaska since it is the successor to the United States' interest) may not bring a suit to challenge a patent

[6] The State of Alaska has taken the position that despite its failure to record its quitclaim deed for ten years and despite the fact none of the land orders are recorded in the state recording districts pursuant to the State's recording statutes, it may seize the land.

[7] See footnote 3, *supra*.

more than six years after the patent has been issued and is thus barred from making a collateral attack upon the patent.

PROCEEDINGS BELOW, PARTIES AND JURISDICTIONAL MATTERS

This action was commenced in the Anchorage Superior Court in February of 1979, when the Petitioners filed a complaint for declaratory relief. Named as defendants were the State of Alaska, Theodore M. Pease and Claire V. Pease. Petitioners in their complaint identified eight claims for relief. On June 4, 1979, Petitioners filed an amended complaint for declaratory judgment which added an additional claim for relief. The Petitioners' amended complaint sets forth several state and federal claims.

Motions for summary judgment were brought by both the Petitioners and Respondent in the trial court. The court denied the Respondent State of Alaska's motion for summary judgment and granted Petitioners' motion as to its second, third and eighth claims for relief. The trial court denied the first claim for relief which reflected petitioner Transamerica's claim that it was not liable under its title insurance policy to Theodore and Claire Pease as to the additional right-of-way taken by the State. The trial court found that the prior Alaska Supreme Court case, *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) was controlling. However, the trial court in its decision found that Petitioner Transamerica's argument was persuasive and asked the Alaska Supreme Court to review the *Hahn* decision.

The decision of the trial court rested predominantly on its determination that a State statute, the Alaska Right-of-Way Act of 1966, was applicable to prevent any further taking without compensation. The trial court determined that, unless the State had occupied or staked a highway in excess of the width set forth in the patents prior to April 14, 1966, then it would only be entitled to the roadway actually occupied or that set forth in the patent, whichever was greater. Any additional land needed by the State could be taken only by paying just compensation.

The State filed its points on appeal on June 24, 1980. The Petitioners filed their notice of cross-appeal on June 30, 1980. Upon appeal, the judgment was affirmed only as to one plaintiff and reversed as to all other Petitioners. One Justice filed a dissent from the three-person majority opinion.

FEDERAL QUESTIONS RAISED AND DECIDED BELOW

The decision of the Alaska Supreme Court is based on the determination of a number of controlling questions of federal law. The first question is whether there existed under 48 U.S.C. §321a power to create an easement in the Secretary of Interior on public lands in Alaska separate from that set forth in 48 U.S.C. §321d. The Alaska Supreme Court's misinterpretation of the power of the federal government under 48 U.S.C. §321a results in a taking of private property without compensation. Further, the Alaska State Legislature has attempted to insure that the State not avail itself of rights-of-way under 48 U.S.C. §321a-321d, when it passed the Right-of-Way Act of 1966. The court below determined that the Right-of-Way Act and the protections thereunder were not applicable since that act applied only to easements under 48 U.S.C. §321d and the easements asserted by the State were created under 48 U.S.C. §321a and DO 2665. The court below ignored the intent of a similar federal act to bar such takings. Federal-Aid Highway Act of 1970, §138(b) Pub. L. 91-605, 84 Stat. 1713 (1970). This interpretation of federal law, if allowed to stand, will permit the State to seize private property belonging to Petitioners without compensation.

The assertion that the Right-of-Way Act of 1966 and section 138(b) of the Federal-Aid Highway Act of 1970 were applicable to protect the Petitioners in these circumstances was raised at the trial court during summary judgment proceedings and again during the appeal to the Alaska Supreme Court. The question was specifically addressed by the Alaska Supreme Court in its decision.

Second, the Alaska Supreme Court rejected Petitioners' contention that the easements claimed by the State of Alaska

were not set forth in the patents and therefore eliminated by failure to annul the patents within the six-year statute of limitation period of 43 U.S.C. §1166. This is clearly a federal question. The Alaska Supreme Court, in addressing this issue on appeal, interpreted federal law in a manner such as to preclude the application of the statute to protect Petitioners' rights in this case. Petitioners raised these claims of a federal right in their complaint at the trial court and maintained their position throughout the appeal.

Third, Alaska Supreme Court misinterpreted 44 U.S.C. §1507 in requiring that public land orders and the departmental order, upon publication in the Federal Register, be considered constructive notice for real property transactions independent of compliance with State or territorial recording statutes. By interpreting the Federal Register Act as constituting constructive notice for purposes of determining ownership of land, Petitioners were precluded from availing themselves of the protection offered by the State recording statutes. Petitioners raised these claims in their memorandum in support of motion for summary judgment in the trial court and maintained their position throughout the appeal.

REASONS FOR GRANTING THE WRIT

(a) Impact of the Decision Below.

The decision of the Alaska Supreme Court below has a devastating impact on landholders within the State of Alaska. During the late 1940s when Alaska was still a territory, the federal government held open to individuals the opportunity to settle in the territory and obtain fee simple ownership of land therein. After properly complying with the applicable statutes and regulations concerning homesteads, these individuals were issued patents reflecting their ownership rights. These patents set forth the reservations and exceptions which the federal government stated it was maintaining.

In the approximately thirty years that have passed since this initial transfer of property from the federal government to individuals following World War II, the individual owners and their successors in interest have subdivided and developed

the property pursuant to the natural growth of the State. Thus this lawsuit greatly affects the current property rights of thousands of landowners within the State of Alaska, many of whom have developed valuable improvements within the claimed easements unaware the State claims the right to take their property.

The decision of the court below results in confusion to titles to thousands of parcels held within the State of Alaska. The State admits that the potential value of the land which it can seize without compensation to be valued in excess of $1.8 billion dollars. Already several other cases have been initiated involving issues related to this decision.

Therefore, the Petitioners believe that their Petition for Writ of Certiorari should be accepted by the Court to review the tremendous impact of the decision of the court below upon title to thousands of parcels of land within the State as well as the combined total economic loss to individuals residing in the State.

(b) Important and Novel Questions of Federal Law.

The decision below also involves important questions of federal law never interpreted by this or any other federal court. The Alaska Supreme Court in reaching its decision interpreted several federal statutes and orders regarding public lands within Alaska. In particular, the court below interpreted 48 U.S.C. §321a as creating in the Secretary of Interior a right to establish an easement on public lands separate from that of 48 U.S.C. §321d. By interpreting the federal statute in this manner, the court below voided the specific protection offered to private landholders by the Alaska Legislature by the Right-of-Way Act of 1966 and Congress by section 138(b) of the Federal-Aid Highway Act of 1970.[*]

---

[*] The intent of the Alaska Legislature is clear. The Act states in part:

Section 1. Purpose. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the

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A second question of first impression was raised by the Alaska Supreme Court in its decision regarding the Federal Register Act, 44 U.S.C. §1507. No previous court has addressed the precise question here. In this case the question rests on whether the Federal Register is constructive notice as to landholders in Alaska or whether such notice is "insufficient in law" within the meaning of 44 U.S.C. §1507. Congress did not clearly identify under what circumstances notice under the Federal Register would be "insufficient in law." However, the interpretation of the court below that the Federal Register must be notice under State land laws has not been addressed. Therefore, this presents an important question of federal law which has applicability beyond the State of Alaska. Other states, particularly in the western United States, have large tracts of federal public land which is subject to thousands of federal public land orders and department orders of the Department of Interior and other federal agencies. Thus, applicability of a decision which indicates that Congress intended the federal register to be constructive notice under State land laws has tremendous impact upon title in other states as well as Alaska. Therefore, the Court should accept Petitioners' Writ for Certiorari to address this issue.

(Footnote Continued)

State of Alaska, and which, if not curtailed by law, will continue to adversely affect the citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska Constitution and the Constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

(c) The Decision of the Court Below Conflicts with Prior Decisions of the Court

The Alaska Supreme Court determined that the six-year statute of limitations applicable to suits by the United States to vacate and annul a patent under 44 U.S.C. §1166 did not apply to prevent the State Highway Department from seizing private property in which the patents from the federal government did not reserve any of the easements or withdrawals sought to be taken by the State. The court found that despite the failure of the federal government to set forth in the patent any limitations arising under the public land orders and the departmental order identified in this case,[9] it would permit a collateral attack on the patent by reducing the amount of land transferred to the patentee by the federal government and by imposing on that patent restrictions not contained herein. This Court has long held that once the six-year statute of limitations has run the United States may not attack the validity of a patent. *United States v. Chandler—Dunbar Water Power Co.*, 209 U.S. 447 (1908); *Brook v. So. Pac. R. Co.*, 234 U.S. 669 (1914); *U.S. v. Oregon Lumber Co.*, 260 U.S. 290 (1922). Although the statute on its face is applicable to the United States it is equally binding on the State. The State has claimed to possess the interest of the United States under the respective statutes and orders pursuant to the quitclaim deed issued upon statehood in 1959. Therefore, unlike cases cited to by the majority opinion in the court below, the State of Alaska has no more than what the United States possessed in 1959. A failure to assert that interest within six years of the issuance of patent precludes the United States (and the State of Alaska, its successor in interest) from attacking the patents. Therefore, the court below has rendered a decision in conflict with prior holdings of this Court.[10]

I. NO SEPARATE AUTHORITY EXISTS TO ESTABLISH AN EASEMENT UNDER 48 U.S.C. §321a.

[9] PLO 601, PLO 757, PLO 1613, and DO 2665.

[10] A succinct discussion of this misinterpretation of 43 U.S.C §1166 appears in the dissenting opinion by Justice Rabinowitz in the court below.

A review of the legislative history of 48 U.S.C. §§321a-321d reveals, contrary to the decision of the court below, no authority for the Secretary of Interior to establish easements under 48 U.S.C. §321a. Originally, under the Act of January 27, 1905, 33 Stat. 616, Congress established a Board of Road Commissioners for Alaska. This Commission was given the power to "locate, layout, construct, and maintain wagon trails and pack trails . . ." within Alaska. Sec. 2 Act of June 27, 1905, 33 Stat. 616. In 1932, Congress transferred the power of the Commission to the Department of Interior. Sec. 1 and 2 Act of June 30, 1932, 47 Stat. 446.

However, neither of these two statutes granted the power to the Secretary of Interior or the Commission to grant easements across the land but rather only the power to construct roads. In fact, the language contained in sec. 2 Act of June 30, 1932, 47 Stat. 446, codified as 48 U.S.C. §321a, was recognized by the Department of Interior as only granting authority to the Secretary to fix the width of *public domain* roads which were "located, laid out, constructed and maintained" pursuant to sec. 2 Act of June 27, 1905, codified as 48 U.S.C. §322.

Because of the Department of Interior's concern over the pending patenting of public lands in Alaska where a 43 U.S.C. §932 easement did not apply, the Department requested in 1947 that Congress amend the Act of June 30, 1932. H.R. Rep. No. 673, 80th Cong. 1st Sess., *reprinted in* 1947 U.S. Cong. & Ad. News 1352, 1353. In the Department's letter requesting legislation, the Secretary of Interior indicated that his Department was seeking authority for the reservation of easements for the first time. Since 48 U.S.C. §321a already existed at the time that the Department of Interior made this request to amend the Act of 1932, it is evident that the Department of Interior recognized that no easement authority existed under §321a. To hold otherwise negates the 1947 Amendment."

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[11] The Language of 48 U.S.C. §321d provides for only one easement. It states that "(i)n all patents for lands hereafter taken up, entered or located in the Territory of Alaska . . . there shall be expressed that there is reserved, from the lands . . . in such patent . . . *a right-of-way.*" (Emphasis added.)

This position is further supported by a Department of Interior memo on October 10, 1950, which in discussing PLO 601 noted that the Department of Interior discussed changing the withdrawals to easements so that rights-of-way under the Act of July 1947 would still be valid.[12] This once again indicates the Department of Interior looked to sec. 321d (the 1947 act) for its authority, not some strained interpretation of sec. 321a.

48 U.S.C. §321d requires that all lands entered after the date of the Act (June 23, 1947) have reserved in the patents an easement. The Department of Interior pursuant to this Congressional mandate began issuing patents which clearly stated that an easement was being reserved pursuant to 48 U.S.C. §321d. It is clear that the Department of Interior did not consider §321a to be authority to impose an easement, or it could have just as easily put this reservation in the patents too.

The court below held that sec. 321a easements exist not from statutory language or legislative intent, but solely from the fact that paragraph 1 of DO 2665 states that the authority for the Secretary to promulgate DO 2665 is 48 U.S.C. §321a. Petitioners do not dispute that section 321a grants the Secretary of Interior the authority over Alaska roads and thus authority to issue the departmental order.[13] Petitioners

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(Footnote Continued)
The statute goes on to state that "(w)hen a right-of-way easement under this Act . . ." once again indicating that a single authority for creating a right-of-way existed under 48 U.S.C. §321. The Act of 1947 was an amendment to the Act of June 30, 1932 (47 Stat. 448) and therefore the language "this Act" must refer to the Act of 1932.

[12] The Department of Interior in October of 1950 revealed concern that the PLO withdrawals were insufficient to protect the rights-of-way desired by the federal government. It was proposed by Department of Interior memo that the withdrawals be changed to easements under the 1947 Act (48 U.S.C. §321d) to set forth the width of the proposed easements. This concern resulted in the publication of DO 2665 in October of 1951 establishing easements under 48 U.S.C. §321d. See Department of Interior memo October 10, 1950 at Appendix C.

[13] The Alaska Supreme Court previously authorized the taking of property without compensation based on this erroneous interpretation in *State, Department of Highways v. Green*, 586 P.2d 595 (Alaska 1978)

however assert that such authority to issue the order does not equate with a separate authority to create an easement. The unmistakable intent of the 1947 amendment, codified at 48 U.S.C. §321d, was to create, for the first time, easements."

The court below in its misinterpretation that 48 U.S.C. §321a is a separate authority for the Department of Interior to establish easements nullifies the attempt by the State of Alaska in the Right-of-Way Act of 1966 to protect private landowners from State exercise of such easements. The Right-of-Way Act of 1966 has been interpreted by the Alaska Supreme Court as applying only to easements established under 48 U.S.C. §321d. Under the terms of the Act, the State is barred from taking without compensation any additional land pursuant to a sec. 321d easement if it has not done so prior to the date of the Act. Further, by its interpretation of federal law, the court below has deprived Petitioners' rights afforded by sec. 138(b) of the Federal-Aid Highway Act of 1970.

II. THE STATUTE OF LIMITATIONS OF 43 U.S.C. §1166 BARS THE RESPONDENT FROM CHALLENGING PATENTS AFTER SIX YEARS.

The United States issued patents to Petitioners and Petitioners' predecessors in interest which contained a description of the reservations and exceptions which the United States intended to retain. The State of Alaska maintains that the various PLOs and the Departmental Order grant it a right-of-way even though not identified in the patents. Had the property at the time of patent still been encumbered by the withdrawals or easements, but patent nevertheless issued, the government would have only six years to annul the patent. *United States v. Chandler—Dunbar Water Power Co.*, 209 U.S.

" The trial court agreed with petitioners and stated that:

It should be noted that DO 2665 is issued under authority of 48 U.S.C. §321a; however, sec. 321a is only the general grant of authority by Congress to the Secretary of Interior to administer the road. In Alaska sec. 321d is the specific authority for the Secretary to reserve easements for roads and therefore, DO 2665 by implication is based on authority of sec. 321d, Pub. L. 229 ch. 313 approved July 24, 1947.

447 (1908). The withdrawals or easements could not have been deemed to have been an implied exception to the patent. *Leo Sheep Co. v. United States*, 440 U.S. 668 (1979); *Hardin v. Jordan*, 140 U.S. 371 (1891); *Stewart v. Lamm*, 132 Colo. 484, 289 P. 2d 916 (Colo. 1955).

The quitclaim deed could not, as the State asserts, pass greater rights than that the United States had to transfer. It is well established that a patent is in the nature of a quitclaim deed. *Wilson Cyprus Co. v. Del Pozo y Marcos*, 236 U.S. 635 (1915); *Sampeyreac v. United States*, 7 Pet. (U.S.) 222 (1833). Consequently, the United States passed by patent its estate *except* that which was actually reserved in the patent, i.e. the 1947 highway reservations, 48 U.S.C. §321d.

Additionally, it is clear that once a patent is issued, even if it contains a mistake, the Executive Department lacks power to set the transfer aside. The annulment must be done judicially. *West v. Standard Oil Co.*, 278 U.S. 200 (1929); *Stone v. United States*, 69 U.S. 525 (1875). In the case at bar, the United States has never sought to set aside the patents issued without the alleged reservation for the easements cited by the Respondent (48 U.S.C. §321a) and therefore those patents would still be binding on the United States. Under the 1959 quitclaim deed, the State recieved no greater right to the land than the United States had and since the patents were conclusive against the United States then they are likewise conclusive against the State of Alaska.

This court in *United States v. Whited & Wheless, Ltd.*, 246 U.S. 552 (1918) noted that the purpose of the statute of limitations contained in 43 U.S.C. §1166 was to restore, in the public, confidence in the integrity and value of patent title to public lands which had been challenged under numerous suits seeking to cancel such patents. The statute itself presupposes that the government will make an error. *United States v. Chandler—Dunbar Water Power Co., supra* at 450. Indeed,the protection afforded patents under 43 U.S.C. §1166 has been strong enough that this Court has determined that even in the cases of fraud, the patent itself may not be set aside. *United States v. Diamond Coal and Coke Co.*, 255 U.S. 323 (1921). In

United States. v. Whited & Wheless, Ltd., supra, this court has also determined that even in the cases of fraud, if the title to the property has passed to a bonafide purchaser, the government may not challenge the patent. *Wright-Blodgett Co. v. United States,* 236 U.S. 397 (1915); *United States v. California & The Oregon Land Co.,* 148 U.S. 31 (1893).

Courts have also noted that in determining what land is conveyed under a patent, the number of acres specified in the patent is very important. *Ritter v. Morton,* 513 F.2d 942 (9th Cir. 1975). Other courts have also made it clear that the boundaries of land cited in a patent, even if incorrect, would be binding on the United States and its successors. *Grainger v. United States,* 197 Ct. Cl. 1018 (1972). Even though the State claims the withdrawals from homestead entry of PLO 601 and 757 still apply, none of the patents contained any commensurate reduction in total acreage. The United States under 43 C.F.R. §101.3 (1949) was required to put on notice all persons making an entry on public land which could be affected by a right-of-way.[15] The failure to include such an easement on the entry papers or on the final patent is conclusive against the United States.

Therefore, Respondent's claim was barred by the statute of limitations contained in 43 U.S.C. §1166. The Respondent has no greater interest in the land than that held by the United States. The United States was barred from challenging the patents after six years for failure of the patents to contain easements set forth in the PLOs and the departmental order. Assuming *arguendo* that the State's position has merit, any interest which the United States had was extinguished by the

[15] The provisions of 43 C.F.R. §101.3 (1949) set forth the notations which were required to be made on entry papers and notices of allowance in 1949.

> In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, the register is directed to note upon the original entry papers and upon the notice of allowance of the application . . . issued to the entrymen, a reference to such rights-of-way . . . he will place the same notation as to right-of-way upon the final entry papers so that the reservation of the right-of-way will be made in the patent when issued.

running of the statute of limitations in 43 U.S.C. §1166. The United States did, pursuant to 48 U.S.C. §321d, maintain road reservations which were subsequently relinquished by State and federal acts.

III. THE FEDERAL REGISTER ACT IS NOT CONSTRUCTIVE NOTICE AS TO PRIVATE LANDOWNERS IN THE STATE OF ALASKA

Provisions of 44 U.S.C. §1507 provide that persons will be charged with notice of documents filed for publication in the Federal Register "except in cases where notice by publication is insufficient in law." The question in this case is whether, absent actual notice, does publication in the Federal Register constitute notice insufficient in law for real property transactions. A review of the legislative history does not reveal a clear answer as to whether Congress intended the Federal Register to be constructive notice as a matter of law or whether such notice would be insufficient in law as applied to state land titles. The federal case law cited to by the majority of the court below does not contain a case in which the court addressed the question of what was "insufficient in law." There is no reason to believe that Congress intended to displace established conveyancing and recording laws in every state of the Union with a chaotic system in which landowners must be charged with constructive notice of pre-patent federal orders not noted as reservations in the patents.[16]

Therefore, the court below erred in interpreting federal cases cited for the proposition as to what constitutes constructive notice where that determination is being made as to title under state law. Acts of Congress which affect conveyancing and recording statutes of the fifty states should be considered "insufficient in law" to be constructive notice.

[16] This position was adopted by the Dissenting Opinion in the lower court.

CONCLUSION

For all of the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Alaska Supreme Court.

Respectfully submitted,

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APPENDIX

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APPENDIX A-1

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE COMPANY, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Plaintiffs,

vs.

STATE OF ALASKA, Department of Transportation and Public Facilities, THEODORE M. PEASE, JR., and CLAIRE V. PEASE, and MUNICIPALITY OF ANCHORAGE,

Defendants.

No. 3AN 79-951 Civil

MEMORANDUM OF DECISION

This case is a suit for declaratory relief and the plaintiffs, the State of Alaska and the Peases have moved for summary judgment. The facts are that in 1978 the State of Alaska widened Rabbit Creek Road, a local road off the Seward Highway approximately nine miles south of Anchorage, from a road having a bed of less than 66 feet to a road having a bed of 100 feet in width. Mr. and Mrs. Pease are adjoining landowners to Rabbit Creek Road and own the underlying fee to the centerline. They seek compensation from the State of Alaska or the title insurance company which insured their title for the taking of a strip 17 feet in width from their property for the widening of Rabbit Creek Road.

The Peases acquired by warranty deed Lot 191, Section 33, T 12N, R3W, Seward Meridian, Anchorage Recording District on August 18, 1960 which parcel was separated from the public domain on October 4, 1955 by patent number 115 1722 which provides a "reservation of a right-of-way for roads . . . constructed or to be constructed by or under the authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 21, 1947 (61 Stat. 418, 48 U.S.C. sec. 321d)" and "This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land."

There are no facts in dispute. The other parties, Mr. Boysen, Hansen Associates and Jack White Company own property which may be affected by easements for through and feeder roads. In this memorandum of decision the case concerning the Peases will be considered first, a decision reached on the ownership of the 17 foot wide strip along Rabbit Creek Road and will be used for illustrative purposes in deciding questions relating to other parcels.

The relevant history of statutes, public land orders (P.L.O.) and department orders (D.O.) affecting rights-of-way for roads like Rabbit Creek includes:

1. P.L.O. 601 dated August 10, 1949 under the authority of *Executive Order No. 9337* (43 U.S.C. §141) withdrew from entry certain lands and reserved those lands for highway rights-of-way as follows:

a. the public lands lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads.

b. through roads are the Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, and Tok Cut-off.

c. feeder roads are Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-

Indian Road, Edgerton Cut-off, Tok-Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Spring Road.

d. local roads are all roads not classified as through or feeder roads established or maintained under the jurisdiction of the Secretary of the Interior.

e. Paragraph 6 reads:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws and reserved for highway purposes.

2. P.L.O. 757 dated October 16, 1951 provides:

The sixth paragraph of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes, commencing with the words "Subject to valid existing rights", is hereby amended to read as follows:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public land laws, including

the mining and mineral-leasing laws, and reserved for highway purposes.

Easements having been established on the lands released by this order, such lands are not open to appropriation under the public land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

3. D.O. 2665 dated October 16, 1951 under the authority of section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a) established the width of the public highways in Alaska established or maintained under the jurisdiction of the Secretary of Interior as follows:

a. through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

b. feeder roads (with an extensive listing) shall extend 100 feet on each side of the center line thereof.

c. local roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

d. the order provided specifically:

Sec. 3. Establishment of rights-of-way or easements. (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public land laws, including the mining and mineral laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads

as established in section 2 of this order, is hereby established for such roads and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

Sec. 4. Road maps to be filed in proper Land Office. Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public.

It should be noted that D.O. 2665 is issued under the authority of 48 U.S.C. 321a; however, section 321a is only the general grant of authority by Congress to the Secretary for the Interior to administer the roads in Alaska. Section 321d is the specific authority for the Secretary to reserve easements for roads and, therefore, D.O. 2665 by implication is based upon the authority of 321d, Public Law 229, ch. 313 approved July 24, 1947.

4. The effect of P.L.O. 757 and D.O. 2665 was to return to the public domain and make available for entry all land within 100 feet of the center line of feeder roads and 50 feet of the center line of local roads reserving an easement for feeder and local roads of 100 feet and 50 feet on each side of the center line respectively.

5. P.L.O. 1613 dated April 7, 1958 revoked P.L.O. 601 as amended by P.L.O. 757. Therefore, the withdrawal for through roads was no longer in effect; however, an easement for through roads was created extending 150 feet on each side of the center line for through roads designated in P.L.O. 757 and section one of P.L.O. 1613.

6. On June 30, 1959 the United States conveyed by quitclaim deed its interest in highways to the State of Alaska

the mining and mineral-leasing laws, and reserved for highway purposes.

Easements having been established on the lands released by this order, such lands are not open to appropriation under the public land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

3. D.O. 2665 dated October 16, 1951 under the authority of section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a) established the width of the public highways in Alaska established or maintained under the jurisdiction of the Secretary of Interior as follows:

a. through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

b. feeder roads (with an extensive listing) shall extend 100 feet on each side of the center line thereof.

c. local roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

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Sec. 3. Establishment of rights-of-way or easements. (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601 of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public land laws, including the mining and mineral laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads

as established in section 2 of this order, is hereby established for such roads and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the route of the new construction specifying the type and width of the roads.

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It should be noted that D.O. 2665 is issued under the authority of 48 U.S.C. 321a; however, section 321a is only the general grant of authority by Congress to the Secretary for the Interior to administer the roads in Alaska. Section 321d is the specific authority for the Secretary to reserve easements for roads and, therefore, D.O. 2665 by implication is based upon the authority of 321d, Public Law 229, ch. 313 approved July 24, 1947.

4. The effect of P.L.O. 757 and D.O. 2665 was to return to the public domain and make available for entry all land within 100 feet of the center line of feeder roads and 50 feet of the center line of local roads reserving an easement for feeder and local roads of 100 feet and 50 feet on each side of the center line respectively.

5. P.L.O. 1613 dated April 7, 1958 revoked P.L.O. 601 as amended by P.L.O. 757. Therefore, the withdrawal for through roads was no longer in effect; however, an easement for through roads was created extending 150 feet on each side of the center line for through roads designated in P.L.O. 757 and section one of P.L.O. 1613.

6. On June 30, 1959 the United States conveyed by quitclaim deed its interest in highways to the State of Alaska

which deed was recorded October 2, 1969.

7. Sec. 2, Ch. 92, SLA 1966, Right-of-Way Act of 1966 provides:

> Taking of Property Under Reservation Void. After the effective date of this Act [April 14,1968], no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under the federal Act is void.

8. Public Law 229, ch. 313, approved July 24, 1947 provides:

> The act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes, approved June 30, 1932 (47 Stat. 446) [footnote: 5 U.S.C.A §§123, 485; 48 U.S.C.A. §§321a-321e, 322-327] is hereby amended by adding at the end thereof the following new section:
>
> "Sec. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, appurtenant structures constructed or to be constructed by or under the authority of the United States or any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

The Alaska Supreme Court cases which directly relate to the questions in this case are: *Hahn v. Alaska Title Guaranty Co.* 557 P.2d 143 (Alaska 1976) which holds that the federal register is a public record within the meaning of the language of a title insurance policy; and *State, Dept. of Highways v. Green,* 586 P.2d 595 (Alaska 1978) which gives an exhaustive history of the subject before the court without mentioning the Alaska Right-of-Way Act of 1966.

The Peases have moved for summary judgment on their cross-claim against the State of Alaska and on their counterclaim against Transamerica Title Insurance Company. The Peases are entitled to summary judgment against Transamerica Title Insurance Company under the authority of *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) and they are granted such summary judgment establishing the liability of their insurer subject to the provision that if the State must pay for the strip, then the Peases shall collect from the State and not their title insurer.

The plaintiffs have moved for summary judgment against the State of Alaska on the grounds that the State is without authority to exercise jurisdiction over easements allegedly reserved to the State by P.L.O. 601 as amended by P.L.O. 757 and P.L.O. 1613 and D.O. 2665. The title insurance companies and the other plaintiffs have standing to bring this case and are real parties in interest; there is a justiciable controversy and the plaintiffs' pecuniary interest is affected. See *Jefferson v. Asplund,* 458 P.2d 995 (Alaska 1969).

There is no statute of limitations problem; the land is not taken until staked. D.O. 2665(c).

The State asserts that the withdrawals and easements established by the various P.L.O.'s and D.O.'s are dedications of property to the public which cannot be transferred to private ownership until abandoned. There is no evidence of fact or law to support the State's contention. The withdrawals and

easements will be treated as designations by a land owner setting aside certain portions of its property.

It is necessary to view this case in its historical perspective. Pursuant to P.L.O. 601 land was withdrawn for through, feeder, and local roads in strips ranging from 300 feet to 50 feet on each side of the center line. These strips were never surveyed, the Bureau of Land Management did not know what land was withdrawn and patents were issued conveying land which allegedly had been withdrawn. The record is replete with letters explaining the problems created and the hardships which resulted.

In response to the problems created by withdrawals, the Secretary of the Interior revoked P.L.O. 601 in stages: first, P.L.O. 757 in 1951, and then P.L.O. 1613 in 1958 and substituted easements. D.O. 2665 and P.L.O. 1613. The establishment of easements did not solve all of the problems; however, entrymen and the government could determine the boundaries of parcels by measuring from the center line of the existing roads even though the roads were not surveyed.

The predecessor in interest to Mr. and Mrs. Pease was granted a two and one-half acre parcel subject to a 33-foot easement for Rabbit Creek Road and a blanket reservation for easements created pursuant to 61 Stat. 418, 48 U.S.C. sec. 321d, the authority for D.O. 2665. The Right-of-Way Act of 1966 precludes the State from taking without compensation any land pursuant to the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

The State argues that it already had the easement reserved by 61 Stat. 418, 48 U.S.C. sec. 321d before the effective date of the Right-of-Way Act of 1966 and, therefore, the Act does not apply. The State is wrong; it did not secure the easement until the right-of-way was staked by the terms of D.O. 2665.

It is realized that *State, Dept. of Highways v. Green*, 586 P.2d 595 (Alaska 1978) does not discuss the Right-of-Way Act of 1966; nevertheless, the Act does apply to the case at bar and would apparently be applicable in the *Green* case; the State should have brought it to the court's attention even if the appellees failed to do so.

Therefore, the plaintiffs and Mr. and Mrs. Pease are entitled to summary judgment establishing the fact that the State or anyone claiming through the State, including the Municipality of Anchorage, may not occupy land reserved for highway or other purposes pursuant to 61 Stat. 418, 48 U.S.C. sec. 321d without compensation which the State was not occupying on April 14, 1966.

This ruling means that unless the easement was specifically reserved in the patent or was occupied by the State or Municipality or staked by the State before April 14, 1966, the underlying fee holder is entitled to just compensation when the State or Municipality asserts its right to utilize the strip between the previously occupied, staked, or specifically designated in the patent distance from the center line and 50, 100 or 150 feet from the center line depending upon the type of road. The State's argument that the plaintiffs by this lawsuit are seeking to divest the State of its interest in all the roads of the state is not understood and is clearly not the fact.

The plaintiff Hansen Associates is not correct in asserting that its property is free from the easement designated in D.O. 2665 because its predecessor in interest entered the property before D.O. 2665 was issued. The Hansen property had not been patented as of October 16, 1951 and between a mere entryman and the government, the entryman may not be heard to complain when the government reserves an easement. *Shiver v. United States*, 159 U.S. 491, 16 S.Ct. 54 (1895); *Wilber v. United States*, 53 F.2d 717 (C.A.D.C. 1931).

It is unnecessary to decide the effect of the quitclaim deed, its later recordation and the status of land whose owners recorded their deeds or patents earlier than the recordation of the quitclaim deed in light of the above determinations. In addition, it is unnecessary to deal with the doctrine of estoppel as it may apply in this case.

And in order to fully adjudicate the issues presented in this case, it is necessary to comment on the plaintiffs' contentions that *Hahn v. Alaska Title Guaranty Co.*, 557 P.2d 143 (Alaska 1976) was incorrectly decided. The authorities and argument cited by the plaintiffs are persuasive and the Alaska

Supreme Court is requested to review its decision.

The attorneys for the plaintiffs shall prepare, serve and submit a judgment consistent with this decision.

DATED at Anchorage, Alaska, this 7th day of May, 1980.

VICTOR D. CARLSON
Superior Court Judge

This is to certify that on the 8th day of May, 1980, a copy of the above Memorandum of Decision was mailed to:

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APPENDIX A-2

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ALASKA LAND TITLE ASSOCIATION, SECURITY TITLE AND TRUST COMPANY OF ALASKA, ALASKA TITLE GUARANTY COMPANY, BROKERS TITLE COMPANY, LAWYERS TITLE INSURANCE AGENCY, INC., SAFECO TITLE AGENCY, INC., FAIRBANKS TITLE AGENCY, KACHEMAK BAY TITLE AGENCY, VALLEY TITLE AND ESCROW COMPANY, FIRST AMERICAN TITLE INSURANCE COMPANY, TRANSAMERICA TITLE INSURANCE CO., HANSEN ASSOCIATES, an Alaska Limited Partnership, RICHARD L. BOYSEN and JACK WHITE COMPANY,

Plaintiffs,

vs.

STATE OF ALASKA, Department of Transportation and Public Facilities, THEODORE M. PEASE, JR., and CLAIRE V. PEASE, and MUNICIPALITY OF ANCHORAGE,

Defendants.

No. 3AN-79-951 CIV.

JUDGMENT

For the reasons set forth in the Memorandum of Decision prepared and executed by this court on the 7th day of May, 1980, the court hereby awards summary judgment declaring the rights and liabilities of the parties to this lawsuit as follows:

1. The State of Alaska and the Municipality of Anchorage are claiming highway easements for local, feeder, and through roads in excess of easement widths specified in patents issued to Alaska property owners. Said easements are claimed by the State or the Municipality pursuant to authority derived from

Public Land Orders 601, 757, 1613 and Department Order 2665. For the reasons set forth in the Memorandum of Decision dated May 7, 1980, the court hereby awards Plaintiffs a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that the State and the Municipality may not take or utilize property for local, feeder, or through roads in excess of the widths set forth in the patents to the affected properties without just compensation to the owners of the affected properties unless such local, feeder, or through roads were occupied and staked by the State of Alaska or the Municipality of Anchorage prior to April 14, 1966 or were specifically designated in the patents to the affected real properties.

2. The Plaintiffs Hanson Associates and Richard L. Boysen are hereby awarded a summary judgment against the State of Alaska and the Municipality of Anchorage declaring that neither the State nor the Municipality can take any portion of their properties for the through road presently known as the Old Seward Highway which is in excess of the easement widths specified in their respective patents without just compensation.

3. The Defendants Pease are hereby awarded a summary judgment on their cross-claim against the State of Alaska declaring that the State may not take or utilize any portion of the Peases' land for the local road presently known as Rabbit Creek Road which is in excess of the 33-foot easement width specified in the patent to the Peases' property without just compensation. The Peases' property is described as Lot 191, Section 33, Township 12 North, Range 3 West, Seward Meridian, Anchorage Recording District, Third Judicial District, State of Alaska.

4. The Defendants Pease are hereby awarded a summary judgment on their counterclaim against Transamerica Title Insurance Company declaring that Transamerica is liable under its title insurance policy issued to the Peases for the taking by the State of Alaska of a 17-foot strip of land for the local road known as Rabbit Creek Road, which 17-foot strip of land was in excess of 33-foot easement specified in the Peases' patent. However, since the State of Alaska must compensate the Peases for the taking or utilization of said additional 17-foot easement, the Peases shall collect just compensation from the State of Alaska, and upon receipt of said just compensation the Peases shall not be entitled to recover damages from Transamerica Title Insurance Company for said taking of the additional 17-foot strip of property.

5. Plaintiffs are hereby awarded the sum of $_____ for costs and $_____ for a reasonable attorney's fee, for a total judgment of $_____ against the State of Alaska and the Municipality of Anchorage, jointly and severally.

6. The Defendants Pease are hereby awarded the sum of $_____ for costs and $_____ for a reasonable attorney's fee for a total judgment of $_____ against the State of Alaska and the Municipality of Anchorage, jointly and severally.

DONE, at Anchorage, Alaska this 27th day of May, 1980.

_____
VICTOR D. CARLSON
Judge of the Superior Court

I hereby certify that on the 19th day of May, 1980, true and accurate copies of the foregoing were mailed to the following attorneys of record for the above-captioned cause:

Municipality of Anchorage
Office of the Municipal Attorney
Pouch 6-650
437 "E" Street
Anchorage, Alaska

Theodore M. Pease, Jr.
Burr, Pease & Kurtz, Inc.
810 "N" Street
Anchorage, Alaska 99501

Avrum M. Gross, Attorney General
State Capitol, Pouch K
Juneau, Alaska 99811
Attention: Jack McGee
Assistant Attorney General
Department of Law
Transportation Section

Michael W. Price

APPENDIX A-3

IN THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA

Appellant and Cross-Appellee.

vs.

ALASKA LAND TITLE ASSOCIATION, et al.,

Appellees and Cross-Appellants.

Supreme Court Numbers 5407/5408

O R D E R

Superior Court No. 3AN 79-951 Civil

Before: Burke, Chief Justice, Rabinowitz, Matthews and Compton, Justices.

On consideration of the petition for rehearing filed June 6, 1983 by the Alaska Land Title Association, et al., and the [second] petition for rehearing by the State, lodged June 14, 1983 and filed June 23, 1983,

IT IS ORDERED:

1. The petition for rehearing filed by the Alaska Land Title Association is denied.

2. The petition for rehearing filed by the State is granted, and Opinion No. 2681 filed on May 27, 1983, is amended by adding a new footnote 15, referenced to the word "purposes" on page 27, line 19. The new footnote shall read as follows:

> The State and the plaintiffs have agreed that PLO 601 is based on Executive Order 9337 which, "in turn, rests on" 43 U.S.C. §141. We thus have no occasion to consider whether Executive Order 9337 delegated authority to make withdrawals in addition to those authorized by 43 U.S.C. §141.

Succeeding footnotes shall be renumbered.

Entered by direction of the court at Anchorage, Alaska on July 8, 1983.

CLERK OF THE SUPREME COURT

Robert D. Bacon

cc: Justices
Counsel
The Honorable Victor D. Carlson
West Publishing Company
Mead Data Central

APPENDIX B

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

U.S. Const. amend. V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. amend. XIV, §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

43 U.S.C. §932

The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted. R.S. §2477.

43 U.S.C. §1166

Suits by the United States to vacate and annul any patent shall only be brought within six years after the date of the issuance of such patents. Mar. 3, 1891, c. 559, §1, 26 Stat. 1093; Mar. 3, 1891, c. 561, §8, 26 Stat. 1099.

44 U.S.C. §1507

A document required by section 1505(a) of this title to be published in the Federal Register is not valid as against a per-

son who has not had actual knowledge of it until the duplicate originals or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of the title. Unless otherwise specifically provided by statute, filing of a document, required or authorized to be published by section 1505 of this title, except in cases where notice by publication is insufficent in law, is sufficient to give notice of the contents of the document to a person subject to or affected by it. the publication in the Federal Register of a document creates a rebuttable presumption—

(1) that it was duly issued, prescribed, or promulgated;

(2) that it was filed with the Office of the Federal Register and made available for public inspection at the day and hour stated in the printed notation;

(3) that the copy contained in the Federal Register is a true copy of the original; and

(4) that all requirements of this chapter and the regulations prescribed under it relative to the document have been complied with.

The contents of the Federal Register shall be judicially noticed and without prejudice to any other mode of citation, may be cited by volume and page number.

Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1276.

The Act of January 27, 1905, Pub. L. No. 26 §2, 33 Stat. 616

Sec. 2. That there shall be a board of road commissioners in said district, to be composed of an engineer officer of the United States Army to be detailed and appointed by the Secretary of War, and two other officers of that part of the Army stationed in said district and to be designated by the Secretary of War. The said engineer officer shall, during the term of his said detail and appointment, abide in said district. The said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, layout, construct, and maintain wagon roads and pack trails from any point on the navigable waters of said district to any town, mining or other industrial camp or settlement [illegible] between any

such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of the district; but no such road or trail shall be constructed to any town, camp, or settlement which is wholly transitory or of no substantial value or importance for mining trade, agricultural, or manufacturing purposes. The said board shall prepare maps, plans, and specifications of every road or trail they may locate and lay out, and whenever more than five thousand dollars in the aggregate shall have to be expended on the construction of any road or trail, contract for the work shall be let by them to the lowest responsible bidder, upon sealed bids, after due notice, under rules and regulations to be prescribed by the Secretary of War. The board may reject any bid if they deem the same unreasonably high or if they find that there is a combination among bidders. In case no responsible and reasonable bid can be secured, then the work may be carried on with material and men procured and hired by the board. The engineer officer of the board shall in all cases supervise the work of construction and see that the same is properly performed. As soon as any road or trail laid out by the board has been constructed and completed they shall examine the same and make a full and detailed report of the work done on the same to the Secretary of War, and in such report they shall state whether the road or trail has been completed conformable to the maps, plans, and specifications of the same. It shall be the duty of said board, as far as practicable, to keep in proper repair all roads and trails constructed under their supervision, and the same rules as to the manner in which the work of repair shall be done, whether by contract or otherwise, shall govern as in the case of the original construction of the road or trail. The cost and expenses of laying out, constructing, and repairing such roads and trails shall be paid by the Secretary of the Treasury out of the road and trail portion of said "Alaska fund" upon vouchers approved and certified by said board. The Secretary of the Treasury shall, at the end of each month, send by mail to each of the members of said board a statement of the amount available of said "Alaska fund" for the construction and repair of roads, and trails, and no greater liability for construction or repair shall

at any time be incurred by said board than the money available therefor at that time in said fund. The members of said board shall, in addition to their salaries, be entitled to receive their actual traveling expenses paid or incurred by them in the performance of their duties as members of the board.

48 U.S.C. §322 (1958)

The Secretary of the Interior, or such officer, or officers as may be designated by him, shall upon his own motion or upon petition, locate, lay out, construct, and maintain roads, trails and bridges from any point on the navigable waters of Alaska to and through any town, mining or other industrial camp or settlement, or between and through any such town, camps, or settlements therein, if in his judgment such roads, trails, or bridges are needed and will be of permanent value for the development of Alaska: *Provided,* That within incorporated towns only roads and bridges which are designated by the Secretary of the Interior as part of the through highway system of the Territory of Alaska may be constructed under this section; *Provided further,* That no roads or bridges within incorporated towns shall be maintained under this section. (Jan. 27, 1905, ch. 277, §2, 33 Stat. 616; May 14, 1906, ch. 2458, §2, 34 Stat. 192; June 30, 1932, ch. 320, §1, 47 Stat. 446; July 14, 1955, ch. 359, 69 Stat. 321.)

The Act of June 30, 1932, Pub. L. No. 218 §§1 & 2, 47 Stat. 446

Providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alska, and upon the Secretary of War, as provided for in the Act of January 27, 1905 (ch. 277, sec. 2, 33 Stat. 616), as amended by the Act of May 14, 1906 (ch. 2458, sec. 2, 34 Stat. 192), and Acts supplemental thereto, and amendatory thereof, are hereby transferred to

the Department of the Interior, and shall hereafter be administered by the Secretary of the Interior, or under his direction by such officer, or officers, as may be designated by him.

Sec. 2. The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska, heretofore administered by said board of road commissioners under the direction of the Secretary of War; and all appropriations heretofore made, and now available, or that hereafter may be made, for expenditure by said board for meeting the cost of such work in the Territory of Alaska, are hereby transferred to the Secretary of the Interior, to be thereafter administered in accordance with the provisions of this Act; and the said board is directed to turn over to the Secretary of the Interior all equipment, materials, supplies, papers, maps, and documents, or other property utilized in the exercise of such powers, for the use of the said Secretary in the administration of the construction and maintenance of roads, tramways, ferries, bridges, and trails, and other works in the Territory of Alaska heretofore administered by said board.

The Act of July 24, 1947, Pub. L. No. 229 §5 61 Stat. 418 (amending the Act of June 30, 1932, Publ. L. No. 218, 47 Stat. 446)

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

"Sec. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds

by the United States herefter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing the s to another site, if less than their value."

Approved July 24, 1947.

48 U.S.C. §321a (1958)

The Secretary of the Interior shall execute or cause to be executed all laws pertaining to the construction and maintenance of roads and trails and other works in Alaska, heretofore administered by said board of road commissioners under the direction of the Secretary of War; and all appropriations heretofore made, and now available, or that hereafter may be made, for expenditure by said board for meeting the cost of such work in the Territory of Alaska, are transferred to the Secretary of Interior, to be thereafter administered in accordance with the provisions of sections 321a-321d of this title; and the said board is directed to turn over to the Secretary of the Interior all equipment, materials, supplies, papers, maps, and documents, or other property utilized in the exercise of such powers, for the use of the said Secretary in the administration of the construction and maintenance of roads, tramways, ferries, bridges, and trails, and other works in the Territory of Alaska, heretofore administered by said board. (June 30, 1932, ch. 320, §2, 47 Stat. 446)

48 U.S.C. §321d (1958)

In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it

have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of sections 321a-321d of this title is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the costs of removing them to another site, if less than their value. (June 30, 1932, ch. 320, §5, as added July 24, 1947, ch. 313, 61 Stat. 418.)

Federal-Aid Highway Act of 1970 §138(b) Pub. L. No. 91-605, 64 Stat. 1713 (1970)

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321(d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or Territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservations shall merge with the fee and be forever extinguished.

43 C.F.R. §101.3 (1949)

Notation of Rights-of-Way

§101.3 *Notations to be made on entry papers and notice of allowance.* (a) In order that all persons making entry of public lands which are affected by rights-of-way may have actual notice thereof, the manager is directed to note upon the original entry papers and upon the notice of allowance of the application (Form 4-279) issued to the entryman, a reference to such right-of-way.

(b) He will make no such notation upon the final entry papers unless the right-of-way has been granted under an act of Congress which does not in terms protect the grantee

against subsequent adverse rights, in which case he will place the same notation as to right-of-way upon the final entry papers, so that the reservation of the right-of-way will be made in the patent, when issued (23 L.D. 67).

[Reg. Nov. 3, 1909, as amended by Reg. Jan 19, 1910]

Public Land Order 601

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Executive Order No. 9145 of April 23, 1942, reserving public lands for the use of the Alaska Road Commission in connection with the construction, operation, and maintenance of the Palmer-Richardson Highway (now known as the Glenn Highway), is hereby revoked.

Public Land Order No. 386 of July 31, 1947, is hereby revoked so far as it relates to the withdrawal, for highway purposes, of the following-described lands:

(a) A strip of land 600 feet wide, 300 feet on each side of the centerline of the Alaska Highway (formerly the Canadian Alaskan Military Highway) as constructed from the Alaska-Yukon Territory boundary to its junction with the Richardson Highway near Big Delta, Alaska.

(b) A strip of land 600 feet wide, 300 feet on each side of the center line of the Gulkana-Slana-Tok Road as constructed from Tok Junction at about Mile 1319 on the Alaska Highway to the junction with the Richardson Highway near Gulkana, Alaska.

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of all other through roads, 100 feet on each side of the center line on all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:

Through Roads

Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.

Feeder Roads

Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-Indian Road, Edgerton Cut-Off, Tok Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.

Local Roads

All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

With respect to the lands released by the revocations made by this order and not rewithdrawn by it, this order shall become effective at 10:00 a.m. on the 35th day after the date hereof. At that time, such released lands, all of which are unsurveyed, shall, subject to valid existing rights, be opened to settlement under the homestead laws and the homesite act of May 26, 1934, 48 Stat. 809 (48 U.S.C. 461), only, and to that form of appropriation only by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747, as amended (43 U.S.C. 279-284). Commencing at 10:00 a.m. on the 126th day after the date of this order, any of such lands not settled upon by veterans shall become subject to settlement and other forms of appropriations by the public generally in accordance with appropriate laws and regulations.

Public Land Order 757

Amendment of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes.

By virtue of the authority vested in the President and pursuant to Executive Order 9337 of April 24, 1943, it is ordered as follows:

The sixth paragraph of Public Land Order No. 601 of August 10, 1949, reserving public lands for highway purposes,

commencing with the words, "Subject to valid existing rights", is hereby amended to read as follows:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral-leasing laws, and reserved for highway purposes.

Easements having been established on the lands released by this order, such lands are not open to appropriation under the public land laws except as a part of a legal subdivision, if surveyed, or an adjacent area, if unsurveyed, and subject to the pertinent easement.

Public Land Order 1613

Revoking Public Land Order No. 601 of August 10, 1949 which reserved public lands for highway purposes, and partially revoking Public Land Order No. 386 of July 31, 1947.

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952, and the act of August 1, 1956 (70 Stat. 898) it is ordered as follows:

1. Public Land Order No. 601 of August 10, 1949, as modified by Public Land Order No. 757 of October 16, 1951, reserving for highway purposes the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway and within 150 feet on each side of the center line of the Richardson Highway, Glenn Highway, Haines Highway, the Seward-Anchorage Highway (exclusive of that part thereof, within the boundaries of the Chugach National Forest), the Anchorage-Lake Spenard Highway, and the Fairbanks-College Highway, is hereby revoked.

2. Public Land Order No. 386 of July 31, 1947, so far as it withdrew the following-described lands, [illegible] items

(a) and (b) in said order, under the jurisdiction of the Secretary of War for right-of-way purposes for a telephone line and an oil pipeline with appurtenances, is hereby revoked:

(a) A strip of land 50 feet wide, 25 feet on each side of a telephone line as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson highway near Big Delta, Alaska.

(b) A strip of land 20 feet wide, 10 feet on each side of a pipeline as located and constructed generally parallel to the Alaska Highway from the Alaska-Yukon Territory boundary to the junction of the Alaska Highway with the Richardson Highway near Big Delta, Alaska.

3. An easement for highway purposes, including appurtenant protective, scenic, and service areas, over and across the lands described in paragraph 1 of this order, extending 150 feet on each side of the center line of the highways mentioned therein, is hereby established.

4. An easement for telephone line purposes in, over, and across the lands described in paragraph 2(a) of this order, extending 25 feet on each side of the telephone line referred to in that paragraph, and an easement for pipeline purposes in, under, over, and across the lands described in paragraph 2(b) of this order, extending 10 feet on each side of the pipeline referred to in that paragraph, are hereby established, together with the right of ingress and egress to all sections of the above easements on and across the lands hereby released from withdrawal.

5. The easements established under paragraphs 3 and 4 of this order shall extend across both surveyed and unsurveyed public lands described in paragraphs 1 and 2 of this order for the specified distance on each side of the center line of the highways, telephone line and pipeline, as those center lines are definitely located as of the date of this order.

6. The lands within the easements established by paragraphs 3 and 4 of this order shall not be occupied or used for other than the highways, telegraph line and pipeline referred to in paragraphs 1 and 2 of this order except with the

permission of the Secretary of the Interior or his delegate as provided by section 3 of the act of August 1, 1956 (70 Stat. 898), provided: that if the lands crossed by such easements are under the jurisdiction of a Federal department or agency, other than the Department of the Interior, or of a Territory, State or other Government subdivision or agency, such permission may be granted only with the consent of such department, agency, or other governmental unit.

7. The lands released from withdrawal by paragraphs 1 and 2 of this order, which at the date of this order, adjoin lands in private ownership, shall be offered for sale at not less than their appraised value, as determined by the authorized officer of the Bureau of Land Management, and pursuant to section 2 of the act of August 1, 1956, supra. Owners of such private lands shall have a preference right to purchase at the appraised value so much of the released lands adjoining their private property as the authorized officer of the Bureau of Land Management deems equitable, provided, that ordinarily, owners of private lands adjoining the lands described in paragraph 1 of this order will have a preference right to purchase released lands adjoining their property, only up to the center line of the highways located therein. Preference right claimants may make application for purchase of released lands at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph not claimed by and sold to preference claimants may be sold at public auction at not less than their appraised value by an authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the office in the Territory in which their title to their private lands is recorded. Such notice shall give the preference claimant at least 60 days in which to make application to exercise his preference right; and if the application is not filed within the time specified, the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to pay for the lands within the time period specified by

the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

8. The lands released from withdrawal by paragraphs 1 and 2 of this order, which at the date of this order, adjoin lands in valid unperfected entries, locations, or settlement claims, shall be subject to inclusion in such entries, locations and claims, notwithstanding any statutory limitations upon the area which may be included therein. For the purposes of this paragraph, entries, locations, and claims include, but are not limited to, certificates of purchase under the Alaska Public Sales Act (63 Stat. 679; 48 U.S.C. 364a-e) and leases with option to purchase under the Small Tract Act (52 Stat. 609; 43 U.S.C. 682a) as amended. Holders of such entries, locations and claims to the lands, if they have not gone to patent, shall have a preference right to amend them to include so much of the released lands adjoining their property as the authorized officer deems equitable, provided, that ordinarily such holders of property adjoining the lands described in paragraph 1 of this order will have the right to include released lands adjoining such property only up to the center line of the highways located therein. Allowances of such amendments will be conditional upon the payment of such fees and commissions as may be provided for in the regulations governing such entries, locations, and claims together with the payment of any purchase price and cost of survey of the land which may be established by the law or regulations governing such entries, locations and claims, or which may be consistent with the terms of the sale under which the adjoining land is held. Preference right claimants may make application to amend their entries, locations, and claims at any time after the date of this order by giving notice to the appropriate land office of the Bureau of Land Management. Lands described in this paragraph, not claimed by and awarded to preference claimants, may be sold at public auction at not less than their appraised value by the authorized officer of the Bureau of Land Management, provided that preference claimants are first given notice of their privilege to exercise their preference rights by a notice addressed to their last address of record in the appropriate land office, or if the land is patented, in the Territory in which ti-

tle to their private land is recorded. Such notice shall give the claimant at least 60 days in which to make application to exercise his preference right, and if the application is not filed within the time specified the preference right will be lost. Preference right claimants will also lose their preference rights if they fail to make any required payments within the time period specified by the authorized officer of the Bureau of Land Management, which time period shall not be less than 60 days.

9(a) Any tract released by Paragraph 1 or 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which remains unsold after being offered for sale under Paragraph 7 or 8 of this order, shall remain open to offers to purchase under Section 2 of the act of August 1, 1956, supra, at the appraised value, but it shall be within the discretion of the Secretary of the Interior or his delegate as to whether such an offer shall be accepted.

(b) Any tract released by Paragraph 1 and 2 of this order from the withdrawals made by Public Land Orders Nos. 601, as modified, and 386, which on the date hereof does not adjoin privately-owned land or land covered by an unpatented claim or entry is hereby opened, subject to the provisions of Paragraph 6 hereof, if the tract is not otherwise withdrawn, to settlement claim, application, selection or location under any applicable public land law. Such a tract shall not be disposed of as a tract or unit separate and distinct from adjoining public lands outside of the area released by this order, but for disposal purposes, and without losing its identity, if it is already surveyed, it shall be treated as having merged into the mass of adjoining public lands, subject, however, to the easement so far as it applies to such lands.

(c) Because the act of August 1, 1956 (70 Stat. 896; 48 U.S.C. 420-420c) is an act of special application, which authorizes the Secretary of the Interior to make disposals of lands included in revocations such as made by this order, under such laws as may be specified by him, the preference-right provisions of the Veterans Preference Act of 1944 (58 Stat. 747; 43 U.S.C. 279-284) as amended, and of the Alaska Mental

Health Enabling Act of July 28, 1956 (70 Stat. 709; 48 U.S.C. 46-3b) will not apply to this order.

10. All disposals of lands included in the revocations made by this order which are under the jurisdiction of a Federal department or agency other than the Department of the Interior may be made only with the consent of such department or agency. All lands disposed of under the provisions of this order shall be subject to the easements established by this order.

11. The boundaries of all withdrawals and restorations which on the date of this order adjoin the highway easements created by this order are hereby extended to the center line of the highway easements which they adjoin. The withdrawal made by this paragraph shall include, but not be limited to the withdrawals made for Air Navigation Site No. 7 of July 13, 1964, and by Public Land Orders No. 386 of July 31, 1947, No. 622 of December 15, 1949, No. 803 of February 27, 1952, No. 975 of June 18, 1954, No. 1037 of December 16, 1954, No. 1059 of January 21, 1955, No. 1129 of April 15, 1955, No. 1179 of June 29, 1955, and No. 1181 of June 20, 1955.

Department Order 2665

Rights-of-Way for Highways in Alaska

Section 1. Purpose. (a) The purpose of this order is to (1) fix the width of all public highways in Alaska established or maintained under the jurisdiction of the Secretary of the Interior and (2) prescribe a uniform procedure for the establishment of rights-of-way or easements over or across the public lands for such highways. Authority for these actions is contained in section 2 of the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. 321a).

Section 2. Width of public highways. (a) The width of the public highways in Alaska shall be as follows:

(1) For through roads: The Alaska Highway shall extend 300 feet on each side of the center line thereof. The Richardson Highway, Glenn Highway, Haines Highway, Seward-Anchorage Highway, Anchorage-Lake Spenard Highway and

Fairbanks-College Highway shall extend 150 feet on each side of the center line thereof.

(2) For feeder roads: Abbert Road (Kodiak Island), Edgerton Cutoff, Elliott Highway, Seward Peninsula Tram Road, Steese Highway, Sterling Highway, Taylor Highway, Northway Junction to Airport Road, Palmer to Matanuska to Wasilla Junction Road, Palmer to Finger Lake to Wasilla Road, Glenn Highway Junction to Fishhook Junction to Wasilla to Knik Road, Slana to Nebesna Road, Kenai Junction to Kenai Road, University to Ester Road, Central to Circle Hot Springs to Portage Creek Road, Manley Hot Springs to Eureka Road, North Park Boundary to Kantishna Road, Paxson to McKinley Park Road, Sterling Landing to Ophir Road, Iditarod to Flat Road, Dillingham to Wood River Road, Ruby to Long to Poorman Road, Nome to Council Road and Nome to Bessie Road shall each extend 100 feet on each side of the center line thereof.

(3) For local roads: All public roads not classified as through roads or feeder roads shall extend 50 feet on each side of the center line thereof.

Section 3. Establishment of rights-of-way or easements. (a) A reservation for highway purposes covering the lands embraced in the through roads mentioned in section 2 of this order was made by Public Land Order No. 601, of August 10, 1949, as amended by Public Land Order No. 757 of October 16, 1951. That order operates as a complete segregation of the land from all forms of appropriation under the public land laws, including the mining and the mineral leasing laws.

(b) A right-of-way or easement for highway purposes covering the lands embraced in the feeder roads and the local roads equal in extent to the width of such roads as established in section 2 of this order, is hereby established for such roads over and across the public lands.

(c) The reservation mentioned in paragraph (a) and the rights-of-way or easements mentioned in paragraph (b) will attach as to all new construction involving public roads in Alaska when the survey stakes have been set on the ground and notices have been posted at appropriate points along the

route of the new construction specifying the type and width of the roads.

Section 4. Road maps to be filed in proper Land Office. Maps of all public roads in Alaska heretofore or hereafter constructed showing the location of the roads, together with appropriate plans and specifications, will be filed by the Alaska Road Commission in the proper Land Office at the earliest possible date for the information of the public.

Right-of-Way Act of 1966

Section 1. Purpose. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

Section 2. Taking of Property Under Reservation Void. After the effective date of this Act, no agency of the state may

take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320 sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by an election or exercise of a reservation to the state under that federal Act is void.

Section 3. Prospective Application. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313 61 Stat. 418.

Section 4. Short Title. This Act may be cited as the Right-of-Way Act of 1966.

Section 5. Effective Date. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

APPENDIX C

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

October 10, 1950

Executive Order 601, August 10, 1949

Executive Order 601 of August 10, 1949, established rights of way along highways in the Territory of Alaska by means of withdrawing from all forms of entry strips a specified width on each side of each road.

The width of the right of way along the Alaska Highway is 600 feet. On all other through roads in Alaska it is 300 feet, on feeder roads 200 feet, and on local roads 100 feet.

Although Region VII, Bureau of Land Management, had attempted to have easements created rather than withdrawals, before the actual withdrawal order was issued, we had not even then begun to comprehend to what extent the Executive Order would complicate the functions of the Bureau of Land Management. The Bureau of Land Management gradually had begun to pick up momentum in the processing of various types of applications following the delegation of authority to the field. Depending upon our not being completely hamstrung by lack of funds, we could foresee the time when we could become reasonably current. And then it happened. Executive Order 601 was promulgated.

First, let me point out to you, there are no withdrawals along the railroad track of the Alaska Railroad. That is to say that the right-of-way itself is an easement rather than a strip of withdrawn land. Patents are issued to homesteaders which do not interfere with the operations of the Alaska Railroad but yet include the land upon which the tracks are built. If, in the future, a portion of the track is abandoned or the railroad decides to adopt another course, the land upon which the track was first located automatically becomes the property of the individual in whose patent or deed it was described. There are

no complications about a strip of land running up through the country owned by nobody.

Because of the existence of the withdrawal along roads, it has ben ruled that no entry filed or initiated after August 10, 1949, may go across the road, unless it is in the category of a local road with a right-of-way 100 feet wide. It has not been possible for the Alaska Road Commission to officially survey all of their roads and tie them in exactly with the existing corners of the rectangular net of surveys. Until these roads are surveyed, it will not be possible in some cases to determine whether or not the road crosses a given homestead entry.

Before any patent or final certificate can be issued to homesteaders who are restricted to only one side of the road, it will be necessary to survey many roads and all of the homesteads affected by roads running through surveyed land. This adds a tremendous job and workload to our Division of Engineering. In addition, it adds a tremendous expense to the taxpayers.

There is accumulating in the Land Offices files of applications by veterans who have complied with the regulations and who now want to obtain patent. These veterans are required to live on the land seven months and are not required to cultivate. Therefore, they may make application to obtain patent or, technically, to make final proof at the end of their seven months residence period. But these papers cannot be processed because withdrawal strips run through the land. The veteran must await a survey, which may be forthcoming this field season and may be forthcoming next field season.

After the survey has been made on the ground, it is necessary for the field notes to be processed, the plats to be produced from the drafting boards, the completed plat to be sent to Washington, the plat to be approved in the Washington office, and then returned to the proper Land Office for official filing. It is optimistic to assume that the plat will be finally filed in the proper Land Office within one year of the survey on the ground. During all of this time, the veteran has been unable to publish his final proof because his land cannot be

adequately described in the notice of publication.

The Sterling Highway, going down through the Kenai Peninsula gives us a specific project to discuss. The exact location of that road was not known to the Anchorage Land Office and therefore many entries were allowed which subsequently proved to straddle the road. In the meantime the entrymen have cultivated land on one side of the road, and have built their improvements on the other side of the road. Under the present rules and regulations, each entryman must elect which side of the road he is to take, and must relinquish or give up the land on the other side of the road. We have specific cases in which the road has cut across, leaving five, six or ten acres on one side of the road, and it is here that the entryman has built his house. He has cultivated and placed his fields on the other side of the road. As the saying goes, he is between the devil and the deep blue sea, and we can be of no assistance.

Then assuming that the entryman selects the portion of his entry which includes only ten acres or less. Under the provision of an act of 1947, the Alaska Road Commission still has the right to build a road through any homestead entry and therefore, technically, the Commission could put a road through the small acreage that has been left to the entryman.

Here are some specific cases:

Anchorage 014800, Richard Teller. There are 54 acres in the whole application, which comprises two lots, one north of the other. The Sterling Highway goes through the two lots, from north to south, but not through the middle, rather toward the eastern edge, about two-thirds of the way across. Teller has built a small road and has planned to build his house on the side of the road which would force him to choose the narrow strip. Originally his entry extended to Cook Inlet, and therefore he had water frontage. Under the new regulations he must relinquish either the area where he planned to build his house, and construct a small road, and give up the portion fronting the water, or he must select the portion fronting the water and give up the area where he planned to build his house and which evidently has the best house site.

There is nothing in the regulations which require us to investigate every homestead. We have an example of a case where the homesteader had appeared to be complying with the regulations in good order. He was a veteran, and therefore was not required to cultivate. His name is Clarence E. Herman, Anchorage 014574. There is nothing in the records to indicate we should make an investigation of his homestead, therefore we went through the procedures which is called "clear listing." That is, the Division of Land Planning indicated to the Land Office that a final certificate could be issued without further investigation or negotiating of any type. However, during a recent trip to that vicinity, a field examiner was making routine investigations of other homesteads, and was incidentally checking the location of the road as he went along. He discovered that the road goes through the homestead entry of Clarence E. Herman, therefore, we must backtrack in about everything that we have done. The Notice of Allowance of Herman must be vacated. Then we will have to have the road surveyed, and then await preparation of a supplemental plat. When the supplemental plat has been processed and finally filed in the Land Office, we must require this homesteader to publish again, as he already has published at the time he submitted his final proof. This homesteader had also bumped up against the regulation which affected Department of Interior employees as he was an employee of the Alaska Road Commission, but happily that restriction has now been removed through action of the Secretary of Interior.

You will recall that the homestead regulations state that each qualified individual may obtain land under the homestead laws up to a total of 160 acres. He may take that in one entry or several entries. If he homesteads in one part of Alaska and goes to another part of Alaska, he may homestead again, so long as he has not taken up an area exceeding 160 acres. If a homesteader has less than 160 acres and some available land becomes public domain adjacent to his original holdings, under the regulations he can acquire this additional land if it does not run his total over 160 acres. He is not required to live on the additional land if it is contiguous to his original entry. As a withdrawal along a highway causes a piece of land on one

side of the road to be not contiguous to a piece of land on the other side of the road, an entryman who had 40 acres would have to make proof and complete his requirements on one side of the road, then go across the road and build a house on that side, or move his house across in order to take land only 200 feet away from his original entry. As the regulations do not prevent a person from taking lands on both sides of the road under two entries, it merely complicates the matter by providing additional filings that must be placed on record by an entryman in order to get across the road if the land is still available.

The regulations provide that an entryman may obtain 160 acres, so if the land is available, the entryman may stretch his entry far along one side of the road until he has obtained 160 acres. There is a serious question as to whether it is more undesirable to have one entry straddle the road than it is to have one entry string along one side of the road for a mile and a half or two miles.

Then another complication enters into a different phase of the work. It appears that the withdrawals are in effect through the Matanuska Valley as they are elsewhere. We have on file several applications to purchase land. Two of them, Anchorage 016216 and 016304, filed by Gerald Brunner and Floyd Rock respectively, cover only five acres each. We are assuming that in this case the proposed sale may go on both sides of the road, but in order to know exactly how many acres are in the tract after the right of way has been deducted, it is necessary to survey the road to know just where it enters and leaves each tract, and then compute the acreage. In the meantime, the sales are not consummated.

We have many thousands of acres of unsurveyed lands through which roads are now built or will be built. There are claims which were staked out and are legally filed in the U.S. Commissioners' offices before August 10, 1949, the date on which 601 was promulgated. These settlement claims, therefore, have precedence over the order. However, our surveying crews are not investigators, and as they survey down through the country, they are not aware of which claims

antedate Executive Order 601 and which do not. Therefore, to be on the safe side, they must prepare their plats with two rights of way, that which was in effect before Executive Order 601 and that which was in effect after Executive Order 601 was promulgated. It may be that there was a legal claim on the land before August 10, 1949, but the claimant decides to go back to the states and give it up. The next person who settles there must stay on one side or the other of the road, and the wider right of way becomes effective. Let us assume that the claimant who was there before August 10, 1949, decides voluntarily that he wants to be on only on side of the road, and extend his claim further back to obtain other desirable lands. In effect, therefore, he gives up his claim to the other side of the road, and immediately the wide right of way becomes effective on that side, but the narrow right of way stays in effect on the side which the claimant retains. In no one given spot will anybody be able to determine what width the right of way is without referring to official plans in the Land Offices.

Let us assume another situation. A claimant was situated within 50 feet of the center line of a through road before Executive Order 601 was promulgated. For some reason he built his house within 50 feet of the road. Then he decides that he will have to go back to the states, and sells his house and gives up his claim to another individual. This sale we will assume was made after August 10, 1949. Immediately the house is in trespass, as it is located within the right of way, and the second claimant must move it back in order to get it on his homestead claim, which starts 100 feet from the center line of the road, if the road is a feeder road, and 150 feet from the center line of the road if it is a through highway. If this situation should develop along the Alaska Highway, of course, the man would have to move the house back 300 feet from the center line of the road.

Of course the Road Commission will straighten out many of the kinks in its highway system. Whenever it does that, it leaves strips of no man's land, which are withdrawn from entry. If these strips are restored to entry, the adjoining land owner does not have preference, but veterans of World War

II have preference to obtain these strips of land. We have been advised that the withdrawal becomes effective when the Road Commission sets its survey stakes through the public domain. In some cases I would imagine that the Alaska Road Commission officials change their minds and locate the road elsewhere than where it was first surveyed. Then we may have a very real difference of opinion as to where withdrawals actually do exist.

Previously in this memorandum, I mentioned that additional expense results from the requirement that we survey the roads. Each session it would be necessary to hire two draftsmen to keep up with the work of a field crew and to do a little extra work otherwise. It would take this one survey crew working indefinitely as we do not know how many roads are located within the rectangular surveys at present, or do we know how many roads are to be built by the Alaska Road Commission in the future. We are unable to estimate how many survey crews it actually would take to keep current with this work, but it is conservatively estimated that it would cost at least $31,000 per crew each season.

If the road rights of way were easements instead of withdrawals, it would not be necessary for us to delay processing of the applications for final proof by veterans or others. It would not again cause us to build up a backlog which will extend for 2, 3 and sometime 5 years before the surveys are all completed. The Alaska Road Commission could change their rights of way under the act of July 1947, without there being any question as to the ownership of the land. The entryman would still own the land, and the Alaska Road Commission would have an easement across it. There would not be additional expense to the taxpayers of hiring additional survey crews, and there would not be the delay in the survey program that will result in our putting experienced men on the road survey work instead of on other work that requires attention.

The situation is very grave. The results of the promulgation of Executive Order 601 were not foreseen, but now that we are operating with it in effect, we can see it's failing, and we should act accordingly.

Exhibit A

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

RESOURCE INVESTMENTS, a joint venture composed of HAROLD J. MOENING, DAVID G. FRITZ, BRUCE G. PURCELL, ALBERT A. KELLY and HARVEY P. PITTELKO,	)	
Appellants,	)	File No. 7229
v.	)	OPINION
STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES,	)	
Appellee.	)	[No. 2853 - July 27, 1984]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Karl S. Johnstone, Judge.

Appearances: Mary K. Hughes and Steven S. Tervooren, Hughes, Thorsness, Gantz, Powell & Brundin, Anchorage, for Appellant. Bruce Tennant, Assistant Attorney General, Anchorage, Norman C. Gorsuch, Attorney General, Juneau, and Eugene F. Wiles and Marc D. Bond, Delaney, Wiles, Hayes, Reitman & Brubaker, Inc., Anchorage, for Appellee.

Before: Burke, Chief Justice, Rabinowitz, Matthews, and Compton, Justices, [Moore, Justice, not participating.]

MATTHEWS, Justice.

This appeal follows the trial of an eminent domain action in which the State acquired a thirty acre parcel in Anchorage owned by Resource Investments. The land is situated next to the Old Seward Highway. Prior to trial the superior court granted the State's motion for summary judgment, holding that the State already had a 100 foot wide right-of-way along Old Seward Highway. This removed approximately two acres from the parcel. Resource Investments appeals this decision, contending that the State only had a thirty-three foot right-of-way.

Following a jury trial on the issue of just compensation, the superior court entered judgment on the verdict for $5,061,040, an amount more than 10% larger than the total amount deposited by the State, thus entitling Resource Investments to an award of attorney's fees under Civil Rule 72(k). The court awarded Resource Investments $115,000 for attorney's fees and $76,877.13 for costs. Resource Investments has appealed these amounts claiming that the superior court erred in not awarding actual costs of $149,918.49 and attorney's fees of $357,720.14.

I. THE RIGHT-OF-WAY ISSUE

The property in question was acquired by Resource Investments in 1966 from John Schandelmeier, the original patentee. Schandelmeier filed his application for homestead entry on March 27, 1946 and continuously lived on the property thereafter. He received the patent to his land on June 6, 1951

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from the Bureau of Land Management of the United States Department of the Interior. On August 10, 1949 the Secretary of the Interior issued Public Land Order (PLO) 601, which, among other things, withdrew for highway purposes 100 feet on each side of the center line of the Old Seward Highway. The withdrawal was, however, subject to "valid existing rights." The question presented is whether Schandelmeier's pre-patent homestead entry was a valid existing right under the terms of PLO 601. If it was then PLO 601 did not effect a withdrawal from the property.

The landowner's situation in the present case is virtually identical to that of Hansen Associates in State v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983) (ALTA). There the original patentee had made his homestead entry prior to the issuance of PLO 601 but did not receive his patent until after PLO 601 became effective. We rejected the State's contention that it owned a 100 foot right-of-way, holding that a homestead entry was a "valid existing right" that was expressly excepted from withdrawal by PLO 601's own terms. Id. at 724. The State asks us to reconsider this decision.

In ALTA all parties, including the State, agreed that PLO 601 was based on Executive Order 9337[1] which in turn was

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1. Executive Order 9337 provides in relevant part:

(Footnote Continued)

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based on the Pickett Act, 43 U.S.C. § 141 et seq. Id. at 724. In the present case, the State agrees that PLO 601 is based on Executive Order 9337, but argues that the Executive Order is based in part on the Pickett Act and in part on the inherent authority of the President of the United States to withdraw public lands for public purposes. The significance of this distinction is that while the Pickett Act withdrawals may not include lands embraced in any lawful homestead entry, no such limitation applies to withdrawals made under the inherent authority of the President.

Although the State may well be correct that Executive Order 9337 is based on the President's inherent authority as well

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(Footnote Continued)

> AUTHORIZING THE SECRETARY OF THE INTERIOR TO WITHDRAW AND RESERVE LANDS OF THE PUBLIC DOMAIN AND OTHER LANDS OWNED BY OR CONTROLLED BY THE UNITED STATES.
>
> By virtue of the authority vested in me by the Act of June 25, 1910, ch. 421, 36 Stat. 847 [Pickett Act], and as President of the United States, it is ordered as follows:
>
> Sec. 1. The Secretary of the Interior is hereby authorized to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President, and also, to the same extent, to modify or revoke withdrawals or reservations of such lands. . . .

(Emphasis added).

as on the Pickett Act, that fact is not determinative of the meaning of the phrase "valid existing rights" in PLO 601. In Stockley v. United States, 260 U.S. 532, 544, 67 L.Ed. 390, 395 (1923), the United States Supreme Court recognized that an unperfected homestead entry was within an excepted category of "existing valid claims" excluded from the terms of a government withdrawal order. The court stated:

> [T]here is excepted from the operation of the order "existing valid claims." Obviously this means something less than a vested right, such as would follow from a complete final entry, since such a right would require no exception to insure its preservation. The purpose of the exception, evidently, was to save from the operation of the order claims which had been lawfully initiated, and which, upon full compliance with the Land Laws, would ripen into a title.

For the same reason, it seems apparent that the Secretary of the Interior intended to except pre-patent homestead entries from the operation of PLO 601.

We conclude that Schandelmeier's entry was a valid existing right, therefore no part of his homestead was affected by PLO 601. Accordingly, we REVERSE the trial court's grant of summary judgment which held that the State owned a 100 foot right-of-way along the Old Seward Highway and REMAND for a determination of just compensation as to the seventy-seven foot strip of land extending beyond the thirty-three foot right-of-way conceded by Resource Investments.

II. COSTS AND ATTORNEY'S FEES

The award of costs and attorney's fees in eminent domain cases is governed by Civil Rule 72(k).[2] Resource Investments is entitled to an award of costs and attorney's fees under Rule 72(k)(3) because the award it obtained was more than ten percent larger than the amount deposited by the State.[3] Full attorney's fees are the norm under Civil Rule 72(k), but those

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2. Rule 72(k) provides:

> Costs and attorney's fees incurred by the defendant shall not be assessed against the plaintiff, unless:
>
> (1) the taking of the property is denied; or
> (2) the plaintiff appeals from the allowance of the master and the defendant does not appeal; or
> (3) the award of the court was at least ten (10) percent larger than the amount deposited by the condemning authority or the allowance of the master from which an appeal was taken by the defendant; or
> (4) the action was dismissed under the provisions of paragraph (i) of this rule; or
> (5) allowance of costs and attorney's fees appears necessary to achieve a just and adequate compensation of the owner.
>
> Attorney's fees allowed under this paragraph shall be commensurate with the time committed by the attorney to the case throughout the entire proceedings.

3. The jury awarded $5,061,040.00. The State had deposited $3,510,000.00.

fees must be both reasonable and necessarily incurred to achieve just and adequate compensation for the owner. Triangle, Inc. v. State, 632 P.2d 965, 970 (Alaska 1981). We will not disturb a trial court's decision to award less than the property owner's actual costs or fees unless it appears that the court's decision is an abuse of discretion. Badger Construction v. State, 628 P.2d 921, 924 (Alaska 1981). When a trial court decides not to award full attorney's fees and costs it must state its reasons. Triangle, 632 P.2d at 970.

A. Attorney's Fees.

In the present case, Resource Investments claimed actual attorney's fees of $357,720.14. The superior court determined that $115,000.00 were reasonable and necessarily incurred. In making this determination the trial judge issued a five page written order which explained why he did not accept the full fees requested. The full text of the order is set forth in the Appendix. The most important of the trial judge's reasons, as we view his order, are as follows: (1) there was an unnecessary utilization of two and sometimes three attorneys at trial and pre-trial proceedings at which the presence of one attorney would have sufficed; (2) the time spent by the property owner's attorneys in preparing for trial was excessive in view of the straightforward nature of the issues to be tried; (3) the time spent in resolving the question concerning the taking of the easement was excessive and not reasonably related to the

complexity of the issue; (4) the claim of $17,887.65 in attorney's fees for preparing motions for costs and attorney's fees was not only excessive in itself but suggested excessiveness as to all of the fees requested; and (5) attorney Richards' billings for travel time to and from Alaska were unreasonable and his hourly rate of $175.00 was also unreasonable.

We regard these reasons as an adequate explanation for the court's determination and we are unable to say that the determination was an abuse of discretion. We suggest, however, that the trial court review its award on remand in connection with the third reason listed above, namely that excessive time was spent concerning the question of the taking of the easement. In light of the determination on the merits on that question reflected in today's opinion, the trial court may find that additional fees are warranted.

B. Costs

Resource Investments claimed costs of $149,908.49. The clerk taxed costs of $19,846.00. The clerk did not consider costs for expert witnesses, but deferred to the court concerning that subject. The court allowed costs of $76,877.13 including the costs taxed by the clerk.

On appeal Resource Investments claims that the court erred in failing to award costs in thirteen categories:[4]

(1)	Airfares:		
	6/18/82	Tervooren air fare for Tollefson deposition	$ 426.00
	7/21-30/82	Richards air fare for trial	714.94
		Subtotal	$1,140.94
(2)	Actual expenses for attending depositions and trial:		$3,308.75
	The clerk allowed $80.00 per diem in lieu of actual expense amounting to:		1,509.78
		Subtotal	$1,798.97
(3)	Meeting expenses, travel of attorneys, clients and witnesses to attend periodic meetings. Appellants do not state in their briefs the total amount of this claim but refer us to Appendix A of their brief which contains eight items totaling:		$11,182.14
	Some of these items are plainly duplications of items in other categories. We exclude the expert expenses for 9/2-3/80 and 8/21-25/80 and the attorney expenses relating to 6/17-18/82, 6/18/82 and 7/21-30/82 as those categories are substantially duplicated by other categories. The excluded categories total:		3,234.60
	Thus, for purposes of determining what the appellants claim is, we consider this category to amount to a claim of		$ 7,947.54

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4. Resource Investments claims that the court erred in failing to award its actual costs of $149,908.49. It then discusses in general fashion numerous costs that were reduced or not mentioned by the superior court. We have itemized its claim into thirteen categories for ease of discussion. Cost items not discussed in its brief were deemed abandoned.

(4)	Actual copying costs	$4,277.40
	Amount allowed by clerk	3,638.82
	Amount of claim	$ 638.58
(5)	Lexis search costs	$ 44.00
(6)	Telecopy, mileage and parking fees:	$ 108.75
(7)	DOWL Engineering surveying and drafting work to verify the size of the takings	
	3/13/81	$1,528.75
	5/26/81	385.26
	Subtotal	$1,914.01
(8)	Soils drilling and testing:	$2,345.00
(9)	Appraisal consultations	
	Norene Realty	$ 75.00
	Alaska Valuation Services	960.00
	Subtotal	$1,035.00
(10)	Disallowance of out of $7,050.00 claimed in costs attributable to Dr. Twelker - soils expert	$3,020.00
(11)	Disallowance of costs with respect to Clifford Moles - architect	$10,795.50
(12)	Reduction in fees and costs of John Day - appraiser.	
	Claimed:	$21,660.63
	Allowed:	14,850.63
	Amount claimed on appeal	$ 6,810.00
(13)	Ronald Hoefer - appraiser.	
	Total claimed:	$61,008.17
	Allowed:	35,782.92
	Balance claimed on appeal	$25,225.25
	TOTAL COSTS CLAIMED ON APPEAL	$62,823.54

The court gave no reason for disallowing items 1, 3, and 5 through 9 and for reducing items 2 and 4. As to these

items we remand so that the court may express its reasons for its action.[5]

The court failed to allow costs for the June 16, 1982 trip to Anchorage of Resource Investments' soils expert, Dr. Twelker. This trip was for the purpose of on-site field work and appears to have been reasonably necessary. On remand, costs should be allowed for this trip.

The court disallowed all costs of Clifford Moles, the defendants' expert architect, stating he did not testify at trial. The court subsequently corrected this factual misstatement, but failed to award any of Mr. Moles' costs to defendants. This omission must be corrected as Mr. Moles' testimony was found by the court to have been necessary.

The trial court disallowed a trip to Anchorage of Resource Investments' appraiser, John Day, begun on November 9, 1981. This trip was taken for appraisal field work and appears to have been reasonably necessary. On remand, the court should award costs for this trip.

The trial court disallowed eleven of the fourteen trips taken by Resource Investments' appraiser Roland Hoefer. The court did not abuse its discretion in concluding that not all of the trips were necessary. However, we believe that the court

---

5. The court is also authorized to award any of these items if it finds that they were improperly omitted or reduced.

should more fully explain why the following trips taken by Mr. Hoefer should not be allowed: 9/2/80, trip to Anchorage to inspect property; 4/10/81, trip to Anchorage to attend Master's hearing; 3/9/82, trip to Anchorage to continue deposition; and 3/26/82, trip to Anchorage to continue deposition. The court is authorized to award costs for these trips if it determines on remand that the trips meet the reasonable and necessary standard.

REVERSED and REMANDED for action consistent with this opinion.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

Filed in the Trial Courts
STATE OF ALASKA THIRD DISTRICT

JAN 2 - 1985

Clerk of the Trial Courts
By _____ Deputy

STATE OF ALASKA, DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, Plaintiff, vs. 29.513 Acres, more or less; RESOURCE INVESTMENTS, a joint venture, et al., Defendants.	Case No. 3AN-80-7419 Civil Minnesota Drive Extension Project No. OF-031-2(47) Parcel Nos. A-104 and A-104B

ORDER (ATTORNEYS' FEES)

The defendant landowner moved for attorneys' fees in the amount of $339,832.25 through August 31, 1982. Since that date, the landowner has requested additional attorneys' fees for work apparently rendered by Hughes, Thorsness, Gantz, Powell & Brundin in the amount of $17,887.65. The total requested through January 5, 1982, is presently $357,720.14.

Of the total, defendant asserts a breakdown as follows:

Richard Richards (non-resident counsel who participated in trial)	$155,629.00
Mary K. Hughes, Steve Tervooren, and other attorneys in the firm	202,091.14

The landowner asserts that the amounts requested were reasonably and necessarily incurred to obtain just compensation for the landowner.

Even though the sums involved in the trial were large, this case involved a relatively simple question of just compensation for a taking of approximately 40 acres at the intersection of the Old and New Seward Highways and O'Malley Road. Initially, there was a partial taking by the state which matured into a total-taking substantially reducing the complexity of the litigation.[1]

[1] A full taking made it unnecessary for landowner to fully prepare for and prove damages to the remainder, which, according to landowner's counsel, reduced the complexity of the case significantly.

According to the landowner, Mr. Richards was associated for the purpose of his trial expertise in the field. His rate charged to the landowner was $175 per hour, while the rates charged by Anchorage counsel were approximately one-half the hourly rate charged by Mr. Richards.

Counsel for landowner argues that they are entitled to actual attorneys' fees if the court concludes that the professional services were necessarily incurred to achieve just compensation by the landowner. The State of Alaska argues that the fees charged were excessive and unreasonable and not necessarily incurred to achieve just compensation.

This court has carefully reviewed the itemized billings from respective counsel to the landowners, together with the affidavits in support of the motion for attorneys' fees. In addition, the court has given due regard to the length of this trial (approximately two weeks), the pretrial motions and work which necessarily accompanied them, the overall complexity or lack of complexity of the issues involved, the amount in controversy, the time spent in court and during pretrial hearings and conferences, and is otherwise fully informed of the circumstances of this case.

During the course of the trial, Mr. Richards and Ms. Hughes were present almost all of the time. Ms. Hughes participated in the examination and cross-examination of non-expert witnesses for the most part, while Mr. Richards participated in the examination and cross-examination of expert witnesses. Mr. Tervooren, additional counsel for the landowner, was present a portion of the time in court, sitting in the back of the room, but took no active role in the trial itself. Pretrial matters generally involved both Ms. Hughes and Mr. Tervooren. Both counsel appeared for practically all hearings and pretrial conferences. On the other hand, Mr. Richards did not appear before the court until immediately before trial.

The landowner contends that it is entitled to full compensation for attorneys' fees, asserting that all fees were necessarily incurred to achieve just compensation. The court agrees that the landowner is entitled to just compensation, including attorneys' fees, provided such attorneys' fees are reasonable, given all the circumstances of the case. To hold otherwise would essentially be giving the landowner a blank check which would be contrary to law and public policy.

The court finds that to award the fees requested by landowner would be unreasonable under the circumstances. The charges by attorney Richards were not reasonably necessary to achieve just compensation. Mr. Richards' statements show significant charges for his professional time in route to and from Alaska. His hourly charges are significantly higher than what the court believes to be a reasonable rate charged by skilled Anchorage, Alaska lawyers. The case did not involve any unusual complexity nor did it take a protracted length of time to try. The issues were straight forward, and while the court recognizes a need for preparation, the time spent in preparing for this trial appears excessive and not reasonably related to the issues presented.

Time spent in resolving the question of the taking of a road easement which was finally resolved by the trial court against the landowner appears grossly excessive and not reasonably related to the complexity of the issue which had been previously argued before this court on at least two other occasions and was pending on appeal at the time this court resolved the issue in the instant case.

Similarly, it was not reasonably necessary to secure just compensation for two and sometimes three attorneys to be present on behalf of the landowner at most all stages of the litigation.

The landowner argues that the request for fees is reasonable as it is less than what C.R. 82(a)(1) would permit.

1011 2853

The landowner argues that a Rule 82 fee calculation would lead to a presumed partial fee reimbursement in excess of $500,000.00, thus justifying at least the $357,000.00 requested.

This argument assumes, however, that the full amount awarded by the jury was in dispute. In reality, if a Rule 82 calculation was made, it would have been made on not more than the difference between what had been deposited and what was eventually achieved through a jury verdict. The amount deposited was not disputed, had been already paid to the landowner, and would not have been utilized as a basis for calculation of Rule 82 fees by this court. In fact, a good argument can be made to limit the Rule 82 calculation to the difference between the amount of the appraisal by the state and the verdict finally arrived at by the jury. In either case, the attorneys' fees under C.R. 82 would be somewhere between $80,000.00 and $150,000.00.[2]

Finally, the court has reviewed the filings since August 31, 1982, in support of the landowner's claim to an additional $17,887.65 in attorneys' fees. The claim is somewhat unsupported but it is reasonably apparent that these fees were incurred in the landowner's attempt to recover their costs and attorneys' fees. A certain pyramiding of attorneys' fees is reasonably necessary to protect the landowner's rights in obtaining just compensation. However, the amount claimed suggests another "blank check" approach to these fees as was done in the application for fees incurred prior to August 31, 1982.

Provided that the records were maintained in an orderly fashion (which I would expect to have been accomplished), application for costs and attorneys' fees would not appear to involve any complexity or significant time. A compilation of the statements for services rendered together with an itemization of the costs incurred, with a short brief, would appear to be all that

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[2]C.R. 82 is not the controlling rule. It is used simply as an analogy and was not considered by the court in its determination of attorneys' fees in this case.

101 2853

was necessary to present the landowner's claims. In addition, an appearance before the clerk at the cost bill hearing and an appearance before the court on the application for costs and attorneys' fees was required.

This court finds that almost $18,000.00 is not reasonable and is unnecessary to the presentation of the landowner's application for costs and attorneys' fees.

Having given consideration to the factors hereinabove, this court awards the sum of $110,000.00 as attorneys' fees which were reasonably and necessarily incurred to acquire just compensation through August 31, 1982. Additionally, this court finds that the sum of $5,000.00 was reasonably and necessarily incurred by the landowner to process its application for costs and attorneys' fees from August 31, 1982 through the present date. The sum of $115,000.00 shall be inserted as attorneys' fees awarded to the landowner in the approved form of judgment.

DATED at Anchorage, Alaska, this 25 day of January, 1983.

Karl S. Johnstone
Superior Court Judge

On 1/25/83 a copy of the foregoing was mailed to:

Bruce Tennant, AG
Mary Hughes
David Berry

Secretary to Judge Johnstone

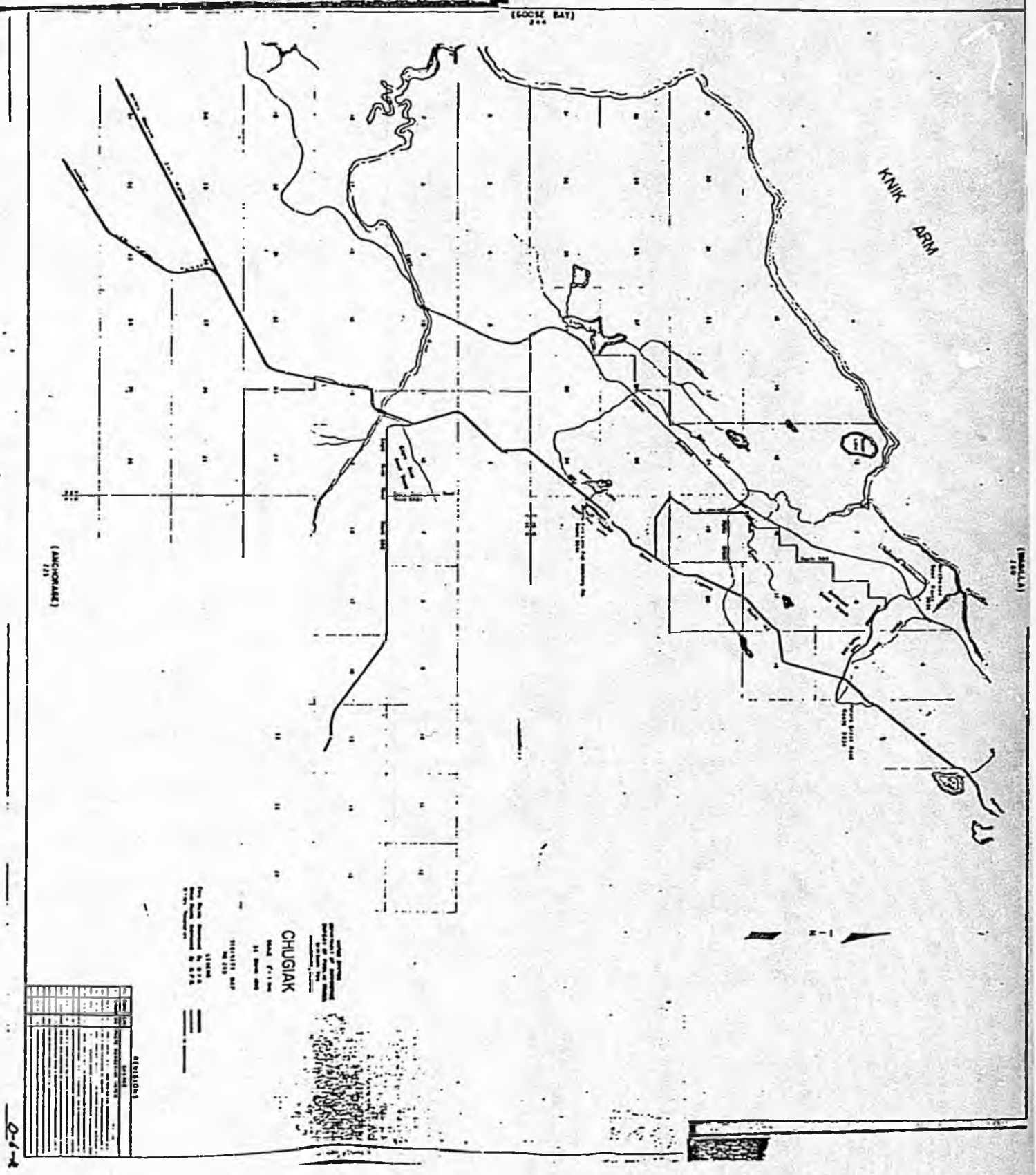
I certify that on 1-27-83
a copy of this document was sent to
☑ Attorney(s) of Record, or
☐ Other
at the address of record.
D.O.E. 2-27-83 LV
Deputy Clerk

cc: Chroons
Tennant
Hughes
Berry

1015

285

Exhibit B



Subject to valid existing rights pre-dating the public land orders, the highway right-of-way widths are as follows:

2 Digit Route Nos. (Primary Highway) - 300 feet
3 Digit Route Nos. (Secondary Highway) - 200 feet
4 Digit Route Nos. (Local Road) - 100 feet

Exhibit C

DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
DIVISION OF TERRITORIES AND ISLAND POSSESSIONS
WASHINGTON

May 6, 1948.

9-1-55 Alaska Road Com.

Memorandum

To: Mr. Flakne

From: Mr. Silverman

Subject: Authority of Alaska Road Commission to construct a bridge within the corporate limits of a town.

Reference is made to your memorandum of April 26, asking whether the Alaska Road Commission has authority to construct a bridge within the corporate limits of a town.

The authority of the Alaska Road Commission to construct and locate roads in Alaska is derived from section 2 of the Act of January 27, 1905, as amended by the Act of May 14, 1906 (34 Stat. 192; 48 U.S.C.A. sec. 322), which provides: "The said Board (Secretary) shall have the power . . . to locate, lay out, construct, and maintain wagon roads and pack trails from any point on the navigable waters of Alaska to any town, mining or other industrial camp or settlement, or between any such town, camps, or settlements therein, if in their judgment such roads or trails are needed and will be of permanent value for the development of Alaska . . . " (Emphasis supplied.)

I believe it is apparent from the foregoing that the Alaska Road Commission is without authority to construct a bridge within the corporate limits of a town.

6/3/48
Discussed personally with Colonel Johnson,
J. I. Flakne (R)

FOR VICTORY BUY UNITED STATES DEFENSE BONDS AND STAMPS

Exhibit D

FEDERAL HIGHWAY ACT OF 1970 AND MISCELLANEOUS BILLS

PART 1

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ROADS

OF THE

COMMITTEE ON PUBLIC WORKS

UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

FEDERAL AID HIGHWAY ACT OF 1970 AND MISCELLANEOUS BILLS

MAY 19, 20; JUNE 9, 10, 11, 12, AND JULY 13, 1970

Printed for the use of the Committee on Public Works

U.S. GOVERNMENT PRINTING OFFICE
46-710 O WASHINGTON : 1970

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FEDERAL HIGHWAY ACT OF 1970 AND MISCELLANEOUS BILLS

WEDNESDAY, MAY 20, 1970

U.S. SENATE, SUBCOMMITTEE ON ROADS OF THE
COMMITTEE ON PUBLIC WORKS,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 4200, New Senate Office Building, Senator Mike Gravel, (Member of the subcommittee) presiding.

Present: Senators Gravel, Jordan, and Baker.

Also present: Barry Meyer, counsel, Tom Jorling, minority counsel, and Adrien Waller, professional staff member.

Senator GRAVEL. The hearing will come to order.

It is my pleasure to have my senior colleague from the State of Alaska, Senator Ted Stevens, to present testimony on S. 933, a copy of which is included in the record at this point.

91ST CONGRESS
1ST SESSION

S. 933

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 1969

Mr. STEVENS introduced the following bill: which was read twice and referred to the Committee on Public Works

A BILL

To vacate and relinquish the reservation of rights-of-way for certain purposes made pursuant to section 321 (d) of title 48, United States Code.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321 (d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

II

Senator GRAVEL. Senator Stevens, you have the floor.

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

Senator STEVENS. Thank you, Mr. Chairman.

I would like to introduce to the members of the committee our Commissioner of the Department of Highways of the State of

Alaska, Robert L. Beardsley. He is accompanied by the Director of the Right-of-Way Division, Mr. Dick Chitty. I am here with my legislative assistant, Rod Rickett.

Mr. Chairman, thank you for this opportunity to appear before you on behalf of legislation which has long been needed to correct a glaring inequity among property owners in my State.

In 1947 Congress enacted a law which automatically reserved, in all Federal patents issued thereafter, rights-of-way for highways built either by the Federal Government or by the territorial government of Alaska. This act was terminated shortly after statehood, but unfortunately the reservations are still a valid cloud on all patents issued between 1947 and statehood.

In simple terms, this means that the Federal Government can build a road across property subject to the reservation without paying any compensation, without any condemnation proceedings—in short, without any concern whatever for the property rights of the owner. This condition does not exist on any land patented by the Federal Government either prior to July 24, 1947, the effective date of the act, or since its repeal July 1, 1959. Those persons holding property subject to this reservation have found difficulty in obtaining financing for development because of the possible entry on to the property by the appropriate road-building authority and subsequent uncompensated devaluation of the property.

So acute are the inequities involved in this reservation that the State of Alaska, by act of the State legislature in 1966, renounced its rights under this reservation and now pays compensation and follows due process for all rights-of-way across private lands, whether subject to the 1947 act or not. My bill, S. 933, would eliminate the reservations altogether.

This bill will cost the Federal Government very little. There are few rights-of-way not already taken that will be acquired for Federal road-building purposes in the future. The State has renounced its rights under the act and the Federal Government has no intention at present of undertaking any major road-building activities of its own in Alaska. But, as long as the reservations remain in effect, the Bureau of Public Roads, the Post Office Department or the Forest Service could expropriate land without compensation. It is this possibility that a right-of-way could be taken, and not the likelihood that it will, which creates the cloud on the title and the resulting hardship to the owner.

A second important inequity which results from this reservation is the inability of the Federal Highway Administration to provide participating Federal Funds for the acquisition by the State of rights-of-way that could have been acquired at no cost to the State if it chose to exercise its rights under the reservation. To date, this has cost the State an additional $1.2 million in lost matching funds.

Alaska therefore finds itself in the paradoxical situation of having acted to correct an inequity to some of its citizens only to create an even greater inequity for the State as a whole.

The late Senator Bartlett and former Senator Gruening introduced a measure in the 90th Congress to eliminate this reservation. An unfortunate series of events, including two assassinations, prevented consideration of their measures by this committee. Because of the importance of this measure to the orderly development of my State, I am continuing their efforts to get this legislation passed.

Mr. Chairman, S. 933 will do no more than place my State in the same position as the other 49 States. It will place my State's highway department in the same position as those of the other States regarding the obtaining of rights-of-way. It will place Federal aid for rights-of-way on the same basis as in other States.

I hope the committee will consider the equities of the property owners and of the State carefully, and will act favorably on S. 933.

Thank you.

Senator STEVENS. Mr. Chairman, this is a bill that has been before the subcommittee before. I am informed that there were incidents that occurred that compelled the cancellation of hearings that were scheduled in prior Congresses. I have mentioned those already.

This is a bill which really is designed to bring about equity for the State of Alaska by eliminating a very harsh provision of the law that existed during territorial days. It is a very simple matter, really. It was an easement in gross, you might say, across all homesteads for any rights-of-way without compensation.

As I pointed out, the State of Alaska determined that it would not take rights-of-way without paying compensation. So, in effect, what we are asking the Congress to do is to recognize the policy that has been set by the State of Alaska to compensate private landowners for the rights-of-way that are taken for public purposes.

I might suggest, Mr. Chairman, before Mr. Beardsley and Mr. Chitty testify, that they have suggested to me that, on line 7, in place of the words "the date of enactment hereof," if the committee would substitute "April 14, 1966," it would in effect recognize the policy of the State of Alaska established on that date by the enactment of legislation which required compensation for the taking of these rights-of-way.

I believe Mr. Beardsley and Mr. Chitty will be able to answer any technical questions. I would be pleased to answer any questions the subcommittee might have of me.

Senator GRAVEL. I have none.

Senator Jordan?

Senator JORDAN. Thank you, Senator.

Would backdating affect the retroactive payment feature of this legislation?

Senator STEVENS. I am informed that the Federal Department of Highways has, in fact, reserved matching funds from the State's allocation for payment of the Federal portion of the rights-of-way that had been compensated by the State.

So, it would have the effect of freeing this money that has been reserved by the Federal Department of Highways for this purpose. It would cause no additional appropriations, or expenditure of money since these funds are part of the State's entitlement of

highway funds. And these funds have, as I understand it, already been set aside. Mr. Beardsley can tell you about that. It would have the effect of recognizing that the rights-of-way that had been acquired and paid for by the State since that date are eligible for the allocation of Federal matching funds, and it would release these funds.

Senator JORDAN. In other words, this would reimburse the State of Alaska for money that they have already paid out? Is it correct that Alaska paid the whole cost of the acquisition of this right-of-way?

Senator STEVENS. That is correct.

Senator JORDAN. And you are entitled to 50 percent of its cost from Federal highway funds?

Mr. BEARDSLEY. These are actually ABC funds and the matching ratio that has been established for the State of Alaska would prevail.

Senator JORDAN. What is that rate?

Mr. BEARDSLEY. 92.75 percent Federal, the balance State.

This would, Senator Jordan, place the State on a comparable basis with the other States where they do not have this special reservation clouding titles of land to Federal ownership.

Senator JORDAN. Do any other States have that?

Mr. BEARDSLEY. Not to my knowledge, sir.

Senator JORDAN. Thank you. I am just curious about that retroactive section in that bill.

Senator STEVENS. As I understand it, Senator, it would not increase the allocation. The entitlement is there, and we have not used up our entitlement: so it would mean that it would come out of the funds that have been reserved for the State anyway.

Senator JORDAN. I have no objection to that.

Senator GRAVEL. Senator Baker?

Senator BAKER. Mr. Chairman, I have no questions.

I would simply say that I commend the witness and command the chairman for dedication and devotion to this program.

Senator STEVENS. If I may be excused, the gentlemen can continue.

Thank You.

Senator GRAVEL. Mr. Beardsley, would you have a statement you would care to make?

STATEMENT OF ROBERT L. BEARDSLEY, COMMISSIONER, ALASKA DEPARTMENT OF HIGHWAYS; ACCOMPANIED BY DICK CHITTY, DIRECTOR, RIGHT-OF-WAY DIVISION

Mr. BEARDSLEY. Yes, Mr. Chairman I am Robert L. Beardsley, commissioner of the Alaska State Highway Department. I consider it a privilege to appear before you today and testify in behalf of Senator Stevens' bill S. 933, which will vacate and relinquish the reservation of rights-of-way pursuant to section 321(d) of title 48, United States Code, or more commonly referred to as the 1947 Act Reservation.

I will preface my remarks with a brief history of the 1947 Act Reservation, and how the reservation was exercised by the State of Alaska.

Prior to the years of World War II, the Territory of Alaska experienced little road construction work. Much of the activity of the Alaska Road Commission and its predecessors was conducted across the public domain and required minimal right-of-way acquisition. A marked increase in population in the years following the war and a related increase in activities designed to reduce public lands to private ownership increased the frequency with which right-of-way was necessitated over lands to which title had passed from the United States.

In recognition of this trend and in an attempt to reduce the expenditure of governmental funds, Congress passed the 1947 act effective July 24, 1947.

The effect of this act was to reserve to the Government a right-of-way across lands subsequently passing into private ownership and to thus avoid the necessity of reacquiring lands for future road construction.

The 1947 act was prospective in application only. It applied only to lands which were taken up, entered, or located, or otherwise passed into private ownership after the effective date. Lands entered or patented before July 24, 1947, could not be subjected to the 1947 act unless, perhaps, they were returned to Government ownership during the time it was in effect.

The 1947 act was repealed by Congress effective July 1, 1959. Thus, lands entered or patented after that date are not subject to the act. Title of lands entered or patented from July 24, 1947, to July 1, 1959, continued to remain clouded with the prospect of future road construction causing arbitrary transfers of unspecified portions of said land to the government, without due process or compensation, until April 14, 1966.

In recognition of the continued inequities, the fourth session of the Alaska State Legislature passed legislation, effective April 14, 1966, which provided that no State agency could take land for public purposes without payment of just compensation. While the State of Alaska thus removed the inequities for owners of said land, the State has itself continued to receive inequitable treatment with respect to Federal participation in the acquisition of portions of said lands for highway purposes because of the remaining legal deficiency which Senator Steven's bill, S. 933, seeks to correct.

The repeal of the 1947 act merely eliminated the statutory directive that such a reservation be inserted into the patents of lands thereafter taken up. Lands which were patented subject to the 1947 act before its repeal were in no way affected. The act created an interest in real property which would remain in the Government when the remaining interests constituting the fee title conveyed away. Repeal merely prevented further similar interests from being created, leaving existing interests unchanged.

A reservation is an interest in real property. It is created by the grantor retaining to himself some element of the fee when the

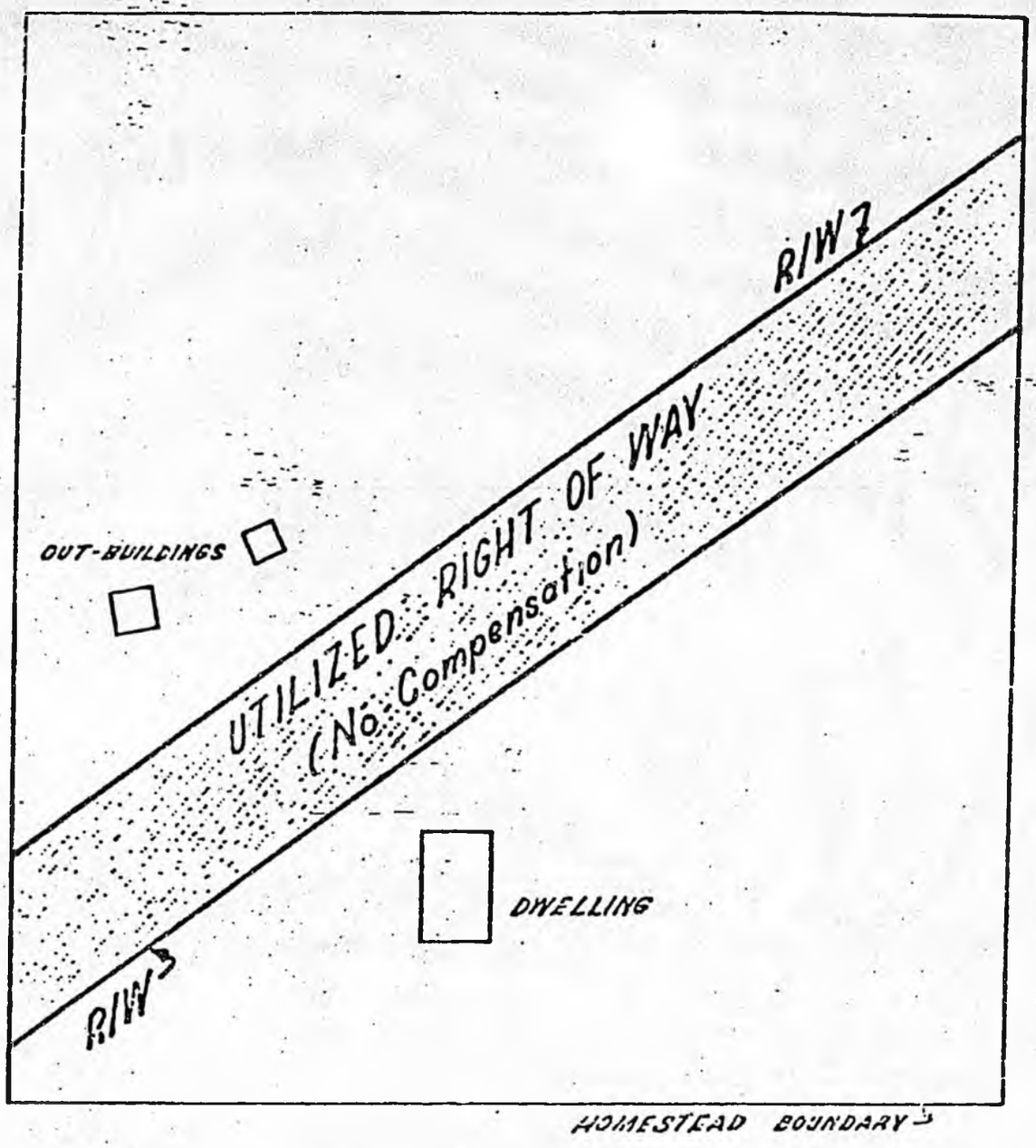
remaining elements are conveyed away. Since this interest never passed to the patentee and was never owned by him it follows that at the time of utilization of the reservation nothing is taken from him for which payment becomes due under the constitutional requirement of compensation for the taking of property.

The precise location and extent of the right-of-way reservation is not indicated in the 1947 act or in the patents issued thereunder. By utilization of the 1947 act reservation, the Government describes and locates on the ground the right-of-way created by the authority of the act. Since the interest utilized has at all times remained in the Government, no real property is taken from the patentee—or his grantee—which necessitates payment of compensation under the law.

The fact that the ownership of the right-of-way has remained in the Government leads to the further conclusion that no compensation is due the patentee by way of severance damages or proximity damages. If, after utilization of the right-of-way, the patentee holds two parcels which are separated by the roadway, he is viewed as having held two separate parcels from the time the patent issued as illustrated in exhibit I.

(Exhibit I follows:)

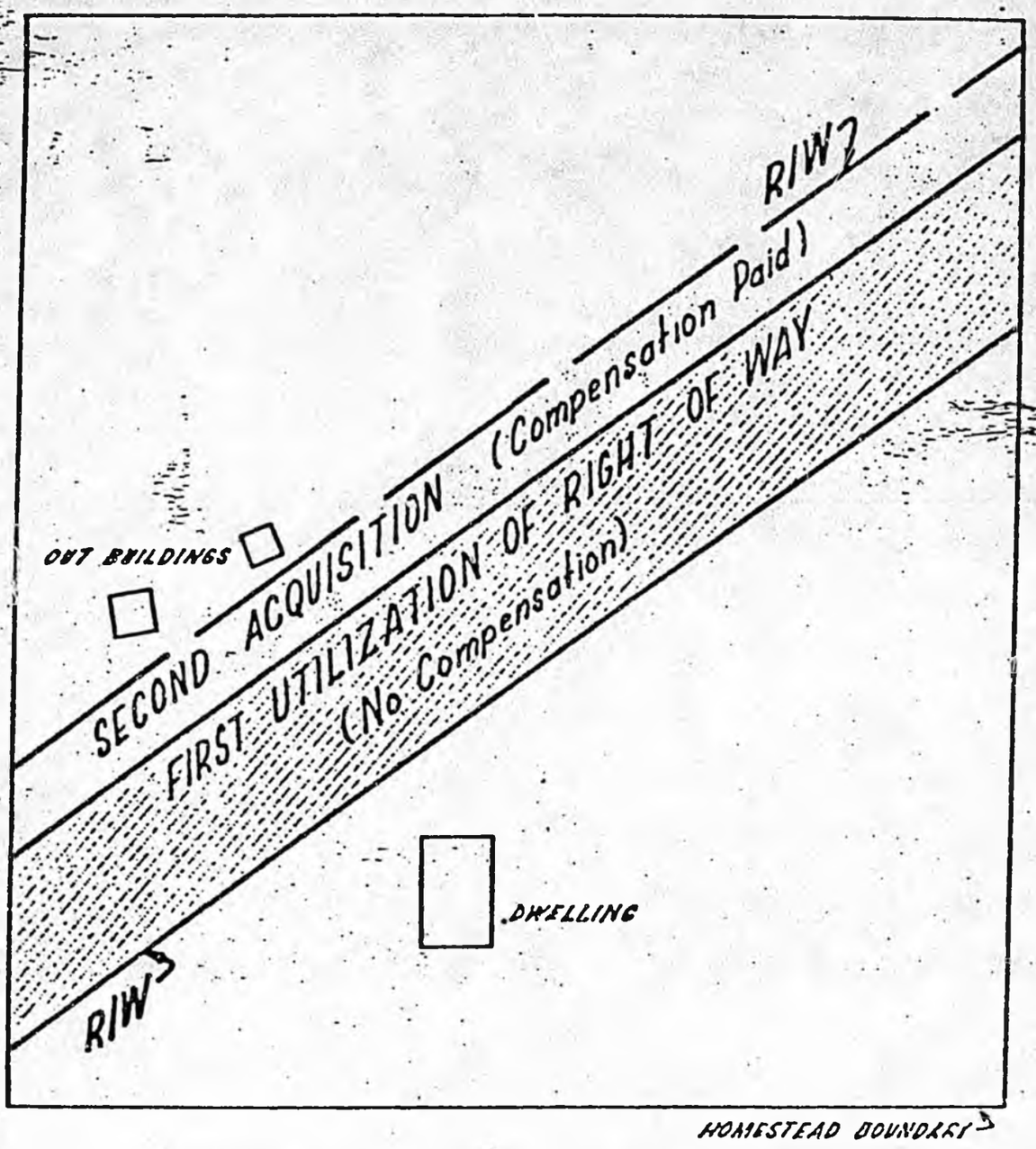
EXHIBIT I



The 1947 act has been interpreted to grant authorization only for the "first utilization." Once the reservation has been utilized in respect to any given patent, the right of way becomes established and located and the State must compensate the owner for any subsequent taking for change of road location, widening of the original right-of-way width, etc., as shown in exhibit II.

(Exhibit II follows:)

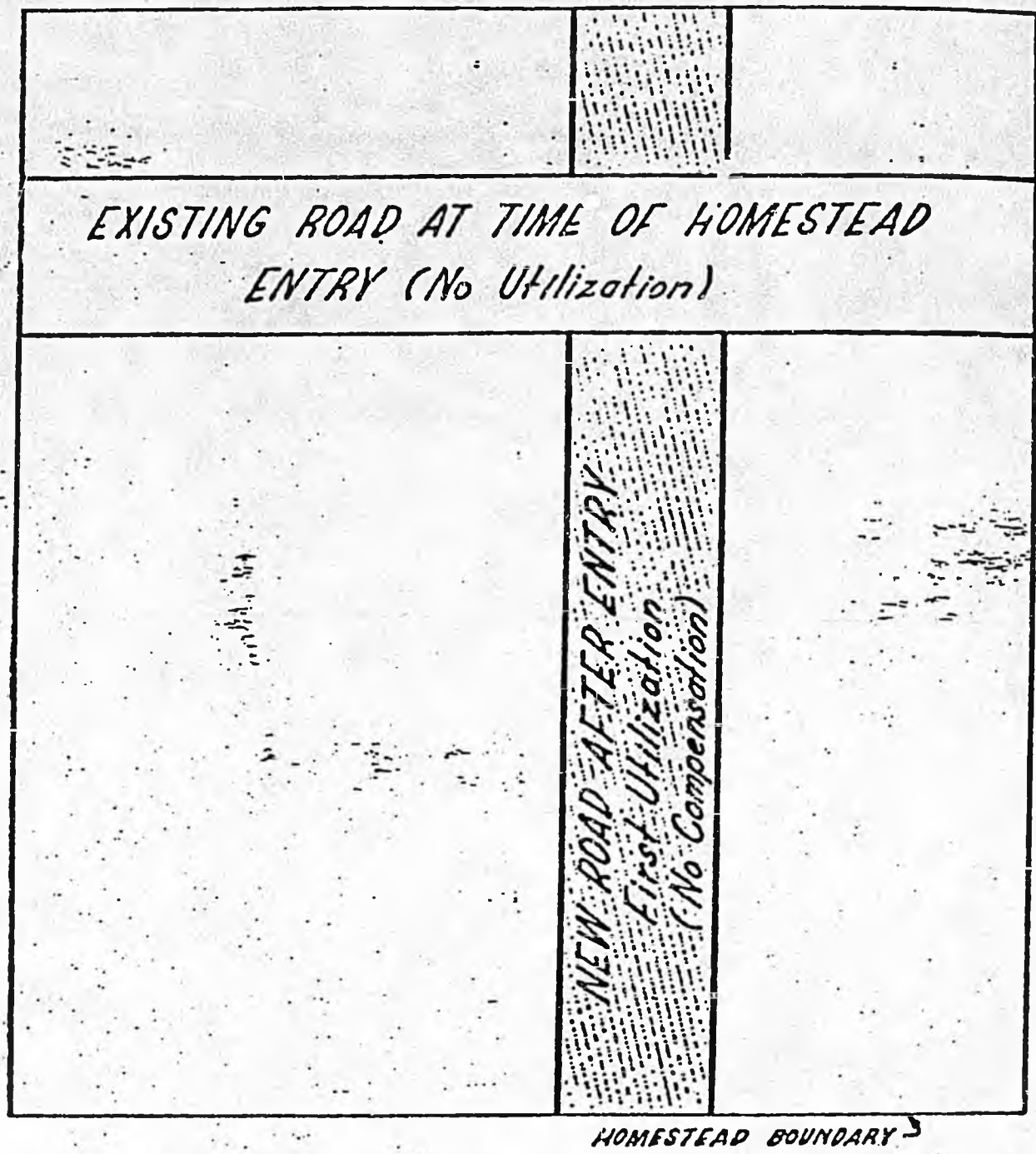
EXHIBIT II



The existence of a road over a parcel prior to entry and patent was not considered a utilization of the reservation. The patentee is considered as having acquired the property subject to the existing road and the reservation of the 1947 act survives. The construction of a road across a parcel subsequent to issuance of patent would constitute a utilization even if no notice of utilization was served. Exhibit III outlines this possibility.

(Exhibit III follows:)

EXHIBIT III



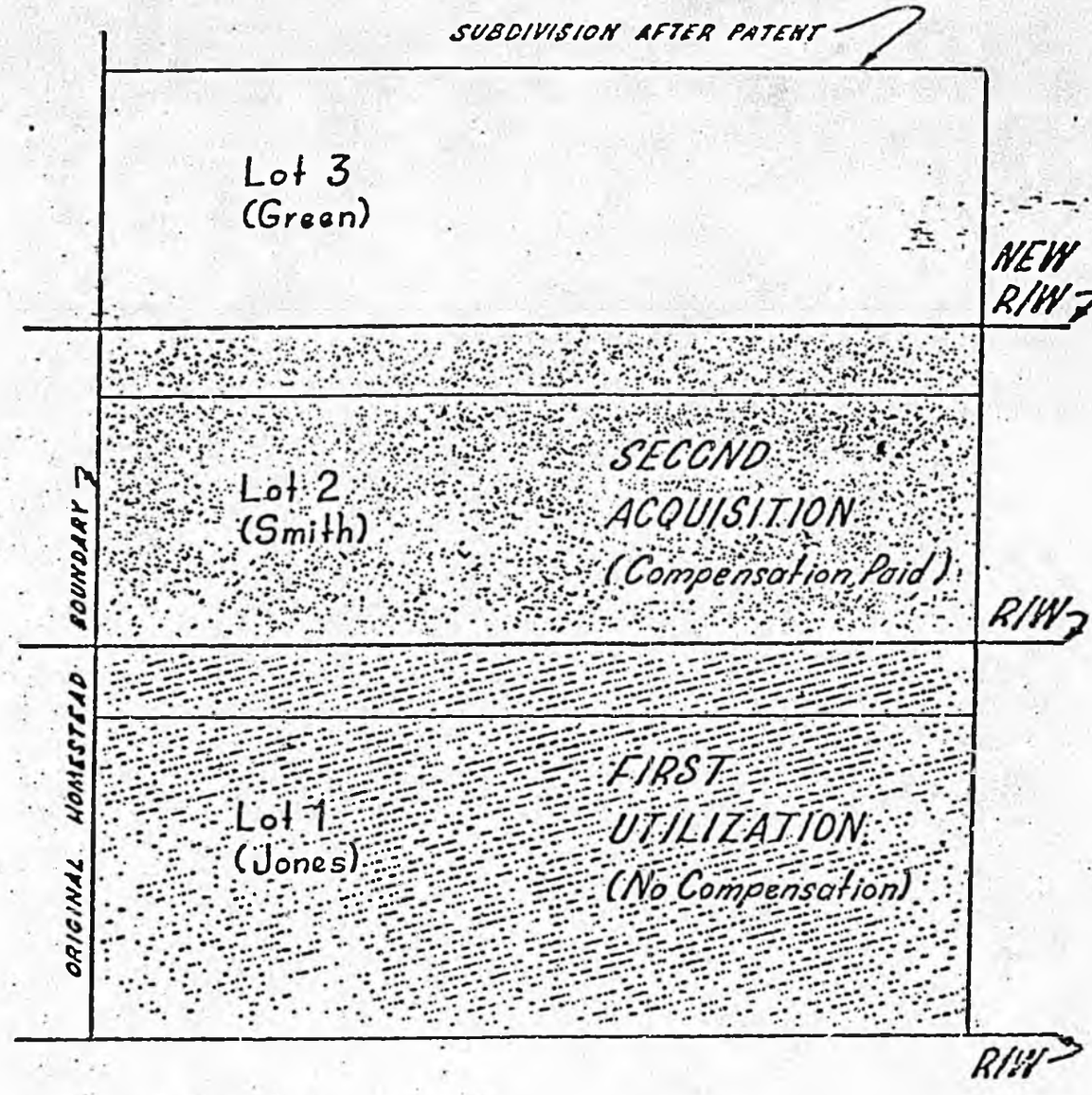
The presence of a utilization may negatived in any case where some agreed consideration was given to the owner at the time a right-of-way was acquired. That is, if the owner accepted any cash or other valuable compensation in return for granting a right-of-way to the Government, the transaction is viewed as a purchase and sale and not as an exercise of the reservation. The 1947 act reservation may be utilized later.

An additional "first utilization" problem is encountered where a tract conveyed by a single patent has since been subdivided and is now held by two or more owners. In this situation, the reservation remains in effect and may be utilized over any portion of the area subject to the original patent even though it may affect two or more of the present lot owners. Location of a right-of-way over one or more of the subdivided tracts constitutes a "first utiliza-

tion" as to the entire area of the original patent. The 1947 act authorized a single free utilization. This reservation is utilized and expended if a right-of-way is located over any part of the land conveyed by a given patent. Such a utilization may be from several owners if the land has been subdivided, but it also may be from only one of the subdivided tracts. Once the reservation has been utilized, the entire tract issued under a given patent is free from the 1947 act reservation. Exhibit IV illustrates this situation.

(Exhibit IV follows:)

EXHIBIT IV



FIRST UTILIZATION - JONES & SMITH RECEIVE NO COMPENSATION
SECOND ACQUISITION - SMITH & GREEN RECEIVE COMPENSATION

The fourth session of the Alaska State Legislature, recognizing the inequities of the 1947 act, passed legislation effective April 14, 1966, commonly called the Alaska Right of Way Act of 1966, providing that no agency of the State may take privately owned

property by the exercise of the 1947 act reservation. The legislature's stated purpose was as follows, and I quote:

> This act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the person holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this State. Those persons who hold title to land under a deed or patent which contains a reservation to the State by virtue of the act of June 30, 1932, ch. 326, sec. 5, as added July 24, 1937, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal act reserve to the United States, or the State created out of the Territory of Alaska, a right-of-way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under he Alaska constitution and the Constitution of the United States, would be required to pay just compensation for any land taken for a right of way. It is declared to be the purpose of this act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

Subsequent to the enactment of the Alaska Right-of-Way Act of 1966 the Bureau of Public Roads advised us "that there can be no Federal reimbursement for funds expended by the State of Alaska for the acquisition of right-of-way from land subject to the reservation contained in the 1947 act." They also stated it would take Federal legislation to effectively repeal the reservation.

In response to that statement, the late Senator E. L. Bartlett introduced—for himself and Senator Gruening—2483 on September 28, 1967. Senator Bartlett's introductory remarks outlined the position of Alaskans affected by the 1947 act and I quote his remarks from the Congressional Record of the Senate for September 28, 1967:

> In 1947 Congress enacted a law—48, United States Code, 321d—which reserved an undefined highway right-of-way in all patents for Federal public lands in Alaska. This law, commonly referred to as the 1947 Act, has become notorious in Alaska. While seemingly innocuous, the 1947 act has worked inequities beyond belief as homesteads and other patented lands fall in the paths of urban development and highway improvement projects.
>
> "Although the 1947 act was repealed in 1959, all of those persons who received patent to Federal lands between 1947 and 1959 still live under the threat that a portion of their land might be taken for highway right-ofway purposes at any time without compensation. As a matter of fact, a substantial number of rights-of-way have already been acquired under the 1947 act without compensation to the landowners and many rights-of-way over such lands will undoubtedly be acquired in the forseeable future.
>
> The State of Alaska has found a way to compensate patentees for takings under the right-of-way provision but the Federal Highway Administration refuses on legal grounds to pay the Federal share of such compensation.
>
> Mr. President, it is my firm belief that no one could have foreseen the inequities inherent in passage of the 1947 act. It is also my belief that corective action is overdue. Therefore, I introduce today for appropriate reference a bill which would vacate and relinquish the reservation of rights of way authorized by the 1947 act.

Hearings, scheduled on Senator Bartlett's bill were canceled first because of the assassination of Dr. Martin Luther King, Jr.,

and se_ond because of the assassina_n of Senator Robert F. Kennedy.

Senator Bartlett's untimely death and Senator Gruening's unsuccessful bid for reelection made it necessary to reintroduce S. 248. Senator Stevens graciously did this on February 7, 1959.

Between April 14, 1966, and the present time the State of Alaska has expended approximately $1.2 million of State funds for the acquisition of lands subject to the 1947 act. We are acquiring lands subject to the 1947 act daily so the total amount will continue to increase until Federal legislation is passed.

Senator Stevens' bill would distinguish this inequitable and unjust reservation forever, and the State of Alaska supports its passage. We also believe it to be only just and equitable that the effective date of the bill should relate back to April 14, 1966, so the State of Alaska will be clearly eligible for reimbursement for funds expended from that date until the effective date of this legislation.

Thank you again for this opportunity to appear before you. I will be happy to answer any questions you may have or to furnish the committee any additional information desired.

We would answer any questions, but the questions that have been asked pretty well cover it.

This is really just a minor legal technicality that as long as that particular Federal statute is on the books, the Bureau of Public Roads is not entitled to participate because of this reservation.

It applies only to those lands for which patents were granted during the period of 1947 until statehood.

Senator JORDAN. Mr. Chairman, may I ask the witness a question?

Senator GRAVEL. Yes, sir.

Senator JORDAN. Has any of this fund got anything to do with the Alaskan Highway or is any portion of this money involved in that particular highway? There is only one road that I know about, that is the road that crosses Canada and then goes on through Alaska. Is that a part of this? Is that involved in this?

Mr. BEARDSLEY. Mr. Chitty, my right-of-way director, informs me that portions of the extension of the Alaskan Highway in the State of Alaska itself that were realined were involved in this particular situation.

Senator JORDAN. That is a very difficult road. I have been told, and very expensive to build and to maintain, due to upheaval of the land caused by the heavy frost. Is that a fact?

Mr. BEARDSLEY. Sir, the portion within the State of Alaska is all reconstructed and it is paved, and our maintenance problems, aside from routine maintenance, are not that difficult on this particular section of the highway.

Senator JORDAN. It is the Canadian section that is so bad?

Mr. BEARDSLEY. Yes, sir: in the Canadian section, substantial portion of that highway is just gravel-surface highway, and I am informed that their maintenance cost exceeds $4,500 a mile.

Senator JORDAN. I have been informed that it takes about that much in tires to get across it, too.

Exhibit E

LAW OFFICES OF
GROH, EGGERS & PRICE
550 WEST SEVENTH AVENUE, SUITE 1250
ANCHORAGE, ALASKA 99501

TELEPHONES
(907) 272-6474
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MICHAEL W. PRICE
LANCE E. GIDCUMB
SALLY KUCKO

MICHAEL P. CONDON
SEMA E. LEDERMAN
ROBERT T. PRICE
ROBERT P. OWENS

John

MAR 14 1985

March 8, 1985

Commissioner Richard J. Knapp
Department of Transportation
and Public Facilities
Pouch Z
Juneau, Alaska 99811

Re: Senate Bill 141

Dear Commissioner Knapp:

As you are aware, this firm represents the Alaska Land Title Association, which is a proponent of Committee Substitute for Senate Bill 141.

Senate Bill 141 endeavors to resolve the inequities resulting from certain "floating" easements created by the Federal Government in pre-statehood days. The inequities to the landowner exist because those "floating" easements were never defined in the patents when issued to the homesteaders.

As we have testified, many landowners were allowed to plat and subdivide their properties and neither the federal, nor the State, nor the City governments asserted ownership over these easements. The landowners, since the time of their patents, have paid taxes on the land included in the easements as if they didn't exist. These same landowners were allowed to place structures and improve the land claimed by the State Government, and in some instances, have constructed multi-million dollar buildings within the easements. The landowners NEVER knew of the existence of the easements and many of them don't know today. Patents were issued to homesteaders showing a 33' easement from centerline when, in fact, there were outstanding Public Land Orders which purported to establish 50' and 100' easements from the centerline of certain roads. In the case of local roads, those roads were not even identified by name.

We appreciate the fact that you and this current administration did not cause the problems which are facing the land owners at the current time. As you know, the primary failure was the inability of the local BLM offices in 1949 and later to comply

with the initial withdrawals established by the Washington office of the BLM. These withdrawals were never surveyed and resultingly patentees settled the property never knowing the rights-of-way existed.

Committee Substitute

Let us take this opportunity to explain the rationale of the Committee Substitute for Senate Bill 141 and why we believe it has a minimal annual fiscal impact upon the State budget. First, the Committee Substitute does not relinquish the easements but accepts their continued existence. Consequently, any condemnation proceedings will be shortened to consider only the question of value. The Committee Substitute requires the State to pay compensation for the value of ONLY that portion of the easement which it utilizes in extensions or widenings of existing roads.

We therefore feel that the fiscal note should not be the value of the easements throughout the State, but should be limited to the actual acquisition cost for only those roads which will be expanded in 1986 through 1990.

As you have been advised, the Supreme Court in ALTA v. State, 667 P.2d 714 (Alaska 1983) decided that if the homesteader entered the property before August, 1949, the State must pay compensation for any taking because the PLO right-of-way does not exist as to that land. Therefore, the acquisition cost of that land must be excluded from the fiscal note. Under the circumstances, since Juneau and Fairbanks were settled long before 1949, the State will already be required to pay compensation for most of the highway expansion in those locations. Under present Court decisions, we estimate that one-half of the entries in Kenai and Anchorage occurred before 1949. It is our belief, under the circumstances, that the fiscal note for the Committee Substitute for Senate Bill 141 will be extremely small.

There has been some discussion that the Committee Substitute for Senate Bill 141 will assist only the title companies. That allegation is not true because many landowners do not even have title insurance. Additionally, where there is title insurance the title policy issued on a piece of property goes back a number of years and the value of the policy was calculated at the time of issuance. The properties have substantially appreciated in value and the amount of a claim is directly proportional between the amount of land covered by the policy. Consequently, the bulk of the losses suffered will probably be by individual landowners.

Once again, we wish to reiterate our desire to work with the Administration in its concern to seek some equitable solution to this problem. It does not seem to be in anyone's best interest to publicize the fact that the State will take property without compensation. It does seem, however, in everyones' best interest to come to some solution of this matter legislatively to avoid case-by-case hardship such as that suffered in the early 60's by Otto Schnieder. The time has come for this type of solution. We would be more than willing to meet with you to discuss whatever equitable solution can be devised.

With the reduced fiscal note of Senate Bill 141 it is possible that the distance between our positions is now surprisingly narrowed. Of course, we have already been in contact with Senator Stevens and the entire Congressional Delegation who assure us of their cooperation in attempting either administratively or legislatively to require federal matching funds to acquire the properties under Committee Substitute SB 141.

We are more than willing to meet with you at your earliest convenience in Anchorage or Juneau, to reach any settlement for the citizens of the State of Alaska. We will call you on Monday, March 11, to arrange a meeting.

Sincerely,

GROH, EGGERS & PRICE

Clifford J. Groh

Michael W. Price

:hf

cc: Gov. William Sheffield
Senator Don Bennett
Senator Jan Faiks
✓ Senator Jack Coghill
Senator Rick Halford
Senator Tim Kelly
Senator Vic Fischer

Version #2
14-1108
Moen
4/19/85 ✓

IN THE SENATE BY COGHILL

SENATE JOINT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the payment of just compensation to landowners for certain rights-of-way across land in Alaska.

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

WHEREAS the Federal Government created certain rights-of-way for highway purposes across land in the state under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613; and

WHEREAS the rights-of-way created by the Federal Government were not identified in the patents issued to Alaska homesteaders nor were the original homesteaders informed as to the location or true width of the rights-of-way claimed for highway purposes by the Federal Government across their land; and

WHEREAS the original homesteaders and their successors in interest have had no knowledge of the claim of the Federal Government to the rights-of-way along or across their properties and have often utilized and improved the portion of the right-of-way claimed by the Federal Government; and

WHEREAS the enforcement of the rights-of-way would be unfair to homesteaders who entered their property between August 1949 and Alaska statehood in 1959; and

WHEREAS the rights-of-way created by the Federal Government were not recorded in any territorial or state recording office for the purpose of public notice; and

WHEREAS the right to utilize the rights-of-way for highway purposes

was conveyed to the state in 1959; and

WHEREAS the United States Department of Transportation has declined to pay federal highway funds to the state to allow the state to pay just compensation to the landowners whose properties are affected by the rights-of-way; and

WHEREAS U.S. Senator Ted Stevens has attempted in the Federal Aid Highway Act of 1970, sec. 138, to require the United States Department of Transportation to compensate the State of Alaska for money paid as just compensation for the taking and utilization of the rights-of-way;

BE IT RESOLVED by the Alaska State Legislature that the Alaska delegation to U.S. Congress is urged to introduce and support legislation to require reimbursement by the United States Department of Transportation to the State of Alaska for money paid by the state as just compensation for the use of any right-of-way created, established, or claimed under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613.

COPIES of this resolution shall be sent to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

SB 141 memo

History on 1966 act

M E M O R A N D U M

To: Committee members
From: Chairman Coghill
Date: February 19, 1985
Re: SB 141, Relinquishment of rights-of-way

As the attached background information will show, SB 141 is intended to release the State's claim to certain portions of highway rights-of-way which were not clearly identified in land patents. This has given rise to the problem faced by many landowners who live or hold land adjacent to highways the State now wishes to upgrade, straighten or expand and who have been or could be abruptly and without compensation deprived of land they assumed was theirs, and which their legal documents have not identified as belonging to the government.

These rights-of-way were withdrawn by the federal government through public land orders or as a result of various Acts of Congress during territorial days, and did not necessarily make their way either to the homesteaders' patents or the district recorders' offices. This has subsequently caused heavy liabilities for the state's title insurance companies, who traditionally insure property based upon what has been recorded at the recorder's office, not upon what has been published in the Federal Register.

As this problem has evolved, the State Supreme Court has ruled that the State's claims to the rights-of-way are valid, and ~~the~~ title insurers, ~~rather than the State~~, are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. therefore In the many instances where ~~the~~ property owner has no title insurance, of course, he or she is simply out of luck ~~or will be~~ sometime in the future, if ~~the state decides to expand its road, and no legislative action has been taken~~ and loses the land with no recourse to compensation.

The background material will more completely explain the history of this problem. However, A brief caviat regarding the enormous ~~DOT/PF~~ fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they ~~expect to~~ have figured the repurchase price, at top market value, of an entire right-of-way width (the whole 300 feet, for example, not just the portion they actually will need).

Introduced: 2/8/85
Referred: Transportation and Resources

IN THE SENATE BY COGHILL

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of transportation and public facilities shall vacate and relinquish to the adjoining property owners any and all rights-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant

structure.

* Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The vacated and relinquished right-of-way under sec. 2 of this Act may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

* Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not divest the state of its interest in a right-of-way to land or require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act divest the state of an interest in an easement of specific width set out in the original patent from the state or federal government.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

* Sec. 5. APPLICATION TO FEDERAL LAND. The provisions of this Act do not divest the state of its interest in a right-of-way that affects land in which fee title is, on the effective date of this Act, vested in the United States of America.

* Sec. 6. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 7. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

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 17, 1984

SUBJECT: An Act releasing claims of the state within certain rights-of-way (Work Order No. 13-2222)

TO: Representative Charlie Bussell
Chairman
House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested the enclosed bill in final; because the draft does not address certain aspects that seem naturally raised by the bill, I have prepared the bill in draft for your consideration.

The bill seems to be a response to State v. Alaska Land Title Ass'n. 667 P.2d 714 (Alaska 1983), cert. den. 52 U.S.L.W. 3509 (January 9, 1984). While I have reviewed the case briefly preparatory to putting the bill into form for your introduction, I confess I have not sought to become altogether familiar with the law of that case.

But certain observations may be made regarding the bill.

(1) The bill deals exclusively with the use by the state of the benefits of the cited Acts of Congress and orders of the Department of the Interior.

However, as the Alaska Supreme Court's opinion indicates in passing, municipalities of the state may avail themselves of the benefits of the Acts and orders. I have not sought to extinguish the ability of these municipalities to use the Acts and orders.

(2) The rights-of-way are presently used by the state (or municipalities) to straighten the right-of-way or to widen or improve the roadbed. Those benefits will cease if the bill passes.

But the rights-of-way are also used by utilities (of both a public and private nature) for sewer and water lines, natural gas lines, electric power lines, and so forth. The bill does not indicate whether these rights continue though it seems clear that they are put in some jeopardy by the extinguishment of the estate on which they rely. Do you wish to deal with these issues? See, for example, AS 19.25.010 which provides:

> Sec. 19.25.010. USE OF RIGHTS-OF-WAY FOR UTILITIES. A utility facility may be constructed, placed, or maintained across, along, over, under or within a state right-of-way only in accordance with regulations prescribed by the department and if authorized by a written permit issued by the department.

(3) While I do not have an answer to suggest, I think it is patently clear that the outer edge of the ditching, if any, along the roadway is not clean demarcation on which to base title to land; whether the existing property line reflects good public policy, or not, at least the line is clearly established. I make this point only because the provisions of the Acts of Congress, orders of the Interior Department, and the efforts of the highway department have already been a goldmine for lawyers and a source of anxiety to property owners, title insurance companies and a newly added uncertainty seems undesireable. In this connection, you may wish to consider the concepts implied in AS 19.25.070.

(4) Finally, note that I have followed the draft provided to us in drafting this bill. But subsecs. (b) - (e) are altogether contained within (a) of the bill and are unnecessary.

If I may be of further assistance, please advise.

RAB:ojb
J6/054 Enclosure

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 26, 1984

SUBJECT: Release of claims of the state
(Work Order No. 13-2222)

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

The above described bill was provided to you earlier today at Joe Brewer's request. At that time I advised Mr. Brewer that I would be providing the committee with comments on the bill.

(1) In my memorandum of April 17, I noted that not only the state but also certain municipalities of the state may avail themselves of the benefits of the Acts of Congress and public land orders in question. I stated that the rights of the municipalities were not extinguished by the bill. I think that I was wrong in part but I believe that if the typical phrase "by the state" is deleted (for example, in the title and at line 28, page 1 of the bill), this possible ambiguity is removed. I believe that it is also desireable to acknowledge that neither the state nor municipalities may avail themselves of the benefits of the easements and subsections (c) and (d) should be conformed to that effect.

(2) The committee asked that the phrase "the subservient estate" be deleted from subsection (b) and that it be replaced with "the adjoining property owners on the effective date of this Act". I have included the phrase as requested.

But I note that it is possible that the substituted phrase has a different substantive meaning from that suggested by "the subservient estate".

If I am correct that the bill is a response to State v. Alaska Land Title Ass'n., 667 P.2d 714 (Alaska 1983), cert.

den., 52 U.S.L.W. 3509 (January 9, 1984), the bill addresses the exercise by the state and municipalities of the state of rights determined by the Alaska Supreme Court to have been created by easements established under certain Acts of Congress and certain public land orders of the U.S. Department of the Interior.

In an easement, two estates (separate ownership interests) in the same land are created. In an easement, a right of use is created in the property of another. As Black's Law Dictionary indicates, a "servient estate" (or a "subservient estate") is one that is burdened with a servitude (benefit) in favor of someone else. And the dominant estate is the right to a particular use that results from the easement.

In the situations described in the bill, the state or the municipality of the state is the owner of the dominant estate in the easement; the owner of the land adjoining the easement who also owns the land under and subject to the easement is the owner of the servient (subservient) estate.

It is the person who owns the servient estate who should receive the released and relinquished easement; that person will usually be the person whose property "adjoins" the land subject to the dominant easement but the bill confuses this distinction because there will frequently, perhaps typically be two property owners whose land "adjoins" the easement.

If I may be of further assistance, please advise.

RAB:ojb
J6/077

Introduced: 4/26/84
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 718

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. (a) The purpose of sec. 2 of this Act is to release and relinquish certain rights-of-way claimed by the Alaska Department of Transportation and Public Facilities.

(b) The legislature finds that sec. 2 of this Act is needed to alleviate economic hardship and physical and mental distress caused by the taking of land by the state without just compensation.

* Sec. 2. AS 19.25 is amended by adding a new section to read:

Sec. 19.25.260. RELINQUISHMENT OF RIGHT-OF-WAY. (a) The right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn, or reserved under the Act of January 27, 1905, 33 Stat. 616, the Act of June 30, 1932, 47 Stat. 446, the Act of July 24, 1947, 61 Stat. 418, Public Land Orders 601, 757, and 1613, and Department of the Interior Order 2665, as amended, that is not on the effective date of this Act physically occupied by the roadway, shoulder, or ditching of a road, roadway, highway, tramway, trail, bridge, or appurtenant structure is vacated and relinquished and the vacated and relinquished right-of-way may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

(b) The provisions of (a) of this section relinquish and release

to the adjoining property owners on the effective date of this Act that portion of the right-of-way claimed, asserted, or used by the state that is not physically occupied by the roadway, shoulder, or ditching of the roadway before the effective date of this Act.

(c) The provisions of (a) of this section do not divest the state of title to land or require compensation by the state for land physically occupied on the effective date of this Act by the roadway, shoulder, or ditching of a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in (a) of this section.

(d) Any expansion beyond the existing roadway, shoulders, or ditching of a road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation by a roadway, shoulder, or ditching within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation by a roadway, shoulders, or ditching occurred before the effective date of this Act.

(e) As used in this section, "physically occupied by the roadway, shoulder, or ditching" means the construction of the actual roadway, shoulders, or ditching before the effective date of this Act.

(f) This section does not relieve a person from an act for which the person may be responsible regarding a past transfer of a right-of-way or an interest in a right-of-way.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

LAWS OF ALASKA

1966

Source: HB 415 am

Chapter No: 92

AN ACT

Relating to the disposition of certain legal interests in land by the State of Alaska; and providing for an effective date.

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

* Section 1. PURPOSE. This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the persons holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal Act reserve to the United States, or the state created out of the Territory of Alaska, a right-of-way for

roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United States, would be required to pay just compensation for any land taken for a right-of-way. It is declared to be the purpose of this Act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law.

* Sec. 2. TAKING OF PROPERTY UNDER RESERVATION VOID. After the effective date of this Act, no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal Act is void.

* Sec. 3. PROSPECTIVE APPLICATION. This Act shall not be construed to divest the state of, or to require compensation by the state for, any right-of-way or other interest in real property which was taken by the state, before the effective date of this Act, by the election or exercise of its right to take property through a reservation acquired under the Act of June 30, 1932, ch. 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418.

* Sec. 4. SHORT TITLE. This Act may be cited as the Right-of-Way Act of 1966.

Sec. 2. EFFECTIVE DATE. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved by Governor April 13, 1966
Actual effective date: April 14, 1966

1. Prospective vs. retroactive application.
2. State v.s. private interests
3. Description of extent of easement
4. 1966 act - same provisions
5. Effect of Sup Ct case on 1966 act

Sup Ct interpreted 66 act to apply only to 1947 Fed act -- P&O orders apply to the 1932 Act.

→ add'l provisions of Proposed Bill would be sure that these included.

Validity of quitclaim deed — being challenged in remand of case.

State law cannot affect if not a valid.

AG may hold 1966 act as unconstitutional.

Utility easements in r-of-way.

IN THE SENATE

SENATE BILL NO. ____

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to certain rights-of-way; and providing for an effective date."

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

*Section 1. LEGISLATIVE PURPOSE AND FINDINGS.

(a) The purpose of this Act is to release and relinquish certain highway rights-of-way claimed by the Alaska Department of Transportation and Public Facilities.

(b) The legislature finds that section 2 of this Act is needed to alleviate economic hardship and physical and mental distress occasioned by the taking of the land by the State of Alaska without just compensation being paid to the person holding title to the land.

*Sec. 2. AS 19.25 is amended by adding a new section to read:

Sec. 19.25.260 RELINQUISHMENT OF RIGHTS-OF-WAY.

(a) Any right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant structures created, withdrawn, or reserved by the United States Government under the Act of January 27, 1905, 33 Stat. 616, the Act of June 30, 1932, 47 Stat. 446, the Act of

July 24, 1947, 61 Stat. 418, Public Land Orders 601, 757 and 1613, and Department of Interior Order 2665, as amended, which the State may now or in the future claim or assert and which is not claimed, asserted or utilized by occupation with physical improvements shall be and hereby are vacated, released and relinquished and shall not be taken, claimed, asserted or utilized by the State or its successors in interest without payment of just compensation.

(b) The provisions of (a) of this section relinquish and release to the adjoining property owner, on the effective date of this Act, the balance of the right-of-way claimed, asserted or utilized by the State which is not physically occupied by roadway, shoulder or ditching actually constructed prior to the effective date of this section.

(c) The provisions of (a) of this section do not divest the State of its interest in the right-of-way or require compensation by the State for land physically occupied on the effective date of this Act by the roadway, shoulder, or ditches of a road, highway, trail, bridges or appurtenant structure constructed with the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in subsection (a) of this section.

(d) The provisions of (a) of this section do not divest the State of its interest in a right-of-way which effects land in which fee title is, on the effective date of this Act, vested in the United States of America.

(e) As used in this section, occupation with physical improvements shall mean the actual construction of the roadway, shoulders and ditching prior to the effective date of this Act.

(f) Roadway, shoulders and ditching which is constructed after the effective date of this section or any expansion of existing roadway, shoulders and ditching which requires additional property to construct shall require the payment of just compensation to the landowner. No other acts or actions by the State shall constitute an occupation with physical improvements within the meaning of this section. The State shall have the burden of proof to show by clear and convincing evidence that the occupation by physical improvements by the construction of roadway, shoulders and ditching occurred prior to the effective date of this section.

(g) Nothing in (a) of this section alters or voids any voluntary prior conveyance of the rights-of-way or an interest in the rights-of-way described in (a) of this section to the state or any other individual or organization.

*Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Mike Price –

Clif Grob – Representing Title Companies

30s, 40s, 50s

Interior Public land orders creating

Easements for roads

Alaska Road Commission

Bureau of Public Roads (later)

Public land orders –	300′	major highways	Primary
	200′	feeder ~~roads~~ roads	Secondary
	100′	local roads.	Farm/Mkt.

(8)

Homestead patents said 33′,
Federal register gave actual easements.

Local roads never designated

Supreme Court - Hahn case 1976 – said the title companies should have looked in Federal Register, not just recording company

State now expanding highways w/o compensation – but is not making anybody tear down buildings

Title Companies are facing bankruptcy; litigating with State for past 5-6 years.

> State giving easements for bike trails and utilities on outside ~~of~~ edge of easements

1966 - Right of Way Act - SLA 1966 Ch. 92
Re-enact to require state to pay for easements
Supreme court claims technical glich, that
1966 act did not solve problem

DOT/PF ~~claims~~ claims they don't know which roads
until they go to widen

1979 - DOT/PF claimed $500 million if 1966 act was
re-enacted

Which roads expanding now, and fiscal impact, not
year 2000

Federal Gov't not interested in paying for R.O.W. in 1966
→ 1970 Congress agreed that Federal Gov't would match
Get copy of Act.

- Native easements another problem entirely.
- Valid section lines easements (33' ea. side centerline)

Federal Gov't recognized by late 50s that easements were
too wide -

IN THE SENATE BY COGHILL

PROPOSED
COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring just compensation for the ulilization of certain rights-of-way and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to provide just compensation to land owners in Alaska who are suffering economic hardship and physical and mental distress by virtue of the state utilizing certain rights-of-way created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. sec. 321(d) (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. TAKING OF PROPERTY WITHOUT COMPENSATION IS BARRED. After the effective date of this Act, no agency of the State may take, utilize, or occupy any right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant struc-

ture created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(d) (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) beyond that portion physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure on the effective date of this Act, without payment of just compensation.

* Sec. 3. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not require the State to pay compensation for land physically occupied on the effective date of this act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act require the payment of compensation by the state for taking, utilizing or occupying an interest in an easement of specific width set out in the original patent from the state or federal government, whether or not physically occupied on the effective date of this Act.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land only to the extent that the state actually takes, utilizes or occupies beyond

the physical occupation as of the effective date of this Act. The state has the burden of proof to show by clear and convincing evidence the extent of the physical occupation which occurred before the effective date of this act.

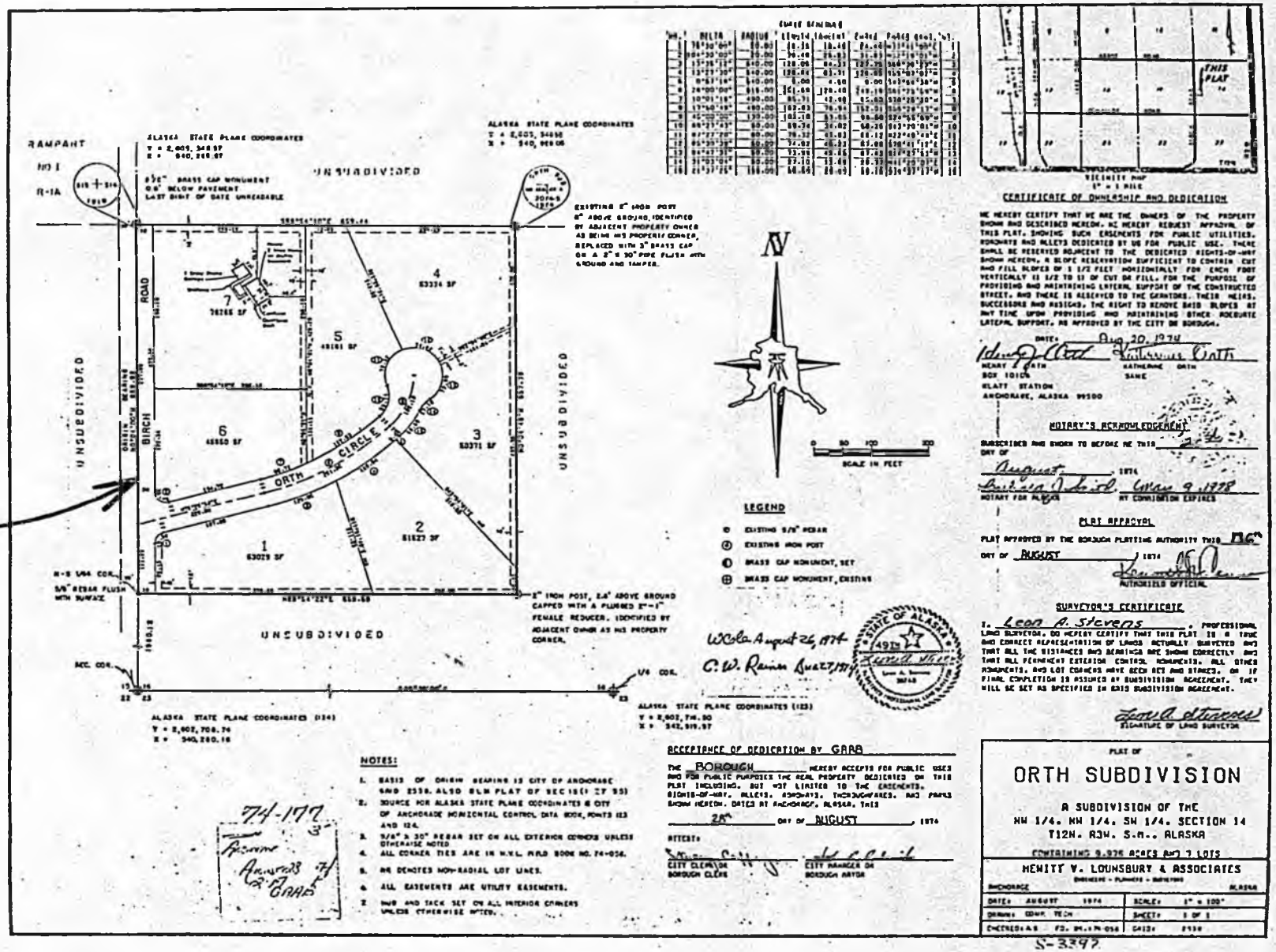
* Sec. 4. APPLICATION TO FEDERAL LAND. The provisions of this Act do not require that the state pay compensation for taking, utilizing or occupying a right-of-way that affects land in which fee title is, on the date of the taking, utilization or occupation, vested in the United States of America.

* Sec. 5. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 6. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

CHRIS WYATT HOME - LOT 6



NO.	DELTA	RADIUS	LENGTH	TANGENT	CHORD	BEARING
1	76°30'00"	50.00	66.76	41.26	61.96	S 51°45'00" W
2	104°30'00"	50.00	91.20	65.83	79.13	S 38°15'00" E
3	13°26'13"	540.00	126.66	63.51	126.36	S 44°58'07" W
4	13°26'13"	540.00	126.66	63.51	126.36	S 31°31'54" W
5	0°43'14"	540.00	6.79	3.39	6.79	S 24°50'30" W
6	24°00'00"	540.00	261.89	132.98	259.91	S 12°29'30" W
7	10°01'18"	490.00	85.71	42.98	85.60	S 30°28'30" W
8	11°48'18"	490.00	100.93	50.61	100.76	S 42°22'39" W
9	42°00'00"	490.00	160.78	83.85	157.16	S 56°29'39" W
10	69°27'49"	50.00	60.61	36.02	56.96	S 63°29'01" W
11	87°27'28"	50.00	76.32	48.03	69.12	S 22°40'45" E
12	85°39'39"	50.00	74.72	46.23	67.98	S 38°46'15" E
13	84°31'23"	50.00	73.76	45.56	67.23	S 45°31'19" W
14	84°31'23"	50.00	73.76	45.56	67.23	S 38°47'55" E
15	21°31'28"	50.00	37.70	19.08	37.48	S 34°31'19" W
16	21°31'28"	50.00	37.70	19.08	37.48	S 55°04'47" W

CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON. WE HEREBY REQUEST APPROVAL OF THIS PLAT, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, HIGHWAYS AND ALLEYS DEDICATED BY US FOR PUBLIC USE. THERE SHALL BE RESERVED ADJACENT TO THE DEDICATED RIGHTS-OF-WAY SHOWN HEREON, A SLOPE RESERVATION SUFFICIENT TO CONTAIN CUT AND FILL SLOPES OF 1 1/2 FEET HORIZONTALLY FOR EACH FOOT VERTICALLY (1 1/2 TO 1) OF CUT OR FILL, FOR THE PURPOSE OF PROVIDING AND MAINTAINING LATERAL SUPPORT OF THE CONSTRUCTED STREET. AND THERE IS RESERVED TO THE GRANTORS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, THE RIGHT TO REMOVE SAID SLOPES AT ANY TIME UPON PROVIDING AND MAINTAINING OTHER ADEQUATE LATERAL SUPPORT, AS APPROVED BY THE CITY OR BOROUGH.

DATED: Aug 20, 1974

Henry J. Orth — Katherine Orth

HENRY J. ORTH
BOX 10106
KLATT STATION
ANCHORAGE, ALASKA 99500

KATHERINE ORTH
SAME

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME THIS 20 DAY OF August, 1974

Barbara J. Lord — Mar 9 1978

NOTARY FOR ALASKA — MY COMMISSION EXPIRES

PLAT APPROVAL

PLAT APPROVED BY THE BOROUGH PLATTING AUTHORITY THIS 26th DAY OF AUGUST, 1974

AUTHORIZED OFFICIAL

SURVEYOR'S CERTIFICATE

I, Leon A. Stevens, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF LANDS ACTUALLY SURVEYED AND THAT ALL THE DISTANCES AND BEARINGS ARE SHOWN CORRECTLY AND THAT ALL PERMANENT EXTERIOR CONTROL MONUMENTS, ALL OTHER MONUMENTS, AND LOT CORNERS HAVE BEEN SET AND STAKED, OR IF FINAL COMPLETION IS ASSURED BY SUBDIVISION AGREEMENT, THEY WILL BE SET AS SPECIFIED IN SAID SUBDIVISION AGREEMENT.

Leon A. Stevens
SIGNATURE OF LAND SURVEYOR

W.C.L.A. August 26, 1974
C.W. Raines Quartz 1974

STATE OF ALASKA — 49TH — Leon A. Stevens — 3674

NOTES:

1. BASIS OF ORIGIN BEARING IS CITY OF ANCHORAGE SAND 2330. ALSO BLM PLAT OF SEC 15 (I 27 S)
2. SOURCE FOR ALASKA STATE PLANE COORDINATES IS CITY OF ANCHORAGE HORIZONTAL CONTROL DATA BOOK, POINTS 133 AND 134.
3. 5/8" x 30" REBAR SET ON ALL EXTERIOR CORNERS UNLESS OTHERWISE NOTED
4. ALL CORNER TIES ARE IN N.W.L. FIELD BOOK NO. 74-056.
5. NR DENOTES NON-RADIAL LOT LINES.
6. ALL EASEMENTS ARE UTILITY EASEMENTS.
7. NAIL AND TACK SET ON ALL INTERIOR CORNERS UNLESS OTHERWISE NOTED.

ACCEPTANCE OF DEDICATION BY GARB

THE BOROUGH HEREBY ACCEPTS FOR PUBLIC USES AND FOR PUBLIC PURPOSES THE REAL PROPERTY DEDICATED ON THIS PLAT INCLUDING, BUT NOT LIMITED TO THE EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, AND PARKS SHOWN HEREON. DATED AT ANCHORAGE, ALASKA, THIS 28th DAY OF AUGUST, 1974

ATTEST:

CITY CLERK OR BOROUGH CLERK — CITY MANAGER OR BOROUGH MAYOR

74-177
Review Agency 7-1-74
2 Prints

PLAT OF

ORTH SUBDIVISION

A SUBDIVISION OF THE NW 1/4, NW 1/4, SW 1/4, SECTION 14 T12N, R3W, S.M., ALASKA

CONTAINING 9.026 ACRES AND 7 LOTS

HEWITT V. LOUNSBURY & ASSOCIATES
ENGINEERS - PLANNERS - SURVEYORS
ANCHORAGE, ALASKA

DATE: AUGUST 1974	SCALE: 1" = 100'
DRAWN: CDW/RCW	SHEET: 1 OF 1
CHECKED: A.S. FD. BK. N.W.L. #N-056	SAID: 9330

S-3397

197 376

110005

Form 4-1199
(Sept. 1964)

Anchorage 023311

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), the claim of Vernon Lenne Lofstedt has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Seward Meridian, Alaska,

T. 12 N., R. 3 W.,

Sec. 33, Lot 191.

The area described contains 2.50 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management: Dependent Resurvey officially filed April 14, 1952.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. [illegible]); and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 3 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305). Excepting and reserving, also, to the United States, all oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land.

Reserving unto the United States, its permittee or licensee, the right to enter upon, occupy and use any part or all of said lands for the purposes provided in the Act of June 10, 1920, (41 Stat. 1065) and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1935 (49 Stat. 896).

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FOURTH day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-FIVE and of the Independence of the United States the one hundred and EIGHTIETH.

For the Director, Bureau of Land Management.

By Rose M. Beadle
Acting Chief, Patents Section

ANCHORAGE PRECINCT, ANCHORAGE, ALASKA

4/5 3 22

JAN 14 1960

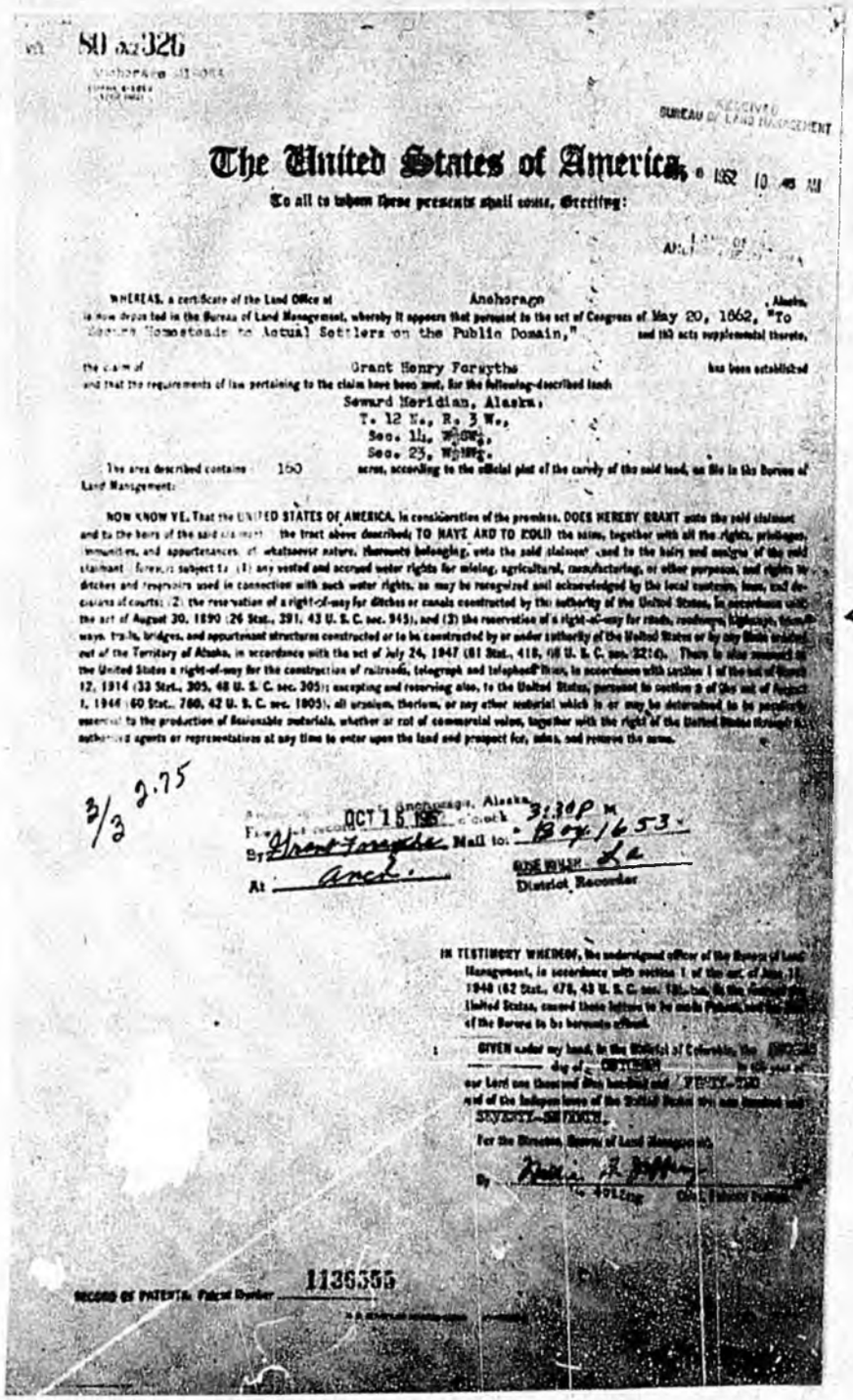
FILED FOR RECORD

DISTRICT RECORDER

By

Patent Number 1151702

1955 PATENT WITH 33' RIGHT-OF-WAY
AND R.O.W. FROM 1947 FEDERAL ACT



80 a.z 326

RECEIVED
BUREAU OF LAND MANAGEMENT

The United States of America,

1952 10 45 AM

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Grant Henry Forsythe has been established and that the requirements of law pertaining to the claim have been met, for the following-described land

Seward Meridian, Alaska,
T. 12 N., R. 3 W.,
Sec. 14, W½SW¼,
Sec. 23, W½NE¼.

The area described contains 160 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to: (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, trails, railways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State organized out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305); excepting and reserving also, to the United States, pursuant to section 9 of the act of August 1, 1946 (60 Stat., 760, 42 U. S. C. sec. 1805), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

← (3).
1947 R.O.W.

3/3 2.75

Filed for record at Anchorage, Alaska, OCT 15 1952 o'clock 3:30P M
By Grant Forsythe Mail to: Box 1653
At Anch.
Deputy
District Recorder

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of June 11, 1948 (62 Stat., 476, 43 U. S. C. sec. 1201), has caused these letters to be made Patent, and the seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the [illegible] day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-TWO and of the Independence of the United States the one hundred and SEVENTY-SEVENTH.

For the Director, Bureau of Land Management.

By [signature] Chief, Patents Section

RECORD OF PATENTS. Patent Number 1136555

1952 BIRCH ROAD PATENT

HIGHWAY RIGHT-OF-WAY

I. Alaska Highway

II. Through Roads

a. Richardson Highway

b. Glenn Highway

c. Haines Highway

d. Seward-Anchorage Highway (exclusive of that part thereof within boundaries of the Chugach National Forest)

e. Anchorage-Lake Spenard Highway

f. Fairbanks-College Highway

III. Feeder Roads

a. Abbert Road

b. Taylor Highway

c. Palmer-Matanuska-Wasilla-Knik Road

d. Glenn Highway Junction-Fishook Junction-Wasilla-Knik Road

e. Slana-Nebsana Road

f. University-Ester Road

g. Kenai Junction-Kenai Road

h. Manley Hot Springs-Eureka Road

i. Paxon-McKinley Park Road

j. Iditarod-Flat Road

k. North Park Boundary-Kantishna Road

l. Nome-Council Road

m. Seward Peninsula-Tram Road

n. Northway Junction-Airport Road

o. Palmer-Finger Lake-Wasilla Road

p. Central-Circle Hot Springs-Portage Creek Road

q. Sterling Landing-Ophir Road

r. Dillingham-Wood River Road

s. Nome-Bessie Road

IV. Local Roads (unidentified by name; 50 feet either side of center line right-of-way)

LIST OF
THROUGH & FEEDER ROADS

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

March 5, 1985

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Request for Opinion on SB 141
Our File: 366-380-85

Dear Mr. Call:

This letter is in response to your request for our analysis of SB 141 which has as its subject matter Public Land Orders 601, 757, 1613 and Department Order 2665.

Public Land Orders 601, 757, 1613 and Department Order 2665 are responsible for the creation of 80 percent of the public road rights-of-way in Alaska. Moreover, the legal validity of the rights-of-way and easements created by these land orders was upheld by the Alaska Supreme Court against numerous legal challenges raised by the Alaska Land Title Association in a case that went all the way up to the U.S. Supreme Court. See Alaska Land Title Association v. State of Alaska, 667 P.2d 714 (Alaska 1983), cert. denied, 104 S.Ct. 704 (1984).

The effect of SB 141 would be to require the state to vacate and relinquish to certain private landowners significant portions of public highway rights-of-way that were created by PLO 601, PLO 757, PLO 1613 and D.O. 2665. Specifically, those portions of the rights-of-way not physically occupied on the effective date of the bill would have to be relinquished by the state.

There are at least two major legal concerns raised by this bill. The first involves article IX, section 6, of the Alaska Constitution. This provision reads as follows:

> Section 6. PUBLIC PURPOSE. No tax shall be levied, or appropriation of public money made, or

ATTORNEY GENERAL'S OPINION

public property transferred, nor shall the public credit be used, except for a public purpose.

The easement rights created by PLO 601, PLO 757, PLO 1613, and D.O. 2665 are held in common by the general public. These rights, therefore, are a form of public property. The clear effect of Senate Bill 141 is to transfer this public property to certain private individuals. This is so because the bill, while relinquishing public road easements held in common by the general public, bestows the right to the fair market value of these easements upon those private landowners whose property was previously subject to them. See sections 2 and 3 of SB 141. The bill, in effect, transfers public property to private individuals who would not pay anything to the state for the value of the rights transferred to them. Such a transfer, on its face, would appear to violate the public purpose provision of the state Constitution. This is underscored by the fact that the public, if it requires the vacated road easement area for future road improvement, must purchase it back from private ownership. Only these private individuals would benefit from this arrangement and the repurchase costs would probably be significant. Thus, it is difficult to understand how this bill would not violate the public purpose requirement of article IX, section 6, of the Alaska Constitution that must be met whenever public property is transferred. 1/

A second legal difficulty concerns article 1, section 1, of the Alaska Constitution. This provision provides that all persons are entitled to equal rights under the law and, conversely, prohibits unfair distinctions between classes of persons.

1/ Because this bill would eliminate significant portions of public road easements, it would most likely have a negative effect on public access to various areas of the state. As a result, SB 141 appears to be inconsistent with article VIII, sections 1 and 2 of the Alaska Constitution. Article VIII, Section 1 states that it is the policy of the state "to encourage the settlement of its lands and development of its resources by making them available for maximum use consistent with the public interest." Article VIII, section 2 requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."

See Ale v. State, 484 P.2d 677 (Alaska 1971); Leege v. Martin, 379 P.2d 447 (Alaska 1963) .

The effect of this bill is to divest the general public of its right to utilize significant portions of the public road easements created by public land orders. Since the effect of this divestment would be to eliminate the public's right to claim these public road easements, only those private individuals owning land fronting on the public roads created by these land orders would benefit from this divestment. That is to say, after the effective date of this bill, the public, acting through the state, would have to purchase from this class of individuals the right to use the same public road easements that were previously owned by the public.

In sum, as matters stand now, the public road rights granted by these land orders are owned by all members of the public in common. Should this bill become law, it would mean that the cash value of these rights, rights which were formerly held by all, would be granted to a class of property owners, i.e., those individual property owners fortunate enough to own land fronting on the very roadways created by these public land orders. Thus the practical effect of this bill is to take away potentially valuable property rights owned by the general public as a whole and bestow the right to the fair market value of these rights upon a class of private individuals. Since article I, section 1 of the Alaska Constitution adopts the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," the granting of special privileges by this bill to a particular class at the expense of the public may very well violate this provision.

At present, only one class of persons exists relative to the public road easements created by these public land orders. This class is made up of members of the general public who own these public road easements in common. Should this bill become law, these easement rights would, in effect, be taken from the general public. 2/ The right to the cash value of these public road easement rights would then be bestowed, not on the general

---

2/ This "taking" from each member of the public by itself may violate article XIII, section 16 of the Alaska Constitution which provides that "no person shall be involuntarily divested of . . . his interests in lands . . ." unless the divestment is for a public purpose and he is paid just compensation.

public as a whole, but on a special class of property owners. This bill, in effect, would create two classes of persons: the class of all those members of the general public who do not own real property fronting on the roadways created by the public land orders and the class of those property owners who do own property fronting on the roadways created by these public land orders. This latter class would then be given the right to the fair market value of the easements previously owned by the entire public. It is likely that such discriminatory treatment is barred by article I, section 1, of the Alaska Constitution.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jack McGee
Jack B. McGee
Assistant Attorney General

JBM:ebc:prm

Moen
3/5/85 ✓

Original sponsor: Coghill

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 141 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring just compensation for the utilization of certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to provide just compensation to landowners in the state who are suffering economic hardship and physical and mental distress by virtue of the state utilizing certain rights-of-way created, withdrawn, or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. TAKING OF PROPERTY WITHOUT COMPENSATION IS BARRED. The state may not take, utilize, or occupy a right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) without payment of just compensation if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure.

* Sec. 3. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not require compensation by the state for land physically occupied on the effective date of this Act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act require compensation by the state for taking, utilizing, or occupying an interest in an easement of specific width set out in the original patent from the state or federal government whether or not physically occupied on the effective date of this Act.

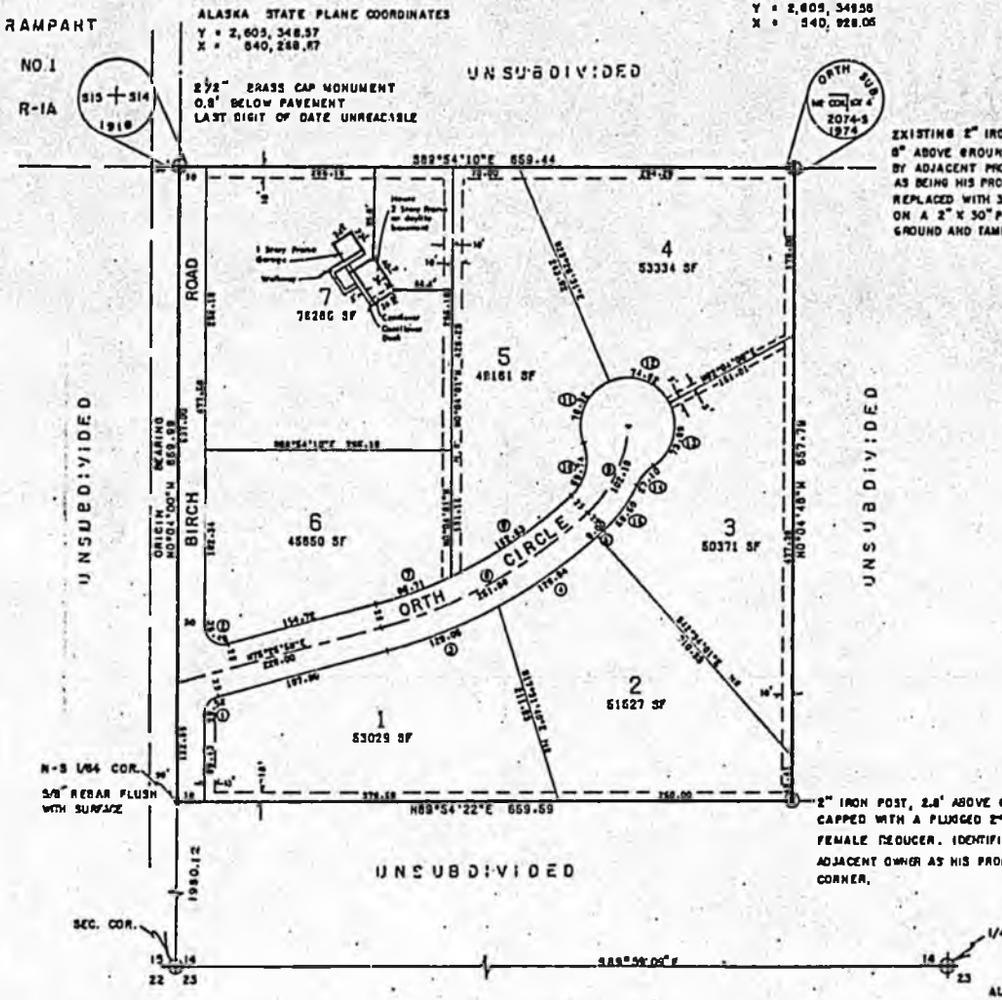
(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land only to the extent that the state actually takes, utilizes, or occupies beyond the physical occupation within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation occurred before the effective date of this Act.

* Sec. 4. APPLICATION TO FEDERAL LAND. The provisions of this Act do not require the state to pay compensation for taking, utilizing, or occupying a right-of-way that affects land in which fee title is, on the date of the taking, utilization or occupation, vested in the United States of America.

* Sec. 5. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

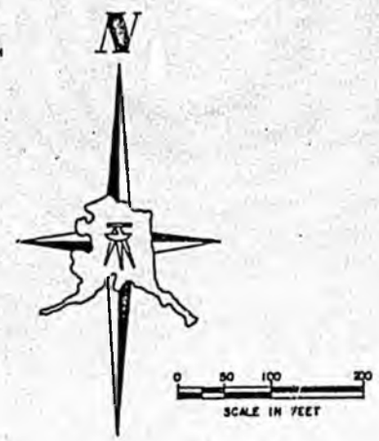
* Sec. 6. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).



CURVE SCHEDULE

NO.	DELTA	RADIUS	LENGTH	TANGENT	CHORD	CHORD BRNG.	NO.
1	78°30'00"	20.00	28.35	16.49	26.19	N37°41'00"E	1
2	104°30'00"	20.00	36.48	25.83	31.63	N51°19'01"W	2
3	13°58'13"	540.00	128.05	64.33	127.75	S68°38'23"W	3
4	13°27'30"	540.00	126.84	63.71	126.55	S55°07'08"W	4
5	0°57'18"	540.00	9.00	4.50	9.00	S47°54'38"W	5
6	28°00'00"	515.00	251.68	128.40	249.18	S61°25'59"W	6
7	10°01'16"	490.00	85.71	42.98	85.60	S70°25'20"W	7
8	17°50'49"	490.00	152.63	76.94	152.01	S56°29'17"W	8
9	46°00'00"	130.00	102.10	53.85	99.50	S24°55'59"W	9
10	88°27'43"	50.00	69.74	34.02	58.28	S13°20'01"W	10
11	91°27'20"	50.00	76.32	47.83	68.14	N72°49'43"E	11
12	89°30'38"	50.00	74.62	46.23	67.88	S70°41'12"E	12
13	84°17'31"	50.00	73.99	45.65	67.43	S14°27'53"W	13
14	31°02'04"	50.00	27.10	13.89	26.77	N41°20'07"E	14
15	21°37'[illegible]"	155.00	58.50	29.80	58.15	S38°37'17"W	15



LEGEND

- ● EXISTING 5/8" REBAR
- ⊙ EXISTING IRON POST
- ◐ BRASS CAP MONUMENT, SET
- ⊕ BRASS CAP MONUMENT, EXISTING

W Cole August 26, 1974
C.W. Raum Aug 27, 1974

STATE OF ALASKA 49TH
Leon A. Stevens 5074-S
REGISTERED PROFESSIONAL LAND SURVEYOR

NOTES:

1. BASIS OF ORIGIN BEARING IS CITY OF ANCHORAGE GRID 2558. ALSO BLM PLAT OF SEC 15 (T 27 S)
2. SOURCE FOR ALASKA STATE PLANE COORDINATES IS CITY OF ANCHORAGE HORIZONTAL CONTROL DATA BOOK, POINTS 123 AND 124.
3. 5/8" X 30" REBAR SET ON ALL EXTERIOR CORNERS UNLESS OTHERWISE NOTED.
4. ALL CORNER TIES ARE IN H.V.L. FIELD BOOK NO. 74-056.
5. RR DENOTES NON-RADIAL LOT LINES.
6. ALL EASEMENTS ARE UTILITY EASEMENTS.
7. PUE AND TACK SET ON ALL INTERIOR CORNERS UNLESS OTHERWISE NOTED.

74-177
Approve
August 28 '74
2-57 CAAB

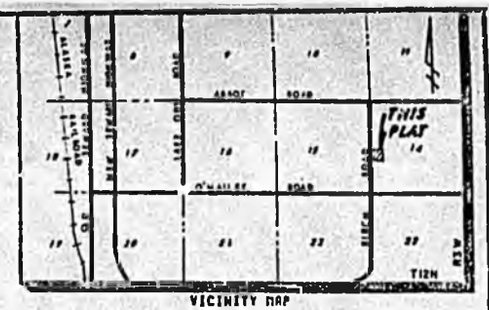
ACCEPTANCE OF DEDICATION BY CAAB

THE BOROUGH HEREBY ACCEPTS FOR PUBLIC USES AND FOR PUBLIC PURPOSES THE REAL PROPERTY DEDICATED ON THIS PLAT INCLUDING, BUT NOT LIMITED TO THE EASEMENTS, RIGHTS-OF-WAY, ALLEYS, ROADWAYS, THOROUGHFARES, AND PARKS SHOWN HEREON. DATED AT ANCHORAGE, ALASKA, THIS 28th DAY OF AUGUST, 1974

ATTEST:

CITY CLERK OR BOROUGH CLERK

CITY MANAGER OR BOROUGH MAYOR



VICINITY MAP
1" = 1 MILE

CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON. WE HEREBY REQUEST APPROVAL OF THIS PLAT, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, ROADWAYS AND ALLEYS DEDICATED BY US FOR PUBLIC USE. THERE SHALL BE RESERVED ADJACENT TO THE DEDICATED RIGHTS-OF-WAY SHOWN HEREON, A SLOPE RESERVATION SUFFICIENT TO CONTAIN CUT AND FILL SLOPES OF 1 1/2 FEET HORIZONTALLY FOR EACH FOOT VERTICALLY (1 1/2 TO 1) OF CUT OR FILL, FOR THE PURPOSE OF PROVIDING AND MAINTAINING LATERAL SUPPORT OF THE CONSTRUCTED STREET, AND THERE IS RESERVED TO THE GRANTORS, THEIR HEIRS, SUCCESSORS AND ASSIGNS, THE RIGHT TO REMOVE SAID SLOPES AT ANY TIME UPON PROVIDING AND MAINTAINING OTHER ADEQUATE LATERAL SUPPORT, AS APPROVED BY THE CITY OR BOROUGH.

DATE: Aug 20, 1974

Henry J Orth — Katherine Orth

HENRY J ORTH
BOX 10109
KLATT STATION
ANCHORAGE, ALASKA 99500

KATHERINE ORTH
SAME

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME THIS 20th DAY OF August, 1974

Barbara J Smith — Notary for Alaska

My Commission Expires: 9, 1978

PLAT APPROVAL

PLAT APPROVED BY THE BOROUGH PLATTING AUTHORITY THIS 26th DAY OF AUGUST, 1974

Kenneth [illegible]
AUTHORIZED OFFICIAL

SURVEYOR'S CERTIFICATE

I, Leon A. Stevens, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF LANDS ACTUALLY SURVEYED AND THAT ALL THE DISTANCES AND BEARINGS ARE SHOWN CORRECTLY AND THAT ALL PERMANENT EXTERIOR CONTROL MONUMENTS, ALL OTHER MONUMENTS, AND LOT CORNERS HAVE BEEN SET AND STAKED, OR IF FINAL COMPLETION IS ASSURED BY SUBDIVISION AGREEMENT, THEY WILL BE SET AS SPECIFIED IN SAID SUBDIVISION AGREEMENT.

Leon A. Stevens
SIGNATURE OF LAND SURVEYOR

PLAT OF

ORTH SUBDIVISION

A SUBDIVISION OF THE
NW 1/4, NW 1/4, SW 1/4, SECTION 14
T12N, R3W, S.M., ALASKA

CONTAINING 9.976 ACRES AND 7 LOTS

HEWITT V. LOUNSBURY & ASSOCIATES
ENGINEERS - PLANNERS - SURVEYORS
ANCHORAGE ALASKA

DATE:	AUGUST 1974	SCALE:	1" = 100'
DRAWN:	COMP. TECH	SHEET:	1 OF 1
CHECKED:	A.S.	FD. BK.:	74-056
		GRID:	2558

S-3397

14-0464
Moen
2/1/85

IN THE SENATE BY COGHILL

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. The commissioner of transportation and public facilities shall vacate and relinquish to the adjoining property owners any and all rights-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant

* Sec. 7. RETROACTIVE APPLICATION. This ~~section~~ Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

Mike Condon

14-0464
Moen
1/30/85✓

IN THE SENATE BY COGHILL

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act releasing claims of the state to land within certain rights-of-way; and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to release certain highway rights-of-way claimed by the state that are causing economic hardship and physical and mental distress to persons who hold title to land under a patent containing a reservation to the state by virtue of 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); and Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. RELINQUISHMENT OF RIGHT-OF-WAY. ~~(a)~~ The commissioner of the Department of Transportation and Public Facilities shall, vacate and relinquish ~~the~~ any and all right-of-way for ~~a~~ road, roadway, highway, tramway, trail, bridge, or appurtenant structure created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(a) - 327 (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); ~~and~~ or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) if the right-of-way on the effective date of this Act is not physically occupied by, ~~the roadway, shoulder, or ditching of a road~~, roadway, highway, tramway, trail, bridge,

or appurtenant structure.

(b) ~~The provisions of (a) of this section relinquish and release to~~ the adjoining property owners on the effective date of this Act ~~that portion of the right-of-way claimed, asserted or used by the state that is not physically occupied by the roadway, shoulder, or ditching of the roadway before the effective date of this Act.~~

* Sec. 3. TAKING OF RIGHT-OF-WAY WITHOUT JUST COMPENSATION VOID. The vacated and relinquished right-of-way under sec. 2 of this Act may not be taken, claimed, asserted, or used by the state without the payment of just compensation.

* Sec. 4. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not divest the state of ~~title~~ its interest in a right-of-way to land or require compensation by the state for land physically occupied on the effective date of this Act ~~by the roadway, shoulder, or ditching of~~ a road, roadway, highway, tramway, trail, bridge, or appurtenant structure then constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act. Nor do the provisions of this Act divest the state of any interest in an easement of specific width set forth in the original patent from the state or federal government

(b) Expansion beyond the existing ~~roadway, shoulders, or ditching of~~ a road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land and no other acts or actions by the state constitute a physical occupation by a roadway, shoulder, or ditching within the meaning of this section. The state has the burden of proof to show by clear and convincing evidence that the physical occupation by a roadway, shoulders, or ditching occurred before the effective date of this Act.

* Sec. 5. DEFINITION. As used in this Act, "physically occupied" ~~by the roadway, shoulder, or ditching~~ means the construction of the actual roadway, (including its shoulders and ditching), highway, tramway, trail, bridge, or appurtenant structure ~~shoulders, or ditching~~ before the effective date of this Act.

* Sec. 6. RETROACTIVE APPLICATION. This section does not relieve ~~a~~

alter or void any voluntary conveyance of any easement including easements dedicated by plat

person from an act for which the person may be responsible regarding a past transfer of a right-of-way or an interest in a right-of-way.

* Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

Federal Lands
2(d)

SB 141 witnesses

M E M O R A N D U M

To: Senator Coghill
From: John Manly
Date: February 20, 1985
Re: People for today's hearing

For the hearing this afternoon on SB 141, relenquishing certain State highway rights-of-way, we are expecting participation by the following individuals:

Clif Groh, Counsel for the Alaska Land Title Association
Commissioner Dick Knapp, DOT/PF
Barry Moorehead, Federal Highway Administration
~~Oscar Beasley, Counsel for First American Title~~
Eric Everbach, Counsel for Tycor
Michael Condon, an associate of Clif Groh
Michael Price, an associate of Clif Groh
Jack McGee, of the Attorney General's office
Ned Fahrquar, Department of Natural Resources
Ted Moore, Security Title in Anchorage
Tom Leighow, Alaska Title Guaranty in Anchorage

sb 141 draft

(a) Notwithstanding any other provision of law, a person who holds title to land conveyed in a patent issued by the United States which is or may be effected by a right-of-way or easement authorized by

[INSERT PLOs, etc]

may, before January ', 1990, apply to the department of transportation and public facilities for relinquishment of all or a portion of the right-of-way or easement.

(b) A person who applies for relinquishment of a right-of-way or easement or a portion of a right-of-way or easement under (a) of this section shall apply on a form approved by the department, and shall submit a copy of the patent that conveyed the land ~~adjacent to the~~ effected by the right-of-way or easement, and a plat of the land showing the right-of-way or easement and indicating that portion of the right-of-way or easement the person is requesting the State to relinquish.

(c) ~~Upon~~ Within 120 days of receipt of an application for relinquishment of a right-of-way under (a) of this section, or easement, the commissioner of transportation and public facilities shall decide ~~within 120 days~~ whether or not the right-of-way or easement or a portion of it shall be relinquished. The commissioner shall consider the provisions of the patent; the federal laws, public land orders and departmental orders effecting the patent; the existence of improvements within the right-of-way or easement before the effective date of this Act; projected or anticipated public use of the right-of-way or easement; and any other information pertinent to the public or private usage of the land.

(d) If the commissioner determines that a public need does not exist, he shall convey the right-of-way or easement or a portion thereof to the applicant if the applicant is the rightful holder of title to the adjoining property.

(e) If the commissioner determines that a public need for the right-of-way or easement continues to exist and that the State will therefore not relinquish its rights, the commissioner shall notify the applicant of the decision by mail and shall state the reasons supporting the denial. A person whose application has been denied under this section may reapply after a period of two years has elapsed after the date of denial.

(f) If the commissioner fails to make a determination on an application under (a) of this section before 120 days has elapsed, the applicant may record a claim of _____ at the ~~appropriate~~ recorder's office serving the district in which the patented land is located.

Official Business

COMMITTEE: Sen. Trawa

DATE: 3-8-85

SIGN-IN

Subject of meeting: SJR 10 - Repeal of the Jones act.

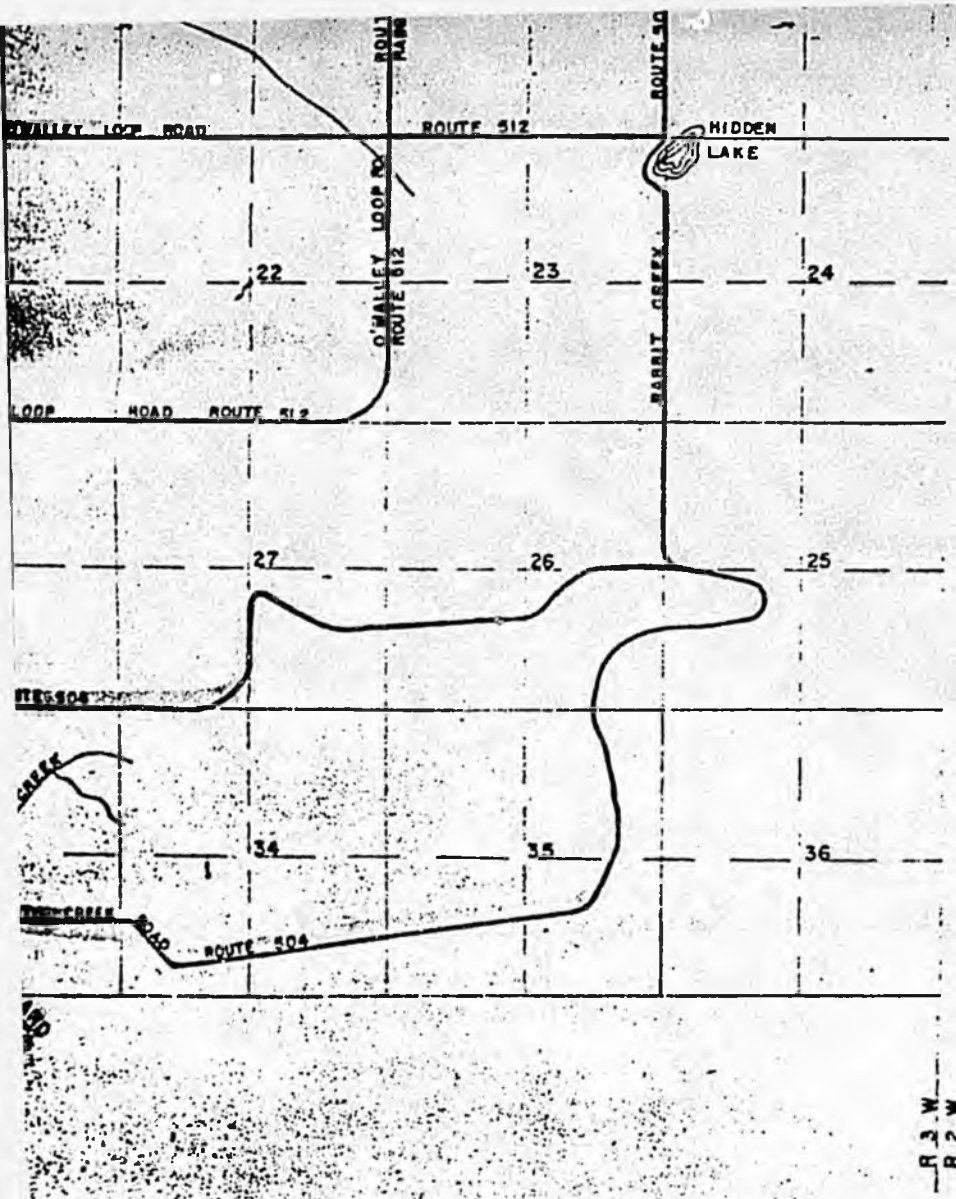
NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?

THE FOLLOWING DOCUMENT HAS

NOT BEEN FILMED BUT IS

AVAILABLE IN THE ORIGINAL

FILE



UNITED STATES
DEPARTMENT OF COMMERCE
BUREAU OF PUBLIC ROADS
DIVISION TEN
ANCHORAGE, ALASKA

ANCHORAGE

VICINITY MAP
NO. 225

SCALE: 2" = 1 MILE

JANUARY 1956

No.	Date	Chk	CHANGE
1	12-1956	M A	ADDED WINCHESTER RD., CONNECTED RABBIT CREEK RD., AND DE ARMOUN ROAD
2	7-25-57	N A	CHANGED ROUTING SYSTEM, ADDED S P.U.D. & FAIRVIEW.
3	11-21-58	V R S	ROGERS PARK ANNEXATION
4	5-1-59	D W	REVISION
5	7-24-59	O F S	CHANGED CITY LIMITS ANCHORAGE & FAIRVIEW

3

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

To: Committee Members
From: Committee Staff JM
Date: March 6, 1985
Re: Background material for SB 141

This afternoon at 3:30 the committee will consider SB 141, relinquishing certain rights-of-way of the State. As you will recall, this bill was scheduled for a hearing two weeks ago, and was removed from the committee's calendar at the request of its proponents.

Included with SB 141 in today's packet are the following materials, some of which are duplicative of information you received last time:

- A proposed committee substitute, which takes the approach of, rather than relinquishing all the rights-of-way, requiring instead that the State compensate for the portions of right-of-way they use, as if they had been relinquished.

- The proponents' summary of the issue, and committee staff synopsis of the problem.

- Relevant Federal Acts of 1947 and 1970.

- Two federal patents, dated 1952 and 1955, and a subdivision plat of land patented by the 1952 patent.

- A list of the identified highways effected by this issue.

- DOT/PF fiscal note and bill analysis that the cost to the State would be $227 million annually, and that DOT/PF would rather settle the cases on an individual basis.

- Federal Highway Administration bill analysis that the federal government could not participate in repurchasing the relinquished rights of way.

- Attorney General's opinion that the bill would violate several provisions of the Alaska Constitution.

MEMORANDUM RE HOUSE BILL

TO RELINQUISH RIGHTS-OF-WAY

Alaska achieved statehood twenty-five years ago. Before stathood the Department of Interior, through certain Pulic Land Orders, took rights-of-way for roads from landowners without compensating the landowners. Since statehood the Department of Transportation and Public Facilities (DOTPF), acting for the State of Alaska, is still taking private property without compensating the landowners.

In 1966, the Alaska State Legislature enacted Ch. 92 (HB 415 am) which prohibited such takings by the State. The purpose of the law was to "alleviate economic hardship and physical and mental distress occasioned by the taking of land by the State of Alaska [for] which no compensation is paid to the person holding title to the land." The Legislature prohibited any further utilization of rights-of-way pursuant to various Public Land Orders and federal acts.

At the time of Statehood the State received a quit claim deed from the federal government conveying to the State certain roads built by the United States. DOTPF claims that the quit claim deed also conveyed certain easements or rights-of-way that were not described therein but included in Public Land Orders that were not even recorded in the various Recorders Offices throughout the state. DOTPF presently claims a right to highway rights-of-way varying in width from 100 to 300 feet surrounding

PROPONENT'S SUMMARY

every major highway in the state and a smaller easement for most of the local roads throughout the state. When DOTPF determines that it needs to expand or modify an existing roadway where it claims a right-of-way exists by virtue of the federal government, it does so without paying compensation to the landowner for the value of the property taken.

The reservations for rights-of-way and easements were made by the federal government between 1947 and 1956. They were set forth in a series of Public Land Orders (namely PLO 601, 757, and 1613) and a Department of Interior Order (DO 2665) which were not recorded in District Recorders Offices in Alaska but were published in the Federal Register, which was a publication utilized by federal agencies.

The rights-of-way and reservations were not specifically included in the patents issued to homesteaders in Alaska. Homesteaders in Alaska were not informed of the existence of the easements and rights-of-way at the time they were issued patents and did not know the federal government was claiming a portion of their property for highway purposes. Now DOTPF is claiming right-of-way easements in the same way by virtue of the quit claim deed mentioned above.

No landowner or member of the public can know where DOTPF claims a right-of-way easement because those easements are not recorded and are not shown on plats available in the Recorder's Offices.

The Supreme Court of Alaska, in State v. A.L.T.A., has held that the easements are valid. The decision is wrong and must be reversed through the enactment of a law that will relinquish these easements and require DOTPF to pay just compensation for lands taken by them.

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee members
From: Chairman Coghill
Date: February 19, 1985
Re: SB 141, Relinquishment of rights-of-way

As the attached background information will show, SB 141 is intended to release the State's claim to certain portions of highway rights-of-way which were not clearly identified in land patents. This has given rise to the problem faced by many landowners who live or hold land adjacent to highways the State now wishes to upgrade, straighten or expand and who have been or could be abruptly and without compensation deprived of land they assumed was theirs, and which their legal documents have not identified as belonging to the government.

These rights-of-way were withdrawn by the federal government through public land orders or as a result of various Acts of Congress during territorial days, and did not necessarily make their way either to the homesteaders' patents or the district recorders' offices. This has subsequently caused heavy liabilities for the state's title insurance companies, who traditionally insure property based upon what has been recorded at the recorder's office, not upon what has been published in the Federal Register.

As this problem has evolved, the State Supreme Court has ruled that the State's claims to the rights-of-way are valid, and therefore, title insurers are liable for any claims by the insured for takings for which the State has declined to compensate the property-owner. Of course, this presumes that the property-owner has title insurance. In the many instances where the property-owner does not, he or she is simply out of luck, and has no recourse to gain compensation.

The background material will more completely go into the history of the problem, however, a brief explanation of the enormous fiscal note may be in order. We are not sure how DOT/PF generated this much fiscal impact, but assume they have figured the repurchase price at top market value, and of the entire width of right-of-way (in other words, the entire 300 or 500 feet, not just the portion they will actually need to expand a road).

COMMITTEE STAFF SYNOPSIS

U.S. Department
of Transportation
**Federal Highway
Administration**

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

February 19, 1985

HRW-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

We have reviewed Senate Bill #141 introducted in the State Senate February 8, 1985. This Bill is similar to previously introduced legislation and we sill have the following concerns:

1. If the right-of-way remaining will only include the road shoulders and the ditching, several problems are envisioned. There may not be sufficient sight distance to provide for the safety of the traveling public, as you would be unable to clear vegetation on the inside of curves. You would be unable to clean ditches and maintain structures without encroaching on other properties. There would be no mechanism to prevent construction of facilities next to the traveled way.

2. It was the intent of the Federal Government in estabishing Public Land Orders to provide land for highway construction at no additional expense to the states or the United States. If the State of Alaska should choose to abandon this right, and later find that this right-of-way is necessary for the construction or operation of the highway, there can be no Federal reimbursement for funds expended by the State of Alaska for reacquisition.

Sincerely yours,

Barry F. Morehead

Barry F. Morehead
Division Administrator

FHWA BILL ANALYSIS

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SB 141

Title: An Act releasing claims of State land within certain rights of way

Sponsor: Coghill

Requestor:

Date of Request: February 15, 1985

FISCAL DETAIL

Agency Affected: Transportation & Public Facili

Program Category Affected: Design and Construction

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		75	75	75	75	75
200 TRAVEL		15	15	15	15	15
300 CONTRACTUAL		1,750	1,750	1,750	1,750	1,750
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES		225,500	225,500	225,500	225,500	225,500
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		227,340	227,340	227,340	227,340	227,340
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		227,340	227,340	227,340	227,340	227,340
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached Analysis

Prepared By: Milton H. Lentz

Phone: 465-2985

Division: Standards & Technical Services HQ

Date: February 14, 1985

Approved by Commissioner:

Date: 2/15/85

Agency: Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

DOT/PF FISCAL NOTE

7/1/84

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill No. 141

TITLE: An Act releasing claims of the State to land within certain rights of way

APPROVED: R. J. Knapp
Commissioner

DATE: 2-15-85

The Department of Transportation and Public Facilities opposes Senate Bill 141. This bill would have a major negative impact on the State of Alaska. It could restrict our ability to serve the public effectively and create a heavy financial burden for the State. In addition, there is a concern that, if this bill is enacted into law, it will jeopardize present or future federal-aid participation in highway rights of way.

The validity of these easements has been reviewed by the U.S. Supreme Court and the passage of this bill would reverse any legal grounds already established through the judicial system.

For further information call Susan Fleischhauer at 465-3900.

ANALYSIS OF FISCAL NOTE FOR SENATE BILL 141

This bill would relinquish highway easements created by the federal government under several laws and land orders. Most of the highway rights of way in the State would be affected. This bill would relinquish or vacate all those rights of way except those portions which are physically occupied on the effective date of the Act. Under this Act, the adjacent landowners would immediately become owners of the affected rights of way except those portions between slopes and ditches.

The enactment of this bill would put the Department in the position of having to purchase any rights of way needed for planned expansion, maintenance (brush cutting and snow storage), protection of utility permit areas, permitted encroachments, etc.

The cost of almost all future upgrading or widening of existing highways and the building of planned highways would be increased drastically because of the expense of acquiring additional right of way. This bill would also affect federal funding on federal-aid projects. It is the Federal Highway Administration's position that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from lands subject to the reservation contained in the 1947 Act.

This fiscal note is based on the following assumptions:

1. Primary highways normally control 300-foot rights of way in general but physically occupy 100 feet for the actual roadway.

2. Secondary highways normally control 200-foot rights of way but physically occupy 60 feet for the actual roadway.

3. The State would have to reacquire approximately one half the relinquished rights of way for planned expansion, maintenance, clear zones, utility permits, etc. This would have to be done as expeditiously as possible to satisfy maintenance agreement obligations with the federal government on federal-aid highways.

~ 197 - 376

11.0005

Anchorage 073311

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of June 1, 1938 (52 Stat. 609), as amended by the Act of July 14, 1945 (59 Stat. 467), the claim of Vernon Lenne Lofstedt has been established and that the requirements of law pertaining to the claim have been met, for the following-described land:

Seward Meridian, Alaska.

T. 12 N., R. 3 W.,

Sec. 33, Lot 191.

The area described contains 2.50 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management: Dependent Resurvey officially filed April 14, 1952.

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to (1) any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305). Excepting and reserving, also, to the United States, all oil, gas, and other mineral deposits, in the land so patented, together with the right to prospect for, mine, and remove the same according to the provisions of said Act of June 1, 1938. This patent is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along the south and east boundaries of said land.

Reserving unto the United States, its permittee or licensee, the right to enter upon, occupy and use, any part or all of said lands for the purposes provided in the Act of June 10, 1920, (41 Stat. 1063) and subject to the conditions and limitations of Section 24 of said Act, as amended by the Act of August 26, 1935 (49 Stat. 846).

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat., 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the FOURTH day of OCTOBER in the year of our Lord one thousand nine hundred and FIFTY-FIVE and of the Independence of the United States the one hundred and EIGHTIETH.

For the Director, Bureau of Land Management.

By Rose M. Beall
Acting Chief, Patents Section

ANCHORAGE PRECINCT, ANCHORAGE, ALASKA

JAN 14 1956

FILED FOR RECORD

DULY RECORDED

Patent Number 1151792

1955 PATENT WITH 33' RIGHT-OF-WAY
AND R.O.W. FROM 1947 FEDERAL ACT

AA-326

BUREAU OF LAND MANAGEMENT

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a certificate of the Land Office at Anchorage, Alaska, is now deposited in the Bureau of Land Management, whereby it appears that pursuant to the act of Congress of May 20, 1862, "To secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of Grant Henry Forsythe has been established and that the requirements of law pertaining to the claim have been met, for the following-described land

Seward Meridian, Alaska.
T. 12 N., R. 3 W.,
Sec. 11, W½NW¼.
Sec. 23, W½NE¼.

The area described contains 160 acres, according to the official plat of the survey of the said land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, DOES HEREBY GRANT unto the said claimant and to the heirs of the said claimant the tract above described TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature, thereunto belonging, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to all vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; (2) the reservation of a right-of-way for ditches or canals constructed by the authority of the United States, in accordance with the act of August 30, 1890 (26 Stat., 391, 43 U. S. C. sec. 945), and (3) the reservation of a right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under authority of the United States or by any State created out of the Territory of Alaska, in accordance with the act of July 24, 1947 (61 Stat., 418, 48 U. S. C. sec. 321d). There is also reserved to the United States a right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with section 1 of the act of March 12, 1914 (38 Stat., 305, 48 U. S. C. sec. 305); excepting and reserving also, to the United States, pursuant to section 2 of the act of August 1, 1944 (58 Stat., 748, 42 U. S. C. sec. 1995), all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same.

← (3). 1947 R.O.W.

3/3 2.75

Filed for record at the request of Grant Forsythe, Anchorage, Alaska, OCT 15 1952, 3:38 P M
By Grant Forsythe Mail to: Box 1653.
At Anch. Anchorage
RUTH HALL
District Recorder

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of June 16, 1948 (62 Stat., 476, 43 U. S. C. sec. 1211), has, in the name of the United States, caused these letters to be made Patent, and the seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in the District of Columbia, the [redacted] day of [redacted] in the year of our Lord one thousand nine hundred and FIFTY-TWO and of the Independence of the United States the one hundred and SEVENTY-SEVENTH.

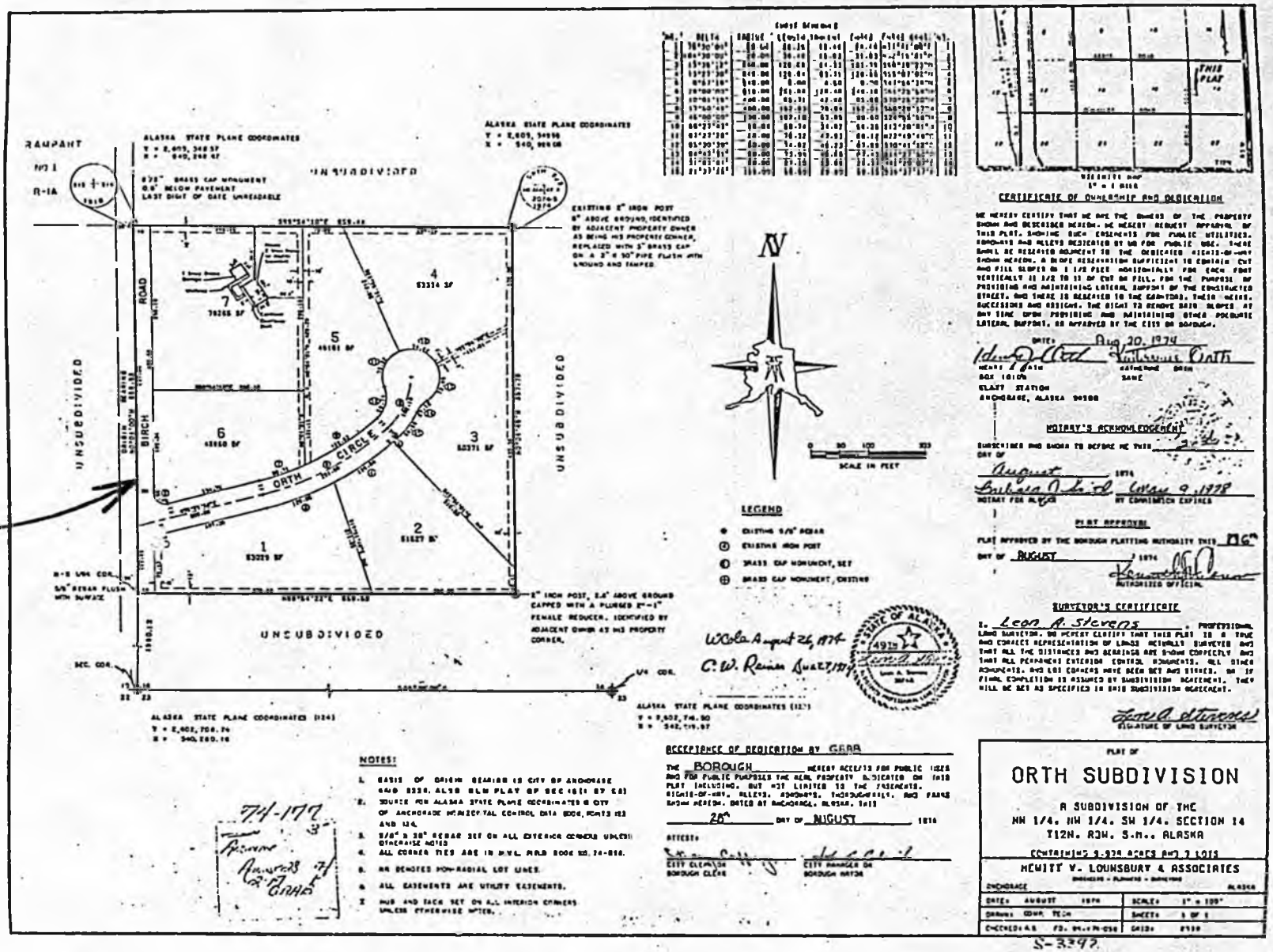
For the Director, Bureau of Land Management

By Nellie R. Jeffery
Acting Chief, Records Section

RECORD OF PATENTS. Patent Number 1136355

1952 BIRCH ROAD PATENT

CHRIS WYATT HOME - LOT 6



No.	DELTA	RADIUS	L (Curve)	Tan (s)	Chord	Chord Bearing
1	78°30'00"	50.00	68.54	42.34	63.24	S 71°54'00" E
2	66°30'00"	50.00	58.08	33.03	54.88	S 71°15'00" E
3	13°30'00"	550.00	129.64	64.93	129.35	S 60°00'00" E
4	13°30'00"	540.00	127.27	63.73	126.98	S 60°00'00" E
5	0°57'18"	540.00	9.00	4.50	9.00	S 53°26'39" E
6	78°30'00"	510.00	698.68	430.18	644.18	S 14°15'00" E
7	13°30'00"	490.00	115.56	57.87	115.30	S 60°00'00" E
8	13°30'00"	490.00	115.56	57.87	115.30	S 60°00'00" E
9	66°30'00"	90.00	104.49	59.20	98.74	S 71°15'00" E
10	66°30'00"	90.00	104.49	59.20	98.74	S 71°15'00" E
11	0°57'18"	540.00	9.00	4.50	9.00	S 53°26'39" E
12	13°30'00"	540.00	127.27	63.73	126.98	S 60°00'00" E
13	13°30'00"	550.00	129.64	64.93	129.35	S 60°00'00" E
14	78°30'00"	50.00	68.54	42.34	63.24	S 71°54'00" E
15	66°30'00"	50.00	58.08	33.03	54.88	S 71°15'00" E
16	13°30'00"	550.00	129.64	64.93	129.35	S 60°00'00" E
17	13°30'00"	540.00	127.27	63.73	126.98	S 60°00'00" E
18	0°57'18"	540.00	9.00	4.50	9.00	S 53°26'39" E
19	78°30'00"	510.00	698.68	430.18	644.18	S 14°15'00" E
20	13°30'00"	490.00	115.56	57.87	115.30	S 60°00'00" E
21	13°30'00"	490.00	115.56	57.87	115.30	S 60°00'00" E
22	66°30'00"	90.00	104.49	59.20	98.74	S 71°15'00" E
23	66°30'00"	90.00	104.49	59.20	98.74	S 71°15'00" E

LEGEND

- ● EXISTING 5/8" REBAR
- ⊙ EXISTING IRON POST
- ◐ BRASS CAP MONUMENT, SET
- ⊕ BRASS CAP MONUMENT, EXISTING

CERTIFICATE OF OWNERSHIP AND DEDICATION

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE PROPERTY SHOWN AND DESCRIBED HEREON. WE HEREBY REQUEST APPROVAL OF THIS PLAT, SHOWING SUCH EASEMENTS FOR PUBLIC UTILITIES, DRAINAGE AND ALLEYS DEDICATED BY US FOR PUBLIC USE. THERE SHALL BE RESERVED ADJACENT TO THE DEDICATED AREAS AS SHOWN HEREON, A SLOPE RESERVATION SUFFICIENT TO CONTAIN CUT AND FILL SLOPES ON A 1:2 RISE HORIZONTALLY FOR EACH FOOT VERTICALLY IF 3:2 TO 1:1 OF CUT OR FILL, FOR THE PURPOSE OF PROVIDING AND MAINTAINING LATERAL SUPPORT OF THE CONSTRUCTED STREET, AND THERE IS RESERVED TO THE CONTROL, THEIR HEIRS, SUCCESSORS AND ASSIGNS, THE RIGHT TO REMOVE SAID SLOPES AT ANY TIME UPON PROVIDING AND MAINTAINING OTHER POSSIBLE LATERAL SUPPORT, AS APPROVED BY THE CITY OR BOROUGH.

DATE: Aug 20, 1974

Edward J. Orth — Katherine Orth

NAME — NAME

BOX 1810

SUITE STATION

ANCHORAGE, ALASKA 99510

NOTARY'S ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME THIS ____ DAY OF August 1974

Barbara J. Lind — May 9, 1978

NOTARY FOR ALASKA — MY COMMISSION EXPIRES

PLAT APPROVAL

PLAT APPROVED BY THE BOROUGH PLATTING AUTHORITY THIS 26th DAY OF AUGUST 1974

AUTHORIZED OFFICIAL

SURVEYOR'S CERTIFICATE

I, Leon A. Stevens, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION OF LANDS ACTUALLY SURVEYED AND THAT ALL THE DISTANCES AND BEARINGS ARE SHOWN CORRECTLY AND THAT ALL PERMANENT CONTROL MONUMENTS, ALL STREET MONUMENTS, AND LOT CORNERS HAVE BEEN SET AND STAKED, OR IF FINAL COMPLETION IS ASSURED BY SUBDIVISION AGREEMENT, THEY WILL BE SET AS SPECIFIED IN SAID SUBDIVISION AGREEMENT.

Leon A. Stevens

SIGNATURE OF LAND SURVEYOR

STATE OF ALASKA — 4913 — LAND SURVEYOR — LEON A. STEVENS

W. Cola August 26, 1974

C. W. Reiman Swartz, 1974

NOTES:

1. BASIS OF BEARING IS CITY OF ANCHORAGE G&O 8330, ALSO BLM PLAT OF SEC 18 T 12 N R 3 E.
2. SOURCE FOR ALASKA STATE PLANE COORDINATES IS CITY OF ANCHORAGE MUNICIPAL CONTROL DATA BOOK, POINTS 1123 AND 1124.
3. 5/8" x 30" REBAR SET ON ALL EXTERIOR CORNERS UNLESS OTHERWISE NOTED
4. ALL CORNER TIES ARE IN BLVD. FIELD BOOK NO. 74-858.
5. NR DENOTES NON-RADIAL LOT LINES.
6. ALL EASEMENTS ARE UTILITY EASEMENTS.
7. NUB AND TACK SET ON ALL INTERIOR CORNERS UNLESS OTHERWISE NOTED.

ACCEPTANCE OF DEDICATION BY GEBA

THE BOROUGH HEREBY ACCEPTS FOR PUBLIC USES AND FOR PUBLIC PURPOSES THE REAL PROPERTY DEDICATED ON THIS PLAT INCLUDING, BUT NOT LIMITED TO THE EASEMENTS, RIGHTS-OF-WAY, ALLEYS, MONUMENTS, THEREON AND/OR ADJACENT THERETO, AND PARKS SHOWN HEREON, DATED AT ANCHORAGE, ALASKA, THIS 26th DAY OF AUGUST 1974

ATTEST:

CITY CLERK/BOROUGH CLERK — CITY MANAGER OR BOROUGH MAYOR

74-177

Rezone

Approved 2-27-74

PLAT OF
ORTH SUBDIVISION

A SUBDIVISION OF THE
NW 1/4, NW 1/4, SW 1/4, SECTION 14
T12N, R3W, S.M., ALASKA

CONTAINING 3.929 ACRES AND 7 LOTS

HEWITT V. LOUNSBURY & ASSOCIATES
ENGINEERS - PLANNERS - SURVEYORS
ANCHORAGE — ALASKA

DATE: AUGUST 1974	SCALE: 1" = 100'
DRAWN: CHAR TECH	SHEET: 1 OF 1
CHECKED: A.S.	FB: 84-14 PG 056 — SHEET: 8520

S-3392

HIGHWAY RIGHT-OF-WAY

I. Alaska Highway

II. Through Roads

a. Richardson Highway

b. Glenn Highway

c. Haines Highway

d. Seward-Anchorage Highway (exclusive of that part thereof within boundaries of the Chugach National Forest)

e. Anchorage-Lake Spenard Highway

f. Fairbanks-College Highway

III. Feeder Roads

a. Abbert Road

b. Taylor Highway

c. Palmer-Matanuska-Wasilla-Knik Road

d. Glenn Highway Junction-Fishook Junction-Wasilla-Knik Road

e. Slana-Nebsana Road

f. University-Ester Road

g. Kenai Junction-Kenai Road

h. Manley Hot Springs-Eureka Road

i. Paxon-McKinley Park Road

j. Iditarod-Flat Road

k. North Park Boundary-Kantishna Road

l. Nome-Council Road

m. Seward Peninsula-Tram Road

n. Northway Junction-Airport Road

o. Palmer-Finger Lake-Wasilla Road

p. Central-Circle Hot Springs-Portage Creek Road

q. Sterling Landing-Ophir Road

r. Dillingham-Wood River Road

s. Nome-Bessie Road

IV. Local Roads (unidentified by name; 50 feet either side of center line right-of-way)

LIST OF
THROUGH & FEEDER ROADS

FEDERAL ACT OF 1947

[CHAPTER 313]

AN ACT

July 24, 1947
[H. R. 1554]
[Public Law 229]

To amend the Act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932.

Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes", approved June 30, 1932 (47 Stat. 446), is hereby amended by adding at the end thereof the following new section:

48 U. S. C. §§ 321a-327.

Reservation of right-of-way for roads, etc.

"SEC. 5. In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska. When a right-of-way reserved under the provisions of this Act is utilized by the United States or under its authority, the head of the agency in charge of such utilization is authorized to determine and make payment for the value of the crops thereon if not harvested by the owner, and for the value of any improvements, or for the cost of removing them to another site, if less than their value."

Payment for value of crops, etc.

Approved July 24, 1947.

FEDERAL AID HIGHWAY ACT - 1970

ALASKAN ASSISTANCE

Sec. 138. (a) Subsection (b) of section 7 of the Federal Aid Highway Act of 1966 is amended to read as follows:

"(b) There is hereby authorized to be appropriated for construction of Federal-aid highways of the State of Alaska, out of the Highway Trust Fund and in addition to funds otherwise made available to the State of Alaska under title 23, United States Code, $20,-

43. 23 U.S.C.A. § 307(b). 44. 23 U.S.C.A. § 606.

000,000 for each of the fiscal years ending June 30, 1972 and June 30, 1973."

(b) Any right-of-way for roads, roadways, highways, tramways, trails, bridges, and appurtenant structures reserved by section 321 (d) of title 48, United States Code (61 Stat. 418, 1947), not utilized by the United States or by the State or territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reservation shall merge with the fee and be forever extinguished.

FEDERAL ACTS OF 1947 & 1970

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

X ☐ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

March 5, 1985

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Request for Opinion on SB 141
Our File: 366-380-85

Dear Mr. Call:

This letter is in response to your request for our analysis of SB 141 which has as its subject matter Public Land Orders 601, 757, 1613 and Department Order 2665.

Public Land Orders 601, 757, 1613 and Department Order 2665 are responsible for the creation of 80 percent of the public road rights-of-way in Alaska. Moreover, the legal validity of the rights-of-way and easements created by these land orders was upheld by the Alaska Supreme Court against numerous legal challenges raised by the Alaska Land Title Association in a case that went all the way up to the U.S. Supreme Court. See Alaska Land Title Association v. State of Alaska, 667 P.2d 714 (Alaska 1983), cert. denied, 104 S.Ct. 704 (1984).

The effect of SB 141 would be to require the state to vacate and relinquish to certain private landowners significant portions of public highway rights-of-way that were created by PLO 601, PLO 757, PLO 1613 and D.O. 2665. Specifically, those portions of the rights-of-way not physically occupied on the effective date of the bill would have to be relinquished by the state.

There are at least two major legal concerns raised by this bill. The first involves article IX, section 6, of the Alaska Constitution. This provision reads as follows:

> Section 6. PUBLIC PURPOSE. No tax shall be levied, or appropriation of public money made, or

ATTORNEY GENERAL'S OPINION

03-C5LH

public property transferred, nor shall the public credit be used, except for a public purpose.

The easement rights created by PLO 601, PLO 757, PLO 1613, and D.O. 2665 are held in common by the general public. These rights, therefore, are a form of public property. The clear effect of Senate Bill 141 is to transfer this public property to certain private individuals. This is so because the bill, while relinquishing public road easements held in common by the general public, bestows the right to the fair market value of these easements upon those private landowners whose property was previously subject to them. See sections 2 and 3 of SB 141. The bill, in effect, transfers public property to private individuals who would not pay anything to the state for the value of the rights transferred to them. Such a transfer, on its face, would appear to violate the public purpose provision of the state Constitution. This is underscored by the fact that the public, if it requires the vacated road easement area for future road improvement, must purchase it back from private ownership. Only these private individuals would benefit from this arrangement and the repurchase costs would probably be significant. Thus, it is difficult to understand how this bill would not violate the public purpose requirement of article IX, section 6, of the Alaska Constitution that must be met whenever public property is transferred. 1/

A second legal difficulty concerns article 1, section 1, of the Alaska Constitution. This provision provides that all persons are entitled to equal rights under the law and, conversely, prohibits unfair distinctions between classes of persons.

1/ Because this bill would eliminate significant portions of public road easements, it would most likely have a negative effect on public access to various areas of the state. As a result, SB 141 appears to be inconsistent with article VIII, sections 1 and 2 of the Alaska Constitution. Article VIII, Section 1 states that it is the policy of the state "to encourage the settlement of its lands and development of its resources by making them available for maximum use consistent with the public interest." Article VIII, section 2 requires the legislature to "provide for the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people."

See Ale v. State, 484 P.2d 677 (Alaska 1971); Leege v. Martin, 379 P.2d 447 (Alaska 1963) .

The effect of this bill is to divest the general public of its right to utilize significant portions of the public road easements created by public land orders. Since the effect of this divestment would be to eliminate the public's right to claim these public road easements, only those private individuals owning land fronting on the public roads created by these land orders would benefit from this divestment. That is to say, after the effective date of this bill, the public, acting through the state, would have to purchase from this class of individuals the right to use the same public road easements that were previously owned by the public.

In sum, as matters stand now, the public road rights granted by these land orders are owned by all members of the public in common. Should this bill become law, it would mean that the cash value of these rights, rights which were formerly held by all, would be granted to a class of property owners, i.e., those individual property owners fortunate enough to own land fronting on the very roadways created by these public land orders. Thus the practical effect of this bill is to take away potentially valuable property rights owned by the general public as a whole and bestow the right to the fair market value of these rights upon a class of private individuals. Since article I, section 1 of the Alaska Constitution adopts the principle that "all persons are equal and entitled to equal rights, opportunities, and protection under the law," the granting of special privileges by this bill to a particular class at the expense of the public may very well violate this provision.

At present, only one class of persons exists relative to the public road easements created by these public land orders. This class is made up of members of the general public who own these public road easements in common. Should this bill become law, these easement rights would, in effect, be taken from the general public. 2/ The right to the cash value of these public road easement rights would then be bestowed, not on the general

---

2/ This "taking" from each member of the public by itself may violate article XIII, section 16 of the Alaska Constitution which provides that "no person shall be involuntarily divested of . . . his interests in lands . . ." unless the divestment is for a public purpose and he is paid just compensation.

public as a whole, but on a special class of property owners. This bill, in effect, would create two classes of persons: the class of all those members of the general public who do not own real property fronting on the roadways created by the public land orders and the class of those property owners who do own property fronting on the roadways created by these public land orders. This latter class would then be given the right to the fair market value of the easements previously owned by the entire public. It is likely that such discriminatory treatment is barred by article I, section 1, of the Alaska Constitution.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Jack McGee
Jack B. McGee
Assistant Attorney General

JBM:ebc:prm

PERCENTAGE OF AREA SUBJECT TO PLO TAKINGS WITHOUT COMPENSATION.

Due to the existing Alaska Supreme Court cases indicating that land homesteaded after August 10, 1949 may have the easements taken without compensation, the following are best guess estimates of land in the following areas that would be subject to taking without compensation:

Anchorage - 60%-75%

Kenai - 90%

Fairbanks - 5%-10%

Juneau - 5%-10%

As you can see in the Anchorage and Kenai areas, this means that the majority of the land bordering these roads may be taken without any compensation whatsoever.

OWNERS V. MORTGAGEE'S TITLE INSURANCE POLICY

A point was made at the Hearing 3-6-85 for Senate Bill 141 that banks required insurance policies on most of the urban transactions. However, there is a basic distinction between an owner's policy and a bank's policy known as a mortgagee's policy. The owner's policy insures title to be in the name of the fee owner of the property, e.g. John Smith. The mortgagee's policy does not insure title is held in any particular person, but only insures that the mortgage to the bank has a certain priority as to other recorded instruments. Many times an owner pays for a mortgagee's policy, but does not pay for an owner's policy whereby he is not insured and in fact if loss occurs to the lending institute, the title insurance company may sue the owner under the doctrine of subrogation to recover any losses. Often times, a mortgagee's policy is the only one acquired and that owner's go uninsured as to their property. This is especially true in more rural areas.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Joe
ALTA / [illegible]

November 19, 1984

RECEIVED
MAR 7 1985
GROH, EGGERS & PRICE

The Honorable Frank Murkowski
United States Senate
317 Hart Building
Washington, DC 20510

Dear Frank:

I have been informed that representatives of the Alaska Land Title Association (ALTA) may ask you to consider introducing legislation concerning highway easements created by public land orders and department orders issued by the Department of Interior from 1943 through 1958. I am writing to let you know of our strong opposition to such legislation, for the reasons detailed below.

The central issue is whether existing State and federal statutes limit the State's right to utilize public road easements granted by particular public land orders and department orders. The Alaska Supreme Court has clearly disagreed with ALTA's view that existing laws (the Alaska Right-of-Way Act of 1966 and AS 34.15.290) prohibit the State from utilizing the powers granted in Public Land Order 601 and Department Order 2665 to expand or widen public roads. In January 1984, the U.S. Supreme Court denied ALTA's request to review the Alaska Supreme Court decision.

With statehood, the road powers originally granted by a series of Department of Interior public land orders and department orders were transferred to the State. In 1966, the Alaska Legislature limited those powers. The Alaska Legislature has recently considered legislation further limiting those powers but has not acted on it to date. We believe that federal legislation in this area would be an unwarranted intrusion into matters best addressed, if necessary, at the State level.

The Alaska Department of Transportation and Public Facilities estimates that the total monetary impact to the State's road program could ultimately reach several hundred million dollars if the ALTA proposal were enacted.

Property owners purchase title insurance precisely to protect themselves from the problems presented by the present situation. To enact legislation absolving the title industry of its responsibilities for this issue would simply shift the costs that the private entity has agreed to bear by contract on to the public.

The Alaska Supreme Court's decision in this matter also determined that the publication of the Department of the Interior orders in the Federal Register provided proper notice and that the title industry should have been cognizant of the effect of the orders. It should be noted that title companies now exempt these rights-of-way from their insurance policies. Consequently, they have already taken steps to limit their contractual liability.

I appreciate your consideration of our views. Please let me know if you have any questions or comments.

Sincerely,

Bill Sheffield
Governor

cc: The Honorable Ted Stevens
United States Senator

The Honorable Don Young
United States Representative

The Honorable Norman Gorsuch
Attorney General

The Honorable Richard Knapp
Commissioner
Department of Transportation
and Public Facilities

Mr. John W. Katz
Director, Washington D.C. Office

U.S. Department
of Transportation
**Federal Highway
Administration**

Alaska Division

P.O. Box 1648
Juneau, Alaska 99802

March 8, 1985

HDA-AK
013

R. J. Knapp, Commissioner
Alaska Department of Transportation
and Public Facilities
Juneau, Alaska

Dear Commissioner Knapp:

Senate Bill 141

The enclosed is a paper Gary Wilson did for me explaining the differences in 1947 Act easements and Public Land Order (PLO) easements. Since the 1947 Act easements in essence no longer exist I think it would be helpful to all of us if discussions, including examples, only referred to PLO easements.

Our office would certainly be willing to work with you in resolving this issue. The resolution would seem to tie in with your plan to develop an immediate, intermediate, and long term program of proposed improvement projects. Once this is done you could determine which of the proposed improvements involve PLO easements. We could then agree to the number of lanes needed, and a typical section, including shoulders and ditches; plus any additional areas needed to maintain your roadway. Lands beyond what we agree are needed could then be unencumbered by PLO easements.

The mechanics of how this could be recorded needs to be explored. For instance, could the right-of-way lines be established from areial photography and mathematical calculations? Would something like this be recordable? If so, this could be done rather quickly. However, if a physical survey is needed I can see this resolution would be quite costly and time consuming.

If at some later date it was determined lands outside our agreed to right-of-way limits were needed for a roadway improvement, we would participate in the acquisition even though it may be lands previously included in Public Land Orders.

Sincerely yours,

Barry F. Morehead

Barry F. Morehead
Division Administrator

COPY

Enclosure

U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: Senate Bill 141

Date: March 7, 1985

From: Division Right-of Way Officer
Juneau, Alaska

Reply to Attn. of: HRW-AK
013

To: Mr. Barry F. Morehead
Division Administrator
Federal Highway Admininstration
Alaska Division
Juneau, Alaska

The testimony and material presented at the Senate Committee hearing on March 6, 1985 confused Public Land Order (PLO) right-of-way with "47 Act" right-of-way. The pertinent differences that were not explained are:

"47 Act":

1. Was established by an Act of Congress effective 7/24/47 and codified into 48 USC, Section 321.d. It reserved from subsequent lands patented, a right-of-way. The right-of-way was available to the United States or any state created out of the Territory of Alaska.

2. It was repealed by Public Law 86-70, the Alaska Omnibus Act, effective July 1, 1959, however, the reservation contained in patents issued between 1947 and 1959 remained valid.

3. It was specifically noted in patents issued between 1947 and 1959.

4. Specific areas or locations were not identified in the patents.

5. The State of Alaska relinquished their right to any unutilized reservations by the Alaska Right-of-Way Act of 1966.

6. The Federal Government relinquished their right to any unutilized reservations by Section 138 of the Federal-aid Highway Act of 1970.

PLO: 1. Established a withdrawal from Public domain which was subsequently changed to an easement and established and/or revised corridor widths by:

Executive Order 9145 dated 4/23/42.
PLO 12 dated 7/20/42
PLO 84 dated 1/28/43
PLO 270 dated 4/5/45
PLO 386 dated 7/31/47
PLO 601 dated 8/10/49
PLO 757 dated 10/16/51
Secretarial Order 2665 dated 10/16/51
Amendment #1 to 2665 dated 7/17/52
Amendment #2 to 2665 dated 9/15/56
PLO 1613 dated 4/7/58

The above were issued by the Executive Branch rather than the Congress.

2. They established the original corridor for the Alaska and Glenn Highways. They withdrew from Public Domain a specific width corridor along existing highways. They changed the withdrawals to easements.

3. The withdrawals or easements were not identified in patents issued by the Federal Government nor were they recorded.

4. The withdrawals or easements were not affected by the Alaska Right-of-Way Act of 1966 or Section 138 of the Federal-Aid Highway Act of 1970. The hearings and introductory remarks pertaining to these pieces of legislation always referred to 48 USC, Section 321d or the "47 Act" with no mention of Public Lands Orders.

In summary, the "47 Act" reserved an area from the land patented but did not identify where it was. The PLO's created an easement over the land and located it by designating the highway name and corridor width.

The question of payments and reimbursement was raised but not sufficiently answered.

Prior to 1966:

the State of Alaska did not pay for land utilized under provisions of the "47 Act" or within the PLO corridors. Since there was no expense, there was no federal-aid reimbursement.

From 1966 to 1970:

the State of Alaska paid fair market value for right-of-way covered by the "47 Act" but there was no federal-aid reimbursement for these expenses (see attached listing of parcels and amounts expended prior to 5/1/67).

The State of Alaska did not pay for land within the PLO corridors.

From 1970 to the present

the State of Alaska has paid fair market value for right-of-way covered by "47 Act" and federal-aid funds have participated in the expense.

The State of Alaska has not paid for land within the PLO corridors.

Gary E. Wilson

Attachment

1/64)

MEMORANDUM State of Alaska

TO: William J. Niemi
Interim Regional Administrator
Federal Highway Administration
Juneau

DATE: May 1, 1967

FILE NO: 23-2900

SUBJECT: Small Tracts and Right of Way Act

ATTN: Calvin Ringgenberg
Regional R/W Officer

FROM: Dick Chitty
Chief Right of Way Agent
Department of Highways
Juneau

~~#1005~~
061 - cross reference
to 062

We have enclosed a copy of our listing of parcels for which land payments have been made in accordance with the State Supreme Court Opinion No. 322 for Small Tracts as well as the Right of Way Act as passed by the 1966 Legislature. The listing as submitted is subject to change as it has been necessary to obtain additional title information on some projects and parcels.

Additional listings will be furnished on a monthly basis as requested in your memorandum of April 7, 1967.

Attachments: As stated

I	A	TO	INT
		RE	
		ARE	
		[illegible]	
		R&R	
		CLM	
		DES	
		RR	
		[illegible]	
		FPE	
L		R/W	CER
		ADM	
		FISC	
		PERS	
		[illegible]	
		[illegible]	
		[illegible]

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0461(1)	10	X		$ 2,300.00	
Ninilchik	16	X		625.00	
	4	X		65.00	
S-0490(2)	30		X	176.40	
North Kenai	12		X	205.83	
Road	15		X	206.25	
	17		X	165.00	
	20		X	206.25	
	32		X	139.65	$1,800.00
	24		X	173.25	
	72L	X		2,226.00	1,000.00
	11		X	165.53	
	18		X	247.50	
	23		X	123.25	
	34		X	147.50	66.53
	4	X		772.87	
	9		X	209.10	
	10		X	208.00	
	13		X	165.00	
	14		X	206.25	
	16		X	247.50	
	19		X	206.25	
	21		X	173.25	
	22		X	173.25	
	25		X	173.25	
	26		X	151.80	
	27		X	151.80	
	28		X	173.25	
	29		X	174.30	
	31		X	139.65	
	33		X	200.40	
	70	X		1,898.20	
	70C	X		825.00	
	70D	X		127.60	
	72	X		7,384.50	
	62		X	2,225.00	
	63	X		3,000.00	
	63A	X		132.00	
	63B	X		75.00	
	66	X		2,350.00	
	69	X		3,038.00	229.00
	70A	X		1,125.00	
	70B	X		800.00	
	72B	X		70.00	
	72E	X		240.00	
	72H	X		459.00	177.00
	72J	X		740.00	230.00

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0490(2)	72M	X		$1,042.50	$ 500.00
	72G	X		330.00	
	72N	X		341.00	
	72K	X		330.00	
	72A	X		975.00	135.00
	65	X		1,682.00	
	72F	X		354.00	
	72D	X		1,050.00	
	59	X		650.00	
	67	X		150.00	
S-0501(1)	30		X	1,250.00	
Girdwood -	7		X	137.84	
Alyeska	15		X	193.42	
	17		X	195.05	
	26		X	368.47	
	14		X	194.23	
	21		X	255.80	
	6		X	289.70	
	16		X	195.86	
	23		X	239.89	
	24		X	276.85	
S-0512(2)	1109		X	629.75	
O'Malley Road	1067		X	755.70	
	1110		X	2,516.33	
	1111		X	755.70	
	1114		X	629.75	
	1402		X	629.75	
	1120		X	7,000.00	
S-0547(6)	16		X	1,222.84	4,980.96
Lake Otis Road	17		X	1,023.56	
(Tudor to	10		X	586.73	
Dowling)	22		X	6,263.75	
	4	X		34.50	
	9		X	925.65	
	11		X	806.70	
	12		X	648.00	
	14		X	970.00	
	15		X	562.50	
	19		X	1,056.00	
S-0520(8)	5A	X		475.00	
Dimond Blvd	5B	X		790.00	
(Jewel Lake West)	20	X		1,700.00	
	5	X		1,500.00	
	5C	X		545.00	
	5D	X		1,625.00	
	8	X		1,100.00	
	10		X	1,450.00	
	4	X		875.00	
	7		X	650.00	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
S-0549(1) Abbot Road (4 Miles South of Anchorage)	12		X	$ 276.00	
	13		X	296.22	
	14		X	296.22	
	15		X	265.88	
	16		X	265.88	
	17		X	296.22	
	18		X	296.22	
	19		X	463.59	
S-0959(1) North Douglas Highway	12		X	33.43	
	15		X	40.80	
	16A		X	41.15	
	17A		X	29.48	
	20A		X	570.06	
	21		X	223.52	
	22		X	186.00	
	23		X	165.76	
	28		X	56.65	
	29		X	54.79	
S-0970(2) Fritz Cove Road (Juneau)	6		X	116.76	
	7		X	275.04	
	9		X	1,342.00	
	10		X	2,044.50	
	15		X	16.63	
	17		X	32.55	
	18		X	26.39	
	22		X	1,252.80	
	23		X	1,037.70	
	24		X	494.96	
	24A		X	186.90	
	28		X	1,276.92	
F-021-1(3) Nikolaevsk to Soldotna	096	X		1,623.65	
F-021-1(14) Homer Streets & Homer Spit	6		X	1,323.00	
	7		X	652.40	
	8		X	652.40	
	9		X	1,401.00	
	22		X	320.00	
	23		X	3,431.00	
	25		X	5,813.00	
	27		X	3,440.98	
	28		X	1,197.70	
	20		X	2,070.00	
	21		X	241.00	
	20A		X	35.00	
	17		X	2,314.00	
	18A		X	384.00	
	26 & 27A		X	1,128.57	

PROJECT	PARCEL	SUBJECT TO 47 ACT	SUBJECT TO SMALL TRACT ACT	LAND	DAMAGES
F-062-4(11)	29	X		$966.85	
Shaw Creek to	31	X		765.50	
Eielson AFB	28		X	903.87	
(Fairbanks)	30		X	440.00	
	32		X	529.65	
	33		X	701.80	
F-095-8(5)	13	X		5,252.00	
Tuncan Outer Drive					

1947 act land $54,681.17

Small Tracts $85,402.16

54,681.17

Total to May 1, 1967 $140,083.33

April 10, 1985

MEMORANDUM

To: Senator Coghill

From; John Manly

Re: Conversation with Clif Groh

I spoke with Clif Groh this afternoon regarding SB 141, as you requested and with the following result: He said that they are apparently not going to get much out of the Congressional delegation, as they have "bigger fish to fry". Their next move is to prepare a proposed resolution for introduction by you that would ask two things of the federal government. First, that the federal government recognize the PLO easements as having been created as a result of the 1947 Act, and then that the Federal Highway Administration be directed to participate in compensating for the easements, as passed by the 1970 Act.

Clif said Mike Price and Mike Condon are working on the resolution and he would have the draft in the mail to us by Friday. I told him you would be out of town until Wednesday, but that I would get the draft in the works and out of Legal Services by the time you got back, so it could be introduced next week.

LAW OFFICES OF
GROH, EGGERS & PRICE
550 WEST SEVENTH AVENUE, SUITE 1250
ANCHORAGE, ALASKA 99501

TELEPHONES
(907) 272-6474
(907) 274-9547

CLIFFORD J. GROH
KENNETH P. EGGERS, P.C.
MICHAEL W. PRICE
LANCE E. GIDCUMB
SALLY KUCKO

MICHAEL P. CONDON
SEMA E. LEDERMAN
ROBERT T. PRICE
ROBERT P. OWENS

March 21, 1985

MAR 2 2 1985

Senator Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510

Senator Frank H. Murkowski
United States Senate
Hart Building
Washington, D.C. 20510

Congressman Donald E. Young
2331 Rayburn House Office Bldg.
Washington, D.C. 20515

Re: PLO 601 and 1613

Gentlemen:

I am addressing this joint letter to you to update our attempts to pass State legislation solving the public land order highway easement issue which has been the subject of both previous correspondence and personal meetings. We have introduced State legislation and met on several occasions, with both the Governor and his Commissioner of Transportation, Richard Knapp, in an effort to solve this problem for the people of the State of Alaska. Unfortunately, I cannot report any significant progress between the State Administration and us to eliminate the unfairness of these undisclosed, federally-created easements.

As you are aware, Governor Sheffield has asked the Alaska Congressional Delegation to refrain from introducing federal legislation and contending that this is a State problem that is to be solved intrastate. However, the Administration's efforts so far have been limited to a preliminary agreement that the State might pay for improvements constructed within the rights-of-way if accompanied by federal agreements to allow federal matching to reimburse the State for those expenses.

Senator Jack Coghill introduced Senate Bill 141, a Committee Substitute of which is enclosed for your reference. This bill calls for the State of Alaska to not give up the easements, but

only pay compensation for that portion taken beyond the recorded and recognized easements in any given year for widening projects. We believe, with federal matching funds at approximately 95%, this would result in minimal fiscal impact to the State on an annualized basis. However, in an attempt to simply kill the bill, the Administration has furnished to the Legislation a $227 million per year fiscal note which totals over one billion dollars over a five year period. I respectfully suggest that Governor Sheffield's letter stating that the matter should be handled in-state was an attempt to place the issue in a forum that he more readily controls and one where he could easily kill the substantive aspects of the bill.

The Administration tentatively has agreed to support a compromise that would call for the State of Alaska to pay (with federal matching funds available as a condition) for "improvements." This would not compensate such people as Otto Schneider who purchased from the federal government a five acre tract north of Homer and subsequently had the Sterling Highway take 1.82 acres of it without compensation. Mr. Schneider's patent was silent as to any PLO easements.

As Commissioner Knapp explained to us, even if the federal government were to contribute 100 cents on the dollar for takings of these highway rights-of-way under the federal matching fund program, he would not support our Senate Bill 141 because his total contribution per year is limited to $150 million and that every federal dollar he spends for highway right-of-way acquisition is one less dollar he can spend on highway construction. We feel this attitude is somewhat harsh in light of his testimony before the Alaska Senate Transportation Committee where he admitted that the easements were not shown in the patents, that homeowners are not aware of their existence, and in organized boroughs or municipalities, the owners have been paying taxes on the property as if no easement existed. This is not to mention the fact that the various people in the State paid for the property when they purchased the property as if no easement existed.

The only time we get any significant reaction from the Administration is when we mention the possibility that the Congressional Delegation will attempt to pass a bill to declare that taking of these easements are void as violative of the United States Constitution. The only other alternative which might succeed would be a combination of pressure from the Congressional Delegation on the Administration in combination

with a special appropriation to the State of Alaska of either 100 cents on the dollar for these particular highway acquisition costs or a one time appropriation to the State in recognition of the fact that the errors were originally created by the federal government. These bills could be combined in the same effort to solve the PLO 1613 repurchase program which I am sure all of your staffs are working on for disgruntled constituents.

Quite frankly, the bottom line is our client, and the people of the State of Alaska, need the Congressional Delegation's help either through introduction of the bill or pressure on the Administration to be more reasonable than they have so far demonstrated. The only other item which might be of some help would be if U.S. Department of Transportation were to give an opinion that PLO 601, 757, 1613 and Department Order 2665 were issued pursuant to the authority of and were to be interpreted as 1947 Act Reservations (48 USC 321(d)). With such an opinion we could attempt to convince either the Legislature, Alaska Department of Transportation and Public Facilities or the Courts of the State that the Right-of-Way Act of 1966 and Senator Steven's bill of 1970 have already taken care of the problem.

Unfortunately, we need to know what the Congressional Delegation can do, if anything, to help us. Because of the time constraints of the Alaska Legislature, we need to know that as soon as possible.

Gentlemen, would you please consider the potential solutions and advise us as soon as practicable. Of course, we will be more than willing to meet with you either in Anchorage or Washington, D.C. to discuss this complicated situation in more detail if you think that necessary.

Sincerely,

GROH, EGGERS & PRICE

Clifford J. Groh

Michael W. Price

:hf

cc: ALTA Steering Committee
Local ALTA
Peter Miller
Senator Coghill

IN THE SENATE BY COGHILL

SPONSOR SUBSTITUTE FOR

SENATE BILL NO. 141

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring just compensation for the ulilization of certain rights-of-way and providing for an effective date."

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

* Section 1. LEGISLATIVE PURPOSE AND FINDING. The purpose of this Act is to provide just compensation to land owners in Alaska who are suffering economic hardship and physical and mental distress by virtue of the state utilizing certain rights-of-way created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. sec. 321(d) (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951).

* Sec. 2. TAKING OF PROPERTY WITHOUT COMPENSATION IS BARRED. After the effective date of this Act, no agency of the State may take, utilize, or occupy any right-of-way for a road, roadway, highway, tramway, trail, bridge, or appurtenant struc-

ture created, withdrawn or reserved under 33 Stat. 616 (Act of January 27, 1905); 47 Stat. 446 (Act of June 30, 1932); 48 U.S.C. secs. 321(d) (Act of July 24, 1947); Public Land Order 601, 14 Fed. Reg. 5048 (1949); Public Land Order 757, 16 Fed. Reg. 10, 749 (1951); Public Land Order 1613, 23 Fed. Reg. 2376, 2378 (1958); or Departmental Order 2665, 16 Fed. Reg. 10, 752 (1951) beyond that portion physically occupied by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure on the effective date of this Act, without payment of just compensation.

* Sec. 3. PHYSICAL OCCUPATION OF RIGHT-OF-WAY. (a) The provisions of this Act do not require the State to pay compensation for land physically occupied on the effective date of this act by a road, roadway, highway, tramway, trail, bridge, or appurtenant structure constructed within the right-of-way created, withdrawn, or reserved under the Acts of Congress and the orders described in sec. 2 of this Act; nor do the provisions of this Act require the payment of compensation by the state for taking, utilizing or occupying an interest in an easement of specific width set out in the original patent from the state or federal government, whether or not physically occupied on the effective date of this Act.

(b) Expansion beyond an existing road, roadway, highway, tramway, trail, bridge, or appurtenant structure requires the payment of just compensation to the owner of the land only to the extent that the state actually takes, utilizes or occupies beyond

the physical occupation as of the effective date of this Act. The state has the burden of proof to show by clear and convincing evidence the extent of the physical occupation which occurred before the effective date of this act.

* Sec. 4. APPLICATION TO FEDERAL LAND. The provisions of this Act do not require that the state pay compensation for taking, utilizing or occupying a right-of-way that affects land in which fee title is, on the date of the taking, utilization or occupation, vested in the United States of America.

* Sec. 5. DEFINITION. As used in this Act, "physically occupied" means the construction of the actual roadway, including its shoulders and ditching, highway, tramway, trail, bridge, or appurtenant structures, before the effective date of this Act.

* Sec. 6. RETROACTIVE APPLICATION. This Act does not relieve, alter, or void a voluntary conveyance of an easement including an easement dedicated by plat.

* Sec. 7. EFFECTIVE DATE. This Act takes effect immediately in accordance with AS 01.10.070(c).

14-1108
Moen
4/18/85 ✓

NO

IN THE SENATE BY COGHILL

SENATE JOINT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the payment of just compensation to landowners for certain rights-of-way across land in Alaska.

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

WHEREAS the Federal Government created certain rights-of-way for highway purposes across land in the state under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613; and

WHEREAS the rights-of-way created by the Federal Government were not identified in the patents issued to Alaska homesteaders nor were the original homesteaders informed as to the location or true width of the rights-of-way claimed for highway purposes by the Federal Government across their land; and

WHEREAS the original homesteaders and their successors in interest have had no knowledge of the claim of the Federal Government to the rights-of-way along or across their properties and have often utilized and improved the portion of the right-of-way claimed by the Federal Government; and

WHEREAS the enforcement of the rights-of-way would be unfair to homesteaders who entered their property between August 1949 and Alaska statehood in 1959; and

WHEREAS the rights-of-way created by the Federal Government were not recorded in any territorial or state recording office for the purpose of public notice; and

WHEREAS the right to utilize the rights-of-way for highway purposes

was conveyed to the state in 1959; and

WHEREAS the United States Department of Transportation has declined to pay federal highway funds to the state to allow the state to pay just compensation to the landowners whose properties are affected by the rights-of-way; and

WHEREAS U.S. Senator Ted Stevens has attempted in the Federal Aid Highway Act of 1970, sec. 138, to require the United States Department of Transportation to compensate the State of Alaska for money paid as just compensation for the taking and utilization of the rights-of-way;

BE IT RESOLVED by the Alaska State Legislature that the Alaska delegation to U.S. Congress introduce and support legislation to require reimbursement by the United States Department of Transportation of the State of Alaska for money paid by the state as just compensation for the use of any right-of-way created, established, or claimed under Public Land Order 601, Public Land Order 757, Department Order 2665, and Public Land Order 1613; and be it

FURTHER RESOLVED by the Alaska State Legislature that the Alaska delegation requests that Congress enact legislation preventing the Federal Government or any successor-in-interest from utilizing the rights-of-way without paying just compensation to the landowner.

COPIES of this resolution shall be sent to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

SB

175

sb 175 amend xx1

PROPOSED AMENDMENT

TO

SB 175

On page 1, line 11, delete "$18,500,000" and

insert in its place "$13,000,000"

On page 1, line 12, delete "$925,000" and

insert in its place "$650,000"

On page 1, line 14, following the period (.), insert:

"The monies are to be allocated to Alternative A."

PROPOSED AMENDMENT

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee Members

From: Committee staff

Date: April 1, 1985

Re: SB 175

SB 175 proposes to appropriate $18.5 million (of which less than $1 million would be from the general fund) to design and construct the DeArmoun-Rabbit Creek Interchange in south Anchorage.

This project has had a substantial amount of work done on it in the past several years, including required public hearings, environmental impact statement and preliminary engineering. The State has chosen Alternative 'C' as its preferred alternative, has received FHWA approval for it, and is proceeding with that design. DOT/PF is also acquiring right-of-way necessary for the project.

SB 175 was introduced to fund Alternative 'C', although it was also included in the Governor's FY 86 budget request. However, Senator DeVries has indicated she would now prefer to fund Alternative 'A', and has proposed an amendment to do so. She has based this decision, she said, on input from effected landowners and on the alternative's lower cost.

DOT/PF has indicated that, in view of the work done on Alternative 'C' to date, to change to Alternative 'A' at this point would probably set the project back 2 to 3 years, and would likely effect federal funding.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
CENTRAL REGION

4111 AVIATION AVENUE
POUCH 6900
ANCHORAGE, ALASKA 99502
(TELEX 25-186)

Alternative "A"

Date: 1-8-82
Prepared By: EQD

PRELIMINARY CONSTRUCTION COST ESTIMATE FOR:

Project: DeArmoun & Rabbit Creek Interchange
From: _____ (MP _____) TO: _____ (MP _____)
Total Length: 1.5 Miles ±
Location and Description: Construction of a full diamond interchange at DeArmoun Rd & New Sew. Hwy intersection and eliminating Rabbit Cr Rd. Old Sew. Hwy intersection with the construction of a two way Frontage Road to the east bet. DeArmoun Cl & Rabbit Cr Rd. Upgrading New Seward Hwy into 4 lanes
Current ADT: _____ Design ADT: _____
Required Width: _____ Actual Width: _____
Assumed Structural Section H.A.P.: 4 in.
C.A.B.: 9 in.
Borrow: Varies in.

Estimated Costs (1981 Dollars) Based Upon Above Assumptions:

1.	Corstruction Estimate:	$ 7,907,294
2.	Construction Administration (12% of 1):	$ 948,875
3.	Subtotal:	$ 8,856,169
4.	Preliminary Engineering (6% of 1):	$ 474,438
5.	Right of Way ($_____/Acre):	$ 1,204,060
6.	Utilities:	$ 423,600
7.	Subtotal:	$ 10,963,267
8.	Contingencies (5% of 7):	$ 548,163
	TOTAL:	$ 11,511,430

Sheet 1 of _____

25A-T16LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
CENTRAL REGION

4111 AVIATION AVENUE
POUCH 6900
ANCHORAGE, ALASKA 99502
(TELEX 25-188)

Alternative "C"

Date: 1-8-82
Prepared By: EQD

PRELIMINARY CONSTRUCTION COST ESTIMATE FOR:

Project: JcArmoun & Rabbit Creek Interchanges
From: _____ (MP _____) TO: _____ (MP _____)
Total Length: _____
Location and Description: Upgrading New Seward Hwy into 4 lanes. A construction of 2 partial diamond interchanges at DeArmoun Rd intersection and a full interchange at Rabbit Cr. Rd - Old Sew. Hwy intersection.

Current ADT: _____ Design ADT: _____
Required Width: _____ Actual Width: _____
Assumed Structural Section H.A.P.: 4" in.
C.A.B.: 9" in.
Borrow: Varies in.

Estimated Costs (1981 Dollars) Based Upon Above Assumptions:

1.	Construction Estimate:	$ 11 380 264
2.	Construction Administration (12% of 1):	$ 1, 725, 632
3.	Subtotal:	$ 16, 105 896
4.	Preliminary Engineering (6% of 1):	$ 862, 816
5.	Right of Way ($_____/Acre):	$ 5365 600
6.	Utilities:	$ 768 750
7.	Subtotal:	$ 23, 103 062
8.	Contingencies (5% of 7):	$ 1, 155, 153
	TOTAL:	$ 24 258, 215

Sheet 1 of ____

of the existing development.

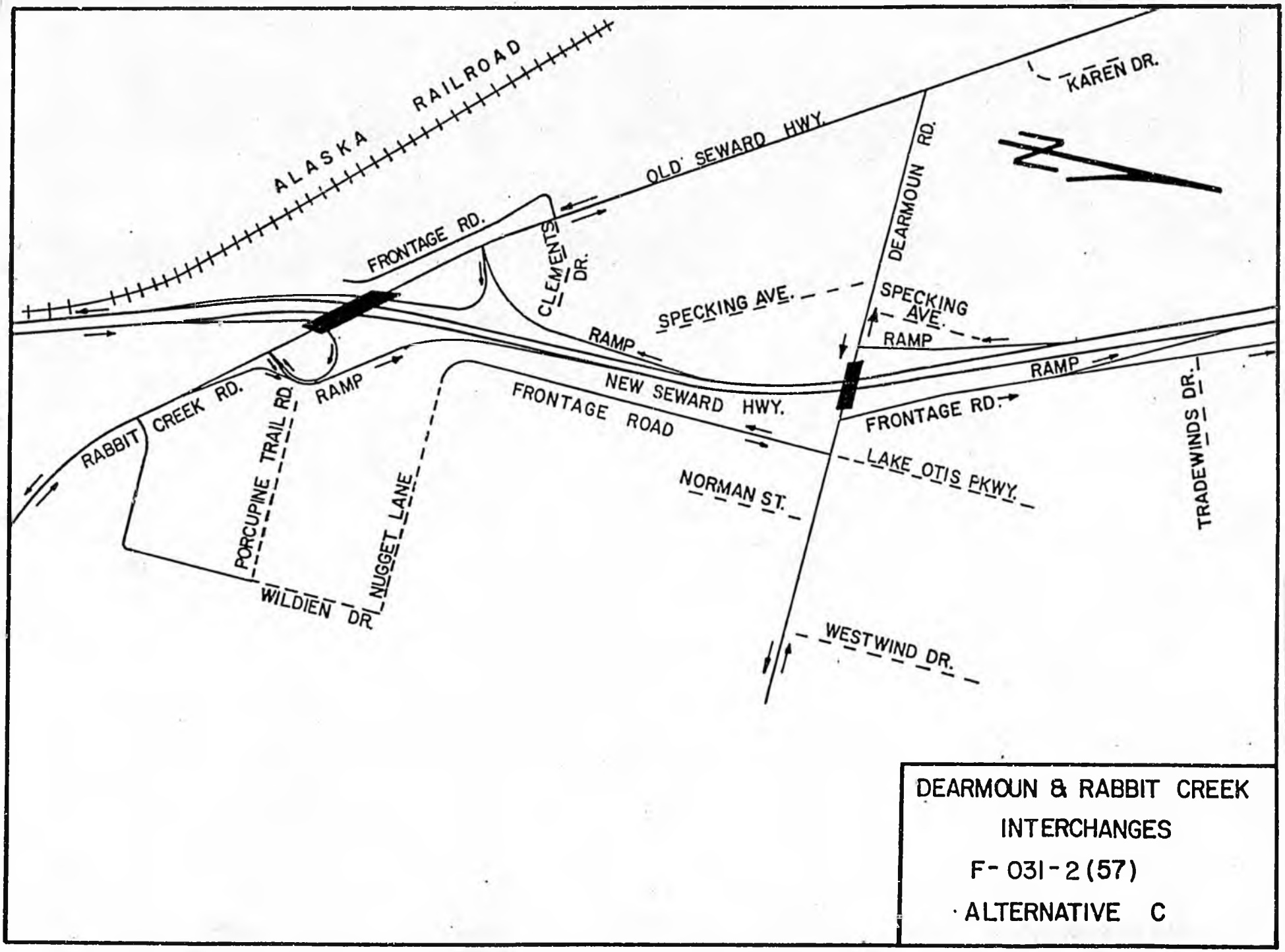
The five alternatives under consideration present a number of interchange configurations. Traffic projections for each of these configurations have been included in Appendix A.

All of the alternatives would construct an at-grade intersection serving the driveway of the Rabbit Creek Rifle Range and the road which provides access to the property east of the highway. A median opening and left-turn storage lanes would be provided at this location. There is a possibility that an increase in traffic volumes will make it desirable to close this median opening at some time in the future.

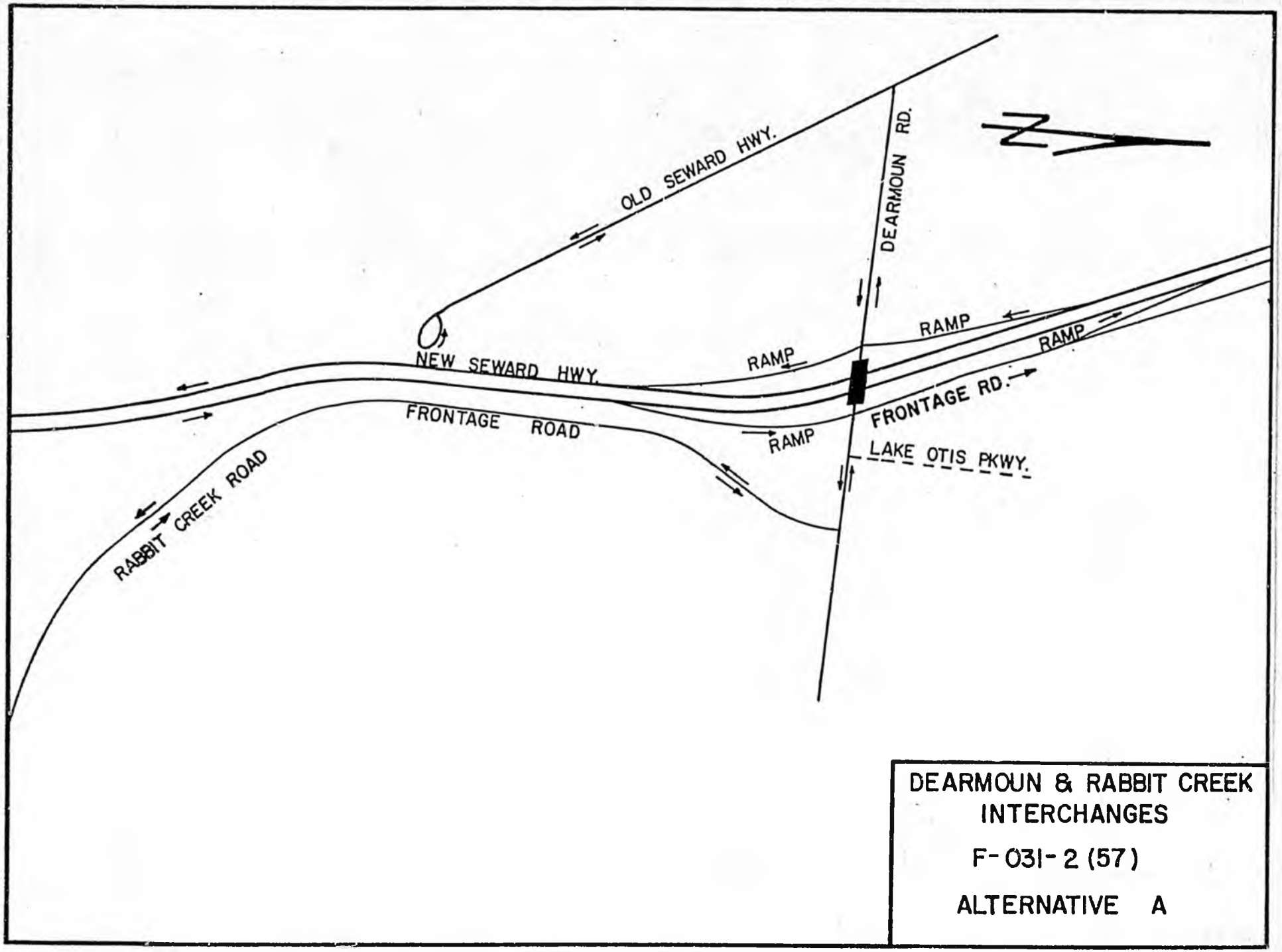
ALTERNATIVE A

This proposal calls for the construction of a full diamond interchange at the DeArmoun Road intersection and the elimination of the Old Seward Highway intersection. The Old Seward Highway west of the New Seward Highway would be dead-ended and provided with a cul-de-sac. Rabbit Creek road will be connected with the two-way frontage road east of the New Seward Highway. This frontage road will be realigned so that its proposed intersection with DeArmoun Road will be farther east than its existing intersection. This was done in order to provide better spacing between this intersection and the ramp intersection. This alternative would make it necessary for area residents wishing to travel from the Old Seward Highway to Rabbit Creek Road to do so by way of DeArmoun Road.

ALTERNATIVE 'A'



DEARMOUN & RABBIT CREEK
INTERCHANGES
F-031-2(57)
ALTERNATIVE C



DEARMOUN & RABBIT CREEK
INTERCHANGES

F-031-2 (57)

ALTERNATIVE A

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

October 26, 1984

Honorable Bill Sheffield
Governor - State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield;

This letter is to express the Valdez Chamber of Commerce's support for the City of Valdez REQUEST FOR FUNDING of the following CAPITAL PROJECTS:

1. Commercial Boat Harbor
2. Prince William Sound Community College
3. Museum Addition
4. Ice Skating Rink
5. National Guard Armory
6. New Jail Addition
7. Upgrading Richardson Highway
8. Small Boat Harbor Slips
9. Valdez Industrial Park
10. Small Boat Harbor Grid
11. Handicap Curbs
12. Dayville Road Boat Ramp

Thank you for your positive considerations to these projects.

Respectfully,

William J. Simpson
President

CHAMBER OF COMMERCE PRIORITIES

Small Boat Harbor Expansion

This project is the development of the final phase of the existing Valdez Small Boat Harbor. At the time of the original Corps of Engineers Valdez boat harbor construction, the general area to the east of the original boat harbor was left undeveloped for future harbor expansion. The area of the proposed expansion site is presently at elevation to a depth of -13 feet (MLLW) which will be consistent with the bottom of the existing small boat harbor area. The excavation consists of the removal of approximately 298,000 cubic yards of soil in the harbor area.

Material removed from the harbor expansion area would be located on the Port of Valdez side of the existing spit that now separates the boat harbor from the port. This area was used as a site for disposing of the dredge material from the original boat harbor.

The widening of the spit area, at a City owned location, would facilitate the creation of a waterfront area for uses compatible with the City's Coastal Zone Management plan. These intended uses include the storage and dry docking of recreational and commercial boats; the storage of commercial fishing gear; and a parking and staging area. The limited amount of land available near the small boat harbor doesn't assure a place for parking boat trailers or pulling boats out of the water for minor repairs. This site is also designated as a potential long range planning site for expanded fin fish and shellfish processing facilities.

The intended use for the expanded boat harbor area would be to provide additional moorage capacity for private and small commercial boats. The facility would be owned and operated by the City of Valdez as it is the final phase of the small boat harbor project. A conceptual drawing of the expanded small boat harbor is shown in 'Figure 1'

The Valdez Small Boat Harbor expansion project is a positive development activity for the continued planned growth of the City of Valdez. The additional facilities support the commercial and recreational fishing populace and are expected to be beneficial to the local economy.

SMALL BOAT HARBOR

The existing small boat harbor currently has the following number of berths available:

Length (ft)	Number
50	33
42	34
32	84
24	108
20	98

On these berths, the occupancy rate on a year round basis is relatively high particularily in the larger boat lengths:

Length (ft)	Occupancy Percentage
50	100
42	90
32	65
24	40
20	30

In addition, there is over 350 feet of transient dock, however, no individual transient berths exist. Six berths are being utilized for either permanent or scenic-permanent residence. At least seven vessels, making Valdez their home port, are 50 feet or more in length:

Name	Length	Type
Capt. Sonny	80'	Fishing
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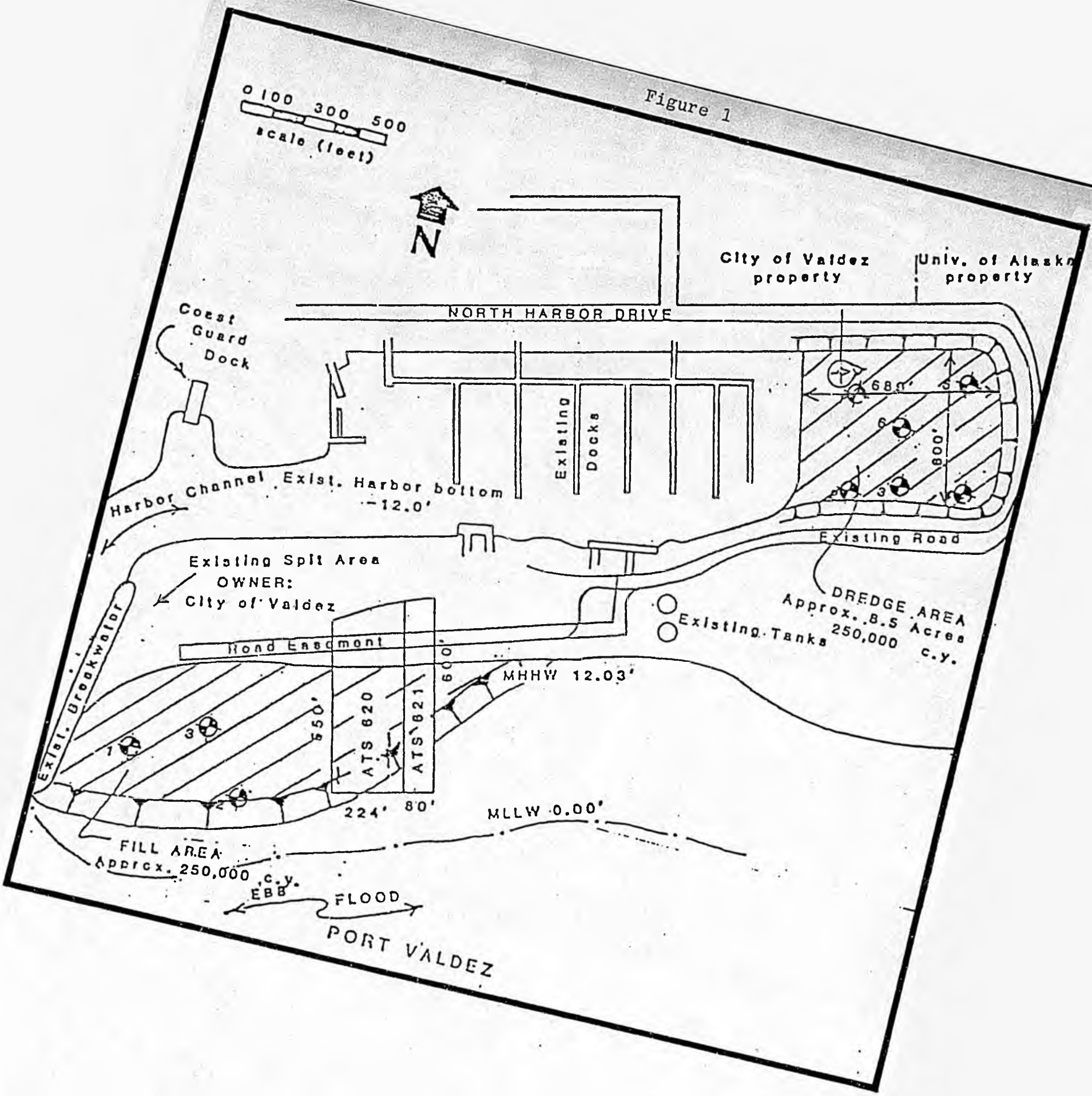
Lady Fair	50'	Pleasure

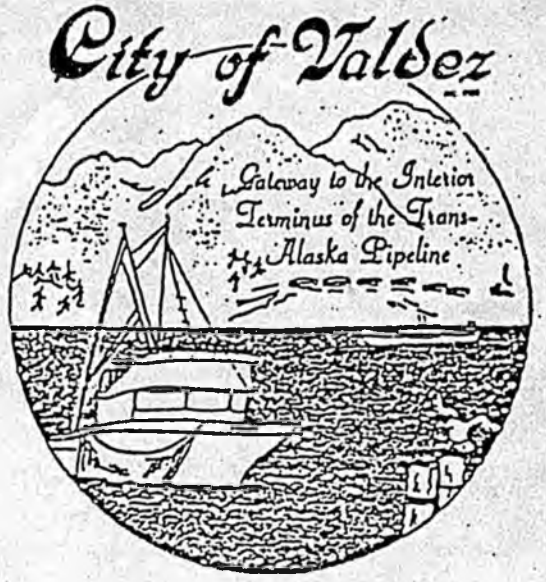
During peak fishing periods, it is estimated that over 100 additional boats utilize the harbor. Valdez currently has two growing fish processors and a third processor expressing interest in locating in Valdez. This could lead to a substantial increase in necessary berths.

The secondary benefit to the City of Valdez with the expanded harbor will be increased use of local lodging, food services, marine repairs and fuel sales.

Figure 1


0 100 300 500
scale (feet)
N
City of Valdez property
Univ. of Alaska property
NORTH HARBOR DRIVE
Coast Guard Dock
Existing Docks
Harbor Channel
Exist. Harbor bottom -12.0'
Existing Road
Existing Spit Area
OWNER:
City of Valdez
Exist. Breakwater
Road Easement
DREDGE AREA
Approx. 8.5 Acres
250,000 c.y.
Existing Tanks
MHHW 12.03'
MLLW 0.00'
ATS 620
ATS 621
600'
550'
224'
80'
685'
800'
FILL AREA
Approx. 250,000 c.y.
EBB
FLOOD
PORT VALDEZ

FUNDING REQUEST FOR VALDEZ COMMERCIAL BOAT HARBOR IMPROVEMENTS



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Economics of fish processing, marketing and fisheries related business are sensitive to initial capitalization such as good harbors, adequate uplands, handling facilities and docks. Jointly used facilities which lower annual costs of capitalization are an attraction to business and with availability there is more chance of business growth and success.

The City of Valdez has established general annual capital improvement priorities specifically directed toward improving commercial fishing and other harbor use activities. The City is also reviewing long range harbor expansion goals, which will be consistent and mesh with development as it happens.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

FUNDING REQUEST

FOR CAPITAL PROJECTS AND GRANTS

FY 86

CITY PRIORITY	PROPOSED PROJECT	DISTRICT 6 APPROPRIATION	PROJECTS SUPPORTED BY THE CITY OF VALDEZ AND AGENCY REQUESTING FUNDS
1	Commercial Boat Harbor - Phase II/Small Boat Harbor Improvements	4,500,000	- -
2	Prince William Sound Community College Classroom/ Office Building	2,000,000*	9,834,000 University of Alaska
3	Valdez Heritage Center Expansion	2,500,000	- -
4	Ice Skating Arena	2,500,000	- -
5	National Guard Armory	- -	1,300.000 Department of Military Affairs
6	New Jail Addition	- -	675,000 Department of Corrections
7	Richardson Highway Improvements	- -	23,100,000 Department of Transportation
8	Subdivision of the Valdez Industrial Park	288,000	- -
9	Small Boat Harbor Grid	- -	750,000 Department of Transportation
10	Handicap Curbs	-40,000	- -
11	Dayville Road Boat Ramp	150,000	
	Total project funding requested by the City of Valdez	$ 9,978,000	
	Total project funding supported by the City of Valdez		$ 35,659,000

* Note: First priority is that funding come from University funding. However, if not appropriated from University, then City requests $2,000,000 as a direct appropriation to funding Phase I of Prince William Sound Community College.

REQUEST FOR FUNDING FOR CAPITAL PROJECTS/GRANTS

FISCAL YEAR 1986

ocation Valde Election District 6

roject Title Commercial Boat Harbor Improvements

ommunity Priority Number 1 of 11

gency Responsible

tate or Local (Responsibility Local

OST ESTIMATES		REQUESTED FUNDING	
ite Aquisition	$ -0-	General Fund	$4,500,000
lanning and Design	$ 750,000	Federal (source)	$
onstruction and Equip	$ 3,750,000	Other (souce; local, etc...)	$
ther	$	Total	$4,500,000

revious Appropriations and Years $3,000,000 FY 85/riprap, slope revision, dock

aintenance/Operating Cost (First Year) $50,000

(Annual) $50,000

ROJECT DESCRIPTION AND JUSTIFICATION Estimated Starting Date June 1985

ompletion Jan. 1986 (Explain physical product and operational activities, if this project is one phase or multi-phase. Briefly describe the entire project, attach any backup materials, maps, surveys, etc.)

Commercial fishing and fish processing are developing into significant renewable industries in the City of Valdez. According to a recent study commissioned by the City, commercial fishing can and should develop at a steady rate consistent with the resource and the ability of fishermen, processors and the market to efficiently utilize resources.

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In order to meet the immediate demands of the growing commercial fishing industry in the City of Valdez, we have had to utilize a portion of our small boat harbor which is referred to as Valdez Commercial Boat Harbor, Phase I and approved by the state in 1984.

As a part of the Commercial Boat Harbor, Phase I, it is necessary to provide small vessel slips as identified on the attached drawing and labelled Number 6.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

1985 - 1986 PROJECT BUDGET

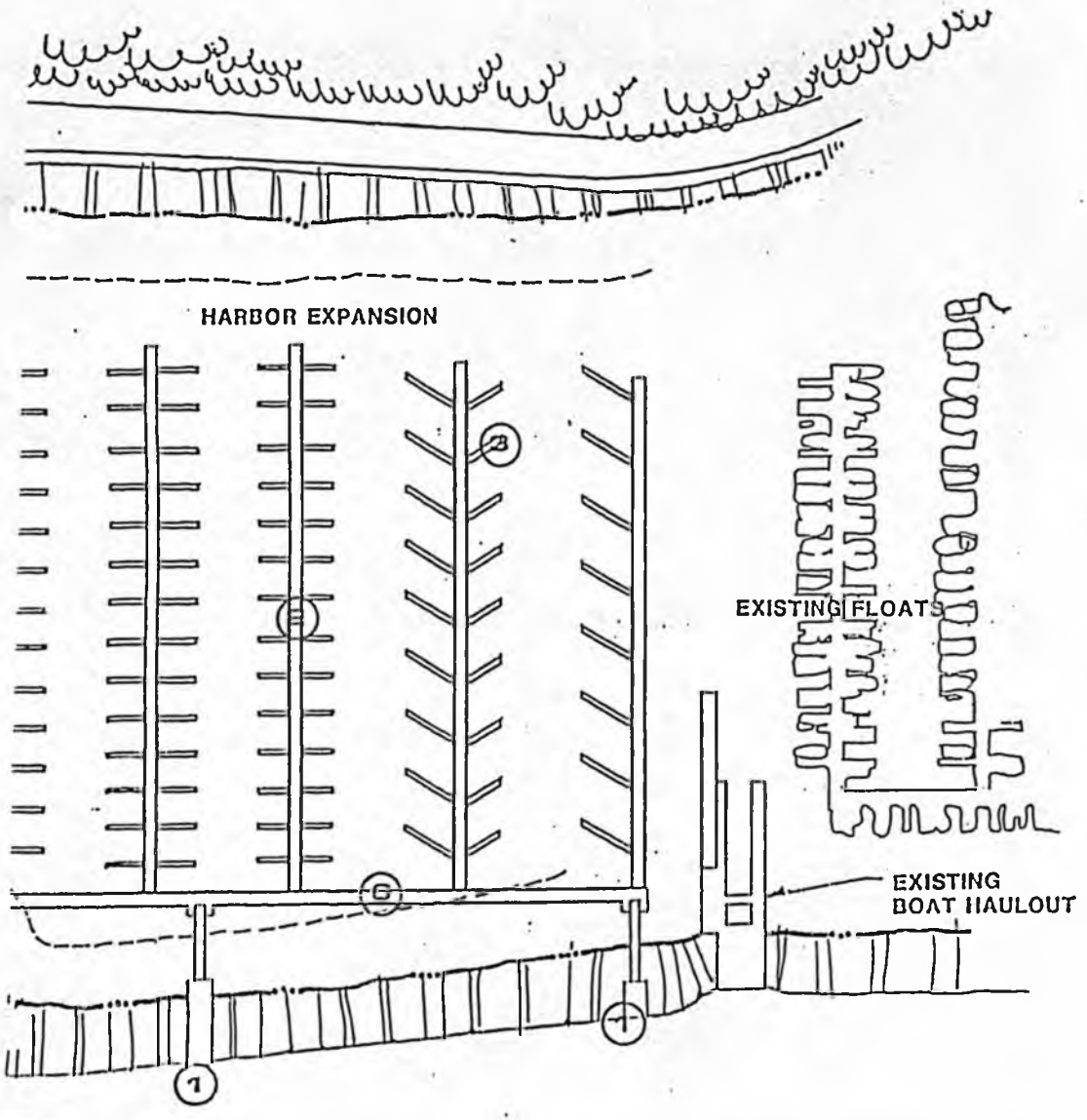
Harbor Dredging and Land Fill	$ 1,500,000
Float Modifications	300,000
Drain System	200,000
Bilge and Waste Oil Disposal Systems	100,000
Slip Improvements	2,400,000
Total Project Budget	$ 4,500,000

PROJECT SCHEDULE

February 1985	September 1985	September 1986
Design	Contract Award	Construction Completion

CONTACT:

Jim Watson
City Manager
P. O. Box 307
Valdez, Alaska 99686
(907) 835-4313



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1. Two approach structures a access gangways
2. Five main harbor floats with access float
3. Finger floats varying in leng to 50 feet
4. Boat ramp access float
5. Boat ramp and various im including wash down and boat apron
6. Float utilities

BUDGET

Description	Estimated Qty.	Unit Price	Amount
Excavation	298,000 Cu.Yd.	400/cu.yd.	$1,195,200.00
Containment Dike	Lump Sum	225,000	225,000.00
Filter Fabric, Dike	1,335 Sq.Yd	2.00/sq.yd.	2,670.00
Coarse Gravel	25,000 tons	12.00/ton	300,000.00
Armor Rock	2,000 tons	80.00/ton	160 000.00
12" CMP (14 gauge) Storm Drain Pipe	430 L.F.	50.00/L.F.	21,000.00
Storm Drain Manhole	1	4,000	4,000.00
Mobilization and Demobilization	Lump Sum	150,000	150,000.00
	TOTAL GRANT REQUEST:		$2,083,450.00

SUMMARY

Proposed Project: Expansion of the Valdez Small Boat Harbor

Need: Increasing requirements for recreational and commercial boat space.

Permits: Alaska D.E.C. Permit: Granted.
Federal C.O.E. Permit: Granted.

Environmental Impact Statement: Completed.

Budget Total: $ 2,083,450.00

Total Grant Request: $ 2,083,450.00

VALDEZ COMMERCIAL BOAT HARBOR

The City of Valdez desires to construct and operate a Commercial Boat Harbor (CBH) primarily to serve a commercial fishing fleet with vessel lengths of 65 to 150 feet. The proposed site is south of the Mineral Creek Islands and eastward of the proposed Small Boat Harbor (SBH) expansion area (see Figure 1, 2, and 3). The site is bounded on the north by Dock Point and on the west by Harbor Point and the site of the proposed SBH expansion (Kennicott Avenue). The project. would involve dredging the site to a depth of -25 feet mean low low water (MLLW). The general layout of the proposed CBH is shown on Figure 3.

The City wishes to develop the CBH in phases. Phase I would consist of the initial geotechnical investigation, engineering design and dredging of the harbor. Future work would include completion of sheet piling, breakwaters, mooring facilities, roads, etc.

The area under consideration for construction of the CBH was studied to some extend from 1977 to 1979 as a part of the on-going geotechnical and environmental evaluation for the City's port expansion study. Some of the area was also included in work related to the preparation of the Alpetco DEIS and FEIS. Additional biological reconnaissance of the area was made in the spring of 1981 as a adjunct to some limited biological investigations related to the proposed SBH expansion. The Port of Valdez itself has been the subject of numerous other investigations in the past decade relative to construction and operation of the Alyeska marine terminal and the environmental and permitting phase of the Alpetco project. Climatic and tidal conditions are well known as is the general nature of the circulation and sedimentation patterns. The wildlife resources of the area of interest have been described, in part, by an 'Environmental Assessment' previously prepared for the City in conjunction with the permitting of the City's container dock and marshalling yard which was recently completed. This ecological overview draws heavily on the previous work performed for the 1979 assessment, as well as work performed by the University of Alaska and others during the planning, design and construction of the Alyeska marine terminal.

Cost estimated for this first phase effort. $ 4,500,000.00

COMMERCIAL BOAT HARBOR

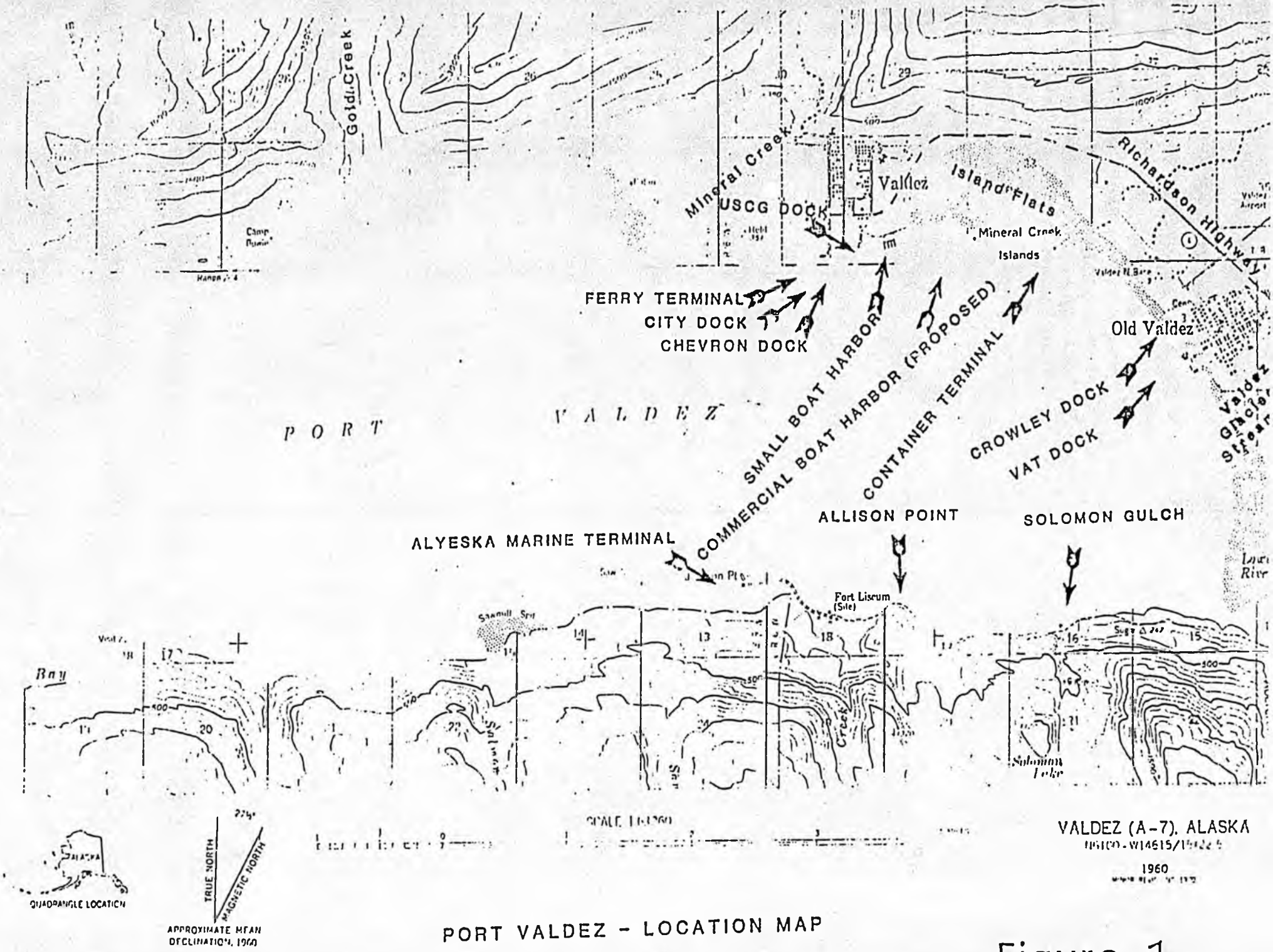
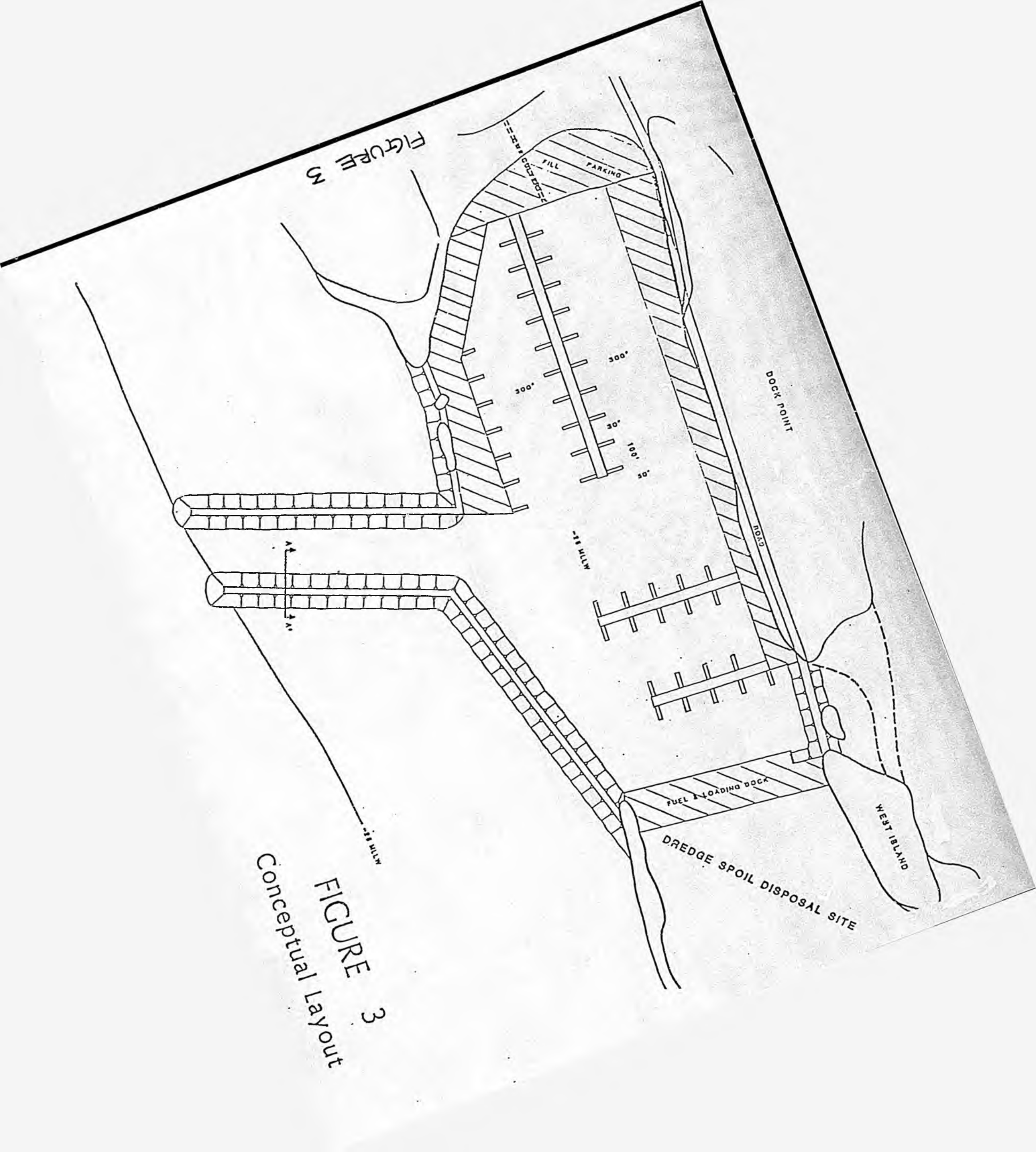


FIGURE 1

PORT VALDEZ - LOCATION MAP

Figure 1

FIGURE 3



Conceptual Layout

Valdez Chamber of Commerce
P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

1983 LEGISLATIVE PROGRAM

TRANSPORTATION:

A. Highways;
with the advent of Alaska becoming a member of the interstate program, accelerate existing 5 year capital improvement plan to within 2 years, and accelerate the 5 to 10 year planning phase to within 5 years with emphasis on reconstruction of the following:

Richardson - Mile 129-265
(Gakona Jct. to Delta Jct.)

Tok - Mile 30-75
(Gakona Jct. to Tok)

Alaska - Mile 1314-1221

Copper River - Million Dollar Bridge to Richardson Highway

Glenn - Mile 50 to 135

B. Marine Highways;
support increase in scheduling to Prince William Sound terminals, and urge the acquisition of a larger vessel to serve Valdez-Cordova-Whittier, and urge the appropriation of the necessary money required for improvements to the state ferry terminal in Valdez.

C. All-Alaska Gas-Line;
urge the state support for construction of an all-Alaskan gas pipeline from the North Slope to tidewater, when deamed feasible

D. Seward Coal Terminal;
support the necessary actions to convert the Seward grain terminal to a coal mineral terminal

E. Valdez Air Terminal;
urge state acquisition and maintenance of the existing terminal building

VALDEZ CHAMBER OF COMMERCE

COMMERCIAL BOAT HARBOR:

urge the appropriation of $21 million for the construction of a commercial boat harbor in Valdez, and urge the funding associated with the Vladez Fisheries Development Association

ENERGY:

A. Silver Lake Hydroelectric;

urge the appropriation of necessary monies required to construct the Silver Lake hydroelectric plant and transmission inter-ties to Cordova and to the Solomon Gulch hydroelectric plant

B. Susitna Hydroelectric;

support the Phase I construction of the Susitna hydroelectric and inter-tie project

NATURAL RESOURCES:

support the acceleration of the develoment of Alaska's natural resources

AGRICULTURE:

support the increase of programing and appropriations for the Delta agriculture program, specifically marketing and planting

ADMINISTRATIVE:

A. State Boroughs;

support the freedom of choice by the local residents as to the formation of local government

B. Tax Reform;

favors application of an investment tax credit at 10% of qualified investment in Alaska each year, not limited to 18% of federal tax credits; favors revision of the state corporate income tax rate to 1% of the first $250,000 and a reduction of the maximum rate of 9.4%

C. Regulation Reform;

Ref. 1982 SB 84, relaxation of stipulations

D. Insurance Reform;

support manditory bodily injury and property damage liability insurance, and support M.A.D.D.

E. Land Disposal Program;

urge the requirement of access power and communication construction to and within the State Land Disposal Subdivisions, both now in existence and future disposals

JUDICIAL:

A. support the assignment of a District Attorney and a Superior Court judge, in that order, to the Valdez, Glennallen, Cordova area of the Third Judicial District

B. urge the appointment and necessary appropriations of and for a Judicial Probation Officier in the Valdez, Glennallen, Cordova area of the Third Judicial District

RECREATION:

A. support the Prince William Sound Development Legislation, and specifically the necessary funding for land acquisition and development of a harbor camper park in Valdez

B. support the trails and campsite development legislation

COMMUNICATION:

support the passage of Alaska Public Broadcasting Commission's FY'84 budget, which includes a Terminal Radio, Inc. (Valdez) funding request

EDUCATION:

A. Prince William Sound Community College;
support the continued programming and urge the necessary appropriations for the upgrading of the existing plant facility

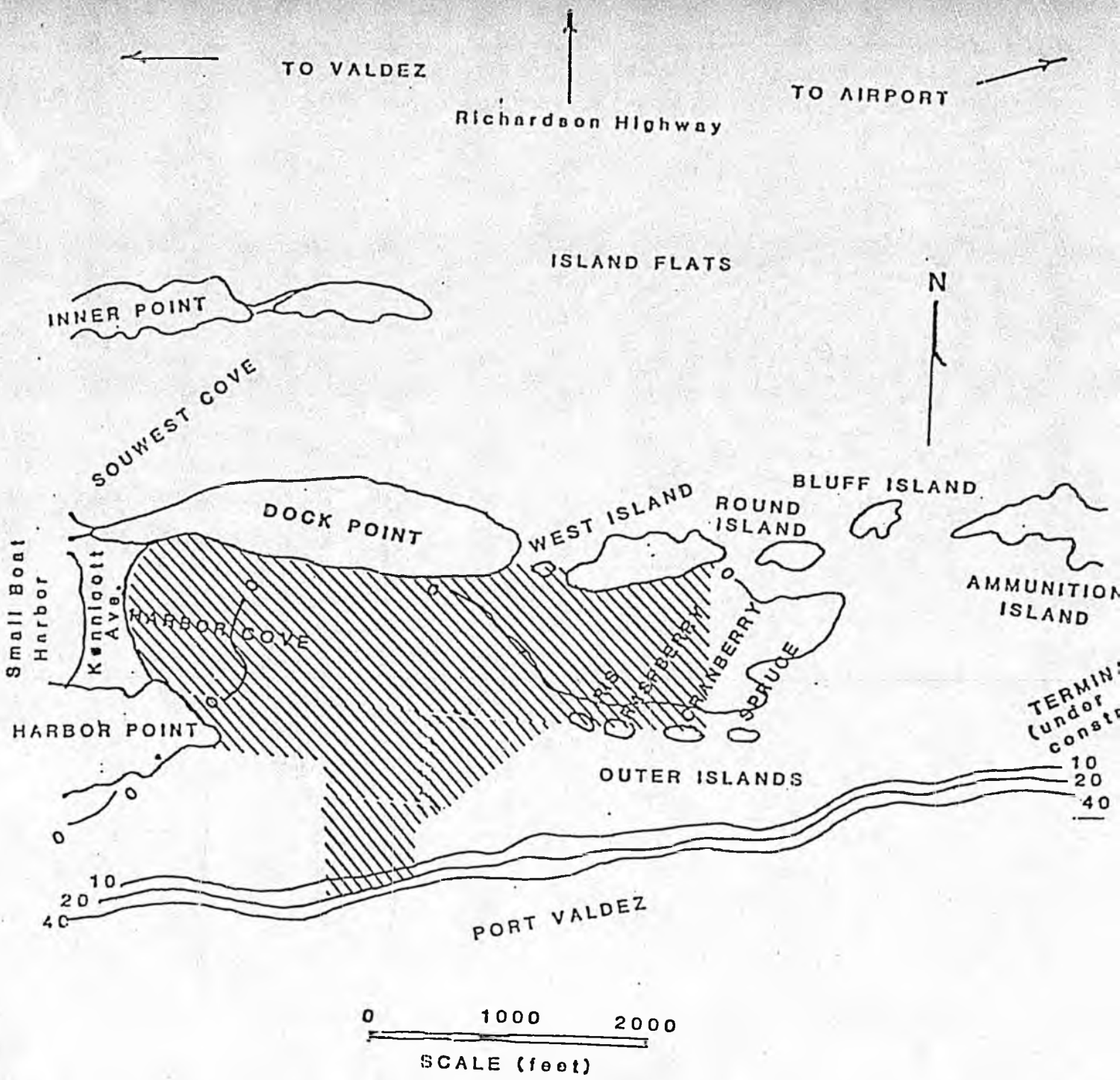


FIGURE 2

Location Map and General Project Area

FIGURE 2

Introduced: 2/21/85
Referred: Transportation and Finance

Funding Information
General Fund $4,500,000
Other Funds -0-
$4,500,000

IN THE SENATE BY DEVRIES

SENATE BILL NO. 180

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation for payment as a grant to the City of Valdez for phase II construction of the commercial boat harbor and for improvements to the small boat harbor; and providing for an effective date."

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

* Section 1. The sum of $4,500,000 is appropriated from the general fund for payment as a grant to the City of Valdez for phase II construction of the commercial boat harbor and for improvements to the small boat harbor.

* Sec. 2. The appropriation made by this Act shall be disbursed in accordance with AS 37.05.315.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

October 26, 1984

Honorable Bill Sheffield
Governor - State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield;

This letter is to express the Valdez Chamber of Commerce's support for the City of Valdez REQUEST FOR FUNDING of the following CAPITAL PROJECTS:

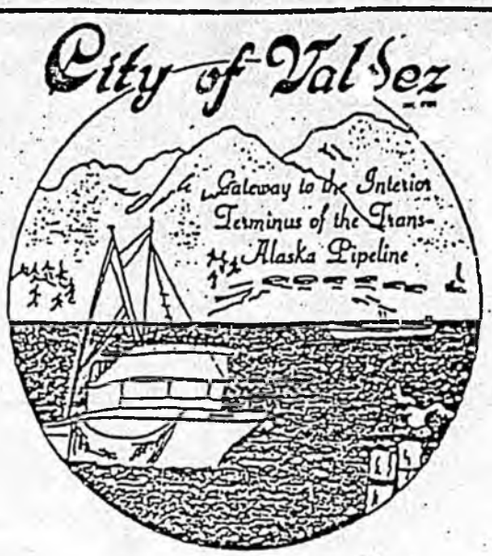
1. Commercial Boat Harbor
2. Prince William Sound Community College
3. Museum Addition
4. Ice Skating Rink
5. National Guard Armory
6. New Jail Addition
7. Upgrading Richardson Highway
8. Small Boat Harbor Slips
9. Valdez Industrial Park
10. Small Boat Harbor Grid
11. Handicap Curbs
12. Dayville Road Boat Ramp

Thank you for your positive considerations to these projects.

Respectfully,

William J. Simpson
President

FUNDING REQUEST FOR VALDEZ COMMERCIAL BOAT HARBOR IMPROVEMENTS



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FOR CAPITAL PROJECTS AND GRANTS

FY 86

CITY PRIORITY	PROPOSED PROJECT	DISTRICT 6 APPROPRIATION	PROJECTS SUPPORTED BY THE CITY OF VALDEZ AND AGENCY REQUESTING FUNDS
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5	National Guard Armory	- -	1,300.000 Department of Military Affairs
6	New Jail Addition	- -	675,000 Department of Corrections
7	Richardson Highway Improvements	- -	23,100,000 Department of Transportation
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9	Small Boat Harbor Grid	- -	750,000 Department of Transportation
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11	Dayville Road Boat Ramp	150,000	
	Total project funding requested by the City of Valdez	$ 9,978,000	
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REQUEST FOR FUNDING FOR CAPITAL PROJECTS/GRANTS

FISCAL YEAR 1986

ocation Valdez Election District 6

roject Title Commercial Boat Harbor Improvements

ommunity Priority Number 1 of 11

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The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

1985 - 1986 PROJECT BUDGET

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Float Modifications	300,000
Drain System	200,000
Bilge and Waste Oil Disposal Systems	100,000
Slip Improvements	2,400,000
Total Project Budget	$ 4,500,000

PROJECT SCHEDULE

February 1985	September 1985	September 1986
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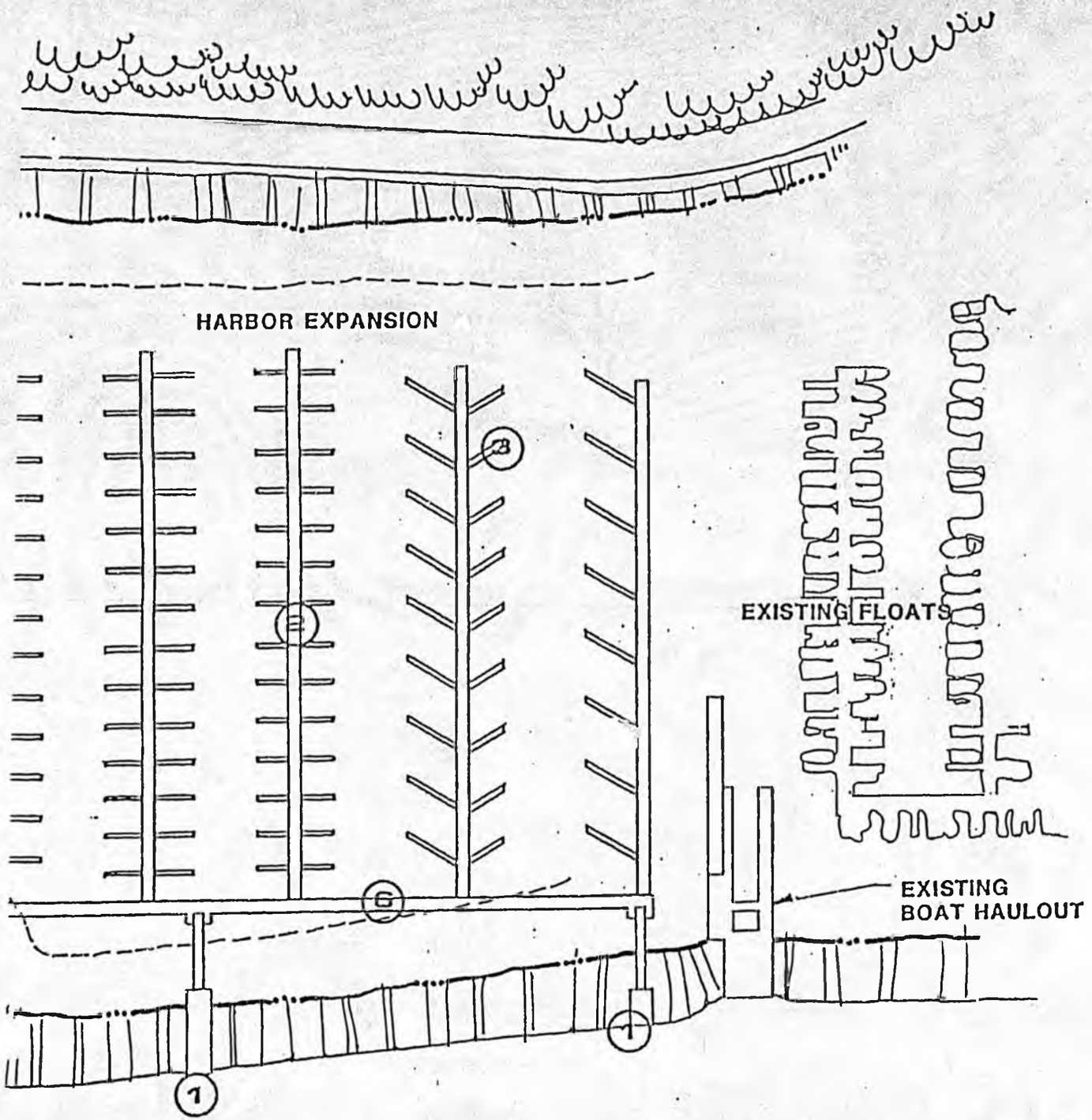

PRIMARY COMPONENTS OF T
PROPOSED DEVELOPMENT INC

1. Two approach structures a access gangways
2. Five main harbor floats with access float
3. Finger floats varying in leng to 50 feet
4. Boat ramp access float
5. Boat ramp and various im including wash down and boat apron
6. Float utilities

Small Boat Harbor Expansion

This project is the development of the final phase of the existing Valdez Small Boat Harbor. At the time of the original Corps of Engineers Valdez boat harbor construction, the general area to the east of the original boat harbor was left undeveloped for future harbor expansion. The area of the proposed expansion site is presently at elevation to a depth of -13 feet (MLLW) which will be consistent with the bottom of the existing small boat harbor area. The excavation consists of the removal of approximately 298,000 cubic yards of soil in the harbor area.

Material removed from the harbor expansion area would be located on the Port of Valdez side of the existing spit that now separates the boat harbor from the port. This area was used as a site for disposing of the dredge material from the original boat harbor.

The widening of the spit area, at a City owned location, would facilitate the creation of a waterfront area for uses compatible with the City's Coastal Zone Management plan. These intended uses include the storage and dry docking of recreational and commercial boats; the storage of commercial fishing gear; and a parking and staging area. The limited amount of land available near the small boat harbor doesn't assure a place for parking boat trailers or pulling boats out of the water for minor repairs. This site is also designated as a potential long range planning site for expanded fin fish and shellfish processing facilities.

The intended use for the expanded boat harbor area would be to provide additional moorage capacity for private and small commercial boats. The facility would be owned and operated by the City of Valdez as it is the final phase of the small boat harbor project. A conceptual drawing of the expanded small boat harbor is shown in 'Figure 1'.

The Valdez Small Boat Harbor expansion project is a positive development activity for the continued planned growth of the City of Valdez. The additional facilities support the commercial and recreational fishing populace and are expected to be beneficial to the local economy.

SMALL BOAT HARBOR

The existing small boat harbor currently has the following number of berths available:

Length (ft)	Number
50	33
42	34
32	84
24	108
20	98

On these berths, the occupancy rate on a year round basis is relatively high particularily in the larger boat lengths:

Length (ft)	Occupancy Percentage
50	100
42	90
32	65
24	40
20	30

In addition, there is over 350 feet of transient dock, however, no individual transient berths exist. Six berths are being utilized for either permanent or scenic-permanent residence. At least seven vessels, making Valdez their home port, are 50 feet or more in length:

Name	Length	Type
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The secondary benefit to the City of Valdez with the expanded harbor will be increased use of local lodging, food services, marine repairs and fuel sales.

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Coarse Gravel	25,000 tons	12.00/ton	300,000.00
Armor Rock	2,000 tons	80.00/ton	160,000.00
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TOTAL GRANT REQUEST:			$2,083,450.00

SUMMARY

Proposed Project: Expansion of the Valdez Small Boat Harbor

Need: Increasing requirements for recreational and commercial boat space.

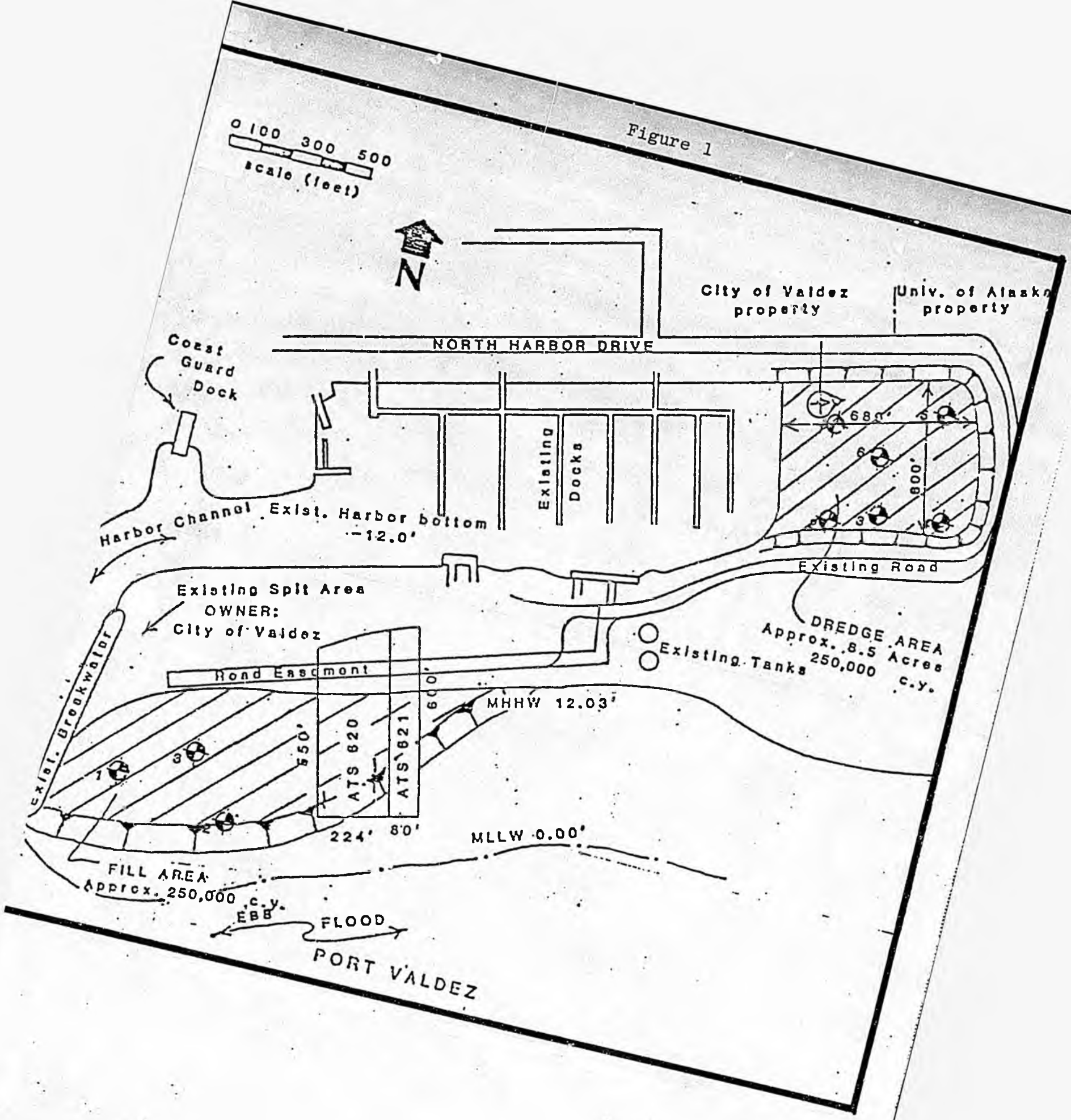
Permits: Alaska D.E.C. Permit: Granted.
Federal C.O.E. Permit: Granted.

Environmental Impact Statement: Completed.

Budget Total: $ 2,083,450.00

Total Grant Request: $ 2,083,450.00

Figure 1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PORT VALDEZ

VALDEZ COMMERCIAL BOAT HARBOR

The City of Valdez desires to construct and operate a Commercial Boat Harbor (CBH) primarily to serve a commercial fishing fleet with vessel lengths of 65 to 150 feet. The proposed site is south of the Mineral Creek Islands and eastward of the proposed Small Boat Harbor (SBH) expansion area (see Figure 1, 2, and 3). The site is bounded on the north by Dock Point and on the west by Harbor Point and the site of the proposed SBH expansion (Kennicott Avenue). The project. would involve dredging the site to a depth of -25 feet mean low low water (MLLW). The general layout of the proposed CBH is shown on Figure 3.

The City wishes to develop the CBH in phases. Phase I would consist of the initial geotechnical investigation, engineering design and dredging of the harbor. Future work would include completion of sheet piling, breakwaters, mooring facilities, roads, etc.

The area under consideration for construction of the CBH was studied to some extend from 1977 to 1979 as a part of the on-going geotechnical and environmental evaluation for the City's port expansion study. Some of the area was also included in work related to the preparation of the Alpetco DEIS and FEIS. Additional biological reconnaissance of the area was made in the spring of 1981 as a adjunct to some limited biological investigations related to the proposed SBH expansion. The Port of Valdez itself has been the subject of numerous other investigations in the past decade relative to construction and operation of the Alyeska marine terminal and the environmental and permitting phase of the Alpetco project. Climatic and tidal conditions are well known as is the general nature of the circulation and sedimentation patterns. The wildlife resources of the area of interest have been described, in part, by an 'Environmental Assessment' previously prepared for the City in conjunction with the permitting of the City's container dock and marshalling yard which was recently completed. This ecological overview draws heavily on the previous work performed for the 1979 assessment, as well as work performed by the University of Alaska and others during the planning, design and construction of the Alyeska marine terminal.

Cost estimated for this first phase effort. $ 4,500,000.00

COMMERCIAL BOAT HARBOR

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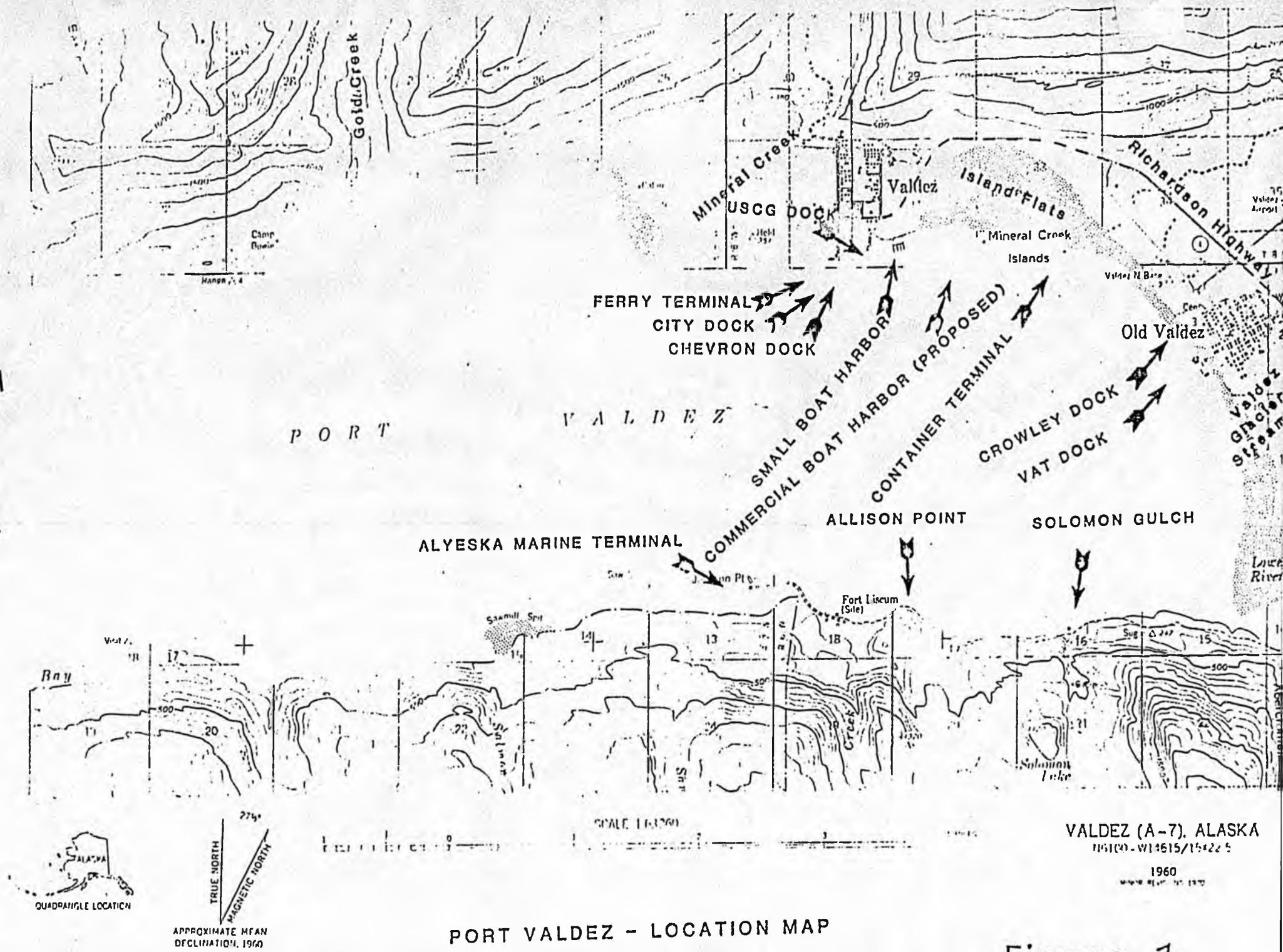
Cost estimated for this first phase effort. $ 4,500,000.00

COMMERCIAL BOAT HARBOR



PORT VALDEZ – LOCATION MAP

FIGURE 1

Figure 1

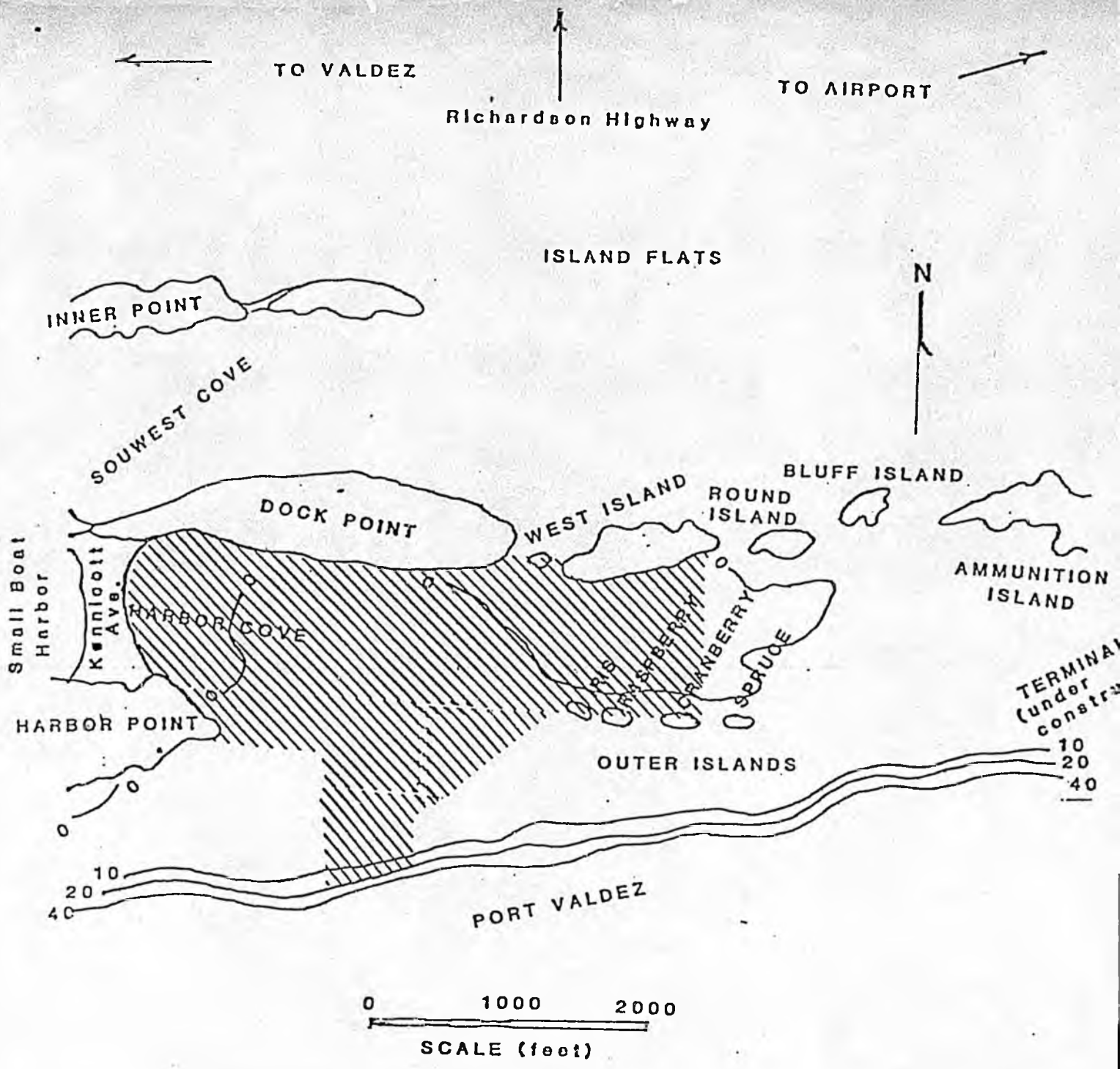


FIGURE 2

Location Map and General Project Area

FIGURE 2

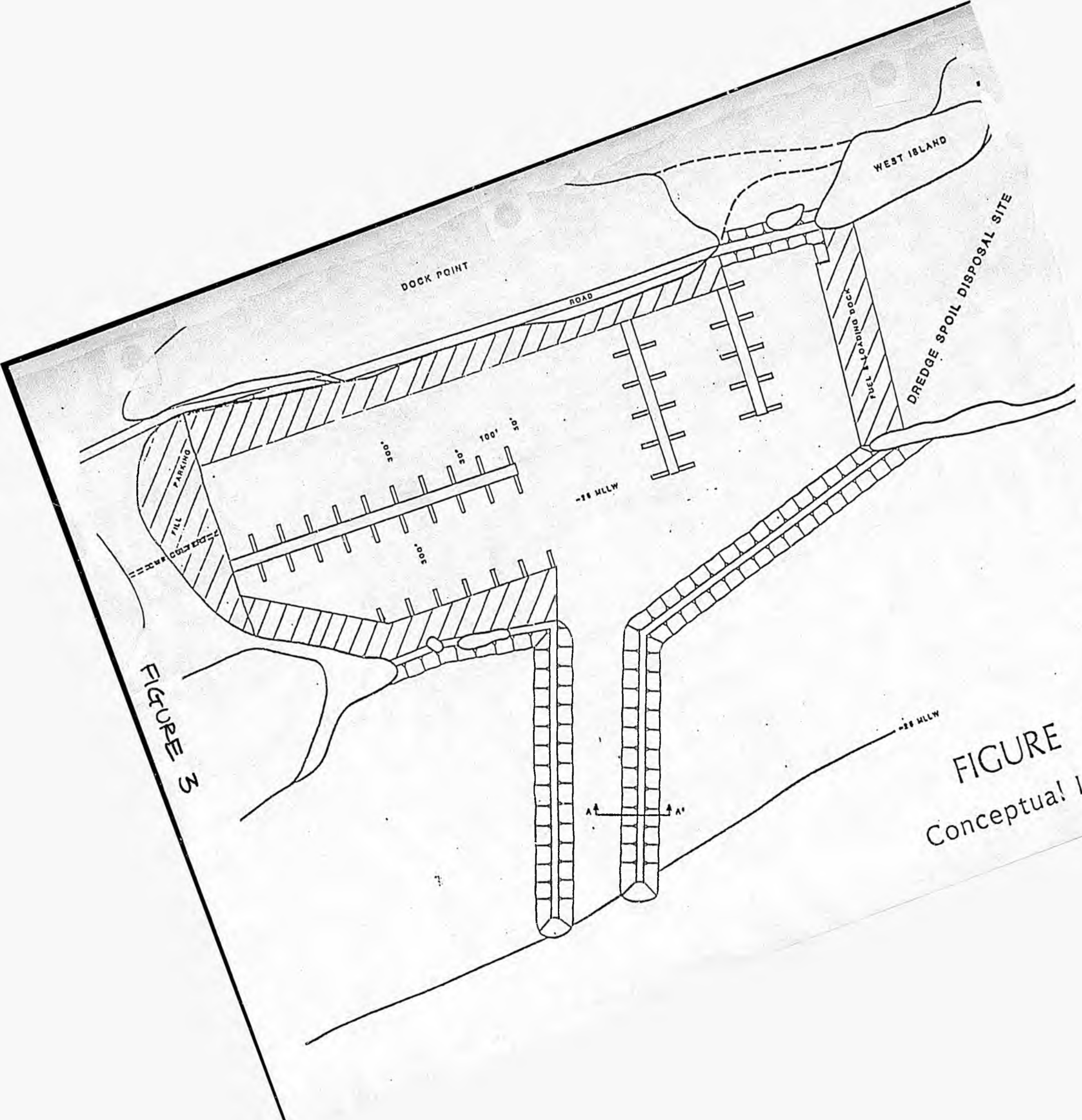


FIGURE 3

Conceptual Layout

Valdez Chamber of Commerce
P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

1983 LEGISLATIVE PROGRAM

TRANSPORTATION:

A. Highways;
with the advent of Alaska becoming a member of the interstate program, accelerate existing 5 year capital improvement plan to within 2 years, and accelerate the 5 to 10 year planning phase to within 5 years with emphasis on reconstruction of the following:

Richardson - Mile 129-265
(Gakona Jct. to Delta Jct.)

Tok - Mile 30-75
(Gakona Jct. to Tok)

Alaska - Mile 1314-1221

Copper River - Million Dollar Bridge to Richardson Highway

Glenn - Mile 50 to 135

B. Marine Highways;
support increase in scheduling to Prince William Sound terminals, and urge the acquisition of a larger vessel to serve Valdez-Cordova-Whittier, and urge the appropriation of the necessary money required for improvements to the state ferry terminal in Valdez.

C. All-Alaska Gas-Line;
urge the state support for construction of an all-Alaskan gas pipeline from the North Slope to tidewater, when deamed feasible

D. Seward Coal Terminal;
support the necessary actions to convert the Seward grain terminal to a coal mineral terminal

E. Valdez Air Terminal;
urge state acquisition and maintenance of the existing terminal building

VALDEZ CHAMBER OF COMMERCE

COMMERCIAL BOAT HARBOR:

urge the appropriation of $21 million for the construction of a commercial boat harbor in Valdez, and urge the funding associated with the Vladez Fisheries Development Association

ENERGY:

A. Silver Lake Hydroelectric;

urge the appropriation of necessary monies required to construct the Silver Lake hydroelectric plant and transmission inter-ties to Cordova and to the Solomon Gulch hydroelectric plant

B. Susitna Hydroelectric;

support the Phase I construction of the Susitna hydroelectric and inter-tie project

NATURAL RESOURCES:

support the acceleration of the develoment of Alaska's natural resources

AGRICULTURE:

support the increase of programing and appropriations for the Delta agriculture program, specifically marketing and planting

ADMINISTRATIVE:

A. State Boroughs;

support the freedom of choice by the local residents as to the formation of local government

B. Tax Reform;

favors application of an investment tax credit at 10% of qualified investment in Alaska each year, not limited to 18% of federal tax credits; favors revision of the state corporate income tax rate to 1% of the first $250,000 and a reduction of the maximum rate of 9.4%

C. Regulation Reform;

Ref. 1982 SB 84, relaxation of stipulations

D. Insurance Reform;

support manditory bodily injury and property damage liability insurance, and support M.A.D.D.

E. Land Disposal Program;

urge the requirement of access power and communication construction to and within the State Land Disposal Subdivisions, both now in existence and future disposals

JUDICIAL:

A. support the assignment of a District Attorney and a Superior Court judge, in that order, to the Valdez, Glennallen, Cordova area of the Third Judicial District

B. urge the appointment and necessary appropriations of and for a Judicial Probation Officier in the Valdez, Glennallen, Cordova area of the Third Judicial District

RECREATION:

A. support the Prince William Sound Development Legislation, and specifically the necessary funding for land acquisition and development of a harbor camper park in Valdez

B. support the trails and campsite development legislation

COMMUNICATION:

support the passage of Alaska Public Broadcasting Commission's FY'84 budget, which includes a Terminal Radio, Inc. (Valdez) funding request

EDUCATION:

A. Prince William Sound Community College;
support the continued programming and urge the necessary appropriations for the upgrading of the existing plant facility

Recreational Vehicle Park

The natural scenic beauty of Valdez, fine recreational boating facilities and excellent fishing attract many tourists world wide. These attractions currently cause an influx of approximately 1500 recreational vehicles from May 23rd through Labor Day. With the opening of the Wrangel - St. Elias National Park and the advertising of Valdez as the 'Gateway' to the park, the number of tourists is expected to show a dramatic increase. Presently, adequate facilities do not exist to handle current levels of the Valdez tourists industry.

The longest single attraction for these recreational vehicles is the Valdez Small Boat Harbor. A site located near the harbor presents the best location as a recreational vehicle park. This would also give users a location that is within walking distance of the City's commercial area. (see attached map).

This property is owned by the University of Alaska with whom the City has entered into a use agreement for the facility location.

Proposed Facilities:

A. 76 parking spaces, each space to be 30'x50'.

B. Two picnic shelters.

C. Six fire pits.

D. Picnic tables.

E. Two water faucets.

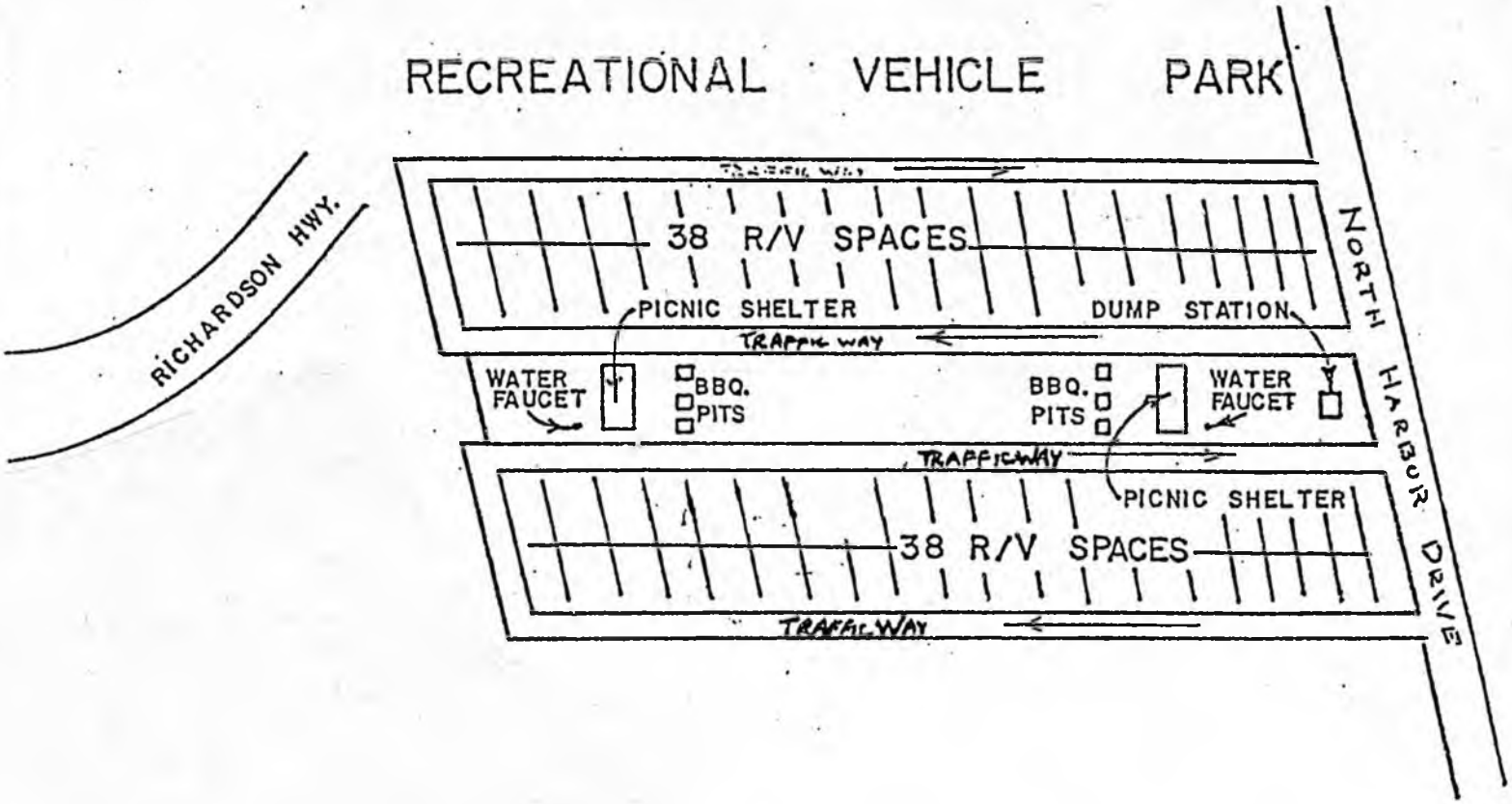
F. A dump station to service recreational vehicles.

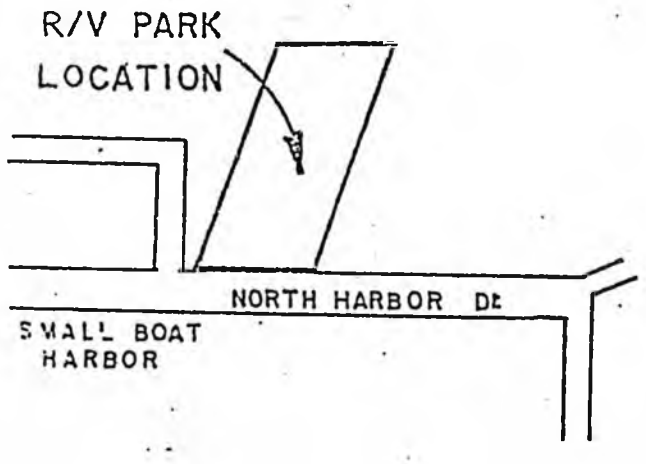
G. Two litter receptacles.

Proposed Budget:

A lump sum grant is proposed for the total project cost:
$ 250,000.00

RECREATIONAL VEHICLE PARK


RECREATIONAL VEHICLE PARK
RICHARDSON HWY.
38 R/V SPACES
PICNIC SHELTER
DUMP STATION
TRAFFIC WAY
WATER FAUCET
BBQ. PITS
BBQ. PITS
WATER FAUCET
TRAFFICWAY
PICNIC SHELTER
38 R/V SPACES
TRAFFIC WAY
NORTH HARBOR DRIVE


R/V PARK
LOCATION
NORTH HARBOR DR
SMALL BOAT
HARBOR

Capital Project Expenditures (Cash Flow)	Total	Budget Year	Budget Year Plus 1	Budget Year Plus 2	Budget Year Plus 3	Budget Year Plus 4	Remaining Cost
Planning and Engineering							
Land	37.1	37.1	---	---	---	---	---
Construction	159	159	---	---	---	---	---
Equipment	227.9	227.9	42.4	---	---	---	---
Administration and Other							
Total Annual Expenditure (Capital Cost)	424	381.6	42.4	---	---	---	---

Project Justification

DISCUSSION OF THE NEED FOR THE PROJECT

Valdez is currently served by only a repeater of a commercial station in Anchorage. Little or no access is available for the community to generate programs and information of its own. The Valdez area is certainly of sufficient size to justify a public radio station since it compares favorably with the size and characteristics of communities like Petersburg, Wrangel, Haines and Homer, who already are served by public radio stations.

The ability of a public radio station to provide in-depth coverage of governmental activity and encourage citizen participation in that activity is reason enough to establish a station in the Valdez population center. In addition, public safety requirements will certainly be served by having a station which can broadcast local weather and sea conditions in that highly sensitive area.

DOCUMENTATION OF ESTIMATED CAPITAL COST

Construction of a public radio station in Valdez falls at the low end of the capital cost scale due to the relatively mild climate in the Valdez area and the lack of tundra or permafrost conditions for the construction of a tower. The cost is based on APBC engineer estimates and list prices of required equipment.

ANALYSIS OF ESTIMATE OF OPERATIONAL EXPENSE

The operational expense estimates are based on current APBC portions of the operating budgets of existing public stations of a similar size to the Valdez operation.

Project Type

- ☒ Building Construction (C)
- ☒ Other Improvement (I)
- ☒ Equipment (E)
- ☒ Land (L)
- ☒ Professional Services (P)
- ☒ Other (O)

Project Characteristics

- ☒ Totally New Facility
- ☐ Addition to Existing Facility
- ☐ Renovation of Existing Facility
- ☐ Major Maintenance or Repair
- ☐ Supplement Previously Authorized
- ☐ Funds to Enable Completion
- ☐ One of Several Phases
- ☐ Major External Funding Source
- ☐ Other

Site Features

NO	YES	
☒	☐	Site Currently Owned?
☐	☒	All Utilities Available?
☐	☒	Access Already Available?

PROJECT TITLE TERMINAL RADIO, INC. - New Station

FY 84

PROJECT JUSTIFICATION

35b PROPOSED CAPITAL PROJECT

Capital Project Expenditures (Cash Flow)	Total	Budget Year	Budget Year Plus 1	Budget Year Plus 2	Budget Year Plus 3	Budget Year Plus 4	Remaining Cost
Planning and Engineering							
Land							
Construction	~~50.0~~	~~25.0~~	~~25.0~~	---	---	---	---
Equipment	~~200.0~~	~~200.0~~	---	---	---	---	---
Administration and Other							
Total Annual Expenditure (Capital Cost)	~~250.0~~	~~225.0~~	~~25.0~~	---	---	---	---

Project Justification

IDENTIFICATION OF ALTERNATIVES CONSIDERED

There is no public station near enough to Valdez to provide an acceptable signal for a translator operation. The size of the community and its need for self-sufficiency argue for a full service station capable of generating its own programming, rather than attempting to operate a repeater station, which would repeat the broadcasts of a public radio station from another part of the state.

COST DETAIL

Building	168,000
Control Rooms/Studios	112,000
Tower, Transmitter, STL	56,000
Earth Station	28,000
Land	39,200
TOTAL	403,200

Project Type

- ☐ Building Construction (C)
- ☒ Other Improvement (I)
- ☒ Equipment (E)
- ☐ Land (L)
- ☐ Profe 'onal Services (P)
- ☐ Other (O)

Project Characteristics

- ☒ Totally New Facility
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- ☐ Supplement Previously Authorized
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Site Features

NO	YES	
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☐	☐	Access Already Available?

PROJECT TITLE TERMINAL RADIO, INC. - New Station

FY 84

35b

PROJECT JUSTIFICATION
PROPOSED CAPITAL PROJECT

Project Title	Location (s)	Election Districts Served	Start Date	Completion Date
TERMINAL RADIO, INC. - New Station	Valdez, Alaska	6	July '83	June 84

STATION REQUEST		Operational Cost & No. Personnel Increase -- (Decrease)		First Operating Year 84	Ultimate Annual Year 85
Federal Grant	302.4	Funding Source	CPB Funds		
State			APBC Funds	163.9	295.3
APBC Funds	100.8		Local Funds	11.1	30
Local Funds			Other		
Other		Total Annual Operational Cost		175	325.3
		Position (FTE)		4.5	8
Total					

PROJECT DESCRIPTION

This Project will provide for a new public radio station to serve the Valdez area. This station has been in the planning stages at the APBC for the last two years. The station will be of the "full service" variety, and will provide 18 hours per day of news, information, cultural enrichment and entertainment programming.

FY84

35a PROJECT DESCRIPTION - PROPOSED CAPITAL PROJECT

01-11434-84

File C.I.P.

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

1983 LEGISLATIVE PRIORITIES

(Not Listed in Priority)

Draft

TRANSPORTATION:

A. Highways;
accelerate existing 5 year capitol improvement plan to within 2 years, and accelerate the 5 to 10 year planning phase to within 5 years with emphasis on reconstruction of the following:

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(Gakona Jct. to Delta Jct.)

Tok - Mile 30-75
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C. All-Alaska Gas-Line;
urge the state support for construction of an all-Alaskan gas pipeline from the North Slope to tidewater

D. Seward Coal Terminal;
support the necessary actions to convert the Seward grain terminal to a coal mineral terminal

E. Valdez Air Terminal;
urge state acquisition and maintenance of the existing terminal building

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support the Phase I construction of the Susitna hydroelectric and inter-tie project

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support the acceleration of the development of Alaska's natural resources

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favors application of an investment tax credit at 10% of qualified investment in Alaska each year, not limited to 18% of federal tax credits; favors revision of the state corporate income tax rate to 1% of the first $250,000 and a reduction of the maximum rate of 9.4%

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Ref. 1982 SB 84
relaxation of stipulations

D. Insurance Reform;
support manditory bodily injury and property damage liability insurance, and support the M.A.D.D. movement -

JUDICIAL:

A. support the assignment of a District Attorney and a Superior Court Judge, in that order, to the Valdez, Glennallen, Cordova area of the Third Judicial District

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A. support the Prince William Sound Development Legislation, and specifically the necessary funding for land acquisition and development of a harbor camper park in Valdez

B. support the trails and campsite development legislation

COMMUNICATION:
support the passage of Alaska Public Broadcasting Commission's FY'84 budget, which includes a Terminal Radio, Inc. (Valdez) funding request

North Harbor Dr. & Kennicott Street Construction

This project would upgrade to urban standards both North Harbor Drive and Kennicott Street, including sewer and water utility extensions. Development will be necessary this year due to the proposed hotel construction at the south end of Kennicott Street (see Attachment B). $ 1,300,000.00

Small Boat Harbor Extension/Float Design

Design of mooring floats for the small boat harbor expansion area. $ 50,000.00

Subdivision Design - Lands West of Mineral Creek

An extreme shortage of land for residential development encourages the subdivision of this area lying adjacent to the west edge of the City as soon as possible. Access to the area via the new Egan Street bridge over Mineral Creek will be completed in the summer of 1983. $ 150,000.00

Loop Road Water Distribution System

This project extends municiple water services to those residents in Zook Subdivision and along Mineral Creek Loop Road from a recently completed well and reservoir (see Attachment C). $ 550,000.00

Pacific and Lowe Streets

This project would upgrade to standard urban design an area now troubled with surface runoff and flooding problems (see Attachment D). $ 380,000.00

Valdez Baseline Survey Monumentation

This effort would correct errors in the survey baseline used for layout of 'New Town' Valdez and would provide monumentation at critical points. $ 50,000.00

Marshalling Yard Warehouse

This project provides the necessary enclosed space at the new City Container Terminal facilities to house Stevedore equipment and miscellenouse small amounts of freight requiring weather protection. $ 240,000.00

SB-15

Blueberry Hill Access Road Utility Extension

This work would provide water and sewer utility extensions from Egan Street south to the property line of the Blueberry Hill Subdivision (see Attachment E) $ 700,000.00

Library Development

This work would provide needed expansion for library services. The recent consortium with Prince William Sound Community College markedly increases the space needs. $ 400,000.00

Fire Stations: Plumbing and Roof Repairs

Both outlying City fire stations require interior plumbing development and repairs to the roof. $ 65,000.00

Valdez Clinic Relocation

The State of Alaska has asked the City to relocate the medical clinic so the State may use the space for other purposes. $ 100,000.00

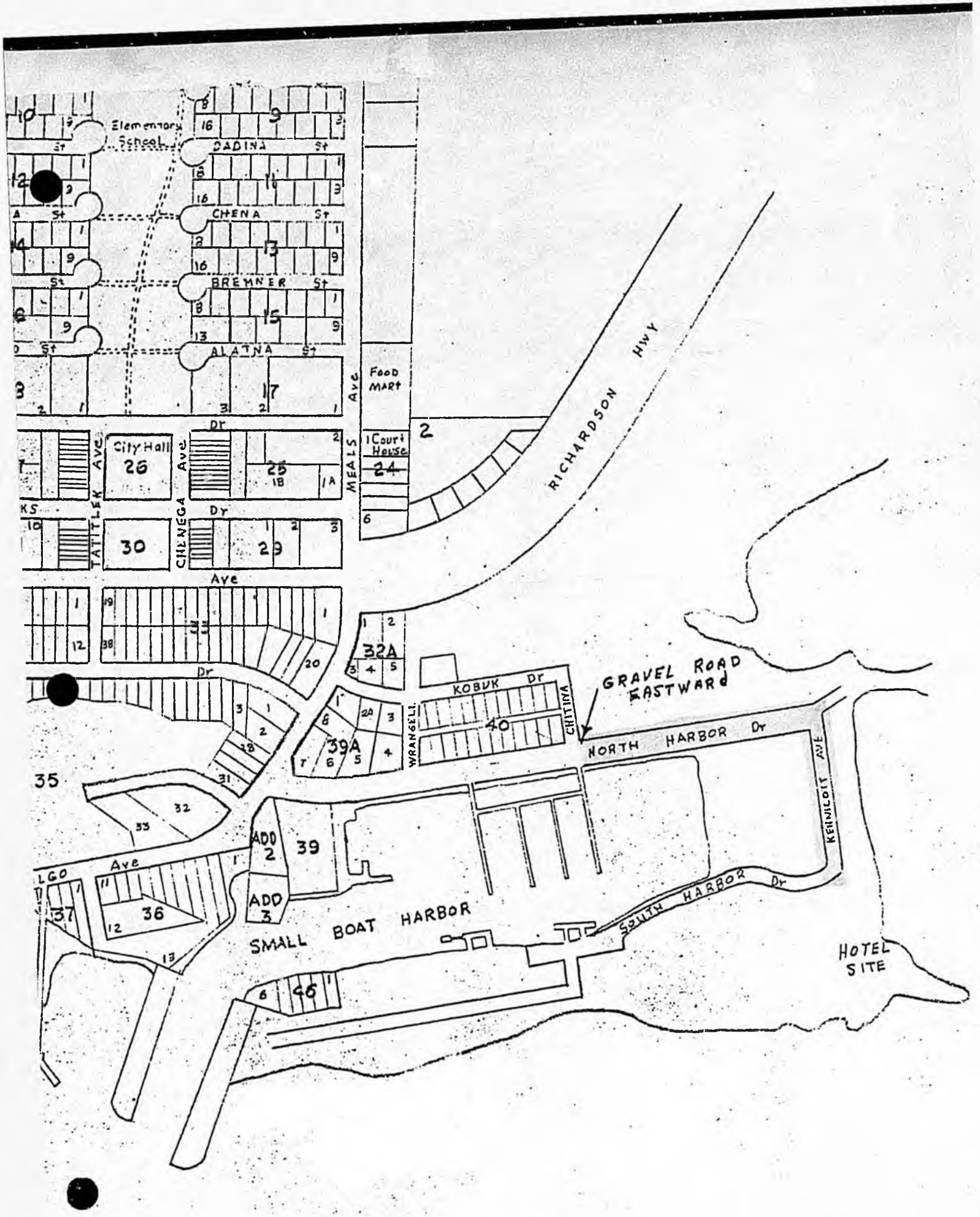
Hertiage Center Building

This building would house both the Archives Alive and the Museum facilities under one roof and would eliminate the present separate rental quarters and duplication of services. $ 1,500,000.00

Commercial Boat Harbor

This project would provide the first phase development of a harbor to serve commercial vessels in the range of 65 to 150 feet in length. This first phase would include; geotechnical and soils investigation, engineering design and dredging. Now that two fish processing plants are successfully operating in Valdez, development of the commercial harbor has become a priority need (see Attachment F) $ 4,500,000.00

12" WATER
PHASE II
LOOP RD
RESERVOIR BOOSTER STATION
LOOP RD TEST WELL
PHASE II
10" SO. CENTRAL WELLS ONLY
8" LOOP RD WELLS
LOOP RD
APPROXIMATE LIMIT
300'-36" FOR ELEVATED TANK
CITY CENTER - 2 MI
ATTACHMENT C



ATTACHMENT B

ATTACHMENT E

of the existing development.

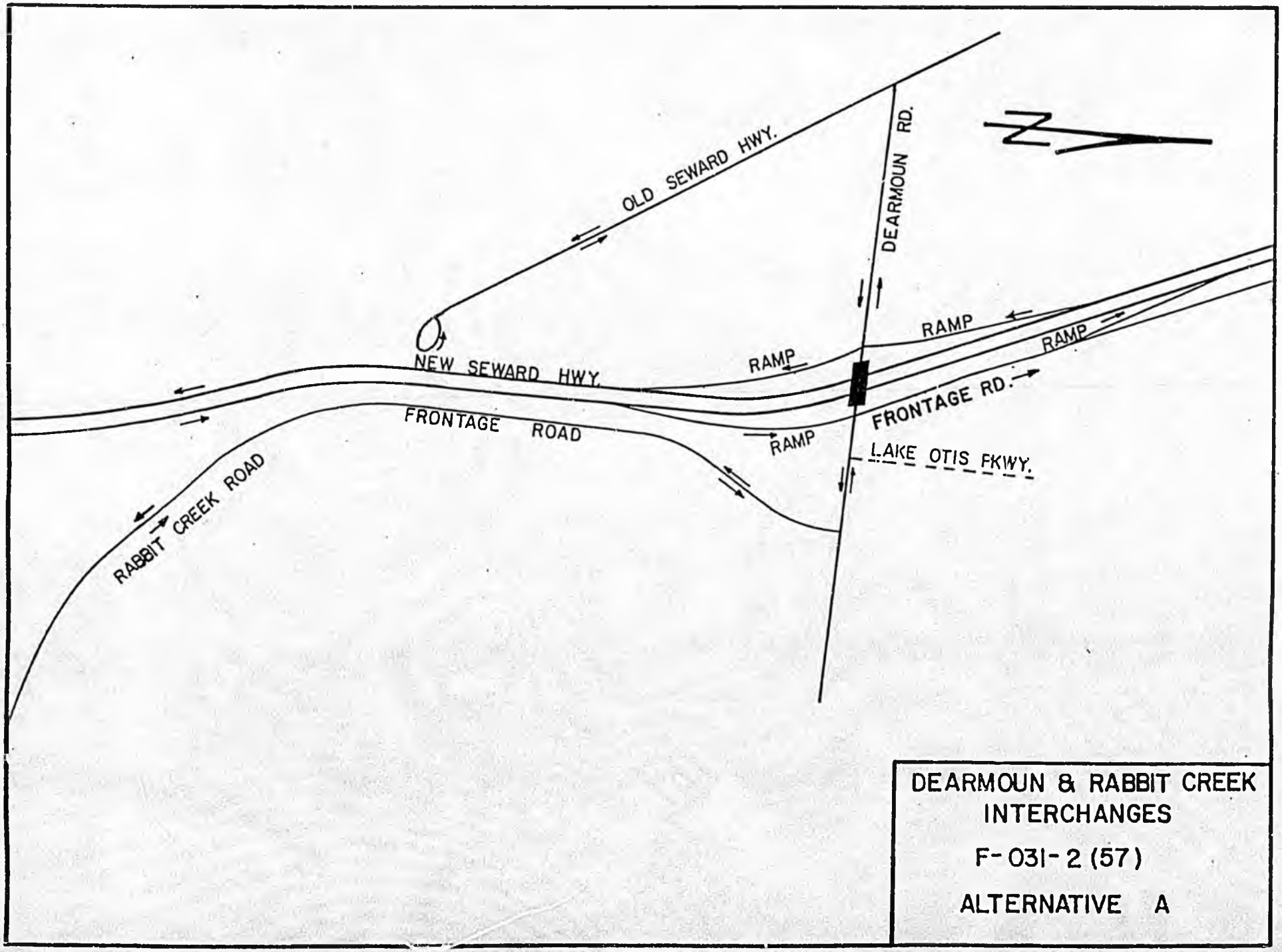
The five alternatives under consideration present a number of interchange configurations. Traffic projections for each of these configurations have been included in Appendix A.

All of the alternatives would construct an at-grade intersection serving the driveway of the Rabbit Creek Rifle Range and the road which provides access to the property east of the highway. A median opening and left-turn storage lanes would be provided at this location. There is a possiblity that an increase in traffic volumes will make it desirable to close this median opening at some time in the future.

ALTERNATIVE A

This proposal calls for the construction of a full diamond interchange at the DeArmoun Road intersection and the elimination of the Old Seward Highway intersection. The Old Seward Highway west of the New Seward Highway would be dead-ended and provided with a cul-de-sac. Rabbit Creek road will be connected with the two-way frontage road east of the New Seward Highway. This frontage road will be realigned so that its proposed intersection with DeArmoun Road will be farther east than its existing intersection. This was done in order to provide better spacing between this intersection and the ramp intersection. This alternative would make it necessary for area residents wishing to travel from the Old Seward Highway to Rabbit Creek Road to do so by way of DeArmoun Road.

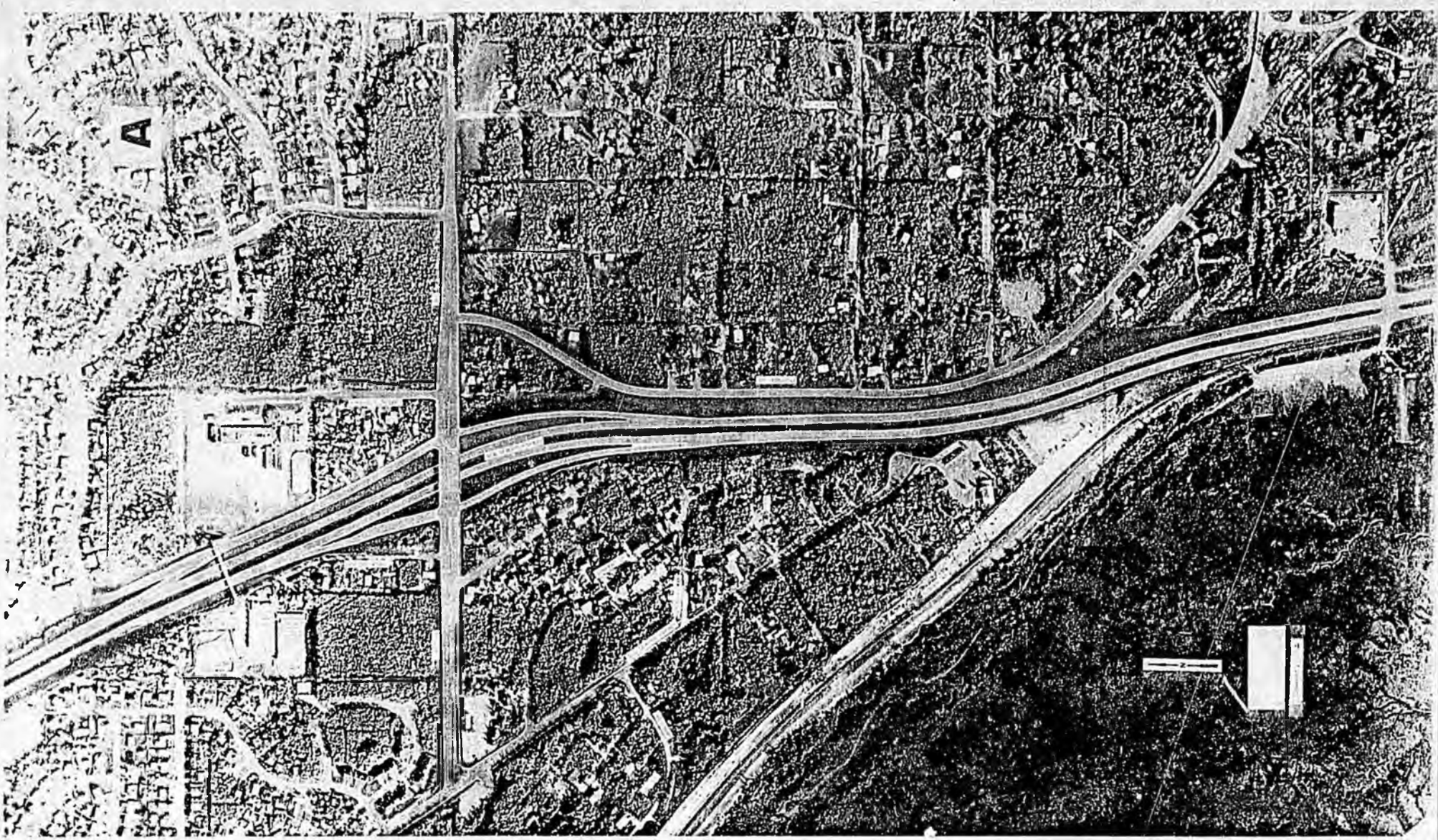
ALTERNATIVE 'A'



DEARMOUN & RABBIT CREEK INTERCHANGES

F-031-2(57)

ALTERNATIVE A



DEARMOUN/RABBIT CREEK INTERCHANGE PROJECT F-031-2(57

Photo Date: September, 1981

This aerial photograph depicts Alternative A as was presented at the combined Location/Design Public Hearing held on May 26, 1983.

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
CENTRAL REGION

JAY S. HAMMOND, GOVERNOR

4111 AVIATION AVENUE
POUCH 6900
ANCHORAGE, ALASKA 99502
(TELEX 25-185)

Alternative "C"

Date: 1-8-82
Prepared By: EQD

PRELIMINARY CONSTRUCTION COST ESTIMATE FOR:

Project: JcArmour & Rabbit Creek Interchanges
From: _____ (MP _____) TO: _____ (MP _____)
Total Length: _____
Location and Description: Upgrading New Seward Hwy into 4 lanes. & construction of 2 partial diamond interchanges at JcArmour Rd intersection and a full interchange at Rabbit Cr. Rd - Old Seward Hwy intersection.

Current ADT: _____ Design ADT: _____
Required Width: _____ Actual Width: _____
Assumed Structural Section H.A.P.: 4" in.
C.A.B.: 9" in.
Borrow: Varies in.

Estimated Costs (1981 Dollars) Based Upon Above Assumptions:

1.	Construction Estimate:	$ 11 380 264
2.	Construction Administration (12% of 1):	$ 1, 725 632
3.	Subtotal:	$ 16, 105 896
4.	Preliminary Engineering (6% of 1):	$ 862, 816
5.	Right of Way ($_____/Acre):	$ 5365 600
6.	Utilities:	$ 769 750
7.	Subtotal:	$ 23, 103 062
8.	Contingencies (5% of 7):	$ 1 155 153
	TOTAL:	$ 24 258 215

Sheet 1 of _____

25A-T16LH

W. H. Hancock
14400 Old Seward Hwy.
Anchorage, Alaska 99515

February 25, 1985

Senator Edna DeVries:
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

Ref. Senate Bill 175

I will appreciate it if you will take a hard look at S.B. 175 before letting it out of committee. Many of us who live in the area involved are very much concerned about the impact on our residential neighborhood, and at the cost of the project.

In local public hearing here, property owners favored an alternate which would cost some six million less, and which would do less violence to the area and would require less land. Reference made in data distributed at the meeting indicating that most of the alternate plans would find a saturation traffic condition at an early date, a point of view which I think needs re-examination when viewed in the context of all the other intersections on the New Seward Highway - Tudor, Dowling, Dimond, O'Malley, and Huffman. Most of these seem to already be at saturation traffic levels, a rather general condition in the Anchorage bowl and one which will not be improved until there is construction of more roadways such as a foothill boulevard and a tidewater freeway.

The widening of Old Seward Highway creates steeper driveways for residents on the south side of the road, and will probably sooner or later call for land to create a frontage road there, with need to take land. The whole project is designed to put more traffic through what is now prime residential property.

It has been said that the project will not cost as much as recent newspaper item indicated, as there will be Federal funds to take care of much of the cost. I am even more concerned about the Federal spending than I am about the Alaskan portion, for in the case of the Federal aide, it will be just one more addition to the annual 200 billion deficit. It would seem that weighted consideration should be given to the most economic alternate which has been proposed.

It is difficult to listen and read all that is said about

LETTERS SUPPORTING ALTERNATIVE 'A'

"quality of life", "pollution control (noise)" "protecting the neighborhoods", "public input" and "impact statements", and then see a project of this magnitude pushed, without regard to the preference of the local residents. One can't help but wonder if it all isn't just window dressing with no substance, when invited to attend the public hearings.

Respectfully,

W.E. Hancock

mark korting
broker/president; phone: 344-6442
RE/MAX properties, inc.
2702 gambell street, suite 201
anchorage, alaska 99503
phone: 276-2761

an independent member broker

March 12, 1985

Dear Senator,

I'm not one to use the legislative process for road issues but I feel you should be aware.

I live next to Fred ~~Schiet~~ Chiei on the Old Seward Highway in Anchorage, (District 7, House) and I agree with him.

I don't think anyone in our area agrees with the highway configuration selected by the State and it is the most expensive alternate selected.

Call if I can help.

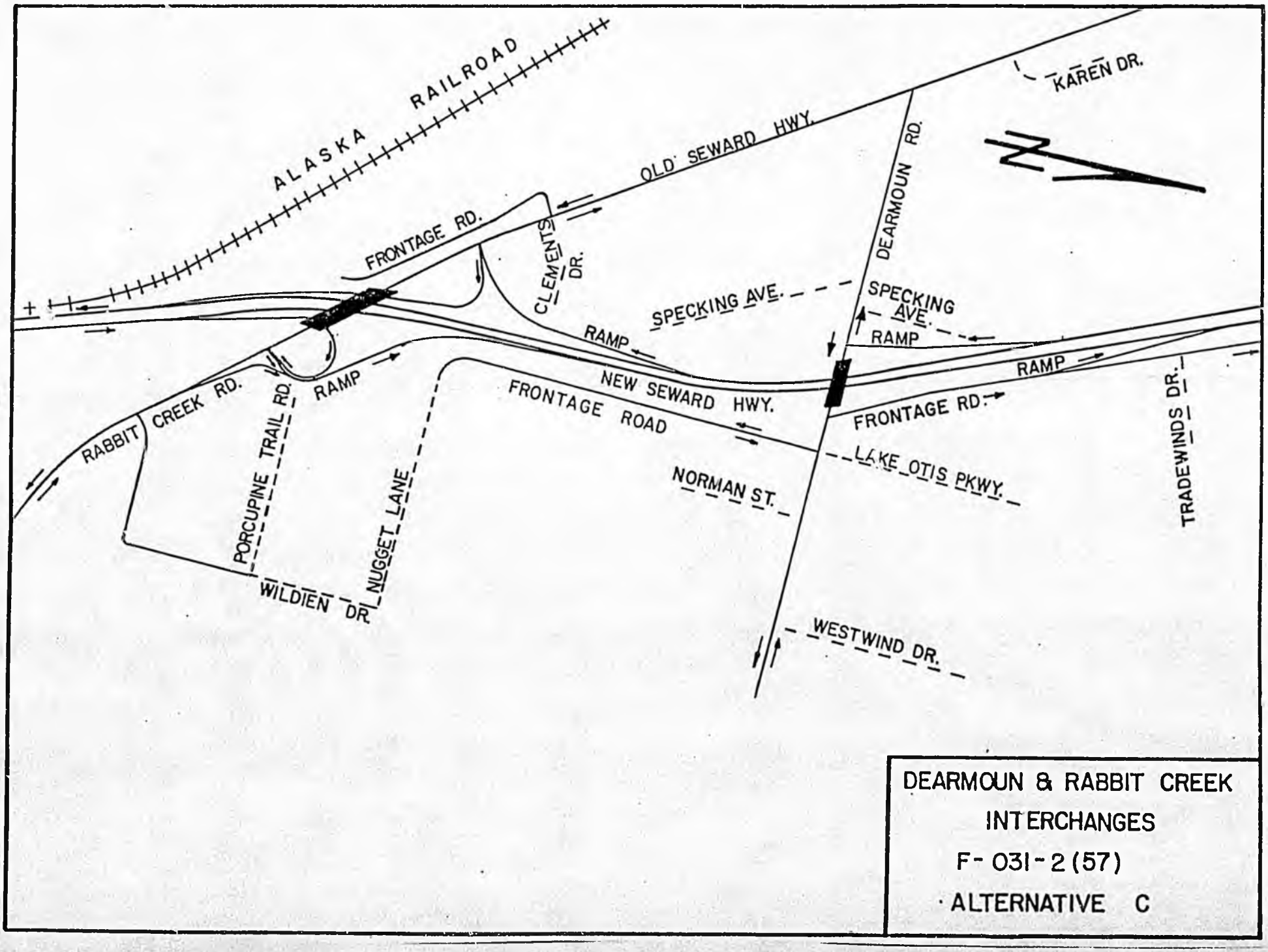
Mark Kortingy

ALTERNATIVE C

This proposal would provide a full movement interchange at the Old Seward Highway intersection that would utilize a combination of direct and loop ramps. A partial diamond interchange having ramps on the north would be constructed at the DeArmoun Road intersection. The DeArmoun Road interchange would serve the predominant traffic flow to and from the CBD but would eliminate direct access with the New Seward Highway on the south. Travellers from the south destined for DeArmoun Road and vice versa would use the Old Seward Highway interchange.

Due to the need to control access at the Old Seward Highway interchange, it would be necessary to construct several lengths of road to provide access to property in the area. In the southwest and northwest quadrants, additional right-of-way would need to be acquired in order to construct access roads. In the northeast quadrant several lengths of road would be constructed in dedicated easements and purchased right-of-way in order to provide access through the use of the existing subdivision road network. The existing east frontage road would be realigned so that its intersection with DeArmoun Road would be opposite Lake Otis Parkway.

ALTERNATIVE 'C'



DEARMOUN & RABBIT CREEK
INTERCHANGES
F-031-2(57)
ALTERNATIVE C

DEARMOUN/RABBIT CREEK INTERCHANGE PROJECT F-031-2(57)

Photo Date: September, 1981

This aerial photograph depicts Alternative C as was presented at the combined Location/Design Public Hearing held on May 26, 1983.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
CENTRAL REGION

4111 AVIATION AVENUE
POUCH 6900
ANCHORAGE, ALASKA 99502
(TELEX 25-185)

Alternative "A"

Date: 1-8-82
Prepared By: EQD

PRELIMINARY CONSTRUCTION COST ESTIMATE FOR:

Project: DeArmoun & Rabbit Creek Interchange
From: _____ (MP _____) TO: _____ (MP _____)
Total Length: 1.5 Miles ±
Location and Description: Construction of a full diamond interchange at DeArmoun Rd & New Sew. Hwy intersection and eliminating Rabbit Cr Rd. Old Sew. Hwy intersection with the construction of a two way Frontage Road to the east bet. DeArmoun & Rabbit Cr Rd. Upgrading New Seward Hwy into 4 lanes
Current ADT: _____ Design ADT: _____
Required Width: _____ Actual Width: _____
Assumed Structural Section H.A.P.: 4 in.
C.A.B.: 9 in.
Borrow: Varies in.

Estimated Costs (1981 Dollars) Based Upon Above Assumptions:

1.	Construction Estimate:	$ 7,907,274
2.	Construction Administration (12% of 1):	$ 948,875
3.	Subtotal:	$ 8,856,169
4.	Preliminary Engineering (6% of 1):	$ 474,438
5.	Right of Way ($_____/Acre):	$ 1,204,060
6.	Utilities:	$ 423,600
7.	Subtotal:	$ 10,963,267
8.	Contingencies (5% of 7):	$ 548,163
	TOTAL:	$ 11,511,430

Sheet 1 of _____

RECEIVED MAR 12 1985

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CENTRAL REGION — DIVISION OF DESIGN AND CONSTRUCTION
DIRECTOR'S OFFICE

4111 AVIATION AVENUE
P.O. BOX 6900
ANCHORAGE, ALASKA 99502
(TELEX 25-185) (907) 266-1500

March 6, 1985

Re: DeArmoun/Rabbit Creek
Interchange

The Honorable Jan Faiks
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

Attached for your review are copies of the preliminary design proposals and estimated costs for the five alternatives which were proposed in the 1982 DeArmoun/Rabbit Creek Interchange Design Study Report.

Alternative "C" was selected in 1983 after public hearings and completion of an Environmental Impact Statement. The Federal Highway Administration (FHWA) approved Alternative "C" and the Department is proceeding with the design. Some right of way has been acquired. Additional funding for utilities and right of way purchase is being requested in the Governor's FY 86 Capital Budget.

The current contruction estimate is $25.6 million as opposed to the 1982 estimate of $14.38 million. Total project costs are estimated at $44.4 million. The breakdown follows:

	1982	1985	Difference
Construction	14.38	25.6	11.2
Constr. Admin.	1.7	3.8	2.1
Quantity Imprecision	1.15	3.0	2.0
PE/Design	.86	1.3	.5
Right of Way	5.3	6.5	1.1
Utilities	.77	4.2	3.5
TOTAL	24.11	44.4	20.4

Additional legislative authority to receive Federal construction funds will be requested in the FY 87 Capital Budget.

DOT/PF FIGURES ON ALT. "C"

Please call me if you have other questions regarding this project.

Sincerely,

John B. Olson

John B. Olson, P.E.
Director, Design & Construction
Central Region

MEH/bgc

cc: Susan Fleischhauer, Legislative Liaison, Commissioner's Office
Ray Gillespie, Director of Legislative Relations, Governor's Office
William R. Snell, Acting Deputy Commissioner, Central Region

RIGHT-OF-WAY

The existing right-of-way width of the New Seward Highway varies. Basically, the average corridor width is 350-feet to the south of DeArmoun Road, narrowing to 300 feet to the north. A "joint-use" line separates the highway from the Alaska Railroad at the beginning of the project.

The right-of-way for the different alternatives varies depending on the interchange ramp configurations, the provision of frontage or access roads and the required width for the crossroads. The right-of-way needs for Alternatives A and B are relatively minor, consisting of narrow strips required for the widening of DeArmoun Road and for the construction of frontage roads. Alternatives C, D and E involve more extensive acquisition, particularly in the northeast quadrant of the Old Seward Highway intersection. Retaining walls were proposed to contain slopes in some areas in order to limit right-of-way acquisitions and to reduce costs.

The total estimated costs of right-of-way acquisition and the areas required for the different alternatives is summarized as follows:

	COST (1981 Dollars)	AREA (Acres)
Alternative A:	$1,204,000	5.0±
Alternative B:	1,005,000	4.2±
Alternative C:	5,365,000	9.0±
Alternative D:	3,643,000	6.0±
Alternative E:	5,000,000	8.3±

See Appendix F for copies of preliminary cost estimates.

Acquistion of right-of-way for Alternatives C, D and E will necessitate the relocation of families and businesses. Alternative C would relocate 9 families, with Alternatives D and E relocating 6 families each. Each of these three alternatives would relocate 2 businesses. A copy of the Conceptual Stage Relocation Study has been included in Appendix G.

Alternative E was developed as a result of comments made during a public meeting held on January 19, 1982. This alternative borrows heavily from features found in Alternative C.

Due to these similarities, a separate right-of-way estimate and conceptual stage relocation study were not prepared. The costs and impacts of right-of-way acquisition required by these alternatives should be identical. For this reason, there is no mention made of Alternative E in the appendices that were mentioned above.

Depending upon whether or not noise abatement barriers are constructed, there may be a need for additional right-of-way acquisition in the northeast quadrant of the DeArmoun interchange. The different alternative designs for noise barriers, which show the additional right-of-way required, have been included in Appendix Q.

UTILITIES

Most of the utility conflicts on this proposed project are found in the area of the DeArmoun Road and Old Seward Highway intersections. This will involve relocating power poles, telephone cables and gas lines.

A copy of the cost estimate for each of the design alternatives is found in Appendix H. The total estimated costs are summarized below:

	COST (1983 Dollars)
Alternative A:	429,000
Alternative B:	493,000
Alternative C:	769,000
Alternative D:	696,000
Alternative E:	769,000

The MOA has contracted a consultant to assist them in their design of a waste water force main and pump house within the project area. The construction of this facility may precede the construction of these interchanges. At the public hearing of this project, a letter was submitted for inclusion in the written record by Louis J. Bonito, of the Anchorage Water and Wastewater Utility (AWWU). In this letter, Mr. Bonito outlined the AWWU's plans of the time and requested co-operation during the final design of both projects. The plans for the AWWU's waste water pipeline have been changed from what was described in this letter. The most current plan, as of October, 1983, would locate the pump

SB

180

Introduced: 2/21/85
Referred: Transportation and Finance

Funding Information
General Fund $4,500,000
Other Funds -0-
$4,500,000

IN THE SENATE BY DEVRIES

SENATE BILL NO. 180

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation for payment as a grant to the City of Valdez for phase II construction of the commercial boat harbor and for improvements to the small boat harbor; and providing for an effective date."

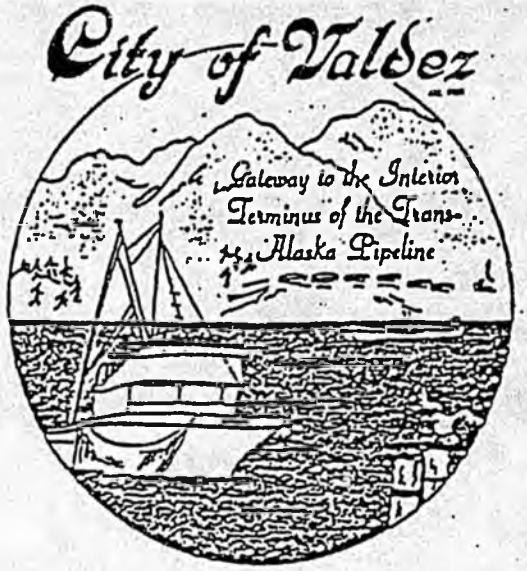
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The sum of $4,500,000 is appropriated from the general fund for payment as a grant to the City of Valdez for phase II construction of the commercial boat harbor and for improvements to the small boat harbor.

* Sec. 2. The appropriation made by this Act shall be disbursed in accordance with AS 37.05.315.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

FUNDING REQUEST FOR VALDEZ COMMERCIAL BOAT HARBOR IMPROVEMENTS



Commercial fishing and fish processing are developing into significant renewable industries in the City of Valdez. Advances in aquaculture, fisheries management, bottom fishing and fish processing offer even greater potential for the future.

According to a recent study commissioned by the City, commercial fishing can and should develop at a steady rate consistent with the resource and the ability of fishermen, processors and the market to efficiently utilize resources.

Economics of fish processing, marketing and fisheries related business are sensitive to initial capitalization such as good harbors, adequate uplands, handling facilities and docks. Jointly used facilities which lower annual costs of capitalization are an attraction to business and with availability there is more chance of business growth and success.

The City of Valdez has established general annual capital improvement priorities specifically directed toward improving commercial fishing and other harbor use activities. The City is also reviewing long range harbor expansion goals, which will be consistent and mesh with development as it happens.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

FOR CAPITAL PROJECTS AND GRANTS

FY 86

CITY PRIORITY	PROPOSED PROJECT	DISTRICT 6 APPROPRIATION	PROJECTS SUPPORTED BY THE CITY OF VALDEZ AND AGENCY REQUESTING FUNDS
1	Commercial Boat Harbor - Phase II/Small Boat Harbor Improvements	4,500,000	- -
2	Prince William Sound Community College Classroom/ Office Building	2,000,000*	9,834,000 University of Alaska
3	Valdez Heritage Center Expansion	2,500,000	- -
4	Ice Skating Arena	2,500,000	- -
5	National Guard Armory	- -	1,300.000 Department of Military Affairs
6	New Jail Addition	- -	675,000 Department of Corrections
7	Richardson Highway Improvements	- -	23,100,000 Department of Transportation
8	Subdivision of the Valdez Industrial Park	288,000	- -
9	Small Boat Harbor Grid	- -	750,000 Department of Transportation
10	Handicap Curbs	-40,000	- -
11	Dayville Road Boat Ramp	150,000	
	Total project funding requested by the City of Valdez	$ 9,978,000	
	Total project funding supported by the City of Valdez		$ 35,659,000

* Note: First priority is that funding come from University funding. However, if not appropriated from University, then City requests $2,000,000 as a direct appropriation to funding Phase I of Prince William Sound Community College.

REQUEST FOR FUNDING FOR CAPITAL PROJECTS/GRANTS

FISCAL YEAR 1986

Location Valdez Election District 6

Project Title Commercial Boat Harbor Improvements

Community Priority Number 1 of 11

Agency Responsible

State or Local (Responsibility Local

COST ESTIMATES		REQUESTED FUNDING	
Site Aquisition	$ -0-	General Fund	$4,500.000
Planning and Design	$ 750,000	Federal (source)	$
Construction and Equip	$ 3,750,000	Other (souce; local, etc...)	$
Other	$	Total	$4,500.000

Previous Appropriations and Years $3,000,000 FY 85/riprap, slope revision, dock

Maintenance/Operating Cost (First Year) $50,000

(Annual) $50,000

PROJECT DESCRIPTION AND JUSTIFICATION Estimated Starting Date June 1985

Completion Jan. 1986 (Explain physical product and operational activities, if this project is one phase or multi-phase. Briefly describe the entire project, attach any backup materials, maps, surveys, etc.)

Commercial fishing and fish processing are developing into significant renewable industries in the City of Valdez. According to a recent study commissioned by the City, commercial fishing can and should develop at a steady rate consistent with the resource and the ability of fishermen, processors and the market to efficiently utilize resources.

Economics of fish processing, marketing and fisheries related business are sensitive to initial capitalization such as good harbors, adequate uplands, handling facilities and docks. Jointly used facilities which lower annual costs of capitalization are an attraction to business and with availability there is more chance of business growth and success.

In order to meet the immediate demands of the growing commercial fishing industry in the City of Valdez, we have had to utilize a portion of our small boat harbor which is referred to as Valdez Commercial Boat Harbor, Phase I and approved by the state in 1984.

As a part of the Commercial Boat Harbor, Phase I, it is necessary to provide small vessel slips as identified on the attached drawing and labelled Number 6.

The program for 1985 - 1986 is limited to the priority items discussed on the following pages.

1985 - 1986 PROJECT BUDGET

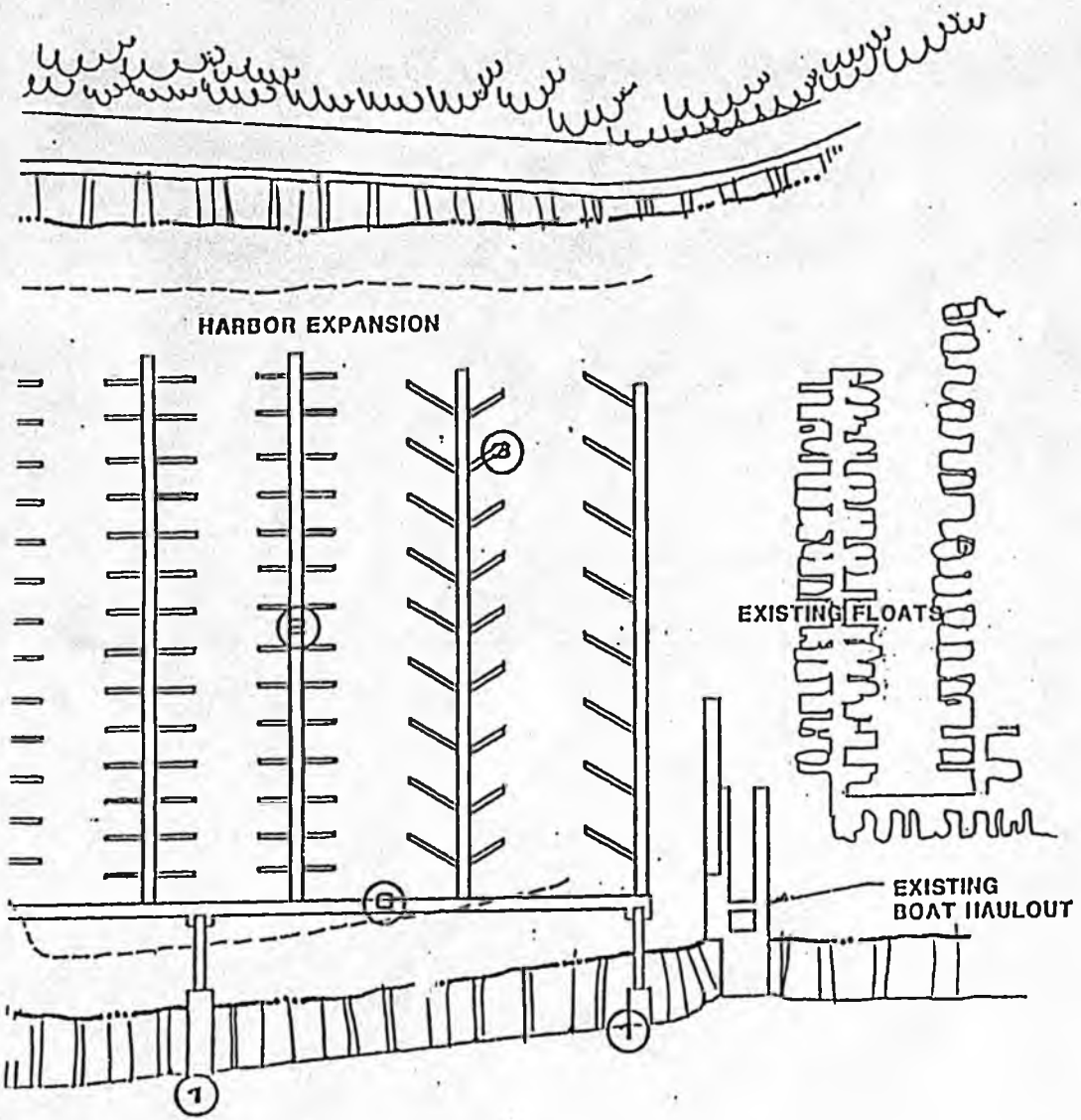
Harbor Dredging and Land Fill	$ 1,500,000
Float Modifications	300,000
Drain System	200,000
Bilge and Waste Oil Disposal Systems	100,000
Slip Improvements	2,400,000
Total Project Budget	$ 4,500,000

PROJECT SCHEDULE

February 1985	September 1985	September 1986
Design	Contract Award	Construction Completion

CONTACT:

Jim Watson
City Manager
P. O. Box 307
Valdez, Alaska 99686
(907) 835-4313



PRIMARY COMPONENTS OF T
PROPOSED DEVELOPMENT INC

1. Two approach structures a access gangways
2. Five main harbor floats with access float
3. Finger floats varying in leng to 50 feet
4. Boat ramp access float
5. Boat ramp and various im including wash down and boat apron
6. Float utilities

Small Boat Harbor Expansion

This project is the development of the final phase of the existing Valdez Small Boat Harbor. At the time of the original Corps of Engineers Valdez boat harbor construction, the general area to the east of the original boat harbor was left undeveloped for future harbor expansion. The area of the proposed expansion site is presently at elevation to a depth of -13 feet (MLLW) which will be consistent with the bottom of the existing small boat harbor area. The excavation consists of the removal of approximately 298,000 cubic yards of soil in the harbor area.

Material removed from the harbor expansion area would be located on the Port of Valdez side of the existing spit that now separates the boat harbor from the port. This area was used as a site for disposing of the dredge material from the original boat harbor.

The widening of the spit area, at a City owned location, would facilitate the creation of a waterfront area for uses compatible with the City's Coastal Zone Management plan. These intended uses include the storage and dry docking of recreational and commercial boats; the storage of commercial fishing gear; and a parking and staging area. The limited amount of land available near the small boat harbor doesn't assure a place for parking boat trailers or pulling boats out of the water for minor repairs. This site is also designated as a potential long range planning site for expanded fin fish and shellfish processing facilities.

The intended use for the expanded boat harbor area would be to provide additional moorage capacity for private and small commercial boats. The facility would be owned and operated by the City of Valdez as it is the final phase of the small boat harbor project. A conceptual drawing of the expanded small boat harbor is shown in 'Figure 1'

The Valdez Small Boat Harbor expansion project is a positive development activity for the continued planned growth of the City of Valdez. The additional facilities support the commercial and recreational fishing populace and are expected to be beneficial to the local economy.

SMALL BOAT HARBOR

The existing small boat harbor currently has the following number of berths available:

Length (ft)	Number
50	33
42	34
32	84
24	108
20	98

On these berths, the occupancy rate on a year round basis is relatively high particularily in the larger boat lengths:

Length (ft)	Occupancy Percentage
50	100
42	90
32	65
24	40
20	30

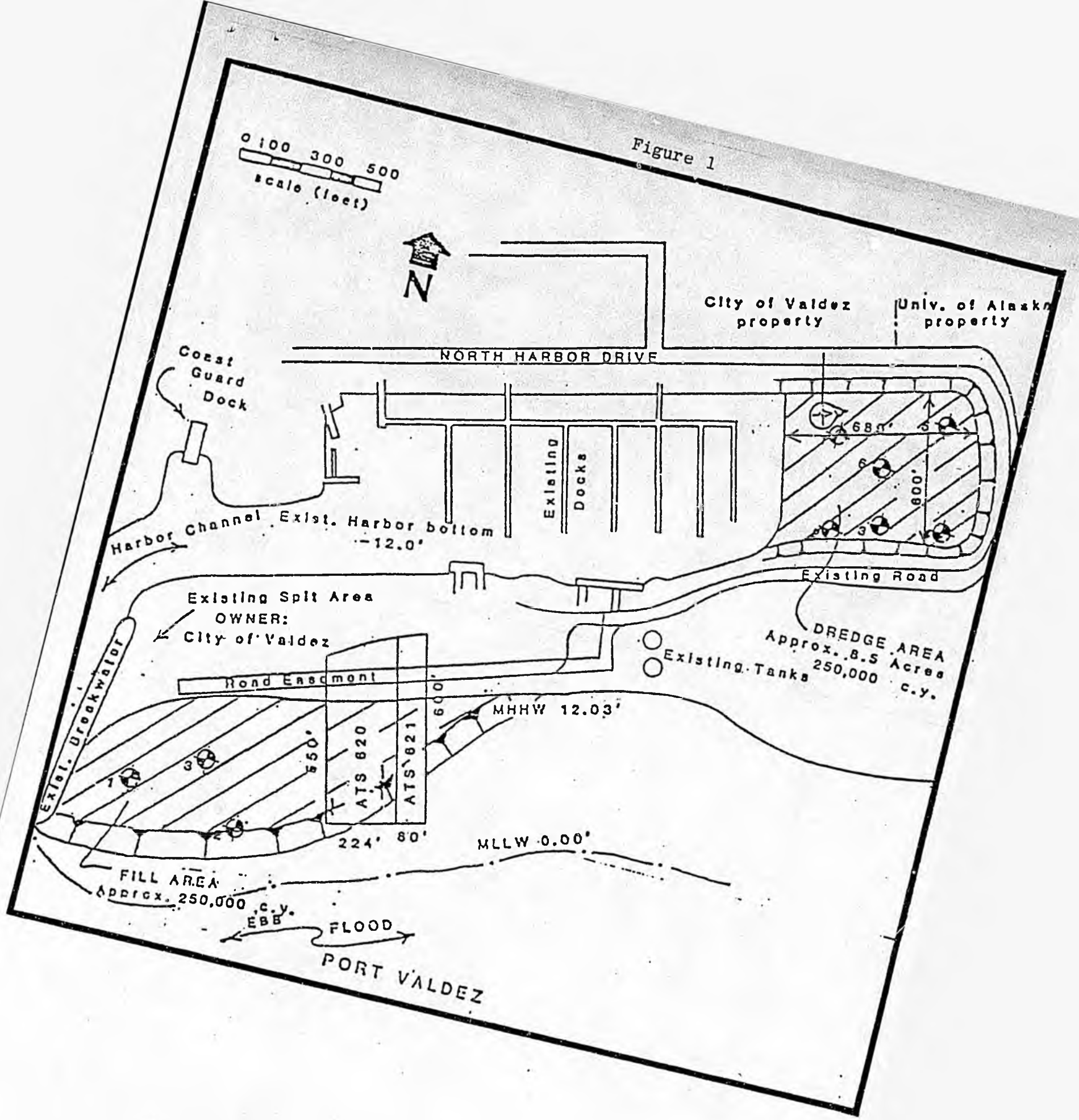
In addition, there is over 350 feet of transient dock, however, no individual transient berths exist. Six berths are being utilized for either permanent or scenic-permanent residence. At least seven vessels, making Valdez their home port, are 50 feet or more in length:

Name	Length	Type
Capt. Sonny	80'	Fishing
El Centrol	76'	Fishing
Bering	65'	Pilot
Margaret M.	60'	Tug
Vince Pee Dee	56'	Charter
Libra	55'	Fishing
Lady Fair	50'	Pleasure

During peak fishing periods, it is estimated that over 100 additional boats utilize the harbor. Valdez currently has two growing fish processors and a third processor expressing interest in locating in Valdez. This could lead to a substantial increase in necessary berths.

The secondary benefit to the City of Valdez with the expanded harbor will be increased use of local lodging, food services, marine repairs and fuel sales.

Figure 1


0 100 300 500
scale (feet)
N
City of Valdez property
Univ. of Alaska property
NORTH HARBOR DRIVE
Coast Guard Dock
Existing Docks
Harbor Channel
Exist. Harbor bottom -12.0'
Existing Road
Existing Spit Area
OWNER:
City of Valdez
Breakwater
Road Easement
DREDGE AREA
Approx. 8.5 Acres
250,000 c.y.
Existing Tanks
MHHW 12.03'
ATS 820
ATS 821
600'
550'
224'
80'
MLLW 0.00'
FILL AREA
Approx. 250,000 c.y.
EBB
FLOOD
PORT VALDEZ

Valdez Chamber of Commerce

P.O. Box 512 • Valdez, Alaska 99686 • Phone 835-2330

October 26, 1984

Honorable Bill Sheffield
Governor - State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Sheffield;

This letter is to express the Valdez Chamber of Commerce's support for the City of Valdez REQUEST FOR FUNDING of the following CAPITAL PROJECTS:

1. Commercial Boat Harbor
2. Prince William Sound Community College
3. Museum Addition
4. Ice Skating Rink
5. National Guard Armory
6. New Jail Addition
7. Upgrading Richardson Highway
8. Small Boat Harbor Slips
9. Valdez Industrial Park
10. Small Boat Harbor Grid
11. Handicap Curbs
12. Dayville Road Boat Ramp

Thank you for your positive considerations to these projects.

Respectfully,

William J. Simpson
President

CHAMBER OF COMMERCE PRIORITIES

SB

193

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Committee members

From: Committee staff

Date: March 13, 1985

Re: SB 193 Backup materials

On Friday, March 15, the committee is scheduled to consider SB 193, the Governor's bill making changes in the State's eminent domain procedures. These changes are needed, according to the Governor, to codify recent court rulings on eminent domain takings.

The back-up material explains the intent behind the bill fairly well, and the Governor's transmittal letter, in particular, is detailed in its discussion of the court cases behind the bill. The referenced statutes, rules of court, and subsection of the State constitution should provide sufficient background to the issue. In addition, we are expecting to hear from the Court system, and hope to have that response by our meeting time.

The power of eminent domain is a particularly controversial, and sometimes abused power of government, and the changes proposed in SB 193 may, on the one hand, expedite the public's business, but may not, on the other hand, all be good for property-owners.

The members may want to consider, for example: Is it appropriate to place the onus on the property-owner to prove "by clear and convincing evidence" that the taking is "arbitrary, capricious, or an abuse of discretion" in order to keep his property? (Sec. 7). Is it appropriate to change the law so that, in the Governor's words, "our eminent domain code accurately reflects the law" (letter, p.5), or should the code be induced to change?

STAFF ANALYSIS

Introduced: 2/26/85
Referred: Transportation, Judiciary and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 193

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the power of eminent domain; and providing for an effective date."

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

* Section 1. AS 09.55.270 is amended by adding a new subsection to read:

(b) If the property is to be taken by a declaration of taking filed under AS 09.55.440, the state or the municipality shall prepare a decisional document that (1) states that the property is taken in a manner compatible with the greatest public good and least private injury, (2) summarizes the major facts supporting that decision, and (3) identifies any reports, studies, or statements relied upon for the decision.

* Sec. 2. AS 09.55.300(a) is amended to read:

(a) The court has power

(1) to regulate and determine the place and manner of making the connections and crossings or of enjoying the common uses mentioned in AS 09.55.260(5), and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by law;

(2) to limit the amount of property sought to be condemned if, in its opinion, the quantity sought to be condemned is not necessary;

(3) to determine whether the property is taken by necessity for a public use or purpose in a manner compatible with the greatest public good and least private injury, based upon the decisional

PROPOSED CHANGES

document required by AS 09.55.270 and the evidence allowed by AS 09.-55.460(d), if the taking is accomplished by a declaration of taking filed by the state or a municipality under the provisions of AS 09.-55.440.

* Sec. 3. AS 09.55.410 is amended to read:

Sec. 09.55.410. WITHDRAWAL OF FUNDS BY PARTY IN INTEREST. The money deposited in the court, or a part of it, may be withdrawn by a party in interest in the manner provided in AS 09.55.440. The[, AND THE] court may [SHALL HAVE THE POWER TO] direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation and to make orders with respect to encumbrances, liens, rents, insurance, and other charges as are just and equitable. ~~[The withdrawal of any part of the deposit by a party in interest is a waiver of all issues concerning the taking of the property, except the amount of just compensation.]~~

(1)

* Sec. 4. AS 09.55.430 is amended to read:

Sec. 09.55.430. CONTENTS OF DECLARATION OF TAKING. The declaration of taking must [SHALL] contain

(1) a statement of the authority under which the property or an interest in it is taken;

(2) a statement of the public use for which the property or an interest in it is taken;

(3) a description of the property sufficient for the identification of it;

(4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it;

(7) a statement that the property is taken by necessity for a project located in a manner which is most compatible with the greatest public good and the least private injury;

(8) a decisional document as described in AS 09.55.270(b).

* Sec. 5. AS 09.55.440(a) is amended to read:

(a) Upon the filing of the declaration of taking, and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken (2) for ~~[from]~~ the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation must [SHALL] be ascertained and awarded in the proceeding and established by judgment. The judgment must [SHALL] include interest at the lawful interest rate set out in AS 45.45.010(a) [THE RATE OF SIX PER CENT PER YEAR] on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

* Sec. 6. AS 09.55.450(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry may [SHALL] not be granted the plaintiff until after the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is filed [MADE] in the time allowed by Rule 72, Rules of Civil Procedure [LAW]. If an objection to the declaration of taking is filed in the time allowed, a hearing (3) for the review of the taking must be held ~~[within 10 days after the~~

as soon as the court calendar allows

~~filing, or as soon after that as possible,~~ to establish the validity of any objections. If no objection to the declaration of taking is filed in the time allowed, the defendant has waived all defenses and objections, and the plaintiff has a right of entry onto the property without further action by the court. If [WHERE] the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during the [SUCH] possession.

* Sec. 7. AS 09.55.460 is amended by adding new subsections to read:

~~[(c) The taking of property is necessary for a public use or purpose in a manner compatible with the greatest public good or least private injury unless the defendant establishes by clear and convincing evidence that the plaintiff's decision to condemn is arbitrary, capricious, or an abuse of discretion.]~~

(4)

(c) The court, when making its finding under this section, shall consider the decisional document prepared by the plaintiff; supporting reports, studies, or statements; affidavits submitted by the parties, their officers, or employees; and depositions taken by the parties. The court, in the exercise of its discretion, may allow the parties to submit additional necessary evidence.

(5)

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

amend sb 193 xx2

PROPOSED AMENDMENT NUMBER 1

TO

SB 193

On page 2, line 13, delete all material on lines 13, 14, and 15.

Currently, once the condemning authority has filed its declaration of taking, and escrowed the estimated amount of compensation, the right to the property being taken vests with the government, and the property owner no longer has a right to it. But the property owner can have access to the value of the property, by withdrawing from the escrowed funds. The proposed change would have the withdrawal of funds act as a waiver to all of the dispute except the amount of compensation. The question to answer is whether this is fair to the property owner who contests the taking, and would not have either the full use of the property or the value of the property to enjoy while the appeal is in process.

AMENDMENTS & RATIONALE

amend sb 193 xx1

PROPOSED AMENDMENT NUMBER 2

TO

SB 193

On pg 3, line 10, delete the word "from", and insert in its place:

the word "for"

This proposed change would clarify a poorly written statute dating from 1962.

amend sb 193 xx3

PROPOSED AMENDMENT NUMBER 3

TO

SB 193

On page 3, line 29, following the phrase "must be held",

delete the remainder of line 29, and

On page 4, line 1, delete everything up to but not including the phrase,

"to establish" and insert in its place:

as soon as the court calendar allows

This amendment would have the effect of diminishing the urgency of calendaring eminent domain appeals for court action. With court schedules as crowded as they now are, eminent domain proceedings, important though they may be, should not necessarily be afforded a statutory 30-day limit.

amend sb 193 xx4

PROPOSED AMENDMENT NUMBER 4

TO

SB 193

On page 4, line 10, delete subsection (c) and renumber remaining subsection accordingly

The effect of this amendment would be to take the burden off the owner of the property being taken, and place it back with the condemning authority to show that the taking was compatible with the greatest public good or least private injury. As the subsection is now written, the property owner (defendant) must show by clear and convincing evidence that the condemning authority's decision was arbitrary, capricious or an abuse of discretion. This is a policy question well within the purview of the Legislature, to determine upon whose shoulders the burden of proof will fall.

amend sb 193 xx5

PROPOSED AMENDMENT NUMBER 5

TO

SB 193

On page 4, line 17, between the words "statements;" and "affidavits",

insert the word "sworn"

The effect of this amendment would be to ensure that the affidavits the court is considering are authentic, and not hearsay.

Introduced: 2/26/85
Referred: Transportation, Judiciary and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 193

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the power of eminent domain; and providing for an effective date."

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

* Section 1. AS 09.55.270 is amended by adding a new subsection to read:

(b) If the property is to be taken by a declaration of taking filed under AS 09.55.440, the state or the municipality shall prepare a decisional document that (1) states that the property is taken in a manner compatible with the greatest public good and least private injury, (2) summarizes the major facts supporting that decision, and (3) identifies any reports, studies, or statements relied upon for the decision.

* Sec. 2. AS 09.55.300(a) is amended to read:

(a) The court has power

(1) to regulate and determine the place and manner of making the connections and crossings or of enjoying the common uses mentioned in AS 09.55.260(5), and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by law;

(2) to limit the amount of property sought to be condemned if, in its opinion, the quantity sought to be condemned is not necessary;

(3) to determine whether the property is taken by necessity for a public use or purpose in a manner compatible with the greatest public good and least private injury, based upon the decisional

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COMMITTEE COPY

document required by AS 09.55.270 and the evidence allowed by AS 09.-55.460(d), if the taking is accomplished by a declaration of taking filed by the state or a municipality under the provisions of AS 09.-55.440.

* Sec. 3. AS 09.55.410 is amended to read:

Sec. 09.55.410. WITHDRAWAL OF FUNDS BY PARTY IN INTEREST. The money deposited in the court, or a part of it, may be withdrawn by a party in interest in the manner provided in AS 09.55.440. The[, AND THE] court may [SHALL HAVE THE POWER TO] direct the payment of delinquent taxes and special assessments out of the amount determined to be just compensation and to make orders with respect to encumbrances, liens, rents, insurance, and other charges as are just and equitable. The withdrawal of any part of the deposit by a party in interest is a waiver of all issues concerning the taking of the property, except the amount of just compensation.

* Sec. 4. AS 09.55.430 is amended to read:

Sec. 09.55.430. CONTENTS OF DECLARATION OF TAKING. The declaration of taking must [SHALL] contain

(1) a statement of the authority under which the property or an interest in it is taken;

(2) a statement of the public use for which the property or an interest in it is taken;

(3) a description of the property sufficient for the identification of it;

(4) a statement of the estate or interest in the property;

(5) a map or plat showing the location of the property;

(6) a statement of the amount of money estimated by the plaintiff to be just compensation for the property or the interest in it;

(7) a statement that the property is taken by necessity for a project located in a manner which is most compatible with the greatest public good and the least private injury;

(8) a decisional document as described in AS 09.55.270(b).

* Sec. 5. AS 09.55.440(a) is amended to read:

(a) Upon the filing of the declaration of taking, and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken from the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation must [SHALL] be ascertained and awarded in the proceeding and established by judgment. The judgment must [SHALL] include interest at the lawful interest rate set out in AS 45.45.010(a) [THE RATE OF SIX PER CENT PER YEAR] on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

* Sec. 6. AS 09.55.450(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit of the estimated compensation, the court may, upon motion, fix the time during which and the terms upon which the parties in possession are required to surrender possession to the petitioner. However, the right of entry may [SHALL] not be granted the plaintiff until after the running of the time for the defendant to file an objection to the declaration of taking or until after the hearing on any objection to the declaration of taking if the objection is filed [MADE] in the time allowed by Rule 72, Rules of Civil Procedure [LAW]. If an objection to the declaration of taking is filed in the time allowed, a hearing for the review of the taking must be held within 30 days after the

filing, or as soon after that as possible, to establish the validity of any objections. If no objection to the declaration of taking is filed in the time allowed, the defendant has waived all defenses and objections, and the plaintiff has a right of entry onto the property without further action by the court. If [WHERE] the party in possession withdraws any part of the award and remains in possession, the court may fix a reasonable rental for the premises to be paid by that party to the plaintiff during the [SUCH] possession.

* Sec. 7. AS 09.55.460 is amended by adding new subsections to read:

(c) The taking of property is necessary for a public use or purpose in a manner compatible with the greatest public good or least private injury unless the defendant establishes by clear and convincing evidence that the plaintiff's decision to condemn is arbitrary, capricious, or an abuse of discretion.

(d) The court, when making its finding under this section, shall consider the decisional document prepared by the plaintiff; supporting reports, studies, or statements; affidavits submitted by the parties, their officers, or employees; and depositions taken by the parties. The court, in the exercise of its discretion, may allow the parties to submit additional necessary evidence.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/~~Resolution No.~~: SB 193
Title:

Sponsor: Rules Committee
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Transportation & Public Facilit
Program Category Affected: Capital Projects

BRU, Program or Subprogram(s) Affected:
Right of Way & Land Acquisition

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Although a dollar amount cannot be identified in this fiscal note, this bill should definitely provide a savings to the State. It will alleviate problems that have developed in regard to eminent domain procedures which have the potential to seriously delay badly needed public work projects. This bill should improve eminent domain procedures without prejudicing property owners' rights.

Prepared By: Milton H. Lentz, Chief, ~~R/W~~ & Land Acq. Phone: 465-2985
Division: Standards & Technical Services/HQ Date: 2/13/85

Approved by Commissioner: Date: 2/14/85
Agency: Dept. of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ANALYSIS OF FISCAL NOTE

"An Act relating to the power of eminent domain; and providing for an effective date"

This bill recognizes recent development in the law and contains provisions that should streamline eminent domain procedures without prejudicing property owner's rights.

First, this would require the court to schedule a hearing for the review of the taking within 30 days after the filing of any objections to the declaration of taking or as soon after that as possible. This particular amendment does not create a priority over other matters on the court's calendar, but does place a requirement upon the Superior Court to deal expeditiously with hearings on objections to the authority and necessity for the taking.

This bill would amend AS 09-55-410 by clearly stating that, if any money on deposit is withdrawn by a party in interest, the withdrawal operates as a waiver of all issues except the amount of just compensation. This would require the property owner early on to make a choice between attempting to stop the project or only litigating the issue of compensation. This bill would also raise the statutory interest allowed under the declaration of taking procedure to the lawful interest rate.

This bill would clearly state that if a defendant does not make his objections in a timely manner, he has waived his objection and defense to the taking.

It is concluded that legislation that leaves a property owner's substantive rights intact, but that changes the procedural aspects of the litigation to a more effective and timely manner so that capital projects are not delayed is in the best interest of the public.

Although a dollar amount cannot be identified, this bill should provide a savings to the State, since it will alleviate problems that have developed in regard to eminent domain procedure which have the potential to seriously delay badly needed public work project.

BILL SHEFFIELD
GOVERNOR

ch 193

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making several changes in the exercise of the power of eminent domain under AS 09.55.240 -- 09.55.460. This bill recognizes recent developments in the law and contains provisions that should streamline eminent domain procedures without prejudicing landowners' rights. The result will alleviate delays that public works projects can experience. The public is well served by the amendments because it will get the use of its public works projects sooner and at lower public expense.

Section 1 of the bill amends AS 09.55.270 by requiring the condemning authority, before the taking of real property by a "declaration of taking," to prepare a decisional document summarizing the decision. Section 4 amends AS 09.55.430 by requiring that the decisional document be part of the declaration of taking. These two amendments codify and implement the holding in Ship Creek Hydraulic Syndicate v. State, 685 P.2d 715 (Alaska 1984).

Section 2 amends AS 09.55.300(a) by clearly specifying the power of the superior court when considering the requirement that a taking be made in a manner compatible with the greatest public good and least private injury. The court is to make its analysis based upon a review of the decisional document required by sec. 1 and on appropriate evidence as set out in sec. 7 of the bill.

Section 3 amends AS 09.55.410 by clearly stating the proposition that, if any money on deposit is withdrawn by a party in interest, the withdrawal operates as a waiver of all issues, except the amount of just compensation. This amendment codifies existing practice. We believe that it is reasonable because it requires the property owner early

on to make a choice between attempting to stop the project or only litigating the issue of compensation.

Section 5 amends AS 09.55.440(a) by raising the statutory interest allowed under the declaration-of-taking procedure to the lawful interest rate. Under AS 45.45.010, that interest rate is currently 10.5 percent. Under the existing language of AS 09.55.440(a), a property owner is entitled to interest at the rate of six percent on the amount finally awarded that is in excess of the initial deposit. This interest rate was found unconstitutional in City of Valdez v. 18.99 Acres, 686 P.2d 682 (Alaska 1984), where the court held that condemning authorities are required to pay lawful interest.

Section 6 provides a number of amendments to AS 09.55.450(a) that will streamline the procedure in the superior court. First, the court is required to schedule a hearing for the review of the taking within 30 days after the filing of any objections to the declaration of taking or as soon after that as possible. This particular amendment does not create a priority over other matters on the court's calendar, but does place a requirement upon the superior court to deal expeditiously with hearings on objections to the authority and necessity for the taking. When combined with the changed nature of that hearing under the amendments contained in sec. 7, the scheduling of a hearing on any objections to the declaration of taking should be greatly expedited.

Section 6 also contains amendments that clearly state that if a defendant does not make his objections in a timely fashion, he has waived his objections and defenses to the taking. This amendment parallels the existing law found in Civil Rule 72(e)(4). We believe that the amendment is necessary to avoid situations such as those that arose in Stewart v. State, Op. No. 2895 (Alaska, December 28, 1984).

In that case, the state filed its declaration of taking, and the property owners filed no objection to the taking. The project went out to bid and the contract was awarded. Six months after the action was filed and two months after the award of the contract, the property owners entered an objection to the taking and the superior court allowed the objections. Rather than litigate the propriety of the taking, the state dismissed its declaration of taking and redesigned its project. This resulted in higher construction costs. Section 6's amendment, absent extraordinary circumstances that the superior court may in the interest

of justice address, is not prejudicial to a defendant's rights; it places him in no worse position than any other civil litigant; i.e., objections or defenses that are not made are waived.

Section 7 contains amendments that are a departure from the existing law and practice. Existing AS 09.55.460 requires an analysis by the superior court to determine whether the taking was accomplished in a manner compatible with the greatest public good and least private injury. If the court finds that the taking was not made in that manner, the state is divested of the title it has acquired with its declaration of taking. The difficulty with the current statute is that no procedural standards are given for the analysis, and no burden of proof is assigned to the parties. The result, in practice, of this lack of clarity in the statute has been generally to assign to the defendant the burden of proof that the taking was not made in a manner compatible with the greatest public good and least private injury, and a "mini-trial" was necessary for the taking of the parties' evidence.

Court calendars are quite crowded and, when coupled with the "mini-trial" practice, the effect has been to delay the hearing until a significant block of the court's calendar can be set aside. One recent Supreme Court case, Ship Creek Hydraulic Syndicate v. State, cited above, produced a hearing in the trial court which lasted nearly five days, during which expert testimony was presented by both sides. While the trial court did ultimately confirm the taking, time that could have been devoted to the project was lost. It should also be noted that the requirement for a decisional document, which is set out in sec. 1, is a product of this case.

The language proposed in AS 09.55.460(c) assigns the burden to the defendant to prove by clear and convincing evidence that the decision to condemn was arbitrary, capricious, or an abuse of discretion. We believe that this language is a codification of the holdings in State v. 0.644 Acres, 613 P.2d 829 (Alaska 1980) and State v. 2.072 Acres, 652 P.2d 465 (Alaska 1982), and only represents a departure from existing statutory language in that the appropriate review standards are clearly and succinctly stated.

The language proposed in AS 09.55.450(d) is a departure from existing practice, but, when combined with the amendments regarding decisional documents, should streamline the procedure in the superior court without prejudicing

the property owners' rights. Under this language, the superior court will consider the decisional document, any supporting reports, studies, or statements relied upon in reaching the decision to condemn, and any affidavits the parties might submit, as well as depositions taken by the parties. There is no provision for the taking of evidence by the court except in situations in which the court allows the presentation of additional evidence. This proposed language provides for a review process by the superior court which is analogous to the function it serves when reviewing decisions of the district court and administrative agencies under AS 22.15.240 and Appellate Rule 609.

Under the cited statute and rule, the superior court reviews cases involving significant liberty and property interests that have been adjudicated by the district court and a variety of administrative agencies. These appeals are all upon the record without the taking of additional evidence, except as provided by statute and rule in extraordinary circumstances.

There are significant differences between the record in an appeal from the district court or an administrative agency and the decisional document envisioned in sec. 1 of this bill. The most important is that the aggrieved party will have presented his case before the matter is in the superior court. We believe that allowing the parties to submit affidavits and depositions in response to, or to support objections to, the taking is a reasonable substitute. We reach this conclusion because of the extensive nature of the background analysis that is performed in the course of developing a public works project. Typically, location and design studies and, in many instances, environmental impact studies are prepared. An additional component of the planning and design of a public works project is a public hearing process during which comments are solicited from the public. Furthermore, AS 35.30.010 requires approval by local planning and zoning commissions. An analogous approval is required under AS 09.55.275 for any replatting which is necessary to accommodate the project. By the time an eminent domain action is filed, the project is a well-known entity and well defined, and has been the subject of local political decisions and adjudication procedures under AS 35.30.010 and AS 09.55.275.

With this extensive administrative background, we believe that augmenting the evidence before the court with depositions and affidavits provides the superior court an adequate basis to review the appropriateness of the taking.

Under the amendments in this bill, the superior court has the discretion to allow the presentation of additional evidence as it does in its appellate jurisdiction.

I urge your favorable action on this measure, so that our eminent domain code accurately reflects the law, and so that the public's business is handled in an expeditious and fair manner for all concerned.

Sincerely,

Bill Sheffield
Governor

amend sb 193 xx7

PROPOSED AMENDMENT Nº 6

TO

SB 193

moved by Abood
adopted w/o objection

On page 4, line 12, delete the phrase "clear and convincing", and

insert in its place: "a preponderance of the"

While this amendment would not reverse the intent of the subsection, and the burden would still lie with the property-owner to prove his case, the change would have the net effect of reducing the degree of evidence required of the defendant.

Preponderance of evidence. Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Braud v. Kinchen, La.App., 310 So.2d 657, 659. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.

That amount of evidence necessary for the plaintiff to win in a civil case. It is that degree of proof which is more probable than not.

Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity for knowledge, information possessed, and manner of testifying determines the weight of testimony.

Clear and convincing proof. Generally, this phrase and its numerous variations mean proof beyond a reasonable, *i.e.*, a well-founded doubt. Some cases give a less rigorous, but somewhat uncertain, meaning, *viz.*, more than a preponderance but less than is required in a criminal case.

Proof which should leave no reasonable doubt in the mind of the trier of the facts concerning the truth of the matters in issue. In Interest of Jones, 34 Ill.App.3d 603, 340 N.E.2d 269, 274.

That measure or degree of proof which will produce in mind of trier of facts a firm belief or conviction as to allegations sought to be established; it is intermediate, being more than mere preponderance, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases. Fred C. Walker Agency, Inc. v. Lucas, 215 Va. 535, 211 S.E.2d 88, 92.

See also Beyond a reasonable doubt; Burden of proof; Clear evidence or proof.

FROM BLACK'S LAW DICTIONARY

Alaska State Legislature

Advisory Council Members
Senator Bennett, Chairman
Senator Kerttula
Senator Abood
Senator Sackett

Pouch V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Senator Jack Coghill
Attention: John Manley

FROM: Rob Nauheim Rob Nauheim

DATE: March 26, 1985

RE: Eminent domain proceedings

There does not appear to be any jurisdiction in which the burden of proof remains with the condemning authority after an initial decision has been made in an eminent domain proceeding. This is consistent with the notion that once a decision has been rendered it is up to those parties which do not agree with the decision to demonstrate how and why the decision was inappropriate. It also seems consistent with certain principles of public policy and the powers of eminent domain. The condemnation of private property is ultimately the result of a legislative decision to carry out public policy.

The alternative to which you alluded in the research request and which would give greater weight to the individual, would also have the effect of rendering any decision in an eminent domain case ineffective until the the condemning authority had proved its case.

If I can be of additional assistance in this matter, please give me a call.

RCN

ADVISORY COUNCIL MEMO

Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

March 22, 1985

Senator Coghill, Chair
Senate Transportation Committee
Pouch V
Juneau AK 99811

Dear Senator Coghill:

I am writing with regard to SB 193, an act relating to the power of eminent domain. I have discussed this measure with several of the presiding judges, who offer the following comments. First, the measure provides that a hearing for review of a taking must be held within 30 days after the filing, or as soon after that as is possible, to establish the validity of any objections (Section 6, pages 3-4). Calendaring of matters before the court is an inherently procedural task, properly within the purview of the courts. The Court System therefore opposes inclusion of language which appears to require placement on the calendar within a set time period. However, the courts are mindful of the concerns expressed in the governor's transmittal letter. Judge Serdahely in particular is exploring ways to expedite hearings before the superior court in Anchorage.

A second concern relates to section 7, paragraph (d), which limits live testimony at a hearing to object to a taking. Since supporting statements, reports and similar documents generally contain hearsay evidence, due process would be enhanced if these materials were sworn in a manner similar to affidavits.

Although this legislation represents a change in the way in which eminent domain proceedings would be handled, the other provisions of the bill involve substantive policy decisions appropriately addressed to the legislature.

Thank you for the opportunity to comment upon this legislation.

Sincerely,

Karla L. Forsythe

Karla L. Forsythe
General Counsel

cc: Arthur H. Snowden, II
Presiding Judges
William F. Cummings, Assistant Attorney General

COURT SYSTEM LETTER

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

To: Senate Advisory Council

From: John Manly, A.A.

Date: March 22, 1985

Re: Eminent Domain proceedings

The Transportation Committee is presently considering SB 193, a Governor's bill proposing changes to statutes pertaining to eminent domain and the power of taking. One of these changes, under section 7 of the bill, would clarify what is meant by the phrase "in a manner compatible with the greatest public good or least private injury", by requiring the appellant (defendant) to establish by clear and convincing evidence that the condemning authority's decision to condemn was "arbitrary, capricious, or an abuse of discretion."

The proposed change is purported to merely codify existing law in Alaska as it has evolved through case law. In other words, it is currently the practice in this state that if a property-owner's property is condemned through eminent domain proceedings, and the property-owner contests the taking, the property-owner becomes the appellant, and the burden is then on the his shoulders to prove his case.

What we would like to know, before we go further with this bill, is if there are jurisdictions elsewhere in the country in which the burden is on the condemning authority to prove its case, if the property-owner appeals the taking. This would be opposite to present practice in Alaska, and apparently on the federal level, but would give greater weight to the individual in this area of law.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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☒ *POUCH K - STATE CAPITOL*
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

MAR 2 6 1985

March 26, 1985

The Honorable John B. Coghill
Chairman, Senate Transportation Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: SB 193 relating to the power of eminent domain

Dear Senator Coghill:

During the Senate Transportation Committee meeting on March 20, 1985, inquiry was made regarding the approach of other jurisdictions on the issue of which party has the burden of proof that a particular taking is not necessary for a public purpose. My research indicates that it is routinely assigned to the property owner. In section 7 of SB 193, we proposed language codifying this legal principal which presently exists in Alaska law. The committee's amendment to the bill which deleted that language will not have much of an impact upon eminent domain practice in Alaska. However, if the committee further amends the bill by assigning to the condemning authority the burden to prove that its decision to condemn was not arbitrary, capricious, nor an abuse of discretion; the contrary is true. Statutory language of that sort would make Alaska unique among American jurisdictions, i.e. in effect the taking could be presumed invalid unless proven otherwise by the condemning authority.

The necessity for the taking of private property enjoys a presumption of validity for very sound public policy reasons. An executive agency undertakes a particular public works project by the direction of the legislature through the appropriation process. That public works project is brought to fruition by that executive agency under a grant of power conferred upon it by the legislature, which includes the grant of the power of eminent domain. Consequently, when, in the course of constructing a public works project, it becomes necessary to acquire interests in land necessary for its construction by the use of the power of eminent domain, the executive agency is fulfilling the will of the legislature, the elected representatives of the people. (It

ATTORNEY GENERAL'S LETTER

is not fulfilling an agenda of its own.) It is for these reasons that the burden is assigned to the property owner to prove that the taking is not necessary for a public purpose. To assign the burden to the condemning authority is in our opinion contrary to sound public policy. Consequently, the administration is opposed to the amendment of SB 193 which would shift the burden of proof on the issue of necessity to the condemning authority.

If I may be of any further assistance in this matter, please contact me.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: William F. Cummings
William F. Cummings
Assistant Attorney General

WFC:prm

Rule 72. Eminent Domain.

(a) **Applicability of Other Rules.** The procedure for the condemnation of property under the power of eminent domain shall be governed by these rules, except as otherwise provided in this rule.

(b) **Joinder of Properties.** The plaintiff may join in the same action one or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(c) **Complaint.**

(1) *Caption.* The complaint shall contain a caption as provided in Rule 10(a), except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(2) *Contents.* The complaint shall contain a short and plain statement of the authority and necessity for the taking, the use for which the property is to be taken, a description of the property sufficient for its identification accompanied by a map or plat thereof, the interests to be acquired, and as to each separate piece of property a designation of the defendants who have been joined as owners thereof or of some interest therein. If an easement or right-of-way is sought to be condemned, the complaint and the attached map or plat must show the location, route and termini.

Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the compensation to be paid for a piece of property, the plaintiff shall add as defendants all persons having or claiming an interest in that property whose names can be ascertained by a reasonably diligent search of the records, considering the character and value of the property involved and the interests to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners".

Process shall be served as provided in subdivision (d) of

this rule upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and the defendant may answer as provided in subdivision (e) of this rule. The court meanwhile may order such distribution of a deposit as the facts warrant.

(3) *Filing.* In addition to filing the complaint with the court, the plaintiff shall furnish to the clerk at least one copy thereof for the use of the defendants and additional copies at the request of the clerk or of a defendant.

(d) **Process.**

(1) *Notice—Delivery.* Upon the filing of the complaint the plaintiff shall forthwith deliver to the clerk joint or several notices directed to the defendants named or designated in the complaint. Additional notices directed to defendants subsequently added shall be so delivered. The delivery of the notice and its service have the same effect as the delivery and service of the summons under Rule 4.

(2) *Form.* Each notice shall state the court, the title of the action, the name of the defendant to whom it is directed, that the action is to condemn property, a description of his property sufficient for its identification, the interest to be taken, the authority and necessity for the taking, and the use for which the property is to be taken. The notice must show the location, route and termini of any easement or right-of-way sought to be condemned.

The notice shall also state that the defendant may serve upon the plaintiff's attorney an answer within twenty (20) days after service of the notice, that a failure to serve an answer constitutes a consent to the taking and to the authority of the court to proceed to hear the action and to fix the compensation, and that at a designated time and place the court will conduct a hearing to determine the authority and necessity for the taking.

The notice shall further state that the defendant, without filing an answer, may serve on plaintiff's attorney a notice of appearance designating the property in which he claims to be interested; that thereafter he will receive notice of all proceedings affecting it; that regardless of whether the defendant ap-

pears or answers, he may present evidence as to the amount of compensation to be paid for his property at the hearing or trial of the issue of just compensation; that regardless of whether he appears or answers he may share in the distribution of the award; that if neither an appearance nor an answer is filed the court will proceed to hear the action and to fix the compensation without further notice; and that if neither an appearance nor an answer is filed before ten (10) days after the jury's verdict is returned or the master's report is filed, judgment by default will be taken against the defendant for the relief demanded in the complaint.

(3) *Service of Notice.*

[a] *Personal Service.* Personal service of the notice shall be made in accordance with Civil Rule 4.

[b] *Unknown Owners.* Service of the notice upon unknown owners shall be made in accordance with Civil Rule 4(e).

(4) *Return—Amendment.* Proof of service of the notice shall be made, and amendment of the notice or proof of its service allowed, in the manner provided for the return and amendment of the summons under Rule 4(f) and (g).

(c) **Appearance or Answer.**

(1) *No Objection or Defense.* If a defendant has no objection or defense to the taking of his property, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter he shall receive notice of all proceedings affecting it.

(2) *Objection or Defense—Answer.* If a defendant has any objection or defense to the taking of his property, he shall serve his answer within twenty (20) days after the service of notice upon him. The answer shall identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and state all his objections and defenses to the taking of his property.

(3) *Declaration of Taking—Objection.* Any motion questioning the validity of a declaration of taking shall be served on or before the time provided in the notice for answering, or within twenty (20) days after the filing of the declaration of

taking, whichever is later. For good cause shown, the court may permit a later filing of the motion.

(4) *Waiver of Defenses and Objections.* A defendant waives all defenses and objections not presented as provided in this subdivision (c), but at the hearing or trial of the issue of just compensation, whether or not he has previously appeared or answered, and even though a default judgment may have been entered against him, he may present evidence as to the amount of compensation to be paid for his property, and he also may share in the distribution of the award if his claim

for compensation is filed before the award is ordered distributed by the court.

(5) *Other Pleading or Motion Precluded.* No other pleading or motion asserting any additional defense or objection shall be allowed.

(f) **Amendment of Pleadings.** Without leave of court, the plaintiff may amend the complaint at any time before the trial of the issue of compensation and as many times as desired, but no amendment shall be made which will result in a dismissal forbidden by subdivison (i) of this rule. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, as provided in Rule 5(b), upon any party affected thereby who has appeared and, in the manner provided in subdivison (d) of this rule, upon any party affected thereby who has not appeared. The plaintiff shall furnish to the clerk of the court for the use of the defendants at least one copy of each amendment, and he shall furnish additional copies on the request of the clerk or of a defendant. Within the time allowed by subdivision (e) of this rule a defendant may serve his answer to the amended pleading, in the form and manner and with the same effect as there provided.

(g) **Substitution of Parties.** If a defendant dies or becomes incompetent or transfers his interest after his joinder, the court may order substitution of the proper party upon motion and notice of hearing. If the motion and notice of hearing are to be served upon a person not already a party, service shall be made as provided in subdivision (d) (3) of this rule.

(h) **Hearing and Trial.**

(1) *Procedure.* The hearing of the allegations and evidence of persons interested, whether before the court, jury, or a master, shall be conducted in the manner prescribed by these rules.

(2) *Hearing Before Master.* A master appointed by the court to ascertain the amount to be paid by the plaintiff to each owner or other person interested in the property shall report to the court pursuant to Rule 53(d) (1). If all parties object to the appointment of a master, they may have a trial by jury or, if the

jury is waived by all parties to the action, a trial without a jury, by filing a demand for it within the time allowed for answer or within the additional time which the court may set.

(3) *Notice of Report.* Upon the filing of a report by the master, the clerk shall forthwith mail notice of the filing to all parties who have appeared or answered.

(4) *Appeal and Trial De Novo.* The plaintiff may appeal within ten (10) days after being served with notice of the filing of the master's report. Any defendant who has appeared or answered before the filing of a master's report may appeal within fifteen (15) days after being served with notice of the filing of the master's report. Any other interested person desiring to appeal from a master's report must take his appeal within fifteen (15) days after the filing of such report.

(5) *Notice of Appeal.* A party or other interested person may appeal from the master's report by filing with the clerk a notice of appeal in duplicate, with sufficient additional copies for all parties who have appeared or answered. The notice of appeal shall contain the following:

[a] The title of the action.

[b] The names of the parties taking the appeal.

[c] The master's report or part thereof appealed from and the date of its filing.

[d] The name of the court to which the appeal is taken.

[e] A concise statement of the grounds of appeal.

Notification of the filing of the notice shall be given by the clerk by mailing copies thereof to all parties who have appeared or answered other than the party or parties taking the appeal, but his failure to do so does not affect the validity of the appeal. The notification to a party shall be given by mailing a copy of the notice of appeal to his attorney of record, or if the party is not represented by an attorney, then to the party at his last known address.

(i) **Dismissal of Action.**

(1) *As of Right.* If no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession, the plaintiff may dismiss the action as to that

property, without an order of the court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(2) *By Stipulation.* Before the entry of any judgment vesting the plaintiff with the title or a lesser interest in or possession of property, the action may be dismissed in whole or in part, without an order of the court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby; and, if the parties so stipulate, the court may vacate any judgment that has been entered.

(3) *By Order of the Court.* At any time before compensation for a piece of property has been determined and paid and after motion and hearing, the court may dismiss the action as to that property, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The court at any time may drop a defendant unnecessarily or improperly joined.

(4) *Effect.* Except as otherwise provided in the notice, or stipulation of dismissal, or order of the court, any dismissal is without prejudice.

(j) **Deposit and Its Distribution.** The plaintiff shall deposit with the court any money required by law as a condition to the exercise of the power of eminent domain, and although not so required, may make such deposit. In such case the court and attorneys shall expedite the proceedings for the distribution of the money so deposited and for the ascertainment and payment of just compensation. If the compensation finally awarded to any defendant exceeds the amount which has been paid to him on distribution of the deposit, the court shall enter judgment against the plaintiff and in favor of that defendant for the deficiency. If the compensation finally awarded to any defendant is less than the amount which has been paid to him, the court shall enter judgment against him and in favor of the plaintiff for the over-payment.

(k) **Costs.** Costs and attorney's fees incurred by the defendant shall not be assessed against the plaintiff, unless:

(1) the taking of the property is denied; or

(2) the plaintiff appeals from the allowance of the master and the defendant does not appeal; or

(3) the award of the court was at least ten (10) percent larger than the amount deposited by the condemning authority or the allowance of the master from which an appeal was taken by the defendant; or

(4) the action was dismissed under the provisions of paragraph (i) of this rule; or

(5) allowance of costs and attorney's fees appears necessary to achieve a just and adequate compensation of the owner.

Attorney's fees allowed under this paragraph shall be commensurate with the time committed by the attorney to the case throughout the entire proceedings. (Amended by Supreme Court Order 414 effective August 1, 1980; and by Supreme Court Order 465 effective June 1, 1981)

CROSS REFERENCES: AS 09.55.240—AS 09.55.460; Civ. Form 148
(c) CROSS REFERENCES: AS 09.55.240—AS 09.55.270; Civ. Form 145
(d) (2) CROSS REFERENCE: Civ. Form 146
(d) (3) CROSS REFERENCE: Civ. Form 147
(e) (3) CROSS REFERENCES: AS 09.55.420—AS 09.55.460; Civ. Form 149
(e) (4) CROSS REFERENCE: AS 09.55.310
(h) (4) CROSS REFERENCE: AA 09.55.310

BILL SHEFFIELD
GOVERNOR

ol 193

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill making several changes in the exercise of the power of eminent domain under AS 09.55.240 -- 09.55.460. This bill recognizes recent developments in the law and contains provisions that should streamline eminent domain procedures without prejudicing landowners' rights. The result will alleviate delays that public works projects can experience. The public is well served by the amendments because it will get the use of its public works projects sooner and at lower public expense.

Section 1 of the bill amends AS 09.55.270 by requiring the condemning authority, before the taking of real property by a "declaration of taking," to prepare a decisional document summarizing the decision. Section 4 amends AS 09.55.430 by requiring that the decisional document be part of the declaration of taking. These two amendments codify and implement the holding in Ship Creek Hydraulic Syndicate v. State, 685 P.2d 715 (Alaska 1984).

Section 2 amends AS 09.55.300(a) by clearly specifying the power of the superior court when considering the requirement that a taking be made in a manner compatible with the greatest public good and least private injury. The court is to make its analysis based upon a review of the decisional document required by sec. 1 and on appropriate evidence as set out in sec. 7 of the bill.

Section 3 amends AS 09.55.410 by clearly stating the proposition that, if any money on deposit is withdrawn by a party in interest, the withdrawal operates as a waiver of all issues, except the amount of just compensation. This amendment codifies existing practice. We believe that it is reasonable because it requires the property owner early

GOVERNOR'S LETTER OF TRANSMITTAL

on to make a choice between attempting to stop the project or only litigating the issue of compensation.

Section 5 amends AS 09.55.440(a) by raising the statutory interest allowed under the declaration-of-taking procedure to the lawful interest rate. Under AS 45.45.010, that interest rate is currently 10.5 percent. Under the existing language of AS 09.55.440(a), a property owner is entitled to interest at the rate of six percent on the amount finally awarded that is in excess of the initial deposit. This interest rate was found unconstitutional in City of Valdez v. 18.99 Acres, 686 P.2d 682 (Alaska 1984), where the court held that condemning authorities are required to pay lawful interest.

Section 6 provides a number of amendments to AS 09.55.450(a) that will streamline the procedure in the superior court. First, the court is required to schedule a hearing for the review of the taking within 30 days after the filing of any objections to the declaration of taking or as soon after that as possible. This particular amendment does not create a priority over other matters on the court's calendar, but does place a requirement upon the superior court to deal expeditiously with hearings on objections to the authority and necessity for the taking. When combined with the changed nature of that hearing under the amendments contained in sec. 7, the scheduling of a hearing on any objections to the declaration of taking should be greatly expedited.

Section 6 also contains amendments that clearly state that if a defendant does not make his objections in a timely fashion, he has waived his objections and defenses to the taking. This amendment parallels the existing law found in Civil Rule 72(e)(4). We believe that the amendment is necessary to avoid situations such as those that arose in Stewart v. State, Op. No. 2895 (Alaska, December 28, 1984).

In that case, the state filed its declaration of taking, and the property owners filed no objection to the taking. The project went out to bid and the contract was awarded. Six months after the action was filed and two months after the award of the contract, the property owners entered an objection to the taking and the superior court allowed the objections. Rather than litigate the propriety of the taking, the state dismissed its declaration of taking and redesigned its project. This resulted in higher construction costs. Section 6's amendment, absent extraordinary circumstances that the superior court may in the interest

of justice address, is not prejudicial to a defendant's rights; it places him in no worse position than any other civil litigant; i.e., objections or defenses that are not made are waived.

Section 7 contains amendments that are a departure from the existing law and practice. Existing AS 09.55.460 requires an analysis by the superior court to determine whether the taking was accomplished in a manner compatible with the greatest public good and least private injury. If the court finds that the taking was not made in that manner, the state is divested of the title it has acquired with its declaration of taking. The difficulty with the current statute is that no procedural standards are given for the analysis, and no burden of proof is assigned to the parties. The result, in practice, of this lack of clarity in the statute has been generally to assign to the defendant the burden of proof that the taking was not made in a manner compatible with the greatest public good and least private injury, and a "mini-trial" was necessary for the taking of the parties' evidence.

Court calendars are quite crowded and, when coupled with the "mini-trial" practice, the effect has been to delay the hearing until a significant block of the court's calendar can be set aside. One recent Supreme Court case, Ship Creek Hydraulic Syndicate v. State, cited above, produced a hearing in the trial court which lasted nearly five days, during which expert testimony was presented by both sides. While the trial court did ultimately confirm the taking, time that could have been devoted to the project was lost. It should also be noted that the requirement for a decisional document, which is set out in sec. 1, is a product of this case.

The language proposed in AS 09.55.460(c) assigns the burden to the defendant to prove by clear and convincing evidence that the decision to condemn was arbitrary, capricious, or an abuse of discretion. We believe that this language is a codification of the holdings in State v. 0.644 Acres, 613 P.2d 829 (Alaska 1980) and State v. 2.072 Acres, 652 P.2d 465 (Alaska 1982), and only represents a departure from existing statutory language in that the appropriate review standards are clearly and succinctly stated.

The language proposed in AS 09.55.450(d) is a departure from existing practice, but, when combined with the amendments regarding decisional documents, should streamline the procedure in the superior court without prejudicing

the property owners' rights. Under this language, the superior court will consider the decisional document, any supporting reports, studies, or statements relied upon in reaching the decision to condemn, and any affidavits the parties might submit, as well as depositions taken by the parties. There is no provision for the taking of evidence by the court except in situations in which the court allows the presentation of additional evidence. This proposed language provides for a review process by the superior court which is analogous to the function it serves when reviewing decisions of the district court and administrative agencies under AS 22.15.240 and Appellate Rule 609.

Under the cited statute and rule, the superior court reviews cases involving significant liberty and property interests that have been adjudicated by the district court and a variety of administrative agencies. These appeals are all upon the record without the taking of additional evidence, except as provided by statute and rule in extraordinary circumstances.

There are significant differences between the record in an appeal from the district court or an administrative agency and the decisional document envisioned in sec. 1 of this bill. The most important is that the aggrieved party will have presented his case before the matter is in the superior court. We believe that allowing the parties to submit affidavits and depositions in response to, or to support objections to, the taking is a reasonable substitute. We reach this conclusion because of the extensive nature of the background analysis that is performed in the course of developing a public works project. Typically, location and design studies and, in many instances, environmental impact studies are prepared. An additional component of the planning and design of a public works project is a public hearing process during which comments are solicited from the public. Furthermore, AS 35.30.010 requires approval by local planning and zoning commissions. An analogous approval is required under AS 09.55.275 for any replatting which is necessary to accommodate the project. By the time an eminent domain action is filed, the project is a well-known entity and well defined, and has been the subject of local political decisions and adjudication procedures under AS 35.30.010 and AS 09.55.275.

With this extensive administrative background, we believe that augmenting the evidence before the court with depositions and affidavits provides the superior court an adequate basis to review the appropriateness of the taking.

Rb 193

Under the amendments in this bill, the superior court has the discretion to allow the presentation of additional evidence as it does in its appellate jurisdiction.

I urge your favorable action on this measure, so that our eminent domain code accurately reflects the law, and so that the public's business is handled in an expeditious and fair manner for all concerned.

Sincerely,

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST
Bill/~~Resolution~~ No.: SB 193
Title:

Sponsor: Rules Committee
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Transportation & Public Faci
Program Category Affected: Capital Projects

BRU, Program or Subprogram(s) Affected:
Right of Way & Land Acquisition

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Although a dollar amount cannot be identified in this fiscal note, this bill should definitely provide a savings to the State. It will alleviate problems that have developed in regard to eminent domain procedures which have the potential to seriously delay badly needed public work projects. This bill should improve eminent domain procedures without prejudicing property owners' rights.

Prepared By: Milton H. Lentz, Chief, ~~R/W~~ & Land Acq. Phone: 465-2985
Division: Standards & Technical Services/HQ Date: 2/13/85

Approved by Commissioner: Date: 2/14/85
Agency: Dept. of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

ZERO FISCAL NOTE & ANALYSIS

ANALYSIS OF FISCAL NOTE

"An Act relating to the power of eminent domain; and providing for an effective date"

This bill recognizes recent development in the law and contains provisions that should streamline eminent domain procedures without prejudicing property owner's rights.

First, this would require the court to schedule a hearing for the review of the taking within 30 days after the filing of any objections to the declaration of taking or as soon after that as possible. This particular amendment does not create a priority over other matters on the court's calendar, but does place a requirement upon the Superior Court to deal expeditiously with hearings on objections to the authority and necessity for the taking.

This bill would amend AS 09-55-410 by clearly stating that, if any money on deposit is withdrawn by a party in interest, the withdrawal operates as a waiver of all issues except the amount of just compensation. This would require the property owner early on to make a choice between attempting to stop the project or only litigating the issue of compensation. This bill would also raise the statutory interest allowed under the declaration of taking procedure to the lawful interest rate.

This bill would clearly state that if a defendant does not make his objections in a timely manner, he has waived his objection and defense to the taking.

It is concluded that legislation that leaves a property owner's substantive rights intact, but that changes the procedural aspects of the litigation to a more effective and timely manner so that capital projects are not delayed is in the best interest of the public.

Although a dollar amount cannot be identified, this bill should provide a savings to the State, since it will alleviate problems that have developed in regard to eminent domain procedure which have the potential to seriously delay badly needed public work project.

Chapter 45. Trade Practices.

Article
1. Interest (§ 45.45.010)
2. Collection of Advance Interest (§ 45.45.080)
5. Regulation of Motor Vehicle Repairs (§ 45.45.240)
6. Motor Vehicle Warranties (§§ 45.45.300 — 45.45.360)

Article 1. Interest.

Section
10. Legal rate of interest

Sec. 45.45.010. Legal rate of interest. (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) No interest may be charged by express agreement of the parties in a contract or loan commitment which is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds $25,000 is exempt from the limitation of this subsection.

(c) *[Repealed, § 3 ch 84 SLA 1973.]*

(d) *[Repealed, § 2 ch 94 SLA 1981.]*

(e) *[Repealed, § 4 ch 146 SLA 1974.]*

(f) No bank, credit union, savings and loan institution, pension fund, insurance company or mortgage company may require or accept any percent of ownership or profits above its interest rate. This subsection does not apply to a loan if the principal amount of the loan is $1,000,000 or more and the term of the loan is five years or more.

(g) Loan contracts and commitments covering one- to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail. (§ 25-1-1 ACLA 1949; am § 20 ch 143 SLA 1968; am § 2 ch 69 SLA 1969; am §§ 1, 2 ch 94 SLA 1969; am §§ 1, 2 ch 239 SLA 1970; am §§ 1 — 3 ch 84 SLA 1973; am §§ 1 — 4 ch 146 SLA 1974; am § 1 ch 110 SLA 1976; am § 1 ch 159 SLA 1976; am § 2 ch 107 SLA 1980; am §§ 1, 2 ch 94 SLA 1981; am § 1 ch 56 SLA 1982)

Cross references. -- As to alternate technology and power resource loans, see AS 45.88.030(e).

Effect of amendments. — The 1981 amendment, in subsection (b), deleted "dated after June 4, 1976" following "contract or loan commitment" and substituted "on the day on" for "that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during" preceding "which the contract" in the first sentence and substituted "$25,000" for "$100,000" preceding "is exempt" in the second sentence. The

AS 45.45.010 - INTEREST RATE

State v. Alaska Land Title Ass'n, Sup. Ct. Op. No. 2681 (File Nos. 5407, 5408), P.2d (1983).

48 U.S.C. § 321d does not apply to patents issued under the Small Tract Act of 1938, 43 U.S.C. §§ 682a-682(e) (now repealed). State v. Alaska Land Title Ass'n, Sup. Ct. Op. No. 2681 (File Nos. 5407, 5408), P.2d (1983).

The Right-of-Way Act of 1966 does not apply to rights-of-way created by a public land order issued pursuant to an executive order under which the President of the United States delegated his statutory authority to the Secretary of the Interior authorizing withdrawal of public lands in Alaska for specified public purposes. State v. Alaska Land Title Ass'n, Sup. Ct. Op. No. 2681 (File Nos. 5407, 5408), P.2d (1983).

Sec. 09.55.270. Prerequisites. Before property can be taken, it shall appear that

(1) the use to which it is to be applied is a use authorized by law;

(2) the taking is necessary to the use;

(3) if already appropriated to a public use, the public use to which it is to be applied is a more necessary public use. (§ 13.04 ch 101 SLA 1962)

Cross references. — For contents of complaint, see Civ. R. 72(c).

NOTES TO DECISIONS

Editor's note. — All notes from Montana decisions appearing under this section are constructions of the Montana statute from which this section derives.

Judicial review of necessity. — Alaska is among the minority of jurisdictions which statutorily calls for judicial inquiry into the question of necessity in eminent domain proceedings. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Such review is inappropriate to proceedings under declaration of taking. — The concept of judicial review embodied in Alaska's general eminent domain statutes is inconsistent with, and inappropriate to, proceedings under a declaration of taking. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

The question of necessity under a declaration of taking is not one for initial judicial consideration as in the case of other condemnation proceedings. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

For distinction between proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession, see Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Pleading must plainly show authority and necessity for taking. — The right of eminent domain can only be exercised in behalf of a public use authorized by law, and in the taking of property necessary to such public use the complaint or petition in such proceedings must show plainly and affirmatively the existence of the statutory authority for the public use, and the necessity of the property for such use. Miocene Ditch Co. v. Lyng, 138 F. 544 (9th Cir. 1905).

An inference is not sufficient in eminent domain proceedings. There must be a clear, positive statement that the property sought to be condemned is necessary for a public use authorized by law, and supported by a statement of facts from which the court can see that the property is intended to be used for that purpose. Miocene Ditch Co. v. Lyng, 138 F. 544 (9th Cir. 1905).

The complaint should allege both that the use to which the property is to be applied is a use authorized by law and that the taking is necessary to such use. City of Helena v. Harvey, 9 P. 903 (Mont. 1886).

Which must be found by court before condemnation. — This section has been construed as requiring the court to find the use is authorized by law and the taking is

AS 09.55.270

necessary "before condemnation." Bridges v. Alaska Hous. Auth., Sup. Ct. Op. No. 1 (File No. 16), 349 P.2d 149 (1960).

Necessity of findings. — It is upon findings made in accordance with this section that there is established a basis for further proceedings. The findings constitute the decision of the court upon the vital question of whether or not the property sought to be taken can be condemned at all. Van Dyke v. Midnight Sun Mining & Ditch Co., 177 F. 85 (9th Cir. 1910).

Questions to be considered by court. — Ordinarily the only questions to be considered by the courts in condemnation proceedings are: First, whether the petitioner has the power to exercise the right of eminent domain; second, whether the property itself is of a nature subject to condemnation; third, whether the property is being taken for a public or a private use; and fourth, whether the power is being used for taking an excessive amount of property. Town of Seward v. Margules, 9 Alaska 354 (1938).

Taking for use authorized by law is not conclusive that taking is necessary. — By providing that the right to take property for public use is founded upon a use authorized by law and that the use for such purpose is necessary, the law itself recognizes the fact that a mere taking for a use authorized by law is not conclusive that the taking is necessary for such use. City of Helena v. Harvey, 9 P. 903 (Mont. 1886).

The rule of necessity must be determinative of the right to take in each instance. Northern Pac. Ry. v. McAdow, 121 P. 473 (Mont. 1912).

But absolute necessity is not required. — An absolute necessity is not a prerequisite to the exercise of the law of eminent domain. Butte A. & Pac. Ry. v. Montana U. Ry., 41 P. 232 (Mont. 1895).

Although the condemnor may have the burden of making a prima facie showing of necessity, the language of this section ought to be construed to require no more than that the particular taking be shown to be "reasonably requisite and proper for the accomplishment of the purpose for which it is sought." City of Fairbanks v. Metro Co., Sup. Ct. Op. No. 1192 (File No. 2504), 540 P.2d 1056 (1975).

Question of necessity is one of fact. — In an action to condemn private property for a public use, the question of necessity is one of fact, to be determined as other questions of fact, in view of all the evidence in the case. State ex rel. Livingston v. District Court, 300 P. 916 (Mont. 1931).

And involves both public and private considerations. — The question of necessity in a given case involves a consideration of facts which relate to the public and also to the private citizen whose property may be injured. State ex rel. Livingston v. District Court, 300 P. 916 (Mont. 1931).

Particular questions left to discretion of condemning authority. — In general condemnation proceedings under this article, once the condemnor has presented sufficient evidence to support a finding that a particular taking is "reasonably requisite" for the effectuation of the authorized public purpose for which it is sought, particular questions as to the route, location or amount of property to be taken are to be left to the sound discretion of the condemning authority absent a showing by clear and convincing evidence that such determinations are the product of fraud, caprice or arbitrariness. City of Fairbanks v. Metro Co., Sup. Ct. Op. No. 1192 (File No. 2504), 540 P.2d 1056 (1975).

Evidence should show that the land is reasonably required for the purpose of effecting the object of its condemnation. State ex rel. Livingston v. District Court, 300 P. 916 (Mont. 1931).

Burden of proof. — One seeking to show that a particular taking is excessive or arbitrary has a heavy burden of proof in the attempt to persuade the court to substitute its judgment for that of the condemnor. City of Fairbanks v. Metro Co., Sup. Ct. Op. No. 1192 (File No. 2504), 540 P.2d 1056 (1975).

Proof of unnecessary injury. — When an attempt is made to show that the location proposed is unnecessarily injurious, the proof should be clear and convincing; otherwise no location could ever be made. State ex rel. Livingston v. District Court, 300 P. 916 (Mont. 1931).

Relative private injury. — That certain property owners suffer relatively greater injury than others, or are less directly benefited by the project, does not establish that the taking of their property is unnecessarily injurious or unwarranted. City of Fairbanks v. Metro Co., Sup. Ct. Op. No. 1192 (File No. 2504), 540 P.2d 1056 (1975).

While it is true that the inability of a particular condemnee to obtain immediate beneficial use from the project may be considered as a factor in weighing the project's impact in terms of the degree of private injury involved in a proposed route or location, the interest in minimizing private

injury is not absolute and must always be weighed in relation to the goals and efficacy of the project in its entirety at the time such determinations are made. City of Fairbanks v. Metro Co., Sup. Ct. Op. No. 1192 (File No. 2504), 540 P.2d 1056 (1975).

City clearly met its initial burden of demonstrating that its taking certain parcels of land for purposes of the construction of a sewer line was reasonably necessary under the circumstances. City of Fairbanks v. Metro Co., Sup. Ct. Op. No. 1192 (File No. 2504), 540 P.2d 1056 (1975).

Complaint held sufficient. — Where a complaint used the words "imperatively required" for a public use and alleged facts supporting the same, this was sufficient to show necessity under this section. Town of Seward v. Marcules, 9 Alaska 354 (1938).

Appeal from interlocutory order finding use authorized and taking necessary. — See Van Dyke v. Midnight Sun Mining & Ditch Co., 177 F. 85 (9th Cir. 1910); Northern Mining & Trading Co. v. Alaska Gold Recovery Co., 20 F.2d 5 (9th Cir. 1927).

Convenience and enhanced profits are insufficient to permit appropriation. — That the appropriation of a particular piece of property would promote convenience of operation and enhance the profits of the business of a railroad company is not alone a sufficient reason for permitting it. Northern Pac. Ry. v. McAdow, 121 P. 473 (Mont. 1912).

Collateral references. — Sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain, 21 ALR4th 765.

Sec. 09.55.275. Replat approval. No agency of the state or municipality may acquire property located within a municipality exercising the powers conferred by AS 29.33.150 — 29.33.245 which results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners. (§ 2 ch 96 SLA 1975)

Sec. 09.55.280. Entry upon land. In all cases where land is required for public use, the state, the public entity, or persons having the authority to condemn, or its agents in charge of the use may enter upon the land and make examination, surveys, and maps and locate the boundaries; but it shall be located in the manner which will be most compatible with the greatest public good and the least private injury, and subject to the provisions of AS 09.55.300. The entry shall constitute no cause of action in favor of the owners of the land except for injuries resulting from negligence, wantonness, or malice. (§ 13.05 ch 101 SLA 1962)

and the deposit of the estimated compensation. Russian Orthodox Greek Catholic Church of N. Am. v. Alaska State Hous. Auth., Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

It is the objection which calls for the hearing. A motion for hearing with supporting affidavits is not required. State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, Sup. Ct. Op. No. 2118 (File No. 4861), 613 P.2d 829 (1980).

As to showings necessary where owner contests validity of taking, see Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

For distinction between proceedings in condemnation under declaration of taking and those under complaint seeking condemnation and order for possession, see Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Collateral references. — Condemnor's acquisition of, or right to, minerals under land taken in eminent domain, 36 ALR2d 1424.

Charging landowner with rent or use value of land where he remains in possession after condemnation. 20 ALR3d 1164.

Sec. 09.55.460. Effect of appeal. (a) No appeal or a bond or undertaking given operates to prevent or delay the vesting of title to real property or the right to possession of it.

(b) The plaintiff may not be divested of a title or possession acquired except where the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury. In the event of that finding, the court shall enter the judgment necessary to (1) compensate the persons entitled to it for the period during which the property was in the possession of the plaintiff, (2) recover for the plaintiff any award paid to any person, and (3) order the plaintiff to restore the property to the condition in which it existed at the time of the filing of the declaration of taking unless such restoration is impossible, in which case the court shall award damages to the proper persons as compensation for any diminution in the value of the property caused by the plaintiff's wrongful possession. (§ 13.23 ch 101 SLA 1962; am § 3 ch 149 SLA 1976)

Legislative history reports. — For report on ch. 149, SLA 1976 (HCSSB 546), see 1976 House Journal, p. 945.

NOTES TO DECISIONS

Presumption that taking is reasonably requisite to realization of public use. — Once an authorized public use for the taking is established by the condemnor, and statutory and procedural requirements are otherwise satisfied, that the particular taking is reasonably requisite to the realization of that use shall be presumed. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

The question of necessity under a declaration of taking is not one for initial judicial consideration as in the case of other condemnation proceedings. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

The concept of judicial review embodied in Alaska's general eminent domain stat-

AS 09.55.460

utes is inconsistent with, and inappropriate to, proceedings under a declaration of taking. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Absent clear showing of fraud, etc. — In proceedings in eminent domain by way of a declaration of taking under AS 09.55.420 — 09.55.450, the court is without authority, either by virtue of the express mandate of subsection (b) of this section or by implication from the legislative history and policy evidenced in AS 09.55.440, to review the question of the necessity of a particular taking absent a clear showing of fraud, bad faith, arbitrariness or an abuse of discretion in exercise of the power of condemnation by the condemning authority. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Notwithstanding such provisions as AS 09.55.270(2), judicial inquiry into such necessity or the condemnor's determinations with respect thereto is not appropriate unless and until the condemnee has presented clear and convincing evidence that the condemnor has acted in bad faith or so capriciously and arbitrarily as to indicate the absence of any reasonable determining principle. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Only specific allegations of fraud, bad faith or some gross abuse of discretion in locating the pipeline could raise issues sufficient to permit judicial review of the necessity of the taking. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Failure of condemnor to make showing was not abuse of discretion. — Where it is clear that the use intended is public and statutorily authorized, and condemnor has presented unrebutted evidence to the effect that the design and construction criteria for the pipeline are most feasibly satisfied by the route across the property of the owner, it cannot be said that condemnor is under any duty to initially submit evidence that it has considered such alternate routing; nor can the failure to make such showing under the circumstances justify a finding of arbitrariness or an abuse of discretion. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

No implied waiver. — Subsection (b) of this section, which provides in part, that when the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and least private injury; the court shall enter the judgment necessary to "recover for the plaintiff any award paid to any person," militates against a finding of implied waiver from the respondents' withdrawal of money deposited in the registry of the court by the state in conjunction with its filing of a declaration of taking against respondents' property. State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, Sup. Ct. Op. No. 2118 (File No. 4861), 613 P.2d 829 (1980).

Injury should be minimized. — This section, which mandates in subsection (b) that "private injury" be considered with reference to the particular properties involved, contemplates that the injury suffered by each individual should be minimized to the extent that it is reasonably possible to do so without impairing the integrity and function of the project and without adding unreasonable costs to the project. State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, Sup. Ct. Op. No. 2118 (File No. 4861), 613 P.2d 829 (1980).

State's failure to consider several important, relevant factors made it impossible to rationally determine whether intended taking was compatible with the greatest public good and the least private injury, and rendered its action arbitrary, thus taking of subject land could not be upheld. State, Dep't of Transp. & Pub. Facilities v. 2.072 Acres, More or Less, Sup. Ct. Op. No. 2575 (File No. 6159), 652 P.2d 465 (1982).

Collateral references. — Appeal relating to amount of condemnation award, 50 ALR2d 1386.

Reviewability, on appeal from final judgment in eminent domain proceeding, of interlocutory order, as affected by fact that order was separately appealable, 79 ALR2d 1400.

Running of interest on judgment where both parties appeal, 11 ALR4th 1099.

the basic distinction arises between a question of fact and a question of law. Taylor v. Interior Enterprises, Inc., Sup. Ct. Op. No. 621 (File No. 1113), 471 P.2d 405 (1970).

Questions of fact may not be re-examined by court. — Where there is a trial by jury, questions of fact must be decided by the jury and may not be re-examined by the court. Taylor v. Interior Enterprises, Inc., Sup. Ct. Op. No. 621 (File No. 1113), 471 P.2d 405 (1970).

Criterion for determining sufficency of evidence for jury. — In deciding whether the evidence is sufficient to raise a question of fact to be presented to the jury, the court applies a criterion. In Alaska's courts the criterion is whether there is room for a difference of opinion among reasonable men as to the factual issue in controversy. If there is, the issue is submitted to the jury for its determination. If not, the court decides the issue without reference to the jury. Taylor v. Interior Enterprises, Inc., Sup. Ct. Op. No. 621 (File No. 1113), 471 P.2d 405 (1970).

Power of removing factual issues from jury. — The courts have exercised the power of removing from consideration by a jury factual issues in a case where the court decides there is insufficient evidence to raise a question of fact to be presented to the jury. Taylor v. Interior Enterprises, Inc., Sup. Ct. Op. No. 621 (File No. 1113), 471 P.2d 405 (1970).

Section does not preclude review of rulings on motions to set aside awards. — Nothing in this section precludes appellate review of the trial judges' rulings on motions to set aside awards. Fruit v. Schreiner, Sup. Ct. Op. No. 838 (File Nos. 1526, 1546), 502 P.2d 133 (1972).

Applicability of fair cross-section standard to civil jury selections. — See Malvo v. J.C. Penney Co., Sup. Ct. Op. No. 901 (File No. 1630), 512 P.2d 575 (1973).

Applied in State v. Kaatz, Sup. Ct. Op. No. 1536 (File No. 3080), 572 P.2d 775 (1977).

Quoted in Knudsen v. City of Anchorage, Sup. Ct. Op. No. 21 (File No. 58), 358 P.2d 375 (1960); Patrick v. Sedwick, Sup. Ct. Op. No. 206 (File No. 314), 391 P.2d 453 (1964); Pennington v. Snow, Sup. Ct. Op. No. 625 (File No. 1101), 471 P.2d 370 (1970); Martinez v. Bullock, Sup. Ct. Op. No. 1152 (File No. 2209), 535 P.2d 1200 (1975); Jeffries v. Glacier State Tel. Co., Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

Cited in Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971).

Section 17. Imprisonment for Debt. There shall be no imprisonment for debt. This section does not prohibit civil arrest of absconding debtors.

The gist of the offense under AS 28.35.026 is failure to return an automobile with a conscious purpose to injure the owner and not mere failure to pay the rental price. Hence, the constitutional prohibition against imprisonment for debt has not been violated. Speidel v. State, Sup. Ct. Op. No. 584 (File No. 1014), 460 P.2d 77 (1969).

Section 18. Eminent Domain. Private property shall not be taken or damaged for public use without just compensation.

Cross reference. — As to compensation and damages awarded for property taken by eminent domain, see AS 09.55.330.

I. General Consideration.
II. Damage.
III. Taking.
IV. Just Compensation.

I. GENERAL CONSIDERATION.

Construction. — The supreme court has liberally construed this section in favor of the private property owner. Alsop v. State, Sup. Ct. Op. No. 1764 (File No. 3023), 586 P.2d 1236 (1978).

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Compensation for personal property. — Reading Alaska Const., art. I, § 18, and Alaska Const., art. I, § 1, in paria materia, and the generally recognized principle that the constitution and legislative enactments in implementation thereof are to be liberally construed, the supreme court found no clear legislative intent to have been manifested that personal property taken or damaged by public use should not be justly compensated. Stroh v. Alaska State Hous. Auth., Sup. Ct. Op. No. 496 (File No. 924), 459 P.2d 480 (1969).

There is no clear legislative intent manifested that personal property taken or damaged by public use should not be justly compensated. Stroh v. State Hous. Auth., Superior Court, 3rd Jud. Dist., No. 65-1222, 459 P.2d 484 (1969).

See note under catchline "Personal property used on land not considered in determining compensation" under analysis line IV, "Just Compensation."

Chattel as real estate. — The rule is that for a chattel to become a fixture and be considered as real estate, three prerequisites must unite: There must be an annexation to the realty of something appurtenant thereto; the chattel must have adaptability or application as affixed to the use for which the real estate is appropriated; and there must be an intention of the party to make the chattel a permanent accession to the freehold. Intention, the third of the three factors said to comprise the general test for determining whether an object has become a fixture, refers to the intent of the parties that the object being introduced onto the realty become a permanent accession thereto. Stroh v. State Hous. Auth., Superior Court, 3rd Jud. Dist., No. 65-1222, 459 P.2d 484 (1969).

Carpeting constituted personalty at the time of the taking, and party was entitled to recover the actual market value thereof at the time of the taking. Stroh v. Alaska State Hous. Auth., Sup. Ct. Op. No. 496 (File No. 924), 459 P.2d 480 (1969); Stroh v. State Hous. Auth., Superior Court, 3rd Jud. Dist., No. 65-1222, 459 P.2d 484 (1969).

Expectation of renewal of a lease is not a compensable interest. State, Dep't of Hwys. v. Salzwedel, Sup. Ct. Op. No. 1861 (File No. 3976), 596 P.2d 17 (1979).

Proceedings distinguished from ordinary civil actions. — This constitutional guarantee, together with the peculiar in rem nonadversary pleadings characteristic of condemnation proceedings, distinguish these proceedings from ordinary civil actions. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Alaska's procedural rules pertaining to condemnation actions do not provide a burden of pleading which could be looked to as determinative of the companionate burden of persuasion. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Procedural rules involving the concept of risk of failure to persuade are inapposite in a condemnation proceeding where the sole issue is determination of just compensation. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

The separate questions of order of proof and order of final arguments of counsel in condemnation proceedings should be left to the discretion of the trial judge. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

The burden of production facet of burden of proof, rather than the risk of non-persuasion aspect, is the more meaningful concept in the trial of a condemnation proceeding. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Competent evidence of fair market value. — As to the issue of fair market value, both the condemning agency and the property may produce competent evidence of the fair market value of the condemned property. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

For additional notes concerning evidence, see notes under analysis line IV, "Just Compensation."

Role of expert witness in eminent domain proceedings. — See Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Absent the production of evidence by either party, the triers of fact will determine fair market value solely from the other party's evidence. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Testimony. — It is not necessary, in order to give credence to a witness' opinion

of fair market value, to also require him to show that the property and market value are such that the entire purchase price could be expected to be paid at the time of sale. State v. 7.026 Acres, more or less, Sup. Ct. Op. No. 601 (File No. 1106), 466 P.2d 364 (1970).

Sale 15 months after date of taking. — As to admission into evidence of a sale taking place 15 months after the date of the taking by the state, see Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

The focal point of the trier of fact's inquiry is the ascertainment of just compensation. Thus, regardless of whether the condemning agency or the property owner meets a given burden of persuasion, Alaska's constitutional mandate requires that the owner be awarded just compensation for the property he has lost. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Jury confronted with conflicting opinions as to value. — In the usual condemnation case, the jury is confronted with conflicting opinions as to value. The jury is not faced with the necessity of finding a particular value or no value at all. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Instructions on burden of proof, in the sense of allocating the risk of failure to persuade the jury, are inappropriate in condemnation actions. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

In a condemnation proceeding, the trial court did not err in refusing to instruct the jury on the subject of burden of proof, where the jury was informed that the exercise of the power of eminent domain is subject to the constitutional requirement of payment of just compensation, and was further instructed that their only concern was the determination of the just compensation to be awarded. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Quoted in Stroh v. Alaska State Hous. Auth., Sup. Ct. Op. No. 496 (File No. 924), 459 P.2d 480 (1968).

II. DAMAGE.

Section expressly requires compensation for damage, while 5th amendment does not. — See State v. Hammer, Sup. Ct. Op. No. 1268 (File Nos. 2500, 2660), 550 P.2d 820 (1976).

Temporary loss of profits during relocation incurred because of the state's exercise of its eminent domain power in taking the property on which the business was conducted is a damaging of property within this section and must be compensated for. State v. Hammer, Sup. Ct. Op. No. 1268 (File Nos. 2500, 2660), 550 P.2d 820 (1976).

III. TAKING.

When taking occurs. — It is the general rule that a taking does not occur until: (1) Legal title vests in the state, (2) the state enters into actual possession, or (3) the state takes constructive possession either by causing damage to property or by depriving the owner of full beneficial use of his land. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Once an owner is deprived of the economic advantages of legal ownership, a taking has occurred. Grant v. State, Sup. Ct. Op. No. 1385 (File No. 2855), 560 P.2d 36 (1977).

Although the state is clearly not bound to abide by its construction plans and specifications, it is reasonable for parties negotiating for the sale of the land involved to assume that those plans will be implemented, and where the plans are not implemented, any further economic interference constitutes a second taking for which the state must pay just compensation. Grant v. State, Sup. Ct. Op. No. 1385 (File No. 2855), 560 P.2d 36 (1977).

Limiting access to vessels able to pass through a culvert six feet in diameter was in effect a taking of such access. Wernberg v. State, Sup. Ct. Op. No. 972 (File No. 1797), 519 P.2d 801 (1974).

Loss of access due to closure of intersection. — Where owners received compensation for the taking of their property for construction of a highway, a second taking occurred, separate from the first, when the state decided to redesign the highway, the second taking consisting of a loss of access due to closure of an intersection and due to the limitation of travel on the frontage road to one-way traffic, if the settlement or the receipt of the intersection award had been in reliance upon unrestricted access to be closed. Alsop v. State, Sup. Ct. Op. No. 1764 (File No. 3023), 586 P.2d 1236 (1978).

Where owners contended that a second taking of their property occurred when the state redesigned the highway for the construction of which their property had

been originally taken, closing off an intersection and limiting travel on the frontage road to one-way traffic, in order to recover damages, each of the owners must demonstrate that he or a predecessor in interest had a portion of his property taken for the original construction project, that he or his predecessor relied on construction of the intersection or the two-way frontage road, or both, in settling or receiving an award for their condemnation claims, and that his remaining property had decreased in value as a result of the highway modifications. Alsop v. State, Sup. Ct. Op. No. 1764 (File No. 3023), 586 P.2d 1236 (1978).

Nonabutting owners, whose property has not been taken, cannot claim damages because a more circuitous access route is imposed upon them. Alsop v. State, Sup. Ct. Op. No. 1764 (File No. 3023), 586 P.2d 1236 (1978).

Changing a frontage road from a two-way street to a one-way street is not by itself a taking. B & G Meats, Inc. v. State, Sup. Ct. Op. No. 1950 (File No. 3940), 601 P.2d 252 (1979).

A distinction must be made between loss of access and loss of traffic flow. The latter is not a part of the owner's interest in his property. Restrictions which merely result in a diversion of traffic away from the property are thus not compensable. B & G Meats, Inc. v. State, Sup. Ct. Op. No. 1950 (File No. 3940), 601 P.2d 252 (1979).

Principles which control when claim of taking caused by loss of access is raised. — See B & G Meats, Inc. v. State, Sup. Ct. Op. No. 1950 (File No. 3940), 601 P.2d 252 (1979).

Compensation required for taking littoral access right. — The state must justly compensate the property owner when it takes by inverse condemnation, a littoral access right. Grant v. State, Sup. Ct. Op. No. 1385 (File No. 2855), 560 P.2d 36 (1977).

Institution of condemnation proceedings constitutes a compensable appropriation of vacant and unimproved land, and the property owner is constitutionally entitled to interest dating from the institution of such proceedings. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Under the Alaska statutory scheme, an owner of unimproved or untenanted property is deprived of both investment potential and the possibility of future development the moment a condemnation action commences. Meanwhile, the owner remains liable for property taxes, mortgage payments, and any other expenses incidental to legal ownership. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Appropriation deemed exercise of power of eminent domain. — Neither the failure of the state to institute a condemnation action nor the owners' assertion of a claim based on the theory of trespass changed the essential nature of the state's action in appropriating the owners' property from one of the exercise of the power of eminent domain. State v. Crosby, Sup. Ct. Op. No. 322 (File No. 584), 410 P.2d 724 (1966).

IV. JUST COMPENSATION.

Measure of just compensation. — Just compensation is measured by the value of the property taken. State v. 7.026 Acres, more or less, Sup. Ct. Op. No. 601 (File No. 1106), 466 P.2d 364 (1970).

Fair market value is an appropriate measure of the just compensation guaranteed by this section. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

"Fair market value". — Fair market value is the price in money that the property could be sold for on the open market under fair conditions between an owner willing to sell and a purchaser willing to buy, with reasonable time allowed to find a purchaser. State v. 7.026 Acres, more or less, Sup. Ct. Op. No. 601 (File No. 1106), 466 P.2d 364 (1970).

One criterion for determining value is what the property is worth on the market — its fair market value, and this is to be determined by a just consideration of all the uses for which the property is suitable. State v. 7.026 Acres, more or less, Sup. Ct. Op. No. 601 (File No. 1106), 466 P.2d 364 (1970); Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

The highest and most profitable use for which the property is adaptable is to be considered, to the extent that the prospect of demand for such use affects the market value while the property is privately held. State v. 7.026 Acres, more or less, Sup. Ct. Op. No. 601 (File No. 1106), 466 P.2d 364 (1970).

The essential difference between market price and market value lies in the premises of intelligence, knowledge and willingness, all of which are contemplated in market value but not in market price. Stated differently, at any given moment of time, market value

connotes what a property is actually worth and market price what it may be sold for. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Use of property must be reasonably probable. — It must be shown that the use for which the property is claimed to be adaptable is reasonably probable. If this cannot be shown, evidence of prospective use must be excluded because it would allow mere conjecture and speculation to become a guide for ascertainment of value, and this is not a permissible method for the judicial ascertainment of truth. State v. 7.026 Acres, more or less, Sup. Ct. Op. No. 601 (File No. 1106), 466 P.2d 364 (1970).

"Best use" evidence. — See Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

In determining just compensation, usually measured by the "market value" of the property, the highest and most profitable use for which the land is adaptable may be considered to the extent that the prospective demand for such use affects the property's present market value. Thus, many courts, including Alaska's, have allowed evidence of a reasonably probable subdivision to be admitted to prove the adaptability of the land for subdivision use. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Admissibility of subdivision plat. — Where the adaptability of the land for subdivision use is shown to be reasonably probable, and not too remote or speculative, then a subdivision plat is admissible as illustrating the potential and reasonably probable use. State v. 7.026 Acres, more or less, Sup. Ct. Op. No. 601 (File No. 1106), 466 P.2d 364 (1970).

A truly speculative or imagined use should not be considered. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Evidence of use as subdivision. — The majority of courts allow evidence of a potential subdivision only for the limited purpose of showing the adaptability of the land for subdivision purposes. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

The courts are much more liberal in admitting evidence of a potential subdivision when some preliminary steps have been taken to develop the land. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Where there is testimony that the highest and best use of the property is as an industrial subdivision, and evidence that other property in the immediate area was subdivided for industrial purposes, the proposed subdivision is not purely conjectual or speculative. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

If the land were adaptable for subdivision purposes, it would seem that the potential income to be derived from sales of the subdivided lots would be highly relevant to a determination of the "market value," especially to the extent that sophisticated investors who make decisions on the basis of income capitalization take part in market transactions. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Capitalization of income, in contexts other than proposed subdivisions, has been recognized as an accepted method of valuation by a number of jurisdictions. Although capitalization of anticipated proceeds from a proposed subdivision necessarily has a speculative element, it still has a direct impact on the property's market value since it will influence investment decisions and thereby affect supply and demand. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

To the extent that the "just compensation" guarantee in this section comprises a notion of fair market value rather than merely the price the property will bring in an imperfect market, income capitalization must be considered particularly apposite. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Even in a market where a parcel's price is unaffected by its income potential, income capitalization must be considered to have a bearing on "market value." The danger that market price will not closely reflect market value is enhanced when the property is not currently generating income. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Income capitalization in general and the anticipated use or development method in particular are standard appraisal practices. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

An expert's testimony which capitalized the anticipated rentals from a proposed recreational subdivision to arrive at an estimate of fair market value was properly admitted. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

As to admission of expert testimony on market value based on the development costs and income capitalization of a potential subdivision, see Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Rule as to special benefits. — The rule in Alaska is that special benefits to the remainder can only be used to offset severance damages to the remainder. In the event that special benefits exceed severance damages, the landowner is still entitled to receive the full market value of the portion actually taken. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Just compensation is not conditioned upon receipt of commensurate value by the state. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Personal property used on land not considered in determining compensation. — The general rule is to the effect that personal property which is used on land taken by eminent domain cannot be considered in the determination of the compensation. State v. Ness, Sup. Ct. Op. No. 977 (File No. 1914), 516 P.2d 1212 (1973).

The majority rule excludes property tax assessments from evidence in condemnation cases on the rationale that such an assessment is res inter alios acta, notoriously unreliable as a criteria of true value or the opinion of persons not called as witnesses and subject to cross-examination. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

It is almost everywhere the law that the value placed upon a parcel of land for the purposes of taxation by the assessors of the town in which it is situated is no evidence of its value for other than tax purposes. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

AS 29.53.080 does not furnish the basis for the admissibility of tax assessments as evidence in condemnation proceedings. Given the limited purpose of the act, there is no indication that the legislature intended to make tax assessments prima facie evidence of value in condemnation proceedings. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

In view of the special purposes for which tax assessments are made, the fact that there is little likelihood that an owner would contest an under-assessment or an assessment which did not reflect the property's full value, the potential unreliability of such assessments due to the varied qualifications of assessors, and the fact that such assessments standing alone embody the opinions of persons not called as witnesses and not subject to cross-examination, the admission of property tax assessments as evidence of fair market value in condemnation actions is prohibited. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Payment of interest may be necessary component of just compensation. — The payment of interest is, in appropriate circumstances, a necessary component of constitutionally guaranteed "just compensation." Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Before interest can accrue, there must be a "taking." Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Owner is entitled to interest from date of taking to date of payment. — This section necessitates that a property owner be compensated for delays incurred between the dates of the government's taking of property and making payment. If an award were paid immediately upon the taking of the land by the state, no damages to the property owner would ensue. But where, due to the necessity of legal proceedings to ascertain fair market value of property, delays ensue, the property owner is entitled to an adequate sum to reimburse him for the loss of use of the money during the period of such delay. To hold otherwise would constitute a taking of the property without just compensation. Therefore, it is well established that the owner of property is entitled to interest from the date of taking to the date of payment. Russian Orthodox Greek Catholic Church of North America v. Alaska State Hous. Auth., Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

Since compensation for delays required. — The 5th amendment to the United States Constitution and this section require that a property owner be compensated for delays incurred between the dates of the government's taking of property and making payment. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

If an award were paid immediately upon the taking of the land by the state, no damages to the property owner would ensue. But where, due to the necessity of legal proceedings to ascertain fair market value of property, delays ensue, the property owner is entitled to an adequate sum to reimburse him for the loss of use of the money during the period of such delay. To hold otherwise would constitute a taking of the property without just compensation. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Interest from date owner loses economic advantages but not liabilities. — If as a matter of constitutional law the property owner is entitled to interest from the moment the state takes legal possession, he should, a fortiori, receive interest where he has been deprived of all the economic advantages of legal ownership but is relieved of none of the liabilities. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Although no statute so provides. — There is no statutory provision for payment of interest from the date a condemnation action is instituted where the property owner remains in possession, and it has long been recognized that unless interest is specifically authorized by legislative enactment, it may not ordinarily be assessed against the state in any action. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Compensation to include expenses necessarily incurred. — Civil R. 72(k)(4), when construed in the framework of the "just compensation" clauses of the United States and Alaska constitutions, entitles the property owner to be made whole for expenses necessarily incurred in connection with the condemnation of his property. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

This section and the 5th amendment entitle the property owner to be made whole for expenses necessarily incurred in connection with the condemnation of his property. City of Anchorage v. Scavenius, Sup. Ct. Op. No. 1183 (File Nos. 2214, 2222), 539 P.2d 1169 (1975).

Without such a rule, the state forces a property owner to pay a greater portion of the costs of a public project than any other taxpayer must pay by afflicting him with unavoidable expenses of condemnation. Placing such a burden on the property owner is no more just than assessing a levy against him but no others. City of Anchorage v. Scavenius, Sup. Ct. Op. No. 1183 (File Nos. 2214, 2222), 539 P.2d 1169 (1975).

Construction of holding in Stewart & Grindle, Inc. v. State. — The holding in Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974), that Civil R. 72(k)(4) when construed in the framework of the "just compensation" clauses of the United States and Alaska constitutions entitles the property owner to be made whole for expenses necessarily incurred in connection with the condemnation of his property, does not mean that the state must become the guarantor of costs incurred in advancing every possible legal theory an owner may have in an eminent domain proceeding. State, Dep't of Hwys. v. Salzwedel, Sup. Ct. Op. No. 1861 (File No. 3976), 596 P.2d 17 (1979).

Any rule which purports to shift the costs of the initial determination of the compensation award upon the owner would be unconstitutional. City of Anchorage v. Scavenius, Sup. Ct. Op. No. 1183 (File Nos. 2214, 2222), 539 P.2d 1169 (1975).

Appraisers' and attorney's fees held "necessarily" incurred. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Where the property to be taken has a readily ascertainable market value, or is worth too little to warrant a professional appraisal, an appraiser's fee could not be said to be "necessary," and the property owner would not be entitled to compensation for such an expense. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Where the property to be taken has a readily ascertainable market value, or is worth too little to warrant a professional appraisal, an appraiser's fee could not be said to be "necessary," and the property owner would not be entitled to compensation for such an expense. Stewart & Grindle, Inc. v. State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

Where the property has a readily ascertainable market value and the state has offered at least that amount, any attorney's fees subsequently incurred would not be necessary in order to obtain just compensation, and would accordingly be disallowed. Stewart & Grindle, Inc. v.

State, Sup. Ct. Op. No. 1052 (File Nos. 1941, 1982, 1986), 524 P.2d 1242 (1974).

No award of expenses in situations not specified in Civ. R. 72(k). — In the absence of an amendment, the supreme court is not justified in awarding costs and attorney's fees in situations not specified in Civ. R. 72(k), which specifies when costs and attorney's fees incurred by the property owner are to be assessed against the condemnor. City of Anchorage v. Scavenius, Sup. Ct. Op. No. 1183 (File Nos. 2214, 2222), 539 P.2d 1169 (1975).

Award of fees incurred in unsuccessfully seeking compensation for the expectancy of renewal of a lease was error since the expenses in developing this claim were not "necessarily incurred" within the meaning of Civ. R. 72(k)(4). State, Dep't of Hwys. v. Salzwedel, Sup. Ct. Op. No. 1861 (File No. 3976), 596 P.2d 17 (1979).

Where property owner unsuccessfully appeals master's award. — A condemnor is not entitled to an award of costs and attorney's fees when the property owner has unsuccessfully appealed a master's award. City of Anchorage v. Scavenius, Sup. Ct. Op. No. 1183 (File Nos. 2214, 2222), 539 P.2d 1169 (1975).

Just compensation within range of testimony precludes new trial. — The trial court did not commit an abuse of discretion in denying the state's motion for new trial, where the jury's determination of just compensation was within the range of the testimony. State v. 45,621 square feet of land, Sup. Ct. Op. No. 641 (File No. 1115), 475 P.2d 553 (1970).

Jury's award of $0.00 as just compensation to a property owner for the taking of an easement was not patently inadequate or violative of constitutional provisions pertaining to eminent domain. Scavenius v. City of Anchorage, Sup. Ct. Op. No. 1182 (File No. 2193), 539 P.2d 1161 (1975).

The taking of an easement does constitute an appropriation of the owner's property regardless of its minuscule effect. But where the property owner failed to object to instructions expressly permitting the entry of an award of no compensation and the difference between an award of $0.00 compensation and a nominal sum to which the property owner would have been entitled is de minimus, the failure to award compensation per se did not require reversal. Scavenius v. City of Anchorage, Sup. Ct. Op. No. 1182 (File No. 2193), 539 P.2d 1161 (1975).

Section 19. Right to Bear Arms. A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Section 20. Quartering Soldiers. No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or occupant, or in time of war except as prescribed by law. The military shall be in strict subordination to the civil power.

Section 21. Construction. The enumeration of rights in this constitution shall not impair or deny others retained by the people.

Right of self-representation has been so retained by the people. — See McCracken v. State, Sup. Ct. Op. No. 986 (File No. 1791), 518 P.2d 85 (1974).

A prisoner has a right to represent himself in post-conviction relief proceedings. McCracken v. State, Sup. Ct. Op. No. 986 (File No. 1791), 518 P.2d 85 (1974).

The right to counsel should not be used to bar self-representation. McCracken v. State, Sup. Ct. Op. No. 986 (File No. 1791), 518 P.2d 85 (1974).

The right to self-representation is not absolute. McCracken v. State, Sup. Ct. Op. No. 986 (File No. 1791), 518 P.2d 85 (1974).

Qualifications on right of self-representation in post-conviction proceedings. — See McCracken v. State, Sup. Ct. Op. No. 986 (File No. 1791), 518 P.2d 85 (1974).

Criminal R. 39(b) construed in light of this section. — See McCracken v. State, Sup. Ct. Op. No. 986 (File No. 1791), 518 P.2d 85 (1974).

SB

202

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

TO: Senate Transportation Committee Members

FROM: Committee Staff

DATE: 3-29-85

RE: SB 202

SB 202, as you can see from the packet, asks for a special appropriation to the DOT/PF of $23,555,100 for the construction of a bridge over the Eagle River.

Enclosed in your packet you will find a copy of the bill, a copy of HB 248 from the Thirteenth Legislature dealing with the bridge, a site plan, a resolution from the City of Anchorage supporting the building of the bridge, an article from the Anchorage Times about SB 202 and the municipalities objections to the bill, and finally a portion of a plan commissioned by the City of Anchorage to look into ways to solve the traffic problems in the Eagle River area.

In conversation with Chip Dennerlein, director of intergovernmental affairs for the Municipality of Anchorage, it has come to the attention of the staff that the municipality is working with DOT/PF to make sure that the bridge can qualify for federal highway funds. If this happens the cost to the general fund would be far less than that requested. Mr. Dennerlein has said that a representative of the municipality will be testifying at the meeting.

ALASKA STATE LEGISLATURE

SENATOR
RICK
HALFORD
SENATE MINORITY LEADER

SENATE

Permanent Address
P.O. BOX 66
CHUGIAK, ALASKA 99567
Phone 907 688 2476
While in Juneau
POUCH V
JUNEAU, ALASKA 99811
Phone 907-465-4958

TO: The House Transportation Committee

FROM: Senator Rick Halford
Senator Tim Kelly

RE: HB 248, construction of a bridge in Eagle River

DATE: May 10, 1983

After careful study of the ongoing problems of traffic congestion in the downtown Eagle River area, I have concluded that there are two projects that can be undertaken at this time to alleviate some of the traffic hazards.

The first and immediate project, for which I have requested funding, is engineering and physical correction of the intersection of Eagle River Road and the Old Glenn Highway.

The second, more long-range project, which I feel should be started as soon as possible, is a bridge over Eagle River to funnel the traffic out of Eagle River Valley over to Hiland Road and out the Hiland Road overpass onto the four lanes to Anchorage.

This bridge seems to be the only feasible solution to the long-range problem of getting the existing traffic out of Eagle River Valley, without going into downtown Eagle River. I feel the sooner we fund and build this bridge, the more money we will save the State. As first designed and considered in 1982, the fiscal note was $12,995,000 and in 1983 it is $15,723,950; each year we wait, the price will be higher.

In conclusion, I strongly recommend your support for HB 248.

Rick Halford
Rick Halford

Tim Kelly
Tim Kelly

Support for HB 248

Introduced: 3/11/83
Referred: Transportation
and Finance

Funding Information

General Fund	$15,000,000
Other Funds	-0-
	$15,000,000

IN THE HOUSE BY LISKA

HOUSE BILL NO. 248

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for construction of a bridge in Eagle River; and providing for an effective date."

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

* Section 1. The sum of $15,000,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for construction of a bridge in Eagle River.

* Sec. 2. The appropriation made by this Act is for a capital project and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect July 1, 1983.

Previous Bill HB248

STATE OF ALASKA
FISCAL NOTE

Revision Date: 11/30/83

I. REQUEST

Bill/Resolution No.: HB 248
Title: ...construct bridge...Eagle River
Sponsor: Rep. Liska
Requestor: House Transportation
Date of Request: 10/1/83

II. FISCAL DETAIL

Agency Affected: DOT&PF
Program Category Affected: Transportatio
BRU, Program or Subprogram(s) Affected: Design & Construction

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL OPERATING			50.0	55.0	60.5	66.5
CAPITAL	305.0	400.0	34,284.0			
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	305.0	400.0	34,334.0	55.0	60.5	66.5
FEDERAL FUNDS						
OTHER (Specify Source)						
TOTAL	305.0	400.0	34,334.0	55.0	60.5	66.5

POSITIONS:

FULL TIME			1	1	1	1
PART TIME						
TEMPORARY						
TOTAL						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor of bill

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared by: William R. Snell, Director
Phone: 266-1462
Division: Central Region Planning & Programming
Date: 11/30/83

Approved by Commissioner: David W. Haugen
Date: 11/30/83
Department: Deputy Commissioner, Central Region

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

HR 248 Fiscal Note

9/14/83

Offered: 5/20/83
Referred: Finance

Original sponsor: Liska

Funding Information	
General Fund	$750,000
Other Funds	-0-
	$750,000

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 248 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - FIRST SESSION

A BILL

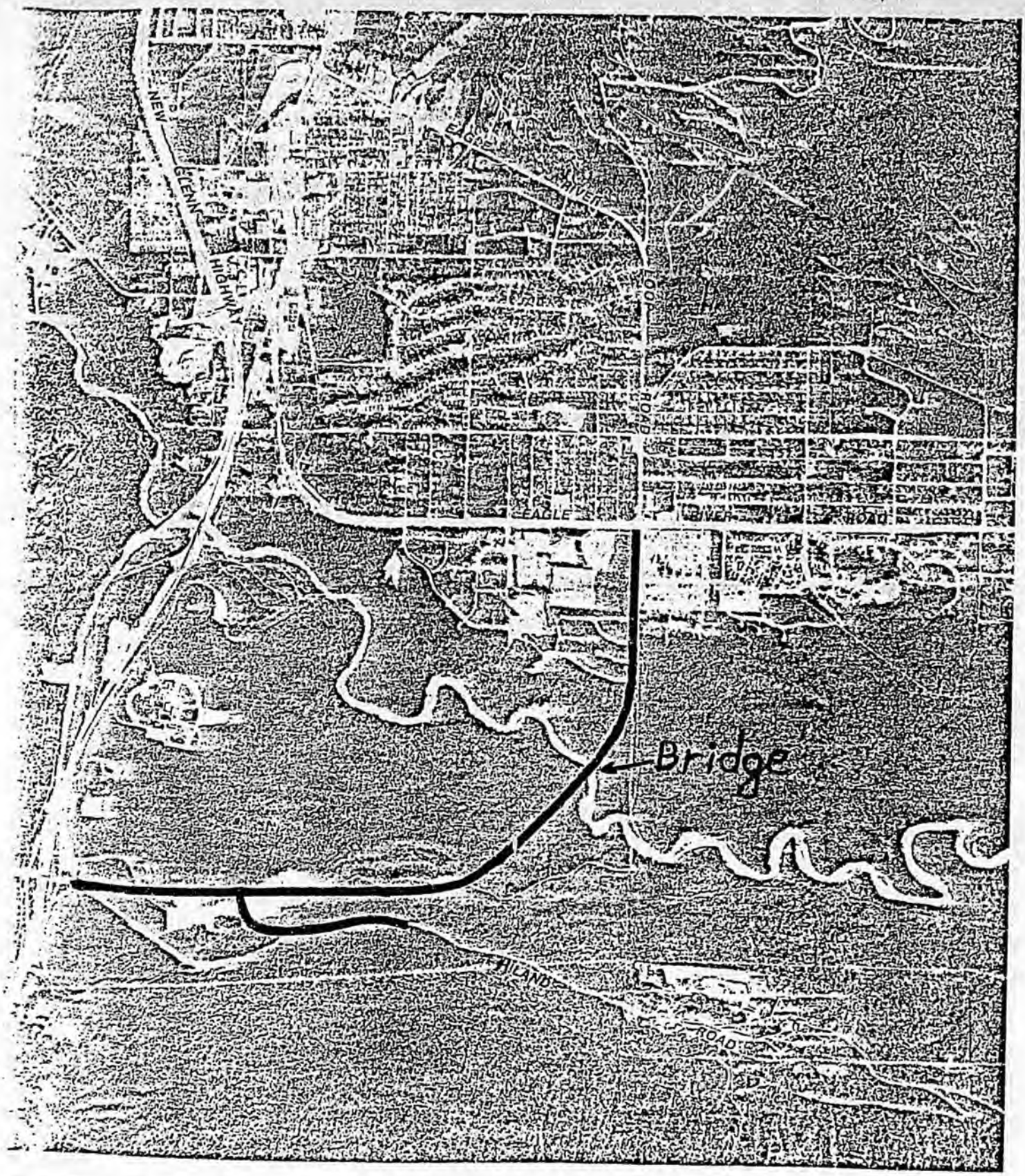
For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities for design, engineering, and construction of a bridge in Eagle River; and providing for an effective date."

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

* Section 1. The sum of $750,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for design, engineering, and construction of a bridge in Eagle River.

* Sec. 2. The appropriation made by this Act is for a capital project and is subject to AS 37.25.020.

* Sec. 3. This Act takes effect July 1, 1983.



Eagle River Bridge

- Alternative 4 -

N

Approximate Scale

Site Plan..

Request for Eagle River bridge funds stirs debate

By ANDY RYAN
United Press International

JUNEAU — A bill seeking $23.5 million to build a second bridge across Eagle River, linking Eagle River and Hiland roads, was introduced in the Senate Thursday but an Anchorage official says the money isn't needed this year.

State Sen. Tim Kelly, R-Eagle River, said he introduced the bill because the bridge, which would open up a second interchange into Eagle River from the Glenn Highway, is one of his community's highest priorities.

But Chip Dennerlein, director of intergovernmental affairs for Anchorage Mayor Tony Knowles, said about $500,000 for engineering work on the bridge already is contained in Gov. Bill Sheffield's proposed 1986 budget.

Money to actually build the bridge won't be needed until the 1987 budget, at the earliest, Dennerlein said.

"If you put construction money for the bridge in the budget it would just sit in the bank," said Dennerlein, explaining why the bridge construction funds aren't on the city's list of projects for legislative funding this year.

"We're not going to ask for money we're not going to use," Dennerlein said.

Kelly, a member of the Senate Majority coalition and chairman of the Senate Rules Committee, said the bridge is essential to clear up the bottleneck at Eagle River's sole interchange onto the Glenn Highway.

"It's one of the three priorities that we have in our area," Kelly said. "We have Chugiak High School, and the bridge and the expansion of the Glenn Highway.

"It's just absolutely necessary that we find another outlet-inlet onto the Glenn Highway, because the traffic problems out there with our one little entrance and exit are just insurmountable; and we simply have to find another way to access Eagle River."

At present, all traffic entering the community of Eagle River from the Glenn Highway goes through a single interchange. The new bridge, which would cross Eagle River several miles upstream of the existing bridge, would allow the present Hiland Road interchange to handle traffic bound for Eagle River.

Asked why he introduced the funding request for the bridge as a separate bill rather than incorporate it into the main construction budget, Kelly said it is a matter of legislative tactics.

"A lot of times you simply want to call attention to the fact that you need this, and by introducing a bill it becomes part of the process. If you can put in the budget, fine; if you can't then you might want to push a bill through. It's just another option that we're leaving ourselves with," the senator said.

The planned bridge, which was included Thursday in the U.S. highway system, and which thus will be eligible for federal as well as state funding, will be either two or four lanes wide, depending on how much money is available.

Dennerlein said other construction funds aimed at alleviating the problem of traffic congestion between Eagle River and Anchorage are contained in the governor's proposed budget. One project planned for this year, he said, is the widening of the Glenn Highway between Hiland Road and Muldoon Road, in Anchorage, from four to six lanes.

The city's main push for construction money for the bridge probably will come next year, Dennerlein said.

"It's a fair bet that the bridge will be very high on the 1987 (city) requests," he said.

Passion man's driving force

Continued from Page B-1

Jefferson Starship came to town and Bob was supposed to pick up Grace Slick at the airport. "But she ducked out one of the bottom doors and took a cab."

"I even put on a suit," he says with mock injury. "I had one of those little roses in my lapel. I was going to chauffeur GRACE SLICK!"

The Joneses say they do it all for the fun of it. They certainly seem to be having a good time. Last year they put 2,000 miles on Passion, driving to Settler's Bay for brunch and to Portage for picnics.

Back when Passion was black — with Cadillac silver crushed velour upolstery — Bob rolled her in a ditch at the curve where Dowling Road meets Lake Otis Drive. His father was a passenger in the car. No one was hurt but the car.

"My father thought it was just funnier than hell." The damage tab? Twelve grand.

"If you wanna play, you gotta pay," says Mike (1930 Chevy) Hunsberger, who has been listening to Bob talk about Passion.

Bob is stopped by a request to explain why he is willing to spend so much time and money on a car. "That's hard," he says. Hunsberger helps out:

"It's like having your own parade. People in front of you slow down. People behind speed up just to take a look."

Sometimes the cost of a passion is more than money. About five years ago, Patty left Bob, divorced him. He says it was because of his obsession with cars. She says there was more to it than that, but car madness was certainly way up there.

"I used to feel left out, neglected," she says.

The divorce only lasted seven months. "Our friends say he really grew up after I left him. He decided his family was important."

So the Joneses remarried and Bob bought Patty a 1948 Willys Jeep convertible and now they work on cars together.

Anchorage Daily News/ Erik Hill

Pearl of a sandwich

Moose death toll rises to 68

AMENDED AND APPROVED
DATE 3-12-85

Submitted by: Chair Angvik
Prepared by: Intergovernmental Affairs
Office of Internal Affairs at the request of the Chair
For Reading: March 12, 1985

MAR 27 1985

ANCHORAGE, ALASKA
AR NO. 85-62

A RESOLUTION SUPPORTING IMPROVEMENT AND UPGRADE OF THE GLENN AND PARKS HIGHWAYS

WHEREAS, the Municipality of Anchorage and the Mat-Su Borough have both experienced dramatic increases in population during the past few years, and

WHEREAS, a great percentage of this growth has occurred in Eagle River and in the Wasilla area, and

WHEREAS, many of the people travel to and from the Anchorage Bowl for employment on a daily basis, including 40% of the working population of the Mat-Su Borough, and

WHEREAS, this has severely impacted the ability of the existing highway corridor to meet even the existing demand, and

WHEREAS, much of Southcentral Alaska's future growth and develoment will continue to occur along this primary corridor.

NOW, THEREFORE, be it Resolved that:

The Anchorage Assembly joins with the Mat-Su Borough in supporting an overall planning and improvement program for the entire Glenn and Parks Highway Corridor from Anchorage to Wasilla to include:

1. expansion of the Glenn from Muldoon to Eagle River to six lanes;

2. construction of a new Hiland Road bridge across Eagle River;

3. expansion of the Glenn Highway across the Elkutna Flats to Mile 35, including bridges, to four lanes;

4. expansion of the Parks Highway to Wasilla; and

5. obtaining of a right-of-way for Wasilla Bypass.

6. encourage the exploration with the Alaska Railroad of the feasibility and implementation of commuter rail transit between Wasilla, Eagle River and Anchorage.

This resolution shall take effect immediately upon passage and approval, and copies distributed to the Governor and members of the State Legislature.

PASSED AND APPROVED by the Anchorage Assembly this 12th day of March, 1985.

Jane Angvik
Chairman

ATTEST:

Barbara E. Smith
Municipal Clerk

Anchorage Resolution Supporting the Project

Through previous analysis, it has been shown that the bridge over Eagle River would be the best alternative for improving access to the Glenn Highway from Eagle River. The cost of this alternative also compares very favorably with the other alternatives. It is the only one of the various alternatives which would both lessen the congestion at the South Eagle River Interchange and eliminate the need for the Glenn Highway to be widened to a six lane facility north of the Hiland Road Interchange. Although the ADT on the Glenn Highway south of the Hiland Road Interchange is projected to be 55,000 by the year 2001, the ADT north of this interchange is projected to be only 38,000. This latter traffic volume is within the capacity of the existing facility.

Recommendations

Based on the results of this study, both interim and longer range improvements will be required to improve the access to the Glenn Highway from Eagle River. Interim solutions are needed since the traffic congestion currently in existence at the South Eagle River Interchange must be relieved as soon as practicable. However, long-range solutions are also needed since these interim solutions will not be sufficient to accommodate the projected traffic demand for the year 2001.

In order to relieve the existing congestion problems at the South Eagle River Interchange at Artillery Road, the following interim actions are recommended:

1. Construct an additional right-turn-only lane on the northbound off-ramp of the interchange;

2. Add an additional right-turn-only lane to eastbound Artillery Road from the interchange off-ramp to Eagle River Road;

3. Channelize the intersection of Eagle River Road by adding a right-turn-only lane from Eagle River Road to the New Eagle River Urban; and

4. Install a traffic signal at the intersection of Eagle River Road and the New Eagle River Urban.

In order to accommodate the projected growth in traffic demand throughout Eagle River, the following additional actions are recommended for implementation:

1. Program the preliminary engineering phase for the North Eagle River Access Road Interchange for FY 1984-86;

2. Construct the North Eagle River Access Road Interchange in FY 1987;

3. Program preliminary engineering monies for the bridge over Eagle River and the necessary Hiland Road improvements for FY1984-86;

4. Construct the Eagle River Bridge and upgrade Hiland Road in FY 1987; and

5. Prepare a long-range transportation plan for Eagle River and the surrounding area which will identify necessary internal circulation improvements.

The total estimated cost of these various improvements would be $41,575 million over the 1984-1987 time period. These costs are itemized in Table 3, with the specific projects displayed on Figure 13.

TABLE 3

ESTIMATED COST OF RECOMMENDED IMPROVEMENTS*
($000)

PROJECT	FISCAL YEAR 1984	1985	1986	1987	TOTAL
1. Eagle River Bridge-Hiland Road Improvements	300.0 PE	350.0 PE	400.0 PE	23,450.0 R, U, C	24,500.0
2. North Eagle River Interchange	200.0 PE	200.0 PE	500.0 PE	15,700.0 R, U, C	16,600.0
3. South Eagle River Interchange Improvements					
A. Added lanes	245.0				245.0
B. Traffic Signal	230.0				230.0
TOTAL	975.0	550.0	900.0	39,150.0	41,575.0

* Inflation is assumed at 7% per year.

er/ml

Environmental/Physical Impacts

The construction of a bridge across Eagle River from the extension of Eagle River Loop Road south to Hiland Road would have a greater impact on the environment than would the other alternatives. Moderate to steep slopes are present, while the site has a rating of moderately low to moderate susceptibility for seismically-induced ground failure. This area is within a coastal management zone, contains wetlands, and is also considered an important wildlife habitat. Extensive engineering and biological studies would be needed prior to constructing a bridge at this location.

The approach road north of the bridge would follow a section line which has been cleared and is currently in use accommodating a power transmission line. However, additional right-of-way would need to be acquired for the bridge structure and the road south of the Eagle River. The surrounding land is presently owned by the State Park System, the Eklutna Corporation, the Municipality, and private individuals.

No structures would need to be taken at this time. However, the roads leading to the bridge would need to be properly buffered to reduce noise and visual impacts to abutting land uses, which currently include a park and developing residential uses. An area on the northeast end of the approach road is currently designated as commercial in the Eagle River Master Plan. The new Gruening Junior High School is located south of the proposed alternative.

Traffic Impacts

At the present time, the existing Hiland Road Interchange is very underutilized. Average traffic volumes are only 1000 per day. However, with the construction of this alternative, this interchange would become a principal access point to the Glenn Highway from Eagle River. Access to and from the Hiland Road area to Eagle River would also be improved. School, shopping, and commercial interests would all be more accessible.

The construction of this bridge would greatly alleviate the existing and forecast traffic volumes at the South Eagle River Interchange, as traffic presently forced to access Eagle River from this location would now have the Hiland Road Interchange as another option. Based on the model projections, the traffic demand for the Hiland Road Interchange would be 17,000 by the year 2001. Of these total trips, 14,000 would cross the new bridge. The majority of this traffic would be diverted from the South Eagle River Interchange. Trips originating in the Eagle River Valley east of Eagle River Loop Road would also have a better access to the Glenn Highway. Figure 12 displays the impact of this alternative on the projected traffic volumes for the area.

Cost

In 1982 dollars, the cost of this facility has been estimated to be approximately $17.5 million. This cost figure also includes improvements to portions of Hiland Road.

The third alternative consists of reconstructing the existing South Eagle River Interchange as a diamond interchange. Higher speeds on the ramps leading to the New Glenn Highway would increase the capacity of the interchange. This alternative would also require the addition of another west-bound traffic lane from the Eagle River Road intersection to the on/off ramps west of the freeway. Traffic from the west side of the highway would be channelized to merge with the on-ramp and be controlled by a yield sign at this point.

Eagle River Valley Bridge - Hiland Road Improvements

The construction of a new road and bridge south from the extension of Eagle River Loop Road, over Eagle River to Hiland Road, could also potentially ease the congestion currently being experienced in Eagle River. This alternative would provide a direct link from the areas of new growth, located primarily in the Eagle River Valley, to Hiland Road and to the existing Hiland Road Interchange. Portions of Hiland Road would also be upgraded as a part of this alternative. These improvements are displayed on Figure 6.

ALTERNATIVES ANALYSIS

Each of the four principal alternatives under study would improve access to the Glenn Highway from Eagle River. However, there are varying impacts associated with each alternative. A brief description of the environmental, physical, and traffic impacts, and the associated cost, of each alternative appears in the ensuing section of this report. For purposes of this analysis, a "no-build" alternative has been included in order to depict the future situation if no improvements at all are made. Because of the State's ongoing program to upgrade the Glenn Highway to a full access controlled facility, it was assumed that the North Eagle River Interchange would be constructed by the year 2001. All future traffic modeling includes this facility except for the "no-build" alternative.

No-Build

If no efforts are undertaken to improve access to the Glenn Highway, the traffic situation in Eagle River can be expected to steadily worsen. Congestion at the South Eagle River Interchange, and in the immediate vicinity, would be far worse by the year 2001 than at present. Model projections indicate that by that time the ADT at this location would be 32,000.

At the only other access point to Eagle River, the North Eagle River Access Road, the ADT would approach 13,000.

IDENTIFICATION

BILL NAME
"An Act making special appropriations to the DOT/PF for construction of the Eagle River Hiland. Bridge; PED"

BILL NUMBER
SB 202

DATE INTRODUCED
2-28-85

RELATED BILLS PENDING
None

SPONSOR(S)
Tim Kelly

Co-Sponsor
Rick Halford

REFERRALS
Transportation
Finance

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes - Used in Packet

FISCAL NOTE

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED
Senator Kelly

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES
HB 248 CS 248

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
Chip Oennerlein (Mun. of Anchorage) - Opposes Bill

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes

DATE & PLACE SET
Yes 4-1-85

STAFF MEMO TO COMMITTEE
Yes - 3-29-85

TELECONFERENCE
No

BACKGROUND MATERIAL DISTRIBUTED
Yes

PSA/PRESS RELEASE
No

LIST OF WITNESSES

SUGGESTED AMENDMENTS/CS DRAFTED

SB

240

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

TO: Committee Members

FROM: Committee Staff BL

DATE: April 19, 1985

RE: SB 240 A Grant to the Kenai Peninsula Borough

The committee will be hearing SB 240 on Monday, April 22, 1985. This bill appropriates $17,000,000 to the Kenai Peninsula Borough for seven different road projects.

The Department of Transportation has no position on this bill because of its grant provision.

Enclosed in this packet you will find a copy of the bill and a publication from the Kenia Borough on each of the road projects, their status, the steps needed to get to the construction phase and the existing condition.

KENAI PENINSULA BOROUGH'S

ROAD PROGRAM

PREPARED BY:

KENIA PENINSULA BOROUGH

DEPARTMENT OF PUBLIC WORKS

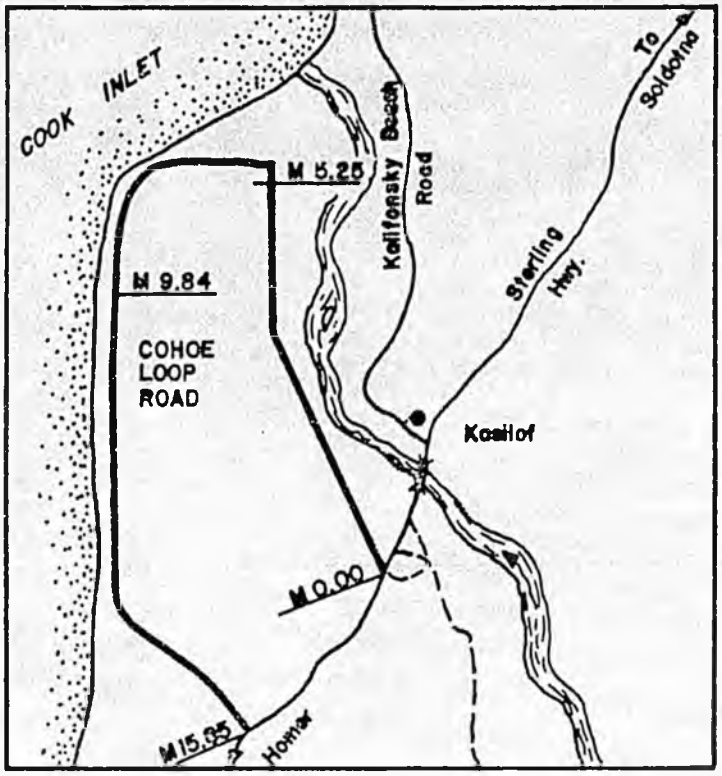
NOVEMBER 13, 1984

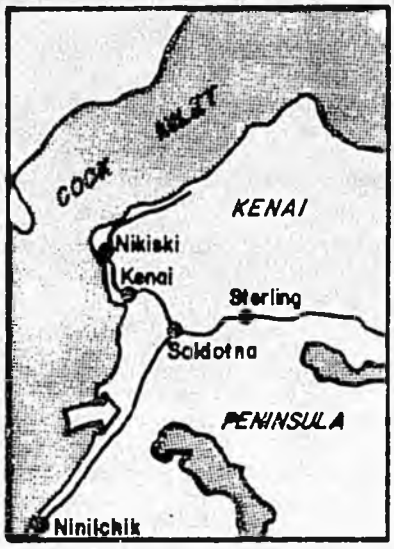
WILLIAM CONYERS
BOROUGH ENGINEER

STAN THOMPSON
MAYOR

Revised 2/5/85

COHOE LOOP ROAD (SR 114300)





Cohoe Loop Road
Capital Cost:

$2.0 million

1983 ADT = 325

Existing Condition: Mile 0.0 (N. Jct Sterling Hwy) to Mile 5.25: Gravelled 32' surface, no shoulders. Mile 5.25 to Mile 9.84: Gravelled 18' surface. Mile 9.84 tc Mile 15.85 (end of route - S. Jct Sterling Hwy): Gravelled 24' - 26' surface, 4' - 5' shoulders, recently upgraded.

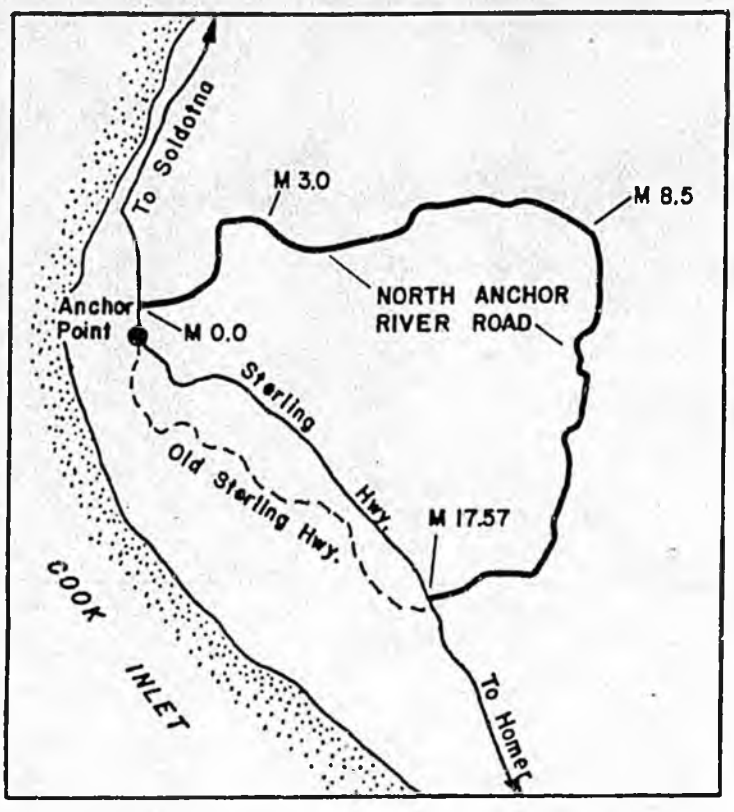
Proposed Physical Improvement: Mile 0.0 to Mile 5.25: Pave to 32'. Mile 9.84 to Mile 15.85: Mile 5.25 to Mile 9.84 - Reconstruct and pave to 32'.

Status: New proposal.

Next Step Prior to Construction: Funding of paving from Mile 0.0 to 5.25 and design from Mile 9.84 and Mile 15.85.

COHOE LOOP ROAD

NORTH ANCHOR RIVER ROAD (SR 111800)



N. Anchor River Road
Capital Cost:

$4.5 million

1983 ADT = 700

Existing Condition: Mile 0.0 (N. Jct Sterling Hwy) to Mile 8.5 (S. Jct Sterling Hwy): Gravelled 20' surface, no shoulders. Overall condition: poor to fair.

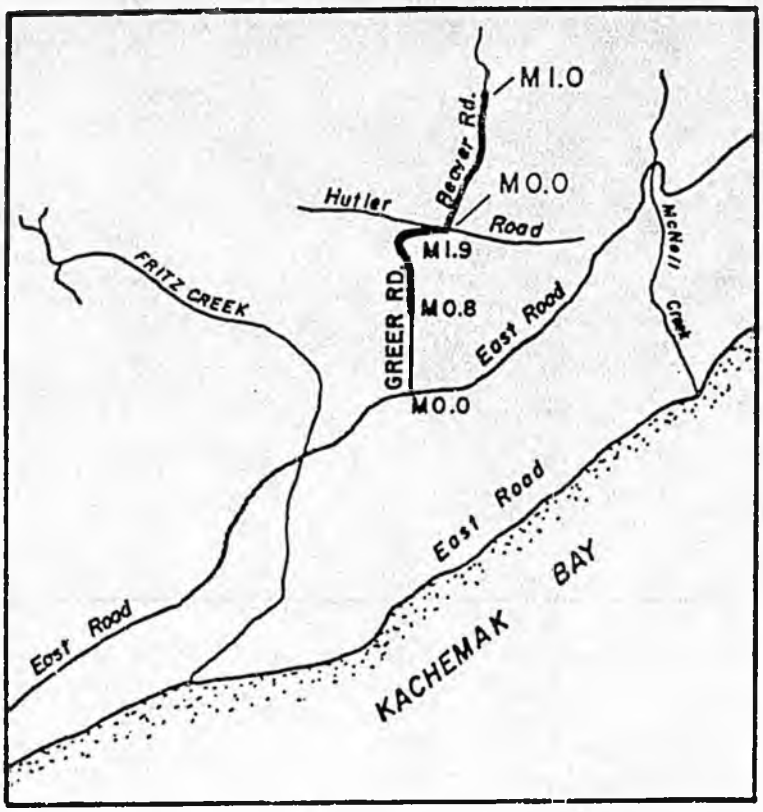
Proposed Physical Improvement: Mile 0.0 to Mile 8.5: Widen, realign, and pave to 32' rural standard. Replace wooden bridge over Anchor River with a steel bridge.

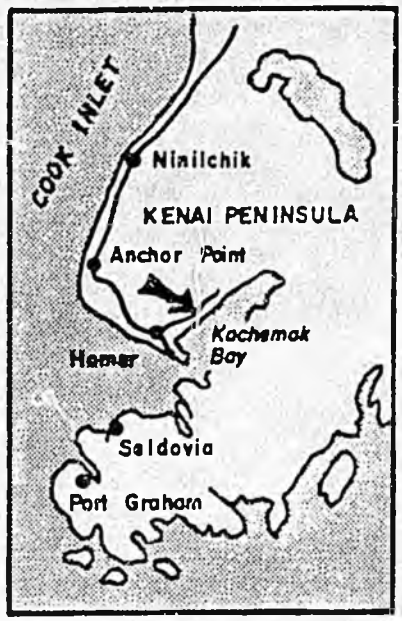
Status: The KPB has funded a $410,000 design in three phases: Phase I, Mile 0.0 to 3.0; Phase II, Mile 3.0 to 8.5; Phase III, Mile 8.5 to 17.0. The construction of Phase I is underway. The design of Phase II is nearing completion.

Next Step Prior to Construction: Construction funding in the amount of $800,000 to complete the paving of Phase I. The amount of $3.7 million for the acquisition of R.O.W. and construction of Phase II.

NORTH ANCHOR RIVER ROAD

GREER ROAD / BEAVER CREEK ROAD (G-11230)





Creer Road
Capital Cost:

$1.8 Million

1983 ADT = 85

Existing Condition: Mile 0.0 to Mile 0.8, 24 wide gravel road in overall good condition. Isolated problem areas. Mile 0.8 to Mile 1.9 - heavy timbered hillside. No existing road. Beaver Creek Road is a single lane mud road approx. 1.0 Mile long, impassible most of the year.

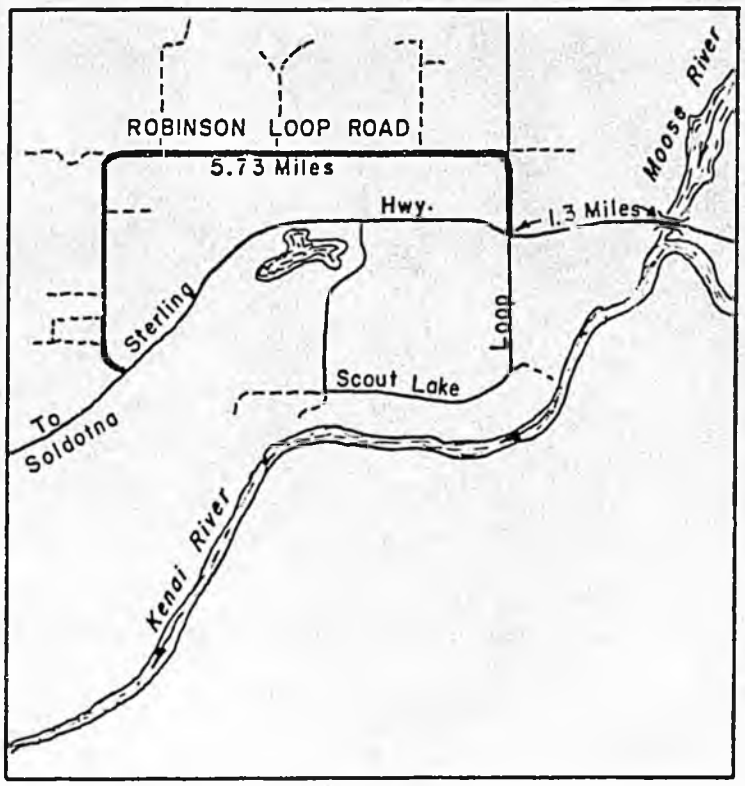
Proposed Physical Improvement: Mile 0.0 to Mile 0.8: Minor improvements and repairs. Mile 0.8 to Mile 1.9 construct new 24' wide gravel road to provide access to Hutler and Beaver Roads. Construct Beaver Creek Road Mile 0.0 to Mile 1.0 to 24' wide gravel road.

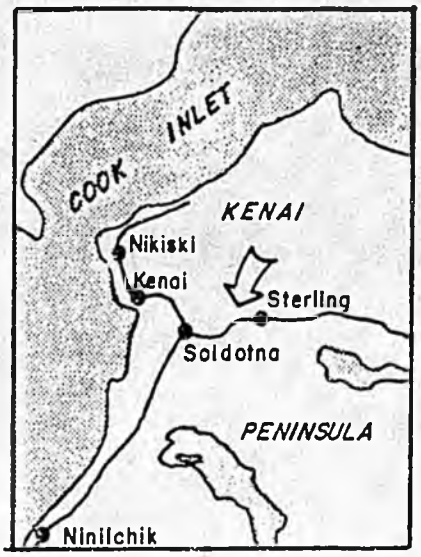
Status: The design is complete and the right-of-way has been secured. The utilities have been relocated.

Next Step Prior to Construction: Construction funding. Design funding for Beaver Creek Road.

GREER ROAD / BEAVER CREEK RD.

ROBINSON LOOP ROAD (SR 118500)





Robinson Loop Road
Capital Cost:

$2.5 million

1983 ADT = 600

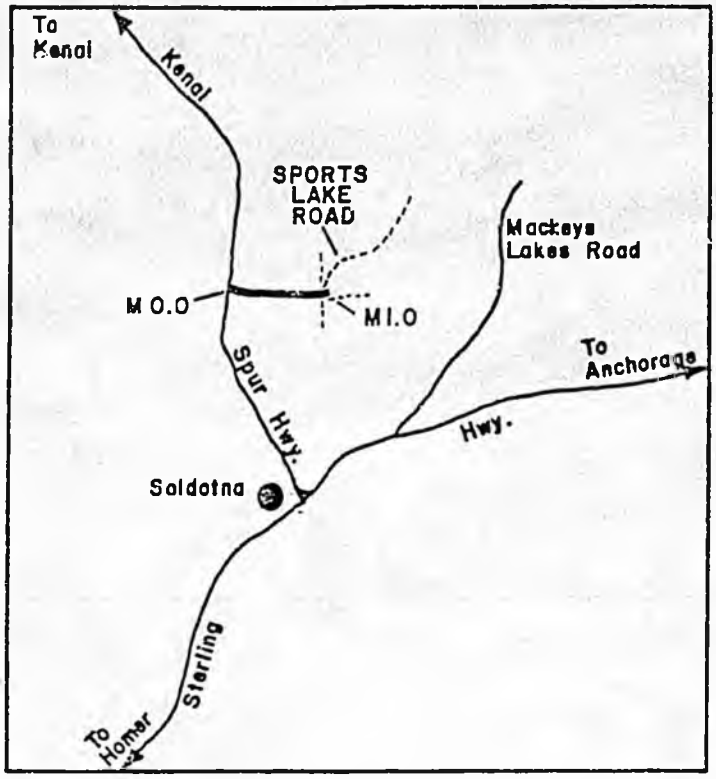
Existing Condition: Mile 0.0 to Mile 5.73: Gravelled 24' surface, no shoulders. Overall condition: Fair with isolated drainage problems.

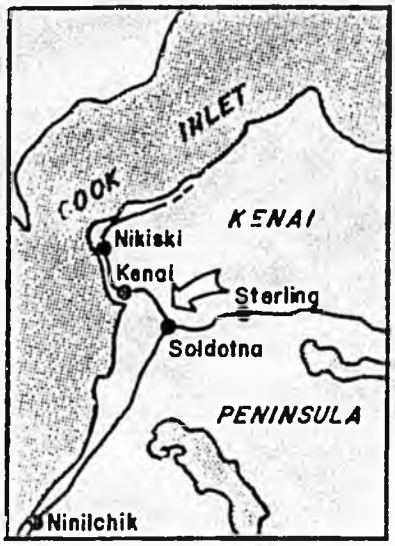
Proposed Physical Improvement: Paved to 32' wide rural standard between Mile 0.0 and Mile 5.73.

Status: The construction of Mile 0.0 to Mile 3.2 is actively underway. The design of Mile 3.2 to Mile 5.73 is nearing completion.

Next Step Prior to Construction: Funding of construction of Mile 3.2 to Mile 5.73.

SPORTS LAKE ROAD (SR 117612)





Sports Lake Road
Capital Cost:

$2.2 million

1983 ADT = 730

Existing Condition: Mile 0.0 (Jct Kenai Spur) to approx. Mile 1.0, known as "Five Corners": Gravelled 24' surface, no shoulders. Overall condition: fair to poor.

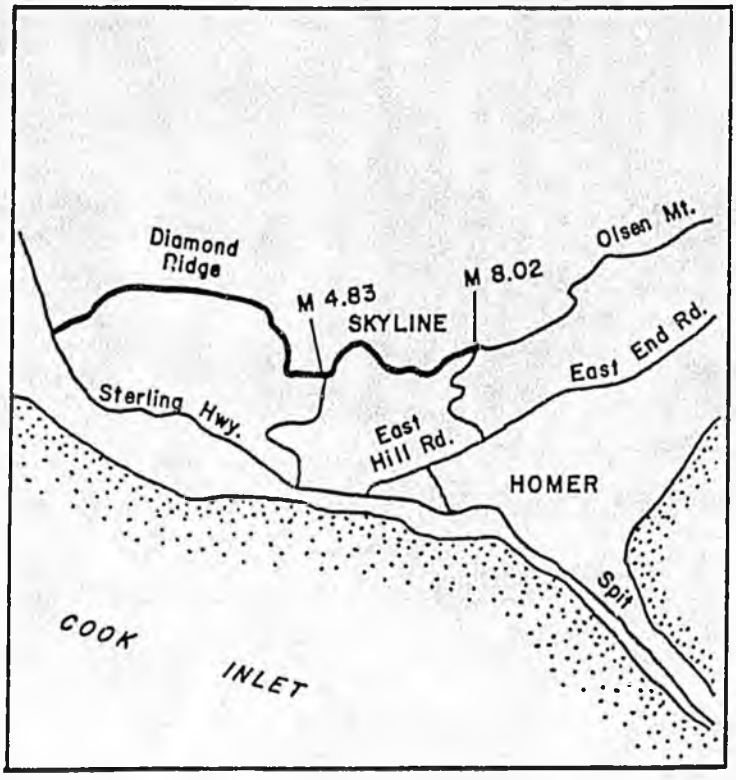
Proposed Physical Improvement: Mile 0.0 to approx. Mile 1.0: Widen and pave to 32' rural standard.

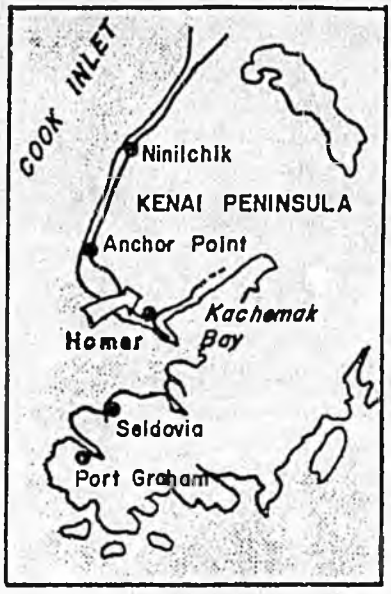
Status: The design is complete, permits have been acquired, right-of-way acquisition is underway.

Next Step Prior to Construction: Construction funding.

SPORTS LAKE ROAD

DIAMOND RIDGE (SKYLINE) / OLSEN MT. ROAD (SR 111300)





Diamond Ridge
Capital Cost:

$2.0 million

1983 ADT = 145

Existing Condition: Mile 0.0 (Jct Sterling Hwy) to Mile 15.81 (end of route): Gravelled 20' surface, no shoulders. Overall condition: poor to fair.

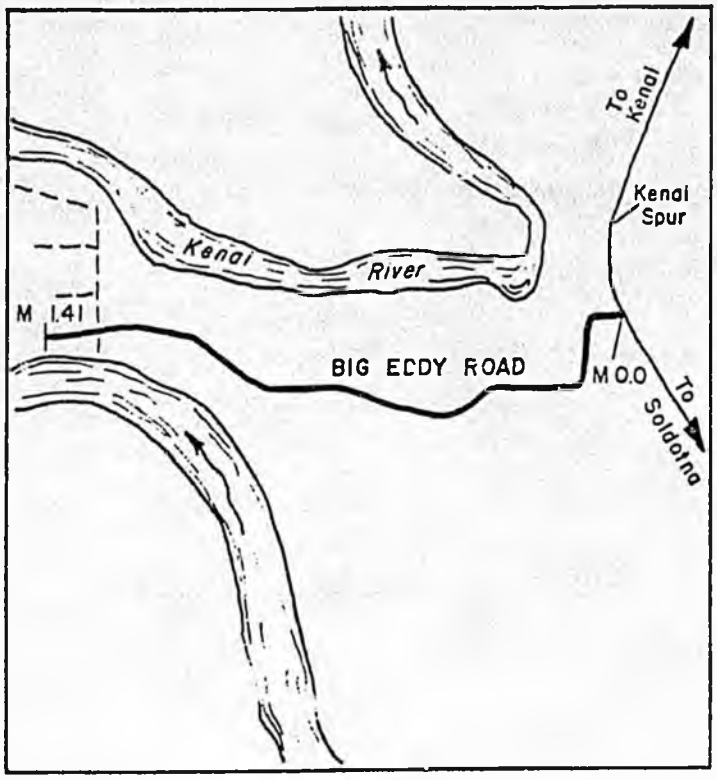
Proposed Physical Improvement: Diamond Ridge (Skyline Drive) Mile 4.83 (Jct West Hill Road) to Mile 8.02 (Jct East Hill Road): Widen and gravel to 28' rural standard. Install guardrails.

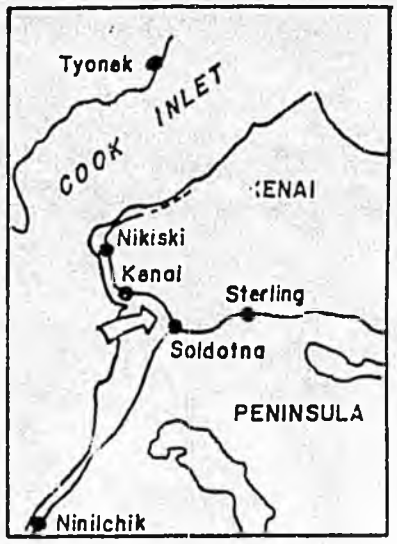
Status: The KPB has funded $68,000 for the design of Skyline Drive between East Hill Road and West Hill Road. The design is complete and right-of-way acquisition is underway.

Next Step Prior to Construction: Construction funding and right-of-way acquisition.

DIAMOND RIDGE (SKYLINE)/OLSEN MT. RD.

BIG EDDY ROAD (SR 117607)





Bid Eddy Road
Phase I
Capital Cost:

$1.5 million

1983 ADT = 400

Existing Condition: Mile 0.0 (Jct Kenai Spur) to mile 1.41 (end of route): Gravelled 18' - 20' surface, minimal shoulders.

Proposed Physical Improvement: Mile 0.0 to 1.4: Pave to 40' rural standard, improve drainage.

Status: The KPB has appropriated $30,000 for design and right-of-way acquisition. The design is actively under way.

Next Step Prior to Construction: Final design, right-of-way acquisition and construction funding.

BIG EDDY ROAD

SB

303

DRAFT

TELECOPY COVER LETTER

DRAFT

To: Senator John B. Coghill

DRAFT

From: Mr. Frank Tarpin, President Alaska Railroad Corporation

Subject: _____

Telecopier No. 265-2469 Telephone No. 265-2690 Nancy Alford

NOTE: _____

No. of Pages: 2 including cover sheet

DRAFT

FROM RR RR ANC HQ 106 04/30/85 08:47 P. 1
XEROX TELECOPIER 495:31- 1-85:21:40 1 907 265 2469 3404 1
9074653700:# 1

ALASKA RAILROAD CORPORATION

Pouch 7-2111 • Anchorage, Alaska 99510-7069

April 30, 1985

The Honorable John B. "Jack" Coghill
Alaska State Legislature
Pouch V
Juneau, AK 99811

Subject: SB 303

Dear Senator Coghill:

Thank you for inviting our response to Senate Bill 303, which proposes repeal of A.S. 42.40.355.

As you know, A.S. 42.40.355 provides that the Corporation may not apply for a right-of-way across, or exercise eminent domain in, the western unit of the Gates of the Arctic National Preserve.

Among the many powers assigned to it, the Corporation is authorized to plan for and undertake expansion of the railroad and railroad activities, including extension of the rail system. We support Senate Bill 303, because it creates a flexibility to plan for extensions in an important part of our State.

The Legislature has previously found that the Corporation must function as a viable economic entity, which will also provide a level of transportation service that best satisfies the needs of the people of the State. Although any proposed extension of the rail system calls for careful scrutiny consistent with such Legislative purposes, by promoting flexibility, SB 303 meshes well with our desire to responsibly plan for the future.

Sincerely,

F. G. Turpin
President and Chief Executive Officer

IDENTIFICATION

"An Act removing a limitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent domain".

SB303

DATE INTRODUCED
4-29-85

RELATED BILLS PENDING
None

SPONSOR(S)
Coghill

REFERRALS
None

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes

FISCAL NOTE

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED
Senator Ferguson

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC
ARR Entitlement Act

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
ARR - Pat (Frank Turpin's Sec. will call soon)
DOT-PF

HEARING PREPARATION

CHAIRMAN BRIEFED

DATE & PLACE SET

STAFF MEMO TO COMMITTEE

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES

SUGGESTED AMENDMENTS/CS DRAFTED

STATEMENT BY: SENATOR FERGUSON

to the Senate Transportation Committee

May 1, 1985

I am introducing this amendment to better allow the Alaska Railroad Corporation to extend a line into the Kantishna mining area. The Kantishna area is located in the Denali Park Preserve next to Mt. McKinley. The Alaska Land Use Council studied the Kantishna area pursuant to 16 USC 410 HH-1(b). There findings were that substantial and valuable minerals are present there and extractive activities should be allowed.

I believe that extending the railroad into Kantishna via the Stampede Road route would have many benefits. First it would be a vital asset to mining development of the Kantishna. Secondly, railroad access provides the least environmental damage. Thirdly, the railroad could double the number of tourists that would visit McKinley Park and Denali Park. Since McKinley is operated on a controlled access basis, the presence of the railroad would allow the interchange of bus passengers from one direction with the railroad passengers from the other direction, hence doubling the opportunities to visit the two parks.

While the amendment only pertains to state lands, I believe it will provide the railroad with less obstacle on starting across state land at the beginning of the Stampede route.

My amendment would be parody to the main bill which opens up the gates to the Arctic.

(c) The corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)

Sec. 42.40.355. Prohibition. Notwithstanding any other provision in AS 42.40, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§ 2 ch 153 SLA 1984)

Sec. 42.40.360. Request for land. (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85 — 508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§ 2 ch 153 SLA 1984)

Sec. 42.40.370. Conveyance of land. (a) Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision

(1) designate the identified land for railroad purposes and, subject to valid existing rights, convey the state's interests in the land to the corporation;

(2) notify the corporation of reasons for refusal to designate the identified land for railroad purposes; or

(3) approve the request in part and deny it in part and convey as appropriate.

(b) A conveyance of land under this section may be for less than its appraised value as determined by the commissioner of natural resources.

(c) In the absence of a reservation to the contrary, a conveyance of land under this section vests in the corporation ownership, control of the surface, material and mineral estate, including the right to extract or use timber and other construction materials, sand, gravel, rock, and the right to tunnel, ditch, recontour, excavate, or otherwise use the land for railroad, transportation, transmission, communication, and related purposes.

(d) The corporation may reconvey to the state land received under this section that the corporation and the commissioner of natural resources jointly identify as unnecessary or unsuitable for the corporation's purposes. (§ 2 ch 153 SLA 1984)

Sec. 42.40.380. Use of state land. When emergency conditions require that track or other right-of-way fixtures of the corporation be moved from the existing location and relocated on state land adjacent to or in the vicinity of the existing right-of-way and the chief executive officer determines that relocation is necessary to maintain safe and adequate rail operations, the corporation may effect the relocation and notify the Department of Natural Resources. The relocation must affect only the amount of state land necessary to adequately restore or continue safe rail operations at a normal level. (§ 2 ch 153 SLA 1984)

Sec. 42.40.385. Eminent domain. (a) The corporation may exercise the power of eminent domain under AS 09.55.240 — 09.55.460 to acquire land for railroad transportation purposes consistent with this chapter. Notwithstanding AS 09.55.250, the corporation may acquire a fee simple title whenever, in the judgment of the board, ownership of a fee simple title is necessary to carry out the purposes of this chapter.

(b) The corporation may file a declaration of taking in the manner provided for the state under AS 09.55.420.

(c) The power of eminent domain conferred under this section includes the power to obtain clay, gravel, sand, timber, rock or other material for the operation of the railroad, the land necessary to obtain the material, and access to the land and material.

(d) The exercise of the power of eminent domain requires the prior approval of the governor. (§ 2 ch 153 SLA 1984)

Sec. 42.40.390. Land use rules. The board may adopt exclusive rules governing land use by parties having interests in or permits for land owned or managed by the corporation. The power conferred by this section is exercised for the common health, safety, and welfare of the public and to the extent constitutionally permissible, may not be limited by the terms and conditions of leases, contracts, or other transactions. (§ 2 ch 153 SLA 1984)

Sec. 42.40.400. Vacation of easements. The corporation may vacate an easement acquired under this chapter by executing and filing a deed in the appropriate recording district. If the easement was

Supplement

SENATE AMENDMENT

By FERGUSON

To: AMEND SENATE BILL No. SB 303

To: HOUSE BILL No.

PAGE: 1 LINE: 11

Add a new Section 2 which reads

Section 2. AS 42.40.370(a)(2) and (a)(3) is repealed.

SB 303 cont'd

The question being: "Shall Amendment No. 1 be adopted?" The roll was taken with the following result:

SB 303 AM 1

Yeas:	10	Bennett, Fahrenkamp, Faiks, Ferguson, Halford, Kerttula, Ray, Sackett, Zharoff, Ziegler
Nays:	8	Abood, Coghill, Eliason, Fischer Paul, Josephson, Kelly, Rodey, Sturgulewski
Excused:	1	Fischer Vic
Absent:	1	DeVries

and so, Amendment No. 1 was adopted.

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 303 am be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

SENATE BILL NO. 303 am was read the third time.

The question being: "Shall SENATE BILL NO. 303 am (removing a limitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent domain) pass the Senate?" The roll was taken with the following result:

SB 303 AM 3RD

Yeas:	15	Abood, Bennett, Coghill, Eliason, Fahrenkamp, Faiks, Ferguson, Fischer Paul, Halford, Kelly, Kerttula, Ray, Sackett, Zharoff, Ziegler
Nays:	3	Josephson, Rodey, Sturgulewski
Excused:	1	Fischer Vic
Absent:	1	DeVries

and so, SENATE BILL NO. 303 am passed the Senate.

Senator Josephson gave notice

THERE IS NO

COMMITTEE SUBSTITUTE FOR

SB 303

Introduced: 4/29/85
Referred: Transportation

IN THE SENATE BY COGHILL

SENATE BILL NO. 303

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act removing a limitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent domain."

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

* Section 1. AS 42.40.355 is repealed.

SB 303

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

TO: Committee Members

FROM: Committee Staff

DATE: 4-30-85

RE: SB 303

SB 303 repeals Section 42.40.355 of the Alaska Statutes. This sub-section prohibits the Alaska Railroad from applying for rights-of-way in the western unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). 16 U.S., etc. refers to chapter 11 of the ANILCA act. Chapter 11 allows the State of Alaska to apply for access across or into national parks and preserves if the appropriate requirements are met.

Senator Ferguson, the sponsor of this provision of the Alaska Railroad Enabling Act, has agreed to this change.

STAFF MEMO

ALASKA RAILROAD CORPORATION

Pouch 7-2111 ◦ Anchorage, Alaska 99510-7069

April 30, 1985

The Honorable John B. "Jack" Coghill
Alaska State Legislature
Pouch V
Juneau, AK 99811

Subject: SB 303

Dear Senator Coghill:

Thank you for inviting our response to Senate Bill 303, which proposes repeal of A.S. 42.40.355.

As you know, A.S. 42.40.355 provides that the Corporation may not apply for a right-of-way across, or exercise eminent domain in, the western unit of the Gates of the Arctic National Preserve.

Among the many powers assigned to it, the Corporation is authorized to plan for and undertake expansion of the railroad and railroad activities, including extension of the rail system. We support Senate Bill 303, because it creates a flexibility to plan for extensions in an important part of our State.

The Legislature has previously found that the Corporation must function as a viable economic entity, which will also provide a level of transportation service that best satisfies the needs of the people of the State. Although any proposed extension of the rail system calls for careful scrutiny consistent with such Legislative purposes, by promoting flexibility, SB 303 meshes well with our desire to responsibly plan for the future.

Sincerely,

F. G. Turpin
President and Chief Executive Officer

ALASKA RR RESPONSE

(c) The corporation may lease, subject to AS 42.40.285 and (d) of this section, grant easements in or permits for, or otherwise authorize use of portions of rail land. However, the corporation may not convey its entire interest in rail land except as provided in AS 42.40.285, 42.40.370(d) and 42.40.400.

(d) A lease or disposal of land approved by the legislature under AS 42.40.285 by the corporation to a party other than the state shall be made at fair market value as determined by a qualified appraiser or by competitive bid. (§ 2 ch 153 SLA 1984)

Sec. 42.40.355. Prohibition. Notwithstanding any other provision in AS 42.40, the state-owned railroad as defined under 45 U.S.C. 1202(14) may not apply for a right-of-way across, or exercise eminent domain in, the western (Kobuk River) unit of the Gates of the Arctic National Preserve under 16 U.S.C. 410hh(4)(b)-(e). (§ 2 ch 153 SLA 1984)

Sec. 42.40.360. Request for land. (a) The board may nominate federal land it determines may be useful for present or future railroad purposes for selection under the Alaska Statehood Act (P.L. 85 — 508, 72 Stat. 339), as amended, and request the commissioner of natural resources to select the land for the state through the federal land selection process.

(b) The board may identify and request the commissioner of natural resources to convey land necessary or useful for present or future railroad purposes owned by or tentatively approved for transfer to the state, including land not contiguous with a railroad utility corridor or rail land. The request must include a statement of and justification for the present or future railroad use. Upon receipt of a request, the commissioner shall temporarily reserve the land identified in the request for railroad purposes and defer disposal or lease of that land under other laws to a party other than the corporation. The temporary reservation of land is subject to valid existing rights and remains in effect for 180 days. (§ 2 ch 153 SLA 1984)

Sec. 42.40.370. Conveyance of land. (a) Within 90 days after receiving a request under AS 42.40.360(b) the commissioner of natural resources shall by written decision

(1) designate the identified land for railroad purposes and, subject to valid existing rights, convey the state's interests in the land to the corporation;

(2) notify the corporation of reasons for refusal to designate the identified land for railroad purposes; or

(3) approve the request in part and deny it in part and convey as appropriate.

(b) A conveyance of land under this section may be for less than its appraised value as determined by the commissioner of natural resources.

AS 42.40.355 !

and scenic beauty of the mountains, forelands, rivers, lakes, and other natural features; to provide continued opportunities, including reasonable access, for mountain climbing, mountaineering, and other wilderness recreational activities; and to protect habitat for and the populations of, fish and wildlife, including, but not limited to, caribou, grizzly bears, Dall sheep, moose, wolves, and raptorial birds. Subsistence uses by local residents shall be permitted in the park, where such uses are traditional, in accordance with the provisions of title VIII.

Post, p. 2422.

(b) Congress finds that there is a need for access for surface transportation purposes across the Western (Kobuk River) unit of the Gates of the Arctic National Preserve (from the Ambler Mining District to the Alaska Pipeline Haul Road) and the Secretary shall permit such access in accordance with the provisions of this subsection.

Publication in Federal Register.

(c) Upon the filing of an application pursuant to section 1104 (b), and (c) of this Act for a right-of-way across the Western (Kobuk River) unit of the preserve, including the Kobuk Wild and Scenic River, the Secretary shall give notice in the Federal Register of a thirty-day period for other applicants to apply for access.

Environmental and economic analysis.

(d) The Secretary and the Secretary of Transportation shall jointly prepare an environmental and economic analysis solely for the purpose of determining the most desirable route for the right-of-way and terms and conditions which may be required for the issuance of that right-of-way. This analysis shall be completed within one year and the draft thereof within nine months of the receipt of the application and shall be prepared in lieu of an environmental impact statement which would otherwise be required under section 102(2)(C) of the National Environmental Policy Act. Such analysis shall be deemed to satisfy all requirements of that Act and shall not be subject to judicial review. Such environmental and economic analysis shall be prepared in accordance with the procedural requirements of section 1104(e). The Secretaries in preparing the analysis shall consider the following—

42 USC 4332.

Post, p. 2459.

(i) Alternative routes including the consideration of economically feasible and prudent alternative routes across the preserve which would result in fewer or less severe adverse impacts upon the preserve.

(ii) The environmental and social and economic impact of the right-of-way including impact upon wildlife, fish, and their habitat, and rural and traditional lifestyles including subsistence activities, and measures which should be instituted to avoid or minimize negative impacts and enhance positive impacts.

(e) Within 60 days of the completion of the environmental and economic analysis, the Secretaries shall jointly agree upon a route for issuance of the right-of-way across the preserve. Such right-of-way shall be issued in accordance with the provisions of section 1107 of this Act.

Kenai Fjords National Park.

(5) Kenai Fjords National Park, containing approximately five hundred and sixty-seven thousand acres of public lands, as generally depicted on map numbered KEFJ-90,007, and dated October 1978. The park shall be managed for the following purposes, among others: To maintain unimpaired the scenic and environmental integrity of the Harding Icefield, its outflowing glaciers, and coastal fjords and islands in their natural state; and

ANILCA 16 USC 410hh(4)b-e

THERE IS NO

COMMITTEE SUBSTITUTE FOR

Introduced: 4/29/85
Referred: Transportation

IN THE SENATE BY COGHILL

SENATE BILL NO. 303

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act removing a limitation on the power of the Alaska Railroad to apply for a right-of-way or exercise eminent domain."

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

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SB 303

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Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
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FROM: Committee Staff

DATE: 4-30-85

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Pouch 7-2111 • Anchorage, Alaska 99510-7069

April 30, 1985

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Pouch V
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Dear Senator Coghill:

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AS 42.40.355

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Kenai Fjords National Park.

ANILCA 16 USC 410hh(4)b-e

SB

308

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: SB 308
Title: $350,000,000 Transportation General Obligation Bonds
Sponsor: Rodey
Requestor: Senate Transportation
Date of Request: May 6, 1985

FISCAL DETAIL
Agency Affected: State Bond Committee
Program Category Affected:
BRU, Program of Subprogram(s) Affected: General Obligation Bond Debt Service

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	17,500	56,960	56,960	56,960	56,960
	TOTAL OPERATING	-	17,500	56,960	56,960	56,960	56,960
	CAPITAL	-	-	-	-	-	-
	REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	17,500	56,960	56,960	56,960	56,960
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	-	17,500	56,960	56,960	56,960	56,960

POSITIONS:

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

ANALYSIS: Debt Service on $350 million of bonds at 10% interest with 10 year maturity. FY 86 amount is interest only on one semi-annual payment.

Prepared By: Milt Barker MB
Division: Treasury
Phone: 465-2350
Date: May 7, 1985

Approved by Commissioner:
Agency: Department of Revenue
Date: 5/7/85

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Introduced: 5/3/85
Referred: Transportation
and Finance

IN THE SENATE BY RODEY AND FERGUSON

SENATE BILL NO. 308

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act providing for the issuance of general obligation bonds in the amount of $350,000,000 for the purpose of paying the cost of transportation projects; calling for a special election on the question; and providing for an effective date."

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

* Section 1. For the purpose of paying the cost of transportation projects, general obligation bonds of the state in the principal amount of not more than $350,000,000 shall be issued and sold. The full faith, credit, and resources of the state are pledged to the payment of the principal of and interest and redemption premium, if any, on these bonds. These bonds shall be issued under the provisions of AS 37.15 as those provisions read at the time of issuance.

* Sec. 2. If the issuance of these bonds is authorized by the qualified voters of the state, a special fund of the state to be known as the "1985 Transportation Projects Fund" shall be established, to which shall be credited the proceeds of the sale of the bonds described in sec. 1 of this Act except for the accrued interest and premiums.

* Sec. 3. (a) The amount of $350,000,000 is appropriated from the "1985 Transportation Projects Fund" to the Department of Transportation and Public Facilities to be allocated in accordance with the following projects and estimates:

(1) transportation projects within the Municipality of Anchorage:

West Northern Lights	21,000,000
Eklutna Transportation Project	28,000,000
Lake Otis Drive	15,500,000
Boniface Parkway and interchanges	26,300,000
C St., Tudor to ARR	2,000,000
100th and Minnesota interchange	3,500,000
C St., - Klatt Road	2,600,000
Spenard Road	12,600,000
36th Avenue	3,100,000
Dimond Blvd	5,600,000
Arctic Blvd	5,600,000
Pedestrian improvements	1,700,000
Traffic circulation improvements	2,000,000
Anchorage road district service areas	3,500,000
Limited road service areas	2,000,000
Eagle River Hiland Road bridge	3,000,000
Chugiak-E.R.-Birchwood road improvements	1,400,000
Old and New Seward Highway Intersections improvements	5,600,000
Eagle River-Birchwood-Chugiak State Road improvements	5,000,000
Total	$150,000,000

(2) transportation projects in the following house election districts, in the respective amounts:

District 1	17,392,439
District 2	8,695,565
District 3	8,695,565
District 4	17,391,304
District 5	17,391,304

District 6	8,695,565
District 16	17,391,304
District 17	8,695,565
District 18	8,695,565
District 19	8,695,565
District 20	17,391,304
District 21	8,695,565
District 22	8,695,565
District 23	8,695,565
District 24	8,695,565
District 25	8,695,565
District 26	8,695,565
District 27	8,695,565
Total	$200,000,000

(b) The proceeds of the bond issue may be reallocated among the listed projects as provided by law.

* Sec. 4. If the issuance of these bonds is authorized by the qualified voters of the state, the amount of $1,225,000 or as much of that amount as is found necessary is appropriated from the general fund of the state to the state bond committee to carry out the provisions of this Act and to pay expenses incident to the sale and issuance of the bonds authorized in this Act. The amounts expended from the appropriation authorized by this section shall be reimbursed to the general fund from the proceeds of the sale of the bonds authorized by this Act.

* Sec. 5. The amount withdrawn from the public facility planning fund for the purpose of advance planning for the improvements financed under this Act shall be reimbursed to the fund from the proceeds of the sale of bonds authorized by this Act.

* Sec. 6. The question whether the bonds authorized in this Act are to

be issued shall be submitted to the qualified voters of the state at a special election to be held the first Tuesday in November 1985 and shall read substantially as follows:

Proposition

State General Obligation Transportation Projects

Bonds $350,000,000

Shall the State of Alaska issue its general obligation bonds in the principal amount of not more than $350,000,000 for the purpose of paying the cost of transportation projects?

Bonds Yes [ ]

Bonds No [ ]

* Sec. 7. This Act takes effect immediately in accordance with AS 01.-10.070(c).

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und Point

Michael Dinneen of The Times

Onlookers grieve at the scene of the accident Wednesday in which a car struck and critically injured 9-year-old Tal Lee Biksen

Bond issue proposed in House

by Bruce Scandling 5-2-85
Associated Press

Juneau — Legislation to put a $350 million bond issue before Alaska voters was introduced in the House Wednesday, but opponents said the measure is a disguised attempt to give Anchorage more money to spend on roads.

The proposal — sponsored by Reps. H.A. "Red" Boucher of Anchorage and Sam Cotten of Eagle River — would set up a special election in November.

If the bond issue was approved, Anchorage would get $150 million for road and highway projects.

The remaining $200 million would be portioned out by election district for transportation projects in the rest of Alaska.

"This bill might be less than perfect, but it's the first step in realizing that Mother Alaska can't do everything for everyone," Boucher said.

He said the bond vote would let Alaska's citizens — not its lawmakers — decide whether more money should be spent on roads and highways as state revenues plummet.

"At the moment, I'm not sure if I would vote yes or no in the ballot box on these projects," Boucher said.

The bond sale is backed strongly by Anchorage Mayor Tony Knowles and the Anchorage Assembly.

Knowles and a cadre of bond experts were expected to arrive in Juneau Wednesday, trying to rally support by lawmakers.

"Our accelerated road (construction) program is on track today, and we need to find a way to keep it on track," said Chip Dennerlein, a Knowles aide.

"We're suggesting a vote of the people to resolve the issue," he said. "We must have a solution to our basic transportation problems."

Boucher said Wednesday he and Cotten have support from about 25 members of the 40-member House.

Some lawmakers, however, took little time to come out against the idea.

"This is being put on the table because Anchorage wants another $150 million in capital projects," said Rep. Mike Navarre, D-Kenai.

He said every Alaska town would like more money to spend on construction projects, but state government must cut back its spending.

Navarre said the bonding proposal promotes "fiscal irresponsibility."

With the value of North Slope crude oil on the decline, lawmakers this year have been wrestling to reduce state spending. The legislature earmarked $1.2 billion for public construction in the current fiscal year.

By all accounts, however, the fiscal 1986 capital budget now being built will total no more than $500 million, with half of that destined for development of hydroelectric power.

Knowles and the assembly have drafted a priority list of raod and highway projects totaling $160 million.

Rep. Steve Rieger, R-Anchorage, said the bonding proposal is a bad idea because it commits the state to pay off bond debts when economists

See Bond, page B-7

Lawmakers, Knowles call for bond proposal testimony

by Larry Persily
Times Juneau Bureau

Juneau — It's become a battle of bond market and government debt experts as legislators consider a proposal to place a $350 million statewide bond issue before the voters this fall.

Mayor Tony Knowles is in Juneau today with his national bond market experts, lobbying for support for his proposal to fund transportation and utility projects with a statewide bond issue.

The Senate Finance Committee countered with an announcement Wednesday that it has invited state and municipal debt consultants from Princeton, N.J., to come to Juneau next week to discuss the bond sale proposal with lawmakers.

Senate Finance Co-Chair Jan Faiks, R-Anchorage, said she and Co-Chair John Sackett, R-Ruby "have invited them (the consultants) to come and present firsthand their analysis of the finances of Alaska."

The Senate committee has invited representatives of Government Finance Associates, of Princeton, N.J., to address a joint

See $350 million, page B-7

session sometime next week of the House and Senate finance committees, Faiks said.

Until they meet with the consultants, Faiks said, Senate finance "will leave the option of the bond proposal open."

Legislators are divided on the bond proposal, with many supporting the issue but others opposing it as being fiscally irresponsible at a time of declining oil revenues.

Government Finance Associates specializes in advising state and local governments on bond issues, said Milt Barker, deputy commissioner for the Alaska Department of Revenue. The company has served as financial adviser to the state bond committee since last fall, Barker said.

Faiks reported the consultants will address lawmakers on:

-The possibility of selling $350 million in state general obligation bonds, to be paid off by future general fund revenues.

-The effects the bond sale could have on state and municipal bond ratings, including any effects it might have on school district bond sales.

-The cost of "back-loading," a proposal to lower bond payments by paying only interest in the early years and then paying the principal in later years, stretching the debt over a longer period of time.

The advisers will be asked to explain how Alaska earned its high bond rating, what must be done to maintain that rating, and how much a drop in the rating could cost the state, Faiks said.

A bill authorizing a $350 million bond issue special election this fall was introduced Wednesday in the House. The bill allocates $150 million for priority road projects in Anchorage, with the remaining $200 million divided between other areas of the state.

Knowles has been pushing for a statewide bond issue to fund Anchorage road projects left out of this session's state capital projects budget.

The mayor said his group of bond market experts, scheduled to come to Juneau today from Seattle, San Francisco and New York, will explain to lawmakers how the bonds can be sold without harming Alaska's financial rating and without putting unreasonable burdens on the state treasury.

Bond issue given

Continued from page B-1

aren't yet sure how low the price of oil will sink in the future.

In the wake of declining oil wealth, Rieger said, legislators this year have talked about statesmanship in tackling tough budget problems.

"And the statesmanship in the this case is not to cave in," he said.

According to the Boucher-Cotten plan, Anchorage would get $150 million for 19 specific road and highway projects — if the bond issue was approved by voters.

Each election district outside of Anchorage would get $8.7 million for tranportation projects, according to the plan.

With 11 days to go in what's supposed to be a 120-day legislative session, the proposal will have to speed through the committee process in time to be approved by both house of the legislature.

One veteran senator said Wednesday there's probably not enough time for that to happen, especially since the Boucher-Cotten bill has generated little enthusiasm in the Senate.

"There's no open support for it," said Sen. Bill Ray, D-Juneau.

"It would be the pork-barrel of all pork-barrels, when you're going to kill the pig now and be paying for it over the next 10 years with money you don't even know you're going to have," Ray said.

Sen. Jan Faiks, an Anchorage Republican who co-chairs the Senate Finance Committee, has said a bond issue would be irresponsible when falling revenues leave the state's future financial picture in doubt.

Meanwhile, Senate President Don Bennett, R-Fairbanks, has called the idea "ridiculous."

State officials said Wednesday it would cost between $800,000 and $1 million to hold a special

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Wendi K. Brown of The Times

Maria Hendrix, 7, plays with her dog while her mother, Carla, an Alaska Cab driver, takes part in an attempted citywide taxi strike on Third Avenue Tuesday.

Citywide taxi strike falls through

23 drivers assemble to discuss fare regulation

by Chriss Swaney
Times Business Writer

Alaska Cab drivers Tuesday were unsuccessful in a bid to foster a citywide taxi strike.

About 17 Alaska Cab drivers — far fewer than organizers expected — gathered at a vacant Third Avenue parking lot near the Holiday Inn in Anchorage Tuesday evening to debate the hotly contested cab fares. They were later joined by four Checker Cab drivers and two Yellow Cab drivers.

The drivers mingled around the parking lot for about an hour talking with other drivers and the press.

Peter Kautsky, an Alaska Cab driver, said he came to protest the disparity in cab fares. "I think they should all be regulated," he said. "We can't make a living out here the way it is now."

Alaska Cab driver Alex Olah, who helped organize the protest, said the meeting was organized to draft opinions from all cab drivers. "We want to know where everyone stands on the issue," Olah said.

Most of the Alaska Cab drivers who supported the protest said they favored the $1.50 a mile rate and a $1.50 flag drop used by Checker Cab. At present, Alaska Cab charges $1.20 a mile and $1.40 for a flag drop. Yellow Cab recently cut its fares to $1 a mile and 80 cents for a flag drop.

Yellow Cab officials said business is booming because of the lower fares. "Cab calls have jumped from 1,200 a day to 2,000 a day," said Hugh Brown, Yellow Cab manager. "Our cabbies are busy all day.

Because Yellow Cab is monopolizing most of the business, drivers with other companies say they can't make a decent living now.

Marci Denison, a Checker Cab driver, said she also agrees with a blanket fare of $1.50. "We need some order in this business," she said.

But John Carlson, a Yellow Cab driver, said Alaska Cab is simply experiencing the pressures of competition. "I sympathize with their problems but we were hurt last year when Alaska Cab refused to raise its prices," he said. "They were the low fares and our business hurt; now the shoe is on the other foot."

Officials at Alaska Cab said drivers never tried to negotiate with them about their problems. "I think we can solve the problems internaly without bringing the public into it," said Karen Johnson, a manager at Alaska Cab.

She said Alaska Cab owners are scheduling a meeting later this week between management and drivers.

check the ice and, right along the bank, it's starting to get a little slushy," Ekstedt said Tuesday.

See Tanana, page B-3

Panel kills pay raises

by Larry Persily
Times Juneau Bureau

Juneau — The Senate Finance Committee this morning deleted about $39 million for state employee pay raises from the fiscal year 1986 budget, setting the table for a heated family argument with the House.

The House Finance Committee last week passed its version of the $1.9 billion state general fund operating budget, sending the bill to the Senate with the employee pay raise money included in the total.

The Senate majority caucus met last week and pledged to delete the pay raise funding from the budget, and this morning Senate finance by unanimous vote sliced about $39 million from the House budget.

After deletion of the pay raise funding and half a dozen other minor amendments, the finance

See Pay fight, page B-7

Lawmakers plan state $350 million bond bill

by Larry Persily
Times Juneau Bureau

Juneau — Legislation to set a special election this fall for approval of a $350 million statewide bond issue was to be introduced today on the House floor.

The bill, sponsored by Anchorage Democratic Reps. Red Boucher and Sam Cotten, would allocate $150 million of the bond funds for Anchorage road projects, with the remaining $200 million divided equally between other areas of the state.

Governor hints at low capital budget — page B-7

The $200 million would be divided with $8.7 million going to each of the 13 single-member House districts outside Anchorage, and $17.4 million for each of the five two-member districts.

Boucher said he's optimistic of the bill's chances in the final two weeks of the legislative session. As of Tuesday, he said, he had "25 people (out of 40 House members) who have given me their yes vote."

He said of the $350 million total, "It's been allocated on a fair basis," and he hopes for statewide support for placing the bond issue on a special election ballot this fall.

The bill, as drafted by Boucher, would limit the bond sale to only transportation projects.

Previous discussions had listed school and utility projects for possible inclusion in the bond issue, and Boucher said he would have no objection to adding those categories.

"There'll be no fluff in it, in other words only the basics," the legislator said, pledging to prevent the bond issue from becoming a dumping ground for frivolous projects.

Mayor Tony Knowles, who a couple of weeks ago started the push for a state bond sale to fund community priority projects, will arrive in Juneau tonight to renew his lobbying effort for the legislation.

He plans to meet with House and Senate leaders, the governor, Department of Revenue commissioner and the Anchorage caucus during his stay in the capital, calling this week's visit, "Probably the most important trip" of his bond issue campaign.

Bond market experts from Seattle, San Francisco and New York City will join the mayor in Juneau this week to offer their opinions as to how the state can sell the bonds without harming its financial rating or causing unreasonable strains on its already tight budget.

Gov. Bill Sheffield "would prefer not to see a special electio. this year," said Molly McCammon, deputy press secretary. "He still believes there is adequate funding for a capital budget."

This year's capital projects budget appears likely to fall within the range of

See Bonding, page B-3

Chamber throws support behind bond issue

Times Business Staff

The second business group in as many days today endorsed Mayor Tony Knowles' proposal for a $350 million statewide bond issue ballot that would include about $150 million for 19 Anchorage projects.

The Anchorage Chamber of Commerce board of directors this morning voted 11-2, with two abstentions, in support of the ballot bond issue. The Downtown Development Corp. on Tuesday endorsed the proposal.

"It was a significant move by the chamber and shows that they are concerned about continued real growth in Anchorage," Knowles said.

In a message to legislators, chamber president-elect Elaine Atwood said the bond issue was endorsed "if that is the only way for the Municipality of Anchorage to obtain funding for its essential tansportation projects."

"After extensive discussion," she said in a telegram to lawmakers, "the chamber board voted for the bonds as a last resort to meet our critical needs. The board strongly urges the legislature to appropriate the needed monies from available revenues — but if that is not possible, a bond issue is the alternative."

Without the bond money, Knowles said, Anchorage would be unable to keep its accelerated road program on schedule because this year's state capital projects' budget is expected to fall far short of meeting the community's $145 million priority list. Anchorage foresees only $50 million in state grants.

Besides road improvements, money raised through the bond issue and designated for Anchorage would be go towards the Eklutna Water Project and the Fifth Avenue and C Street parking garage.

The bond sale proposal, first advanced by the mayor a couple of weeks ago, has been endorsed by the Anchorage Assembly, the Associated General Contractors of Alaska, Anchorage Parking Authority, Fairbanks mayor Bebe Allen, Kenai mayor Stan Thompson and Matanuska-Susitna Valley mayor Dorothy Jones and 23 community council presidents.

The blotter

Three paintings stolen

A Downtown art gallery lost three paintings with a total value of $600 early Monday, when an unidentified man broke into the business' hotel lobby showroom.

Anchorage police said a white man in his 20s broke a sliding-glass door lock to enter The Art Gallery, a private art firm located in the Sheraton Anchorage Hotel, shortly after 1 a.m. Monday.

The suspect, who reportedly sported shoulder-length brown hair, grabbed a gold-framed painting of polar bears by Annette Hartzell, a metal-framed painting of swans, and a John Van Zyle painting of Mount Susitna before fleeing the scene in a small red sedan, police said.

A hotel employee spotted the suspect fleeing, police added.

Police are still investigating the incident.

Vandal rams van

City police were seeking a 22-year-old local man today in connection with his alleged attack on an acquaintance's parked van Monday.

Police said the man allegedly steered his car into a driveway in the 3400 block of Arcturus Circle about 5:45 p.m. Monday, then spun his tires until they had carved holes in the driveway's asphalt surface.

Police said the home's 25-year-old owner told investigators the man — whom his wife had met while undergoing treatment at the Alaska Psychiatric Institute — then used the car to ram a van parked in the driveway, causing an estimated $1,200 in damage to the vehicle.

When the owner ran out to stop the visitor, the man fled.

said. After that, guards will remain posted on the river's banks until the ice goes out.

Ekstedt said he is keeping his eye on the still-frozen Nenana River, which runs south of town. He said the Nenana typically breaks up five days before the Tanana.

Half of the 190,644 entries in this year's contest will have been eliminated by noon Thursday, Ekstedt said. He said many people mistakenly submitted the $2 tickets for a non-existent April 31 date.

Bonding

Continued from page B-1

$200 million to $250 million in state general fund money, in addition to $250 million for the Susitna and Bradley Lake hydro power projects.

Referring to the drop from last year's $1.25 billion capital projects budget, Boucher said, "We jumped out of the plane without a parachute."

He supports offering the bond issue to the voters as a means of funding essential road projects that otherwise would be delayed until state funds become available.

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City/State /Weather /Alaska Life /Business Section B

Capital projects bond issue divides legislature

by Larry Persily
Times Juneau Bureau

Juneau — Mayor Tony Knowles has gathered much support in the past week for a statewide capital projects bond issue, but he has failed to convince the Senate President or House Speaker to join his side of the debate.

Knowles wants the legislature to put a $350 million bond issue on a special election ballot this fall, with Anchorage to receive $140 million of the money for road work and the Eklutna water project.

The remaining $210 million in state bond funds would go for projects in other communities.

"I think it's ridiculous," said Senate President Don Bennett, R-Fairbanks, adding, "It's fiscally irresponsible."

House Speaker Ben Grussendorf, D-Sitka, said it would be premature to put together a bond issue this year.

Without the bond money, according to Knowles, Anchorage would be unable to keep its accelerated road program on schedule since this year's state capital projects budget is expected to fall far short of meeting the community's $160 million priority list.

The mayor does have his backers, however, with one of them — Rep. Red Boucher, D-Anchorage — very close to signing up a majority of the House behind the bond issue proposal.

Boucher worked over the weekend to gather support for legislation he hopes to introduce this week. "The minute I've got 21 or 22 votes, I intend to introduce bond issue legislation," Boucher said.

As of Sunday, he had 20 representatives committed in support of a bill, he said.

Boucher claims strong support in the Railbelt area, but, "In the rural areas, it's less than warm."

House Finance Committee Chairman Al Adams, D-Kotzebue, said Sunday, "I have no comment at this time until I have had a chance to look at the whole picture."

House Minority Leader Terry Martin, R-Anchorage, opposes a bond issue this year.

"I really don't believe in it," he said of the need to sell bonds. Martin said issuing loans from the Alaska Permanent Fund's undistributed income account, or from the Permanent Fund itself, would be preferable to selling bonds. The state's savings account should be invested in Alaska, the Anchorage Republican said.

Grussendorf said time is working against Knowles — the session is scheduled to end May 13 — though he would be inclined to support a bond issue next year.

"Small communities are not prepared to move that rapidly," the House speaker said of putting together a list of local projects in two weeks. "If we're going to go to a bond issue," he said, "it should be developed for next year," giving communities more time to select and plan their projects.

Senate Finance Committee co-chairman John Sackett, R-Ruby, is leaning toward supporting a bond issue this year.

"Generally, my feelings would be positive toward it," he said, depending on two conditions: If it's proven the additional debt would not lower the state's bond rating, and depending on what projects are proposed for bond funding.

Sen. Jan Faiks, R-Anchorage, the other co-chair of the committee, is perhaps the strongest voice in the Anchorage delegation against a bond issue. "We're in a very precarious financial position right now, with 85 percent of our income based on the price of oil," she said.

"People have accused the legislature for the past seven years of living only for today," Faiks said. "We have to look to tomorrow." She said she is convinced bonding would be irresponsible at a time of falling oil prices.

Bennett's opposition also is based on the reality of declining oil revenues. "We are in the midst of declining revenues, and to bond and to get further into debt is ridiculous."

Knowles battles for bond issue

Times staff

Juneau — Anchorage is taking its bond issue fight down to the wire in the last two weeks of the legislative session, and to improve his odds Mayor Tony Knowles has sent 500 telegrams to community and business leaders statewide, asking for their support.

Knowles will return to Juneau this week for more meetings with lawmakers as he tries to enlist support for a special election this fall to vote on $350 million in statewide capital improvement bonds.

He is also taking his plea directly to the people of Anchorage. Today and later this week, Knowles is scheduled to plant himself at busy intersections, where he will hand out letters asking the people of Anchorage to rally behind the bond issue and call their legislators urging its support.

Knowles warns that without bonding, there will not be enough money in the state's capital budget to fund the city's top priority projects.

"Our accelerated road plan and Eklutna water project are hanging in the balance. Your help will make the difference," his letter states. "Nineteen projects including West Northern Lights, Lake Otis, Boniface, Eagle River Hiland Road Bridge, Spenard Road and the Eklutna Water Project — all will only be partially funded or entirely left out unless we let our legislators and governor know that these needs are now."

"It's time for us to stand up for Anchorage. Send your message to Juneau today — or by Wednesday at the latest — expressing your support for our back-to-basics bond package to be voted on this fall. Legislative Information Office, 278-3668, will send your message free."

The telegrams ask community leaders "to join in the effort to get the bond issue," said Chip

See Bond, page B-4

Bond issue battle

Continued from page B-1

Dennerlein, intergovernmental affairs director for Anchorage.

Dennerlein said the mayor will join forces in Juneau this week with bond market experts from Alaska and the Lower 48, invited to the Capitol by the city, and will attempt to prove to lawmakers that the state can afford to sell more bonds without harming Alaska's bond rating or its future economy.

Rep. Red Boucher, D-Anchorage, a leading booster for a special bond issue election this fall, said he believes holding the vote in a non-election year would "raise the level of debate" above politics.

Boucher believes a vote this fall would provide legislators with an indication of public opinion on future financial management of the state.

"Let those who want to break open the Permanent Fund (instead of selling bonds) bring it to the people," Boucher said.

SB

373

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

TO: All committee members

FROM: Committee staff

RE: SB 373

In today's packet you will find:

1. A sectional analysis of SB 373
2. Senator Faik's background information
3. The Department of Transportation and Public Facilities position paper

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

February 12, 1986

TO: All members of the Transportation Committee

FROM: Committee Staff

RE: SB 373

This bill adds a new section to AS 19.15. This section requires that a policy committee be established for cities in the state with a population of 200,000 or more which must have a metropolitan planning organization in order to receive federal capital or operating assistance under 23 U.S.C. 134 or 49 U.S.C. 1607.

Subsection (b) outlines how many members will be on the committee and what groups will be represented. Two members shall be elected municipal officials; two members, representing the house and senate, who are members of either their respective transportation or finance committees; the commissioner of the Department of Transportation and Public Facilities; and one member of the citizen transportation advisory committee.

Subsection (c) states that the policy committee set up in (a) and (b) shall appoint a citizen transportation advisory committee. This committee shall be made up of persons residing in the urbanized area subject to the metropolitan planning organization. These members are to reflect the communities' opinion on transportation issues.

Subsection (d) states that the committee shall set internal procedures relating to public and the citizen transportation advisory committee input on all issues, policies, plans and programs addressed, prepared or endorsed by the municipal planning organization.

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

February 11, 1986

MEMORANDUM

TO: Members of the Senate Transportation Committee

FROM: Senator Jan Faiks

SUBJECT: Background on Senate Bill 373, an Act Relating to Metropolitan Planning Organizations

As a condition of receiving Federal highway funds, urban areas with populations of 200,000 or more are required to establish a metropolitan planning organization. The purpose of this organization is to ensure that highway funds are spent according to a continuing, cooperative, and comprehensive transportation planning process.

Transportation in the Anchorage area is the responsibility of the Anchorage Metropolitan Area Transportation Study, or "AMATS". The AMATS consists of a policy committee which is comprised of the Mayor, the Commissioner of the Department of Transportation and Public Services, and one Assembly member. Although there is an advisory component through a subcommittee of the Planning and Zoning Commission, it appears that its ability to effectively represent public opinion before the policy committee is limited.

In the planning process, it is important that members of the planning organization represent a wide cross section of community interests. In addition, the organization should seek and be guided by public input. The planning of new road construction and improvement is too important to be delegated to a few administrators who may be insulated from the public's priorities.

Senate Bill 373 will require that the planning organization establish a policy committee and that this committee

OUT OF SESSION
1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

appoint a local citizen's advisory group. The six member committee will be composed of two representatives of local government, two local state legislators who are members of their respective finance or transportation committees, the Commissioner of Transportation and Public Facilities, and a member of the citizen's advisory group.

Finally, the bill requires that the policy committee adopt internal procedures which will insure that it solicits and considers public opinion when making policy or planning decisions.

Simply stated, Senate Bill 373 will insure that our transportation planning process responds to the people that it serves.

Thank you.

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

March 11, 1986

TO: All Committee Members

FROM: Committee Staff

RE: SB 373

Today the committee will take up two committee substitutes on SB 373.

The following is an analysis that outlines the differences between the committee substitutes, labeled versions 1 and 2, and the original bill.

Sec. 1 (a) of the original bill established a metropolitan planning organization in an urbanized area having a population of 200,000 or more. Presently, Anchorage under federal census figures does not have a population of 200,000.

Version 1 lowers this figure to 50,000. Version 2 lowers this to 100,000.

Subsection (b) in the original bill required the policy committee to have six members, one being a member selected by the citizen transportation advisory committee.

Both Version 1 and 2 delete this provision, but do require a membership comprised of two members who are principal elected officials of municipalities, two members representing the house and senate and one member representing the Department of Transportation and Public Facilities as in the original bill.

Subsections (c) and (d) remain unchanged.

Municipality of Anchorage

P.O. BOX 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4960

TONY KNOWLES,
MAYOR

INTERGOVERNMENTAL AFFAIRS

February 20, 1986

RECEIVED FEB 2 5 1986

Sen. Jan Faiks
Pouch V
Juneau, Alaska 99811

Re: SB373, Metropolitan Planning Organizations

Dear Sen. Faiks:

This letter is a follow-up to our discussions regarding SB373 and my testimony on the bill in the Senate Transportation Committee. I have discussed with the Mayor the practical and policy implications of the legislation. As I said before the Committee, the legislation was reviewed from the perspective of constructive criticism, setting forth any problems perceived with the proposed approach, while recognizing that there is also benefit in the proposal. This is the spirit in which I offer the following comments:

. The need for the legislation. There are two important points here. First, I want to stress again that AMATS is working in its present form. While there is always room for improvement in any process, the proof is in the pavement. The systemwide approach which we have taken in AMATS over the past several years has resulted in an unprecedented transportation improvement program for the Anchorage area. Not only has this helped federal aid road construction. The process has helped us determine which roads should be more properly constructed with state and local dollars and where the local government should have project management authority. For the first time that I can recall, the Transportation Improvement Program for AMATS matches the Anchorage Assembly capital budget request, which also matches the Governor's proposed capital budget. This is the kind of consistency that results in effective transportation improvements and which can be understood by the public. The second point is that we do see merit in codifying metropolitan planning organizations in state law. Many other states have taken this step, and it would be appropriate for Alaska to do the same.

. Public Participation. This is one of the most important elements of the transportation planning process, and one which we have sought to improve over the past several years. Our major step in this regard has been to establish the AMATS Citizen Advisory Committee as a subcommittee of the Planning and Zoning Commission. This has proven to be a very effective step for several reasons. There is a strong relationship between transportation and land use. People

view transportation improvement in terms of where a road will take them, and how that road may affect their own neighborhood. Citizens are used to discussing land and neighborhood issues in the Planning and Zoning Commission forum, and do not relate as well to a separate citizen committee. Citizen input to AMATS through the Planning and Zoning Commission model has been a more accurate and effective reflection of neighborhood concerns. In addition, the Urban Design Commission has recently been invited to participate in the AMATS Technical Committee forum. We feel strongly that these are the proper forums for direct citizen participation. Each of the members of the Policy Committee as presently constituted is an elected official or directly accountable to an elected official. Your bill proposes legislative representation on the Policy Committee. A legislator would also be directly accountable to the public at large as an elected official. An appointed citizen member would carry equal weight in the Policy Committee decisions, but not equal accountability. This is an imbalance. A separate appointed citizen should not be a member of the Policy Committee.

. Legislative Participation. This is a sensitive area, and there are pros and cons. Legislative participation varies among jurisdictions throughout the country. On the negative side, each of the members of the existing Policy Committee has the ability to plan and program federal funds, but does not participate in the appropriation process. The Legislature appropriates federal receipts. While this may appear awkward at times, it also represents an effective check-and-balance. If a legislator or legislators were to serve on the Policy Committee, that member or members would have the unique ability to operate in both worlds, participating in both the planning and appropriation decisions. In essence, they would have greater standing in the transportation program than other members of the Policy Committee. On the positive side, it could be helpful to have a member or members of the Legislature with detailed knowledge of the AMATS process and the decisions which led to the budgets ultimately proposed to the Legislature. This is a judgment call. While we feel AMATS works, we can accept some legislative participation. However, participation should be limited to one member of the Legislature. Membership should alternate between House and Senate. The legislator should be a member of the Transportation Committee of either the House or Senate. Under this arrangement, the Policy Committee would be constituted of four officials - one member of the local assembly, one member of the legislative delegation from the local planning area, the mayor, and the Governor's designee (Commissioner of the Department of Transportation). This would appear to represent a balance. Even numbers are not a problem. Tie votes would lose. One other point is significant. Many AMATS decisions are made in the spring while the Legislature is in session. It is essential that a legislative member of the Policy Committee be present personally, and not a substitute in the person of a staffer. Many of the major transportation decisions we face are sensitive. Rather than improving the public process in confidence, we would leave ourselves wide open for criticism if major policy votes were made in absentia.

. Effect Upon Various Municipalities. As stated above, there is merit in codifying in state law the state/local planning process. There is legitimate debate concerning any change to the make-up of the present committees. However, it would be a serious mistake to codify the planning process in a way which separates Anchorage from the rest of the State. Any change in the make-up of local planning organization policy committees should at least apply to the major urban areas in the three transportation regions of the State (southern, central and north). On this point, we are firm. The federal government may have "cut-off numbers" which distinguish Anchorage or only Anchorage and Fairbanks as urban areas. This argument does not hold water in Alaska. As we often note, Alaska is unique. Alaska, in fact, has exemptions in federal highway law. Any legislation we craft should fit Alaska's situation, not be based on a cookie cutter from the Potomac, even though that's the source of the dough. Juneau, for example, receives FAUS funds, has a public transit system, and has an air quality plan. The State should not mandate a planning organization for its capital city differing from that mandated for other urban areas. In summary, while AMATS is working, we can support SB373 with certain amendments as recommended above.

Thank you for the opportunity to comment. I look forward to working with you. If you have any further questions, please call on me.

Sincerely,

Chip Dennerlein

cc: Mayor Tony Knowles
Assemblyman Dana Brockway, Member, AMATS
Commissioner Richard J. Knapp
Deputy Commissioner Riley Snell
Sen. Mitch Abood, Member, Senate Transportation Committee
Sen. Joe Josephson, Member, Senate Transportation Committee
Rep. Mike Szymanski, Member, House Transportation Committee

§ 134. Transportation planning in certain urban areas

It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States, as authorized in this title, in the development of long-range highway plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on th future development of urban areas of more than fifty thousand population. After July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section. Added Pub.L. 87-866, § 9(a), Oct. 23, 1962, 76 Stat. 1148.

Library references: Highways ⇐95(1); C.J.S. Highways § 157 et seq.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 87-866, see 1962 U.S.Code Cong. and Adm.News, p. 3933.

(1) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of an apportionment for any fiscal year shall be transferred to other apportionments.

(2) In the case of transfers under paragraph (2), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of an apportionment for any fiscal year shall be transferred to other apportionments.

(3) No transfer shall be made from an apportionment during any fiscal year if during such fiscal year a transfer has been made to such apportionment.

(4) No transfer shall be made to an apportionment during any fiscal year if during such fiscal year a transfer has been made from such apportionment.

(e) On October 1 of each fiscal year the Secretary shall certify to each of the State highway departments the sums which he has apportioned hereunder (other than under subsection (b)(5) of this section) to each State for such fiscal year, and also the sums which he has deducted for administration and research pursuant to subsection (a) of this section. On October 1 of the year preceding the fiscal year for which authorized, the Secretary shall certify to each of the State highway departments the sums which he has apportioned under subsection (b)(5) of this section to each State for such fiscal year, and also the sums which he has deducted for administration and research pursuant to subsection (a) of this section. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized, except that in the case of the Interstate System the Secretary shall advise each State ninety days prior to the apportionment of such funds.

(f)(1) On October 1 of each fiscal year, the Secretary, after making the deductions authorized by subsection (a) of this section, shall set aside not to exceed one-half per centum of the remaining funds authorized to be appropriated for expenditure upon the Federal-aid systems, for the purpose of carrying out the requirements of section 134 of this title, except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System.

(2) These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half per centum of the amount apportioned.

(3) The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations designated by the State as being responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas. These funds shall be matched in accordance with section 120 of this title unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(4) The distribution within any State of the planning funds made available to agencies under paragraphs (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider, but not necessarily be limited to, population, status of planning, and metropolitan area transportation needs.

(g) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 144, 152, and 153 of this title, or section 203(d) of the Highway Safety Act of 1973, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State highway department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionment

Version #1
Utermohle
2/28/86 ✓

Original sponsor: Faiks

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 373 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to metropolitan planning organizations."

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

* Section 1. AS 19.15 is amended by adding a new section to read:

Sec. 19.15.025. METROPOLITAN TRANSPORTATION PLANNING ORGANIZATIONS. (a) A metropolitan planning organization established in an urbanized area with a population of 50,000 or more shall include a policy committee.

(b) The policy committee consists of two members who are principal elected officials of municipalities in the urbanized area; a legislator representing a district within the urbanized area who is a member of the house transportation committee or house finance committee appointed by the speaker of the house of representatives; a legislator representing a district within the urbanized area who is a member of the senate transportation committee or senate finance committee appointed by the president of the senate; and the commissioner of the Department of Transportation and Public Facilities or the commissioner's designee.

(c) The policy committee shall appoint a citizen transportation advisory committee of persons residing in the urbanized area subject to the metropolitan planning organization. The membership of the citizen transportation advisory committee shall represent the breadth of community opinion on issues of urban transportation planning and development.

(d) The policy committee shall adopt internal procedures to govern the conduct of business by the municipal planning organization, including the procedure to solicit, receive, and consider comments from the public and the citizen transportation advisory committee on all issues, policies, plans, and programs addressed, prepared, or endorsed by the municipal planning organization.

Version #2
Utermohle
2/28/86

Original sponsor: Faiks

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 373 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to metropolitan planning organizations."

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

* Section 1. AS 19.15 is amended by adding a new section to read:

Sec. 19.15.025. METROPOLITAN TRANSPORTATION PLANNING ORGANIZATIONS. (a) A metropolitan planning organization established in an urbanized area with a population of 100,000 or more shall include a policy committee.

(b) The policy committee consists of two members who are principal elected officials of municipalities in the urbanized area; a legislator representing a district within the urbanized area who is a member of the house transportation committee or house finance committee appointed by the speaker of the house of representatives; a legislator representing a district within the urbanized area who is a member of the senate transportation committee or senate finance committee appointed by the president of the senate; and the commissioner of the Department of Transportation and Public Facilities or the commissioner's designee.

(c) The policy committee shall appoint a citizen transportation advisory committee of persons residing in the urbanized area subject to the metropolitan planning organization. The membership of the citizen transportation advisory committee shall represent the breadth of community opinion on issues of urban transportation planning and development.

(d) The policy committee shall adopt internal procedures to govern the conduct of business by the municipal planning organization, including the procedure to solicit, receive, and consider comments from the public and the citizen transportation advisory committee on all issues, policies, plans, and programs addressed, prepared, or endorsed by the municipal planning organization.

§ 134. Transportation planning in certain urban areas

It is declared to be in the national interest to encourage and promote the development of transportation systems, embracing various modes of transport in a manner that will serve the States and local communities efficiently and effectively. To accomplish this objective the Secretary shall cooperate with the States, as authorized in this title, in the development of long-range highway plans and programs which are properly coordinated with plans for improvements in other affected forms of transportation and which are formulated with due consideration to their probable effect on the future development of urban areas of more than fifty thousand population. After July 1, 1965, the Secretary shall not approve under section 105 of this title any program for projects in any urban area of more than fifty thousand population unless he finds that such projects are based on a continuing comprehensive transportation planning process carried on cooperatively by States and local communities in conformance with the objectives stated in this section. Added Pub.L. 87-866, § 9(a), Oct. 23, 1962, 76 Stat. 1148.

Library references: Highways ⇐95(1); C.J.S. Highways § 157 et seq.

Historical Note

Legislative History: For legislative history and purpose of Pub.L. 87-866, see 1962 U.S.Code Cong. and Adm.News, p. 3938.

(1) In the case of transfers under paragraph (1), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of an apportionment for any fiscal year shall be transferred to other apportionments.

(2) In the case of transfers under paragraph (2), the total of all transfers during any fiscal year to any apportionment shall not increase the original amount of such apportionment for such fiscal year by more than 50 per centum. Not more than 50 per centum of the original amount of an apportionment for any fiscal year shall be transferred to other apportionments.

(3) No transfer shall be made from an apportionment during any fiscal year if during such fiscal year a transfer has been made to such apportionment.

(4) No transfer shall be made to an apportionment during any fiscal year if during such fiscal year a transfer has been made from such apportionment.

(e) On October 1 of each fiscal year the Secretary shall certify to each of the State highway departments the sums which he has apportioned hereunder (other than under subsection (b)(5) of this section) to each State for such fiscal year, and also the sums which he has deducted for administration and research pursuant to subsection (a) of this section. On October 1 of the year preceding the fiscal year for which authorized, the Secretary shall certify to each of the State highway departments the sums which he has apportioned under subsection (b)(5) of this section to each State for such fiscal year, and also the sums which he has deducted for administration and research pursuant to subsection (a) of this section. To permit the States to develop adequate plans for the utilization of apportioned sums, the Secretary shall advise each State of the amount that will be apportioned each year under this section not later than ninety days before the beginning of the fiscal year for which the sums to be apportioned are authorized, except that in the case of the Interstate System the Secretary shall advise each State ninety days prior to the apportionment of such funds.

(f)(1) On October 1 of each fiscal year, the Secretary, after making the deduction authorized by subsection (a) of this section, shall set aside not to exceed one-half per centum of the remaining funds authorized to be appropriated for expenditure upon the Federal-aid systems, for the purpose of carrying out the requirements of section 134 of this title, except that in the case of funds authorized for apportionment on the Interstate System, the Secretary shall set aside that portion of such funds (subject to the overall limitation of one-half of 1 per centum) on October 1 of the year next preceding the fiscal year for which such funds are authorized for such System.

(2) These funds shall be apportioned to the States in the ratio which the population in urbanized areas or parts thereof, in each State bears to the total population in such urbanized areas in all the States as shown by the latest available census, except that no State shall receive less than one-half per centum of the amount apportioned.

(3) The funds apportioned to any State under paragraph (2) of this subsection shall be made available by the State to the metropolitan planning organizations designated by the State as being responsible for carrying out the provisions of section 134 of this title, except that States receiving the minimum apportionment under paragraph (2) may, in addition, subject to the approval of the Secretary, use the funds apportioned to finance transportation planning outside of urbanized areas. These funds shall be matched in accordance with section 120 of this title unless the Secretary determines that the interests of the Federal-aid highway program would be best served without such matching.

(4) The distribution within any State of the planning funds made available to agencies under paragraphs (3) of this subsection shall be in accordance with a formula developed by each State and approved by the Secretary which shall consider, but not necessarily be limited to, population, status of planning, and metropolitan area transportation needs.

(g) Not more than 40 per centum of the amount apportioned in any fiscal year to each State in accordance with sections 144, 152, and 153 of this title, or section 203(d) of the Highway Safety Act of 1973, may be transferred from the apportionment under one section to the apportionment under any other of such sections if such a transfer is requested by the State highway department and is approved by the Secretary as being in the public interest. The Secretary may approve the transfer of 100 per centum of the apportionment under one such section to the apportionmen

al of federal bureau of roads. Singletary v. Heathman, Tex.Civ.App.1927, 300 S.W. 242.

6. Change of location of highway

To secure federal aid, highway commission could change location of highway not of higher type so as to miss towns through which statute specified highway should run. Logan v. Matthews, 1932, 52 S.W.2d 989, 330 Mo. 1213.

7. Removal and substitution

Former section 6 of this title did not prohibit agreement between federal and state officials to remove a highway from federal aid system, when only small segments thereof were constructed or reconstructed with federal funds, and the substitution of some other approved public improvement in lieu thereof by mutual agreement. Bogart v. Westchester County, 1945, 57 N.Y.S.2d 506, 185 Misc. 561, affirmed 59 N.Y.S.2d 77, 270 App.Div. 274, appeal denied 68 N.E.2d 36, 295 N.Y. 934, appeal dismissed 70 N.E.2d 531, 296 N.Y. 701.

8. Modification of contract

The approval and consent to application of appropriated federal funds to the construction of a given highway, and agreement of state, in turn, to pay maintenance costs of that highway, constitutes a contract between federal and state governments which may be modified by mutual agreement. Bogart v. Westchester County, 1945, 57 N.Y.S.2d 506, 185 Misc. 561, affirmed 59 N.Y.S.2d 77, 270 App.Div. 274, appeal denied 68 N.E.2d 36, 295 N.Y. 934, appeal dismissed 70 N.E.2d 531, 296 N.Y. 701.

9. Review

Action by State Superintendent of Public Works designating site of portion of federal aid highway system was legislative in character and could not be reviewed under statute, Civil Practice Act, § 1283 et seq., authorizing review of determinations of administrative bodies. Brown v. McMorran, 1903, 241 N.Y.S.2d 483, 39 Misc.2d 716.

Inasmuch as it was not asserted that petitioners seeking review of designation of site of portion of federal aid highway system had any interest not common to all residents of county or to all owners of property in portion of county through which proposed highway would pass, petitioners did not have sufficient standing to bring proceeding. Id.

Private citizens were not entitled to decision on constitutional questions relating to validity of designation of site of portion of federal aid highway system by State Superintendent of Public Works, in absence of special injury or damage to their personal or property rights. Id.

§ 104. Apportionment

(a) Whenever an apportionment is made of the sums authorized to be appropriated for expenditure upon the Federal-aid systems, the Secretary shall deduct a sum, in such amount not to exceed 3¾ per centum of all sums so authorized, as the Secretary may deem necessary for administering the provisions of law to be financed from appropriations for the Federal-aid systems and for carrying on the research authorized by subsections (a) and (b) of section 307 of this title. In making such determination, the Secretary shall take into account the unexpended balance of any sums deducted for such purposes in prior years. The sum so deducted shall be available for expenditure from the unexpended balance of any appropriation made at any time for expenditure upon the Federal-aid systems, until such sum has been expended.

(b) On or before January 1 next preceding the commencement of each fiscal year, except as provided in paragraphs (4) and (5) of this subsection, the Secretary, after making the deduction authorized

by subsection (a) of this section, shall apportion the remainder of the sums authorized to be appropriated for expenditure upon the Federal-aid systems for that fiscal year, among the several States in the following manner:

(1) For the Federal-aid primary system:

One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the population of each State bears to the total population of all the States as shown by the latest available Federal census; one-third in the ratio which the mileage of rural delivery routes and star routes in each State bears to the total mileage of rural delivery and star routes in all the States at the close of the next preceding calendar year, as shown by a certificate of the Postmaster General, which he is directed to make and furnish annually to the Secretary. No State shall receive less than one-half of 1 per centum of each year's apportionment.

(2) For the Federal-aid secondary system:

One-third in the ratio which the area of each State bears to the total area of all the States; one-third in the ratio which the rural population of each State bears to the total rural population of all the States as shown by the latest available Federal census; and one-third in the ratio which the mileage of rural delivery and star routes, certified as above provided, in each State bears to the total mileage of rural delivery and star routes in all the States. No State shall receive less than one-half of 1 per centum of each year's apportionment.

(3) For extensions of the Federal-aid primary and Federal-aid secondary systems within urban areas:

In the ratio which the population in municipalities and other urban places of five thousand or more in each State bears to the total population in municipalities and other urban places of five thousand or more in all the States as shown by the latest available Federal census.

(4) For the Interstate System, for the fiscal years ending June 30, 1957, June 30, 1958, and June 30, 1959:

One-half in the ratio which the population of each State bears to the total population of all the States as shown by the latest available Federal census, except that no State shall receive less than three-fourths of 1 per centum of the funds so apportioned; and one-half in the manner provided in paragraph (1) of this subsection. The sums authorized by section 108(b) of the Federal-Aid Highway Act of 1956 for the fiscal years ending June 30, 1958, and June 30, 1959, shall be apportioned on a date not

less than six months and not more than twelve months in advance of the beginning of the fiscal year for which authorized.

(5) For the Interstate System for the fiscal years 1960 through 1971:

For the fiscal years 1960 through 1966, in the ratio which the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of completing the Interstate System in all of the States. For the fiscal years 1967 through 1971, in the ratio which the Federal share of the estimated cost of completing the Interstate System in such State, as determined and approved in the manner provided in this paragraph, bears to the sum of the estimated cost of the Federal share of completing the Interstate System in all of the States. Each apportionment herein authorized for the fiscal years 1960 through 1971, inclusive, shall be made on a date as far in advance of the beginning of the fiscal year for which authorized as practicable but in no case more than eighteen months prior to the beginning of the fiscal year for which authorized. As soon as the standards provided for in subsection (b) of section 109 of this title have been adopted, the Secretary, in cooperation with the State highway departments, shall make a detailed estimate of the cost of completing the Interstate System as then designated, after taking into account all previous apportionments made under this section, based upon such standards and in accordance with rules and regulations adopted by him and applied uniformly to all of the States. The Secretary shall transmit such estimates to the Senate and the House of Representatives within ten days subsequent to January 2, 1958. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1960, June 30, 1961, and June 30, 1962. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1961. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1963, June 30, 1964, June 30, 1965, and June 30, 1966. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this

section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1965. Upon the approval of such estimate by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal years ending June 30, 1967; June 30, 1968; and June 30, 1969. The Secretary shall make a revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1968. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal year ending June 30, 1970. The Secretary shall make a final revised estimate of the cost of completing the then designated Interstate System after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1969. Upon the approval by the Congress, the Secretary shall use the Federal share of such approved estimate in making apportionments for the fiscal year ending June 30, 1971. Whenever the Secretary, pursuant to this subsection, requests and receives estimates of cost from the State highway departments, he shall furnish copies of such estimates at the same time to the Senate and the House of Representatives.

(c) Not more than 20 per centum of the amount apportioned in any fiscal year, commencing with the apportionment of funds authorized to be appropriated under subsection (a) of section 102 of the Federal-Aid Highway Act of 1956 (70 Stat. 374), to each State in accordance with paragraphs (1), (2), or (3) of subsection (b) of this section may be transferred from the apportionment under one paragraph to the apportionment under any other of such paragraphs if such a transfer is requested by the State highway department and is approved by the Governor of such State and the Secretary as being in the public interest. The total of such transfers shall not increase the original apportionment under any of such paragraphs by more than 20 per centum. Nothing contained in this subsection shall alter or impair the authority contained in subsection (d) of this section.

(d) Any funds which are apportioned under paragraph (2) of subsection (b) of this section for the Federal-aid secondary system to a State in which all public roads and highways are under the control and supervision of the State highway department may, if the State highway department and the Secretary jointly agree that such funds

ot needed for the Federal-aid secondary system, be expended for cts on another Federal-aid system.

On or before January 1 preceding the commencement of each l year, the Secretary shall certify to each of the State highway tments the sums which he has apportioned hereunder to each for such fiscal year, and also the sums which he has deducted dministration and research pursuant to subsection (a) of this n. Pub.L. 85–767, Aug. 27, 1958, 72 Stat. 889; Pub.L. 86–70, e) (2), June 25, 1959, 73 Stat. 146; Pub.L. 86–657, § 8(g), July 960, 74 Stat. 525; Pub.L. 87–866, § 10(a), Oct. 23, 1962, 76 Stat. Pub.L. 88–157, §§ 2, 3, Oct. 24, 1963, 77 Stat. 276; Pub.L. 88– 4(a), Aug. 13, 1964, 78 Stat. 397.

ıry references: Highways ⇐=99½; C.J.S. Highways §§ 176, 178.

Historical Note

ences in Text. Section 108(b) of leral-Aid Highway Act of 1956, re- to in subsec. (b) (4), is set out ote under section 101 of this title.

ction (a) of section 102 of the l-Aid Highway Act of 1956 (70 71), referred to in subsec. (c), is as a note under this section.

Amendment. Subsec. (b) (5). 88–423 substituted "January 2. r "January 2, 1962."

Amendment. Subsec. (b) (3). 88–157, § 2, eliminated provision considered Connecticut and Ver- owns as municipalities for the pur- f par. (3) regardless of their in- ted status.

e. (b) (5). Pub.L. 88-157, § 3, ted "1971" for "1969" in the in- ory phrase and the third sen- inserted the phrase "For the fis- s 1969 through 1966," and substi- such State" for "each State" in t sentence; inserted the second respecting apportionment for ears 1967 through 1971; substi- the ninth sentence "January 2, r "January 2, 1966, and annually er through and including January ; substituted in the tenth sen- pon the approval of such estimate Congress" for "Upon approval of h estimate by the Congress by nt resolution" and "fiscal years June 30, 1967; June 30, 1968; and . 1969" for "fiscal year which be- xt following the fiscal year in uch report is transmitted to the nd the House of Representatives" erted "the Federal share of" pre- ceding "such approved estimate"; and inserted the eleventh through fourteenth sentences, respecting revised cost estimate for completion of the Interstate System and its submission to Congress within ten days after Jan. 2, 1968, apportionment for fiscal year ending June 30, 1970, final revised cost estimate for completion of the Interstate System and its submission to Congress within ten days after Jan. 2, 1969, and apportionment for fiscal year ending June 30, 1971, respectively.

1962 Amendment. Subsec. (b) (1). Pub. L. 87-866 substituted "preceding calendar year" for "preceding fiscal yea ."

1960 Amendment. Subsec. (b). Pub.L. 86–657 eliminated provisions from par. (5) which required, in making the estimates of cost for completing the Interstate System, exclusion of the cost of completing any mileage designated from the one thousand additional miles authorized by section 108(1) of the Federal-Aid Highway Act of 1956.

1959 Amendment. Subsec. (b). Pub.L. 86-70 eliminated words ", except that only one-third of the area of Alaska shall be included" following "total area of all the States" in pars. (1) and (2).

Effective Date of 1962 Amendment. Section 10(b) of Pub.L. 87-866 provided that: "The amendment made by subsection (a) of this section [to subsec. (b) (1) of this section] shall be applicable only with respect to apportionments made after the date of enactment of this Act [Oct. 23, 1962]."

Effective Date of 1959 Amendment. Amendment of subsec. (b) of this section

by Pub.L. 86-70 effective July 1, 1959, see note set out under section 101 of this title.

Short Title of 1963 Amendment. Section 1 of Pub.L. 88-157 provided: "That this Act [amending sections 104(b) (3), (5), 106(c), 109(b), 121(d), 131(c) and 307 (c) (1) of this title] may be cited as the 'Federal-Aid Highway Amendments Act of 1963'."

Short Title. Section 1 of Pub.L. 86-657 provided that Pub.L. 86-657, which is classified in part to this section and to sections 114, 120, 129, 132, 203, 205, 210 and 305 of this title, may be cited as the "Federal Highway Act of 1960."

Section 102(a) of the Federal-Aid Highway Act of 1956. Subsection (a) of section 102 of Act June 29, 1956, c. 462, Title I, 70 Stat. 374, provided that:

"(a) (1) For the purpose of carrying out the provisions of the Federal-Aid Road Act approved July 11, 1916, and all Acts amendatory thereof and supplementary thereto, there is authorized to be appropriated for the fiscal year ending June 30, 1957, $125,000,000 in addition to any sums heretofore authorized for such fiscal year; the sum of $850,000,000 for the fiscal year ending June 30, 1958; and the sum of $875,000,000 for the fiscal year ending June 30, 1959. The sums herein authorized for each fiscal year shall be available for expenditure as follows:

"(A) 45 per centum for projects on the Federal-aid primary highway system.

"(B) 30 per centum for projects on the Federal-aid secondary highway system.

"(C) 25 per centum for projects on extensions of these systems within urban areas.

"(2) The sums authorized by this section shall be apportioned among the several States in the manner now provided by law and in accordance with the formulas set forth in section 4 of the Federal-Aid Highway Act of 1944, approved December 20, 1944: Provided, That the additional amount herein authorized for the fiscal year ending June 30, 1957, shall be apportioned immediately upon enactment of this Act [June 29, 1956]."

Approval of Estimate of Cost of Completing the Interstate System as Basis for Apportionment of Funds for Fiscal Years 1963–1966. Section 102 of Pub.L. 87-61, Title I, June 29, 1961, 75 Stat. 122, provided that: "The estimate of cost of completing the Interstate System in each State, transmitted to the Congress on January 11, 1961, by the Secretary of Commerce pursuant to the provisions of section 104(b) (5) of title 23, United States Code [subsec. (b) (5) of this section], and published as House Document Numbered 49, Eighty-seventh Congress, first session, is hereby approved as the basis for making the apportionment of the funds authorized for the Interstate System for the fiscal years ending June 30, 1963, 1964, 1965, and 1966."

Approval of Estimate of Cost of Completing the Interstate System as Basis for Apportionment of Funds for Fiscal Years 1960–1962. Section 8 of Pub.L. 85-381, Apr. 16, 1958, 72 Stat. 94, as amended by Pub.L. 85-699, § 1, Sept. 2, 1958, 72 Stat. 1725; Pub.L. 86-342, Title I, § 103, Sept. 21, 1959, 73 Stat. 611, provided that: "The estimate of cost of completing the Interstate System in each State, transmitted to the Congress on January 7, 1958, by the Secretary of Commerce pursuant to the provisions of section 105(d) of the Act approved June 29, 1956 (70 Stat. 374), and published as House Document Numbered 300, Eighty-fifth Congress, second session, is hereby approved as the basis for making the apportionment of the funds authorized for the Interstate System for the fiscal years ending June 30, 1960, 1961, and 1962".

Apportionment Factors for Expenditures on National System of Interstate and Defense Highways for Fiscal Year 1967. Pub.L. 89-139, § 2, Aug. 28, 1965, 79 Stat. 578, provided that: "The Secretary of Commerce is authorized to make the apportionment for the fiscal year ending June 30, 1967, of the sum authorized to be appropriated for such year for expenditures on the National System of Interstate and Defense Highways, using the apportionment factors contained in table 5 of House Document Numbered 42, Eighty-ninth Congress, but the Congress reserves the right to disapprove the cost estimate for completion of such National System submitted by the Secretary on January 11, 1965, and contained in such document."

Apportionments for Subsequent Years Based on Revised Estimates of Cost. Section 108(d) of Act June 29, 1956, c. 462, Title I, 70 Stat. 378, as amended by Pub. L. 85-699, § 2, Sept. 2, 1958, 72 Stat. 1725, provided that: "All sums authorized by this section to be appropriated for the fiscal years 1960 through 1969, inclusive,

shall be apportioned among the several States in the ratio which the estimated cost of completing the Interstate System in each State, as determined and approved in the manner provided in this subsection, bears to the sum of the estimated cost of completing the Interstate System in all of the States. Each apportionment herein authorized for the fiscal years 1960 through 1969, inclusive, shall be made on a date as far in advance of the beginning of the fiscal year for which authorized as practicable but in no case more than eighteen months prior to the beginning of the fiscal year for which authorized. As soon as the standards provided for in subsection (i) have been adopted, the Secretary of Commerce, in cooperation with the State highway departments, shall make a detailed estimate of the cost of completing the Interstate System as then designated, after taking into account all previous apportionments made under this section, based upon such standards and in accordance with rules and regulations adopted by him and applied uniformly to all of the States. The Secretary of Commerce shall transmit such estimate to the Senate and the House of Representatives within ten days subsequent to January 2, 1958. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary of Commerce shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1960, June 30, 1961, and June 30, 1962. The Secretary of Commerce shall make a revised estimate of cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1961. Upon approval of such estimate by the Congress by concurrent resolution, the Secretary of Commerce shall use such approved estimate in making apportionments for the fiscal years ending June 30, 1963, June 30, 1964, June 30, 1965, and June 30, 1966. The Secretary of Commerce shall make a revised estimate of the cost of completing the then designated Interstate System, after taking into account all previous apportionments made under this section, in the same manner as stated above, and transmit the same to the Senate and the House of Representatives within ten days subsequent to January 2, 1966, and annually thereafter through and including January 2, 1968. Upon approval of any such estimate by the Congress by concurrent resolution, the Secretary of Commerce shall use such approved estimate in making apportionments for the fiscal year which begins next following the fiscal year in which such report is transmitted to the Senate and the House of Representatives. Whenever the Secretary of Commerce, pursuant to this subsection, requests and receives estimates of cost from the State highway departments, he shall furnish copies of such estimates at the same time to the Senate and the House of Representatives."

Legislative History: For legislative history and purpose of Pub.L. 86-70, see 1959 U.S.Code Cong. and Adm.News, p. 1575. See, also, Pub.L. 86-657, 1960 U.S. Code Cong. and Adm.News, p. 3159; Pub. L. 87-866, 1962 U.S.Code Cong. and Adm. News, p. 3068; Pub.L. 88-157, 1963 U.S. Code Cong. and Adm.News, p. 1027; Pub. L. 88-423, 1964 U.S.Code Cong. and Adm. News, p. 2708.

§ 105. Programs

(a) As soon as practicable after the apportionments for the Federal-aid systems have been made for any fiscal year, the State highway department of any State desiring to avail itself of the benefits of this chapter shall submit to the Secretary for his approval a program or programs of proposed projects for the utilization of the funds apportioned. The Secretary shall act upon programs submitted to him as soon as practicable after the same have been submitted. The Secretary may approve a program in whole or in part, but he shall not approve any project in a proposed program which is not located upon an approved Federal-aid system.

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: SB 373
HB 528

TITLE: An Act Relating to Metropolitan Planning Organizations

APPROVED: R. J. Knapp
Commissioner

DATE: February 11, 1986

In reviewing this bill, three key issues must be kept in mind: 1) the appropriateness of legislation to modify Policy Committee membership, 2) the desirability of including legislative and citizen representation on the committee and, 3) the technical aspects of the bill itself. This paper addresses these concerns.

Need for Legislation to Modify Committee Membership

The first issue to examine is the need for the legislation. The Code of Federal Regulation (CFR) 23 450.106(a) states "MPOs shall be made by agreement among the units of general purpose local government and the Governor." The current Governor's designation dated April 8, 1976 (copy attached) establishes a "three-person Policy Committee with two elected representatives - the Mayor and a Municipal Councilman, and the third member is the Commissioner of Highways." Based on the CFR and the language in the Governor's designation, it appears legislation is not required to amend membership in the AMATS Policy Committee. An amended Governor's designation could be used to change the policy committee composition and would provide a more flexible mechanism for future modifications than specific enacted legislation.

A question has also been raised by CFR references which indicate local governments shall agree to MPO representation. This could be interpreted to mean the local government must be agreeable to any proposed changes. However, FHWA has verbally indicated that "agreement" in this context means that the views of the local government have been considered in any decision making.

Desirability of Legislative/Citizen Representation

The second issue raised is the desirability of legislative and citizen representation. CFR 23 450.106(b) states "principal elected officials of general purpose local governments shall be represented on the MPO to the extent agreed to pursuant to paragraph (a) above". The intent of Congress when establishing MPO's was to provide local (city) governments a greater voice in the planning and programming of federal aid receipts. The addition of two legislators may be perceived by the local government as tipping the balance in the State's favor and outweighing local voices. However, proponents of legislative representation may argue legislators represent local interests as they are elected by a local constituency. The CFR only requires local government have a voice; voting control is not stipulated. Proponents may also argue state representation should be increased considering the number of state transportation facilities and the magnitude of State dollars appropriated to the Municipality. At present, only the State is authorized to construct facilities with federal aid dollars.

For further information call Susan Fleischhauer at 465-3900.

Other distinct advantages and disadvantages of legislative membership on the Policy Committee are as follows.

Advantages

1. Current regulations require both the local government and the Legislature to ultimately approve the expenditure of federal funds within the urbanized area. The local government must approve the expenditure of federal dollars, however, the Legislature must also authorize the State to receive and expend federal funds. Therefore, mutual cooperation between the local government and Legislature is necessary. Legislative representation on the Policy Committee could facilitate legislative approval of transportation capital budgets by:

   a. inducing closer legislative/local government cooperation
   b. increasing legislative familiarity and support of projects and their priorities.

2. The current MPO designation by the Governor is dated 1976. Since then Anchorage has grown immensely in size and complexity. Increased membership may be more representative of the complexities of the community. Legislative participation would increase the membership and provide a different community perspective.

Disadvantages

1. The Legislature has existing power to approve/disapprove the capital budget request as discussed above. Therefore, representation on the Policy Committee would be a duplication of legislative effort and involvement. Additionally, the branches of government should be kept separate to provide a check and balance system. Legislators on the Policy Committee would have the dual roles of both approving the planning document at the local level and then acting on funding decisions at the legislative level.

2. Coordination/attendance of meetings, particularly when the Legislature is in session could be difficult. The MPO is required to produce specific planning documents. Policy Committee meetings in April through June are critical to the timely submission of the annual Transportation Improvement Program (TIP) and the Unified Work Program (UWP).

3. In light of reduced funding, the expenses incurred and who pays for legislative travel to attend meetings while the Legislature is in session must be addressed. If the MPO is expected to pay travel costs and/or per diem, it will decrease monies available for planning.

4. Partisan politics may be difficult to avoid, particularly during election years. Officials currently on the Policy Committee are elected in a non-partisan manner. Given the existing political structure, legislative representation could create decision making delays.

A representative of the citizen Transportation Advisory Committee is also proposed for Policy Committee membership. This proposal varies significantly from the rest of the committee representation in that a citizen member would not be accountable to an elective body or a government agency. The existing members and the proposed legislative members by mandate represent a broad perspective. CFR 23 450.106(b) requires "principal officials of general purpose governments shall be represented on the MPO..." Elected officials are chosen by the public to represent the general citizenry and are accountable to their constituencies. The existing Policy Committee may wish to evaluate the role of public involvement in the AMATS process. However, legislation is not required to achieve this end and the existing Policy Committee could direct increased public involvement efforts. Other MPO's generally do not have citizen representatives on their policy committees.

Technical Problems with the Bill as Proposed

The last issue this paper addresses is the technical problems with the bill itself. They are as follows:

Page 1, line 12: Population of 200,000 or more - should read population of 50,000 or more which is consistent with the federal definition of an "urbanized" area. The 200,000 population is an important distinction in the distribution and reporting requirements of Urban Mass Transportation Act (UMTA) funds utilized by the Municipal Department of Transit. The population figure is determined by the decennial census.

Page 1, lines 15-26: This section establishes a six-member policy committee. Six voting members will not allow resolution of a split vote.

Page 2, lines 4, 5: Committee shall adopt internal procedures to govern the conduct of business - should read shall amend the Transportation Planning Operating Agreement which will govern the conduct of business...

Conclusions

In summary, and in consideration of the foregoing we have two overriding reservations:

1. Inclusion of State Legislators on a Municipal planning organization puts them in the positions of both proposal and disposal.

2. Inclusion of a private citizen, accountable to no particular group of organization, could be counter-productive.

However should the Legislature elect to proceed, such action could, with the approval of the Governor, be accomplished administratively.

April 8, 1976

Mr. Bruce Cannon, Chairman
Intermodal Planning Group
Department of Transportation
Federal Highway Administration
222 S. W. Morrison Street
Portland, Oregon 97204

Dear Mr. Cannon:

As a result of the unification election in September 1975 the City of Anchorage and the Greater Anchorage Area Borough combined into one governing entity, the Municipality of Anchorage. The approved boundaries of the urbanized area fall within the new boundaries. At this time, the State would like to designate the new Municipality of Anchorage as the Metropolitan Planning Organization (MPO), not only to reflect the political changes but to promote a planning process as responsive to the desires of local residents as possible.

The previous designation letter, sent to Mr. Butterfield by former Governor Egan on June 25, 1974, designated a representative membership of local government as the MPO. The designation will not affect the make-up of the bodies which establish the direction of transportation planning in the Anchorage area. The three-person Policy Committee has two elected representatives - the Mayor and a Municipal Councilman - and the third member is the Commissioner of Highways. The Technical Committee also has three voting members - the Municipal Planning Director, the Municipal Director of Transportation, and the State Department of Highways' District Engineer. As required by current regulations, this process will enable transportation planning to be carried out by the MPO in cooperation with the highway agency and the transit operator. The Highway Department has representation on both committees. Since the transit operation is a division of the Municipal Department of Transportation, it too, implicitly, has representation on these committees, though only implicitly. Also, the transit operator is an associate member of the Technical Committee.

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APR 12 1976
Commissioner's Office
Juneau, Alaska

As Anchorage has been designated an urbanized area for only two years, its transportation planning activities are still evolving, but it is felt that transferring the responsibility to the Municipality will hasten further development and improvement.

Sincerely,

Jay S. Hammond
Governor

BCC: Gene A. Hanna, FHWA, Juneau
George Sullivan, AMATS Policy Committee
George Dickson, AMATS Policy Committee
Jack Spake, AMATS Technical Committee
William Fort, UMTA, Seattle
Department of Highways

JSH/JLU/mth

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Room 412 Mohawk Building
222 S.W. Morrison Street
Portland, Oregon 97204

(AMATS)

April 28, 1976

IN REPLY REFER TO	I	A	Alaska Division	Init
			Division Admin.	
			Engr. Coord.	
			Asst. Engr. Coord.	
			Env. Coord.	
			Bridge Engineer	
			R.O.W. Officer	
	L		Plan. & Res. 1, 2	
			Field Opr. Engr.	
			Area A	
			Area B	
			Area C	
			Asst. Area Engr.	
			Audits	
			Admin. Manager	
			Fiscal	
			State	
			[illegible]	

Honorable Jay S. Hammond
Governor of Alaska
Juneau, Alaska 99801

Dear Governor Hammond:

Anchorage Urban Area, Designation of
Metropolitan Planning Organization

We acknowledge your April 8, 1976 designation of the Municipality of Anchorage as the Metropolitan Planning Organization (MPO) for the Anchorage urban area.

With this designation, the Municipality is the established eligible recipient of Department of Transportation planning funds for comprehensive urban transportation planning. Also the organization, together with the State, is responsible for conducting the metropolitan transportation planning program. The policy and technical committees structured by you and the Municipality are the means to fulfill this responsibility.

The U.S. Department of Transportation administrations in this region are looking forward to continuing their working relationship with the Municipality of Anchorage and the State on the Anchorage transportation/land use planning process.

Sincerely yours,

Bruce Cannon

Bruce Cannon, Chairman
Intermodal Planning Group,
Region X

5/4/76

cy to Umbaugh

ANCHOR. 82

SB

374

PROPOSED AMENDMENT NUMBER ONE TO SB 374

ON PAGE TWO, LINE NINE

Delete AS 37.17.730

Add AS 37.15.730

PROPOSED AMENDMENT TO NUMBER TWO TO SB 374

On Page 2, Line 12

Delete AS 37.17.760 (7)

Add AS 37.15.760 (7)

DeVries introduces bill to pave way for new tunnel to Whittier

JUNEAU (AP) — A Whittier Toll Road Authority would be created under legislation introduced in the state Senate — potentially clearing the way for a $100-million tunnel to that Prince William Sound community.

The measure was introduced Sen. Edna DeVries, R-Palmer, who said it would amend Alaska law giving the proposed Knik Arm Crossing in Anchorage top billing for toll road money.

Under the bill, either or both projects would be funded depending upon the communities' ability to pay and meet legal criteria.

Building a new tunnel through Mount Maynard and paying for it with toll-road receipts would be a realistic alternative to public financing, DeVries said.

"Without such an alternative, facilities such as the Whittier road will fall victim to revenue declines," DeVries said Wednesday.

"Whittier is an ice-free port," she said. "Right now, only the Alaska Railroad tunnel provides land access to Whittier. Access is an important thing for economic development."

The resulting benefits from new tourism, transportation and fishing-related businesses would send economic ripples through the entire state, she said.

Anch Times 1/31/86

Copies mailed to
Duane Dvorak, City Clerk, Whittier 2/3/86

PHASE III INTERIM REPORT

System Alternatives &

Recommendations

Whittier Access Study

PREPARED FOR

STATE OF ALASKA
ALASKA DEPARTMENT
OF TRANSPORTATION
AND PUBLIC FACILITIES

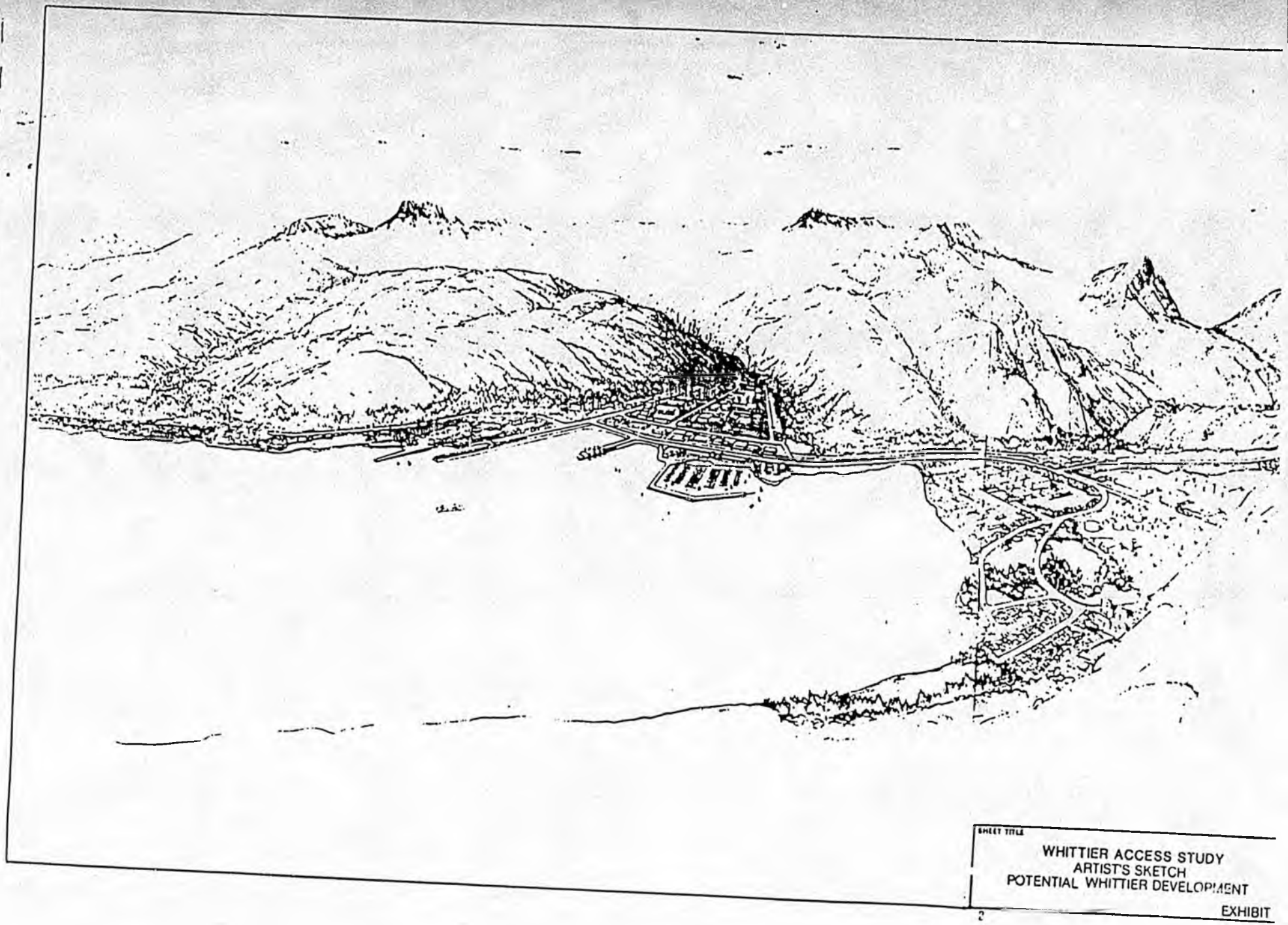
ANCHORAGE, ALASKA 99502

MAY 1, 1980

DMJM Forssen

420 L Street, Suite 406 • Anchorage, Alaska 99501 • 907/274-1554
3250 Wilshire Boulevard • Los Angeles, California 90010 • 213/381-3663

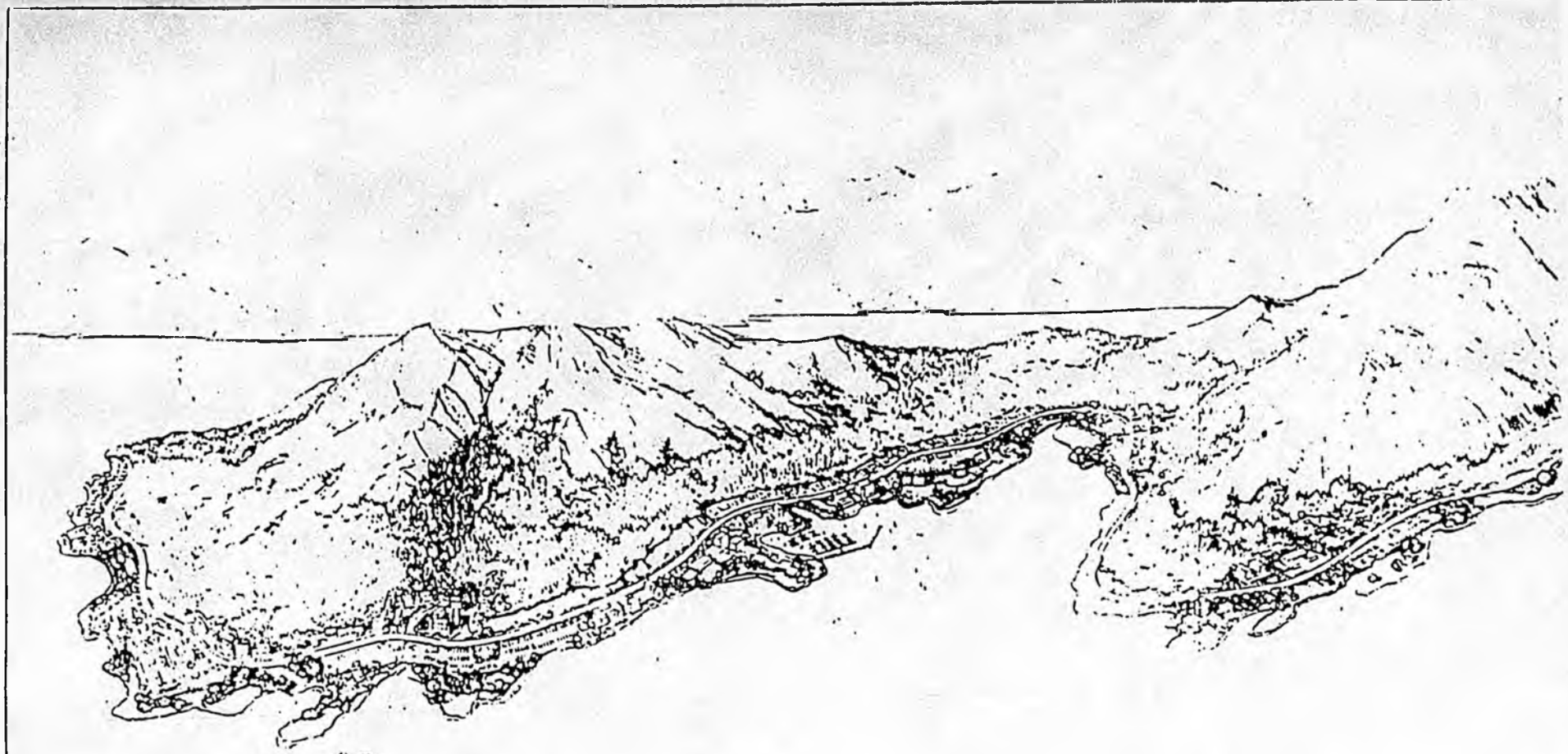
PRELIMINARY



SHEET TITLE

WHITTIER ACCESS STUDY
ARTIST'S SKETCH
POTENTIAL WHITTIER DEVELOPMENT

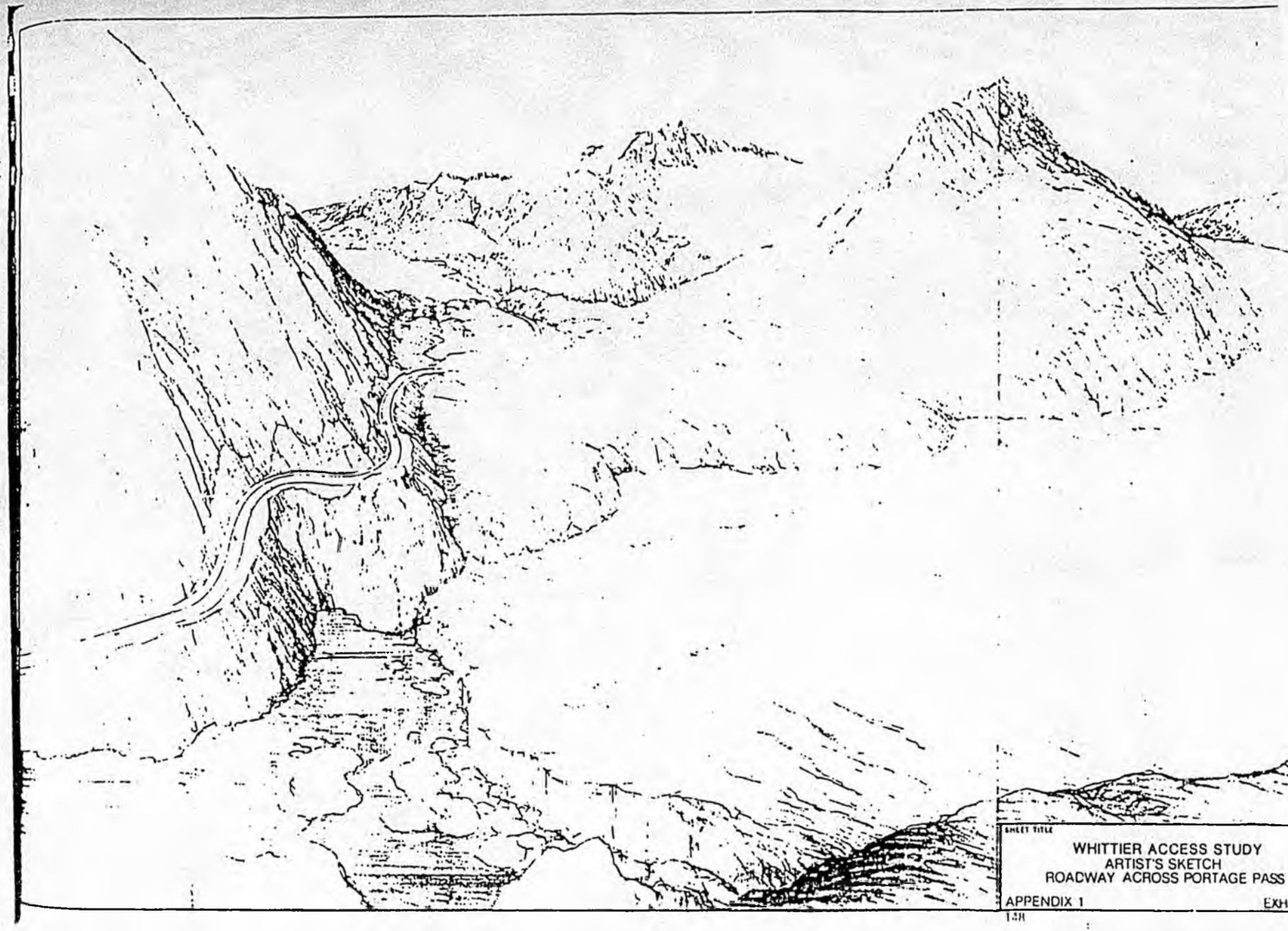
EXHIBIT



SHEET TITLE

WHITTIER ACCESS STUDY
ARTIST'S SKETCH POTENTIAL SHOTGUN
COVE & DECISION POINT DEVELOPMENT

EXHIBIT

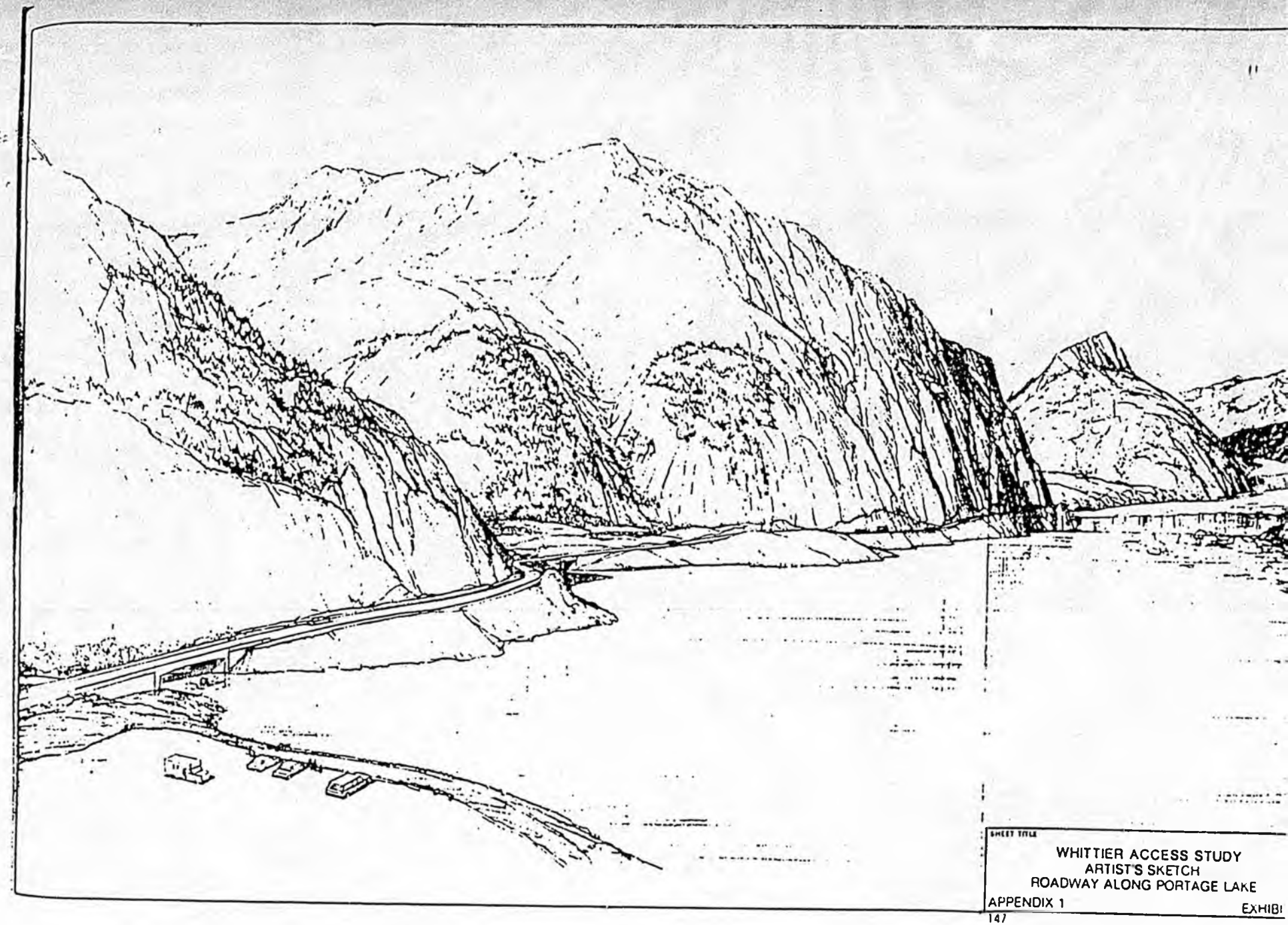


SHEET TITLE

WHITTIER ACCESS STUDY
ARTIST'S SKETCH
ROADWAY ACROSS PORTAGE PASS

APPENDIX 1 EXHIBIT

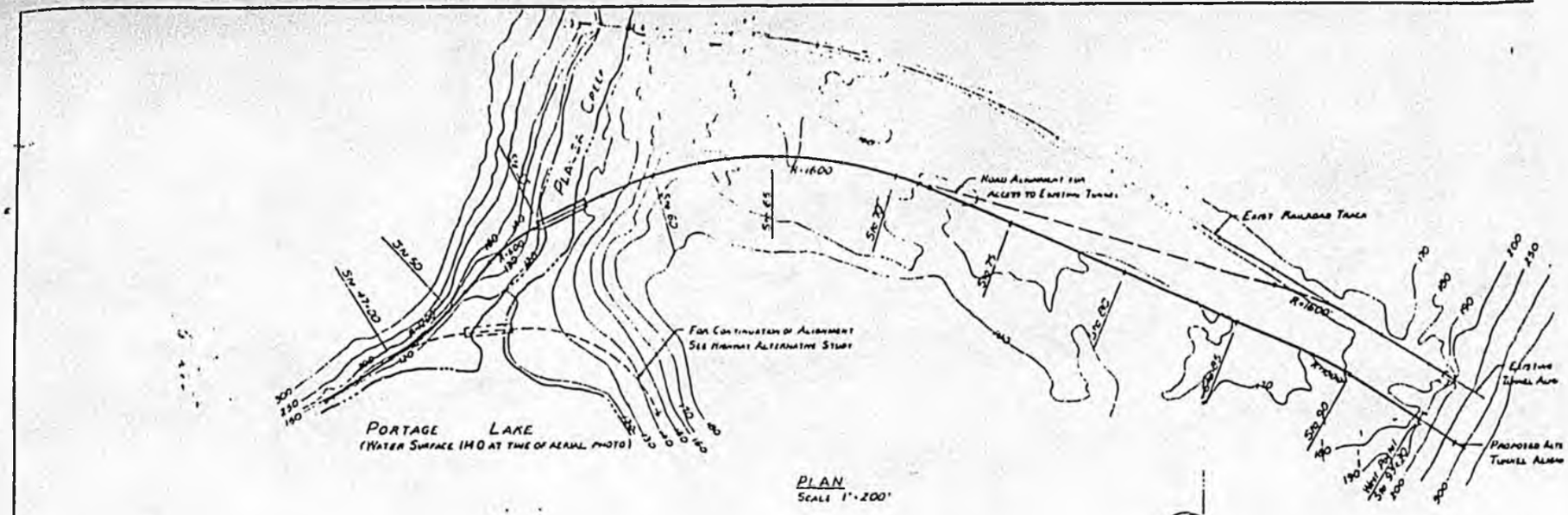
138

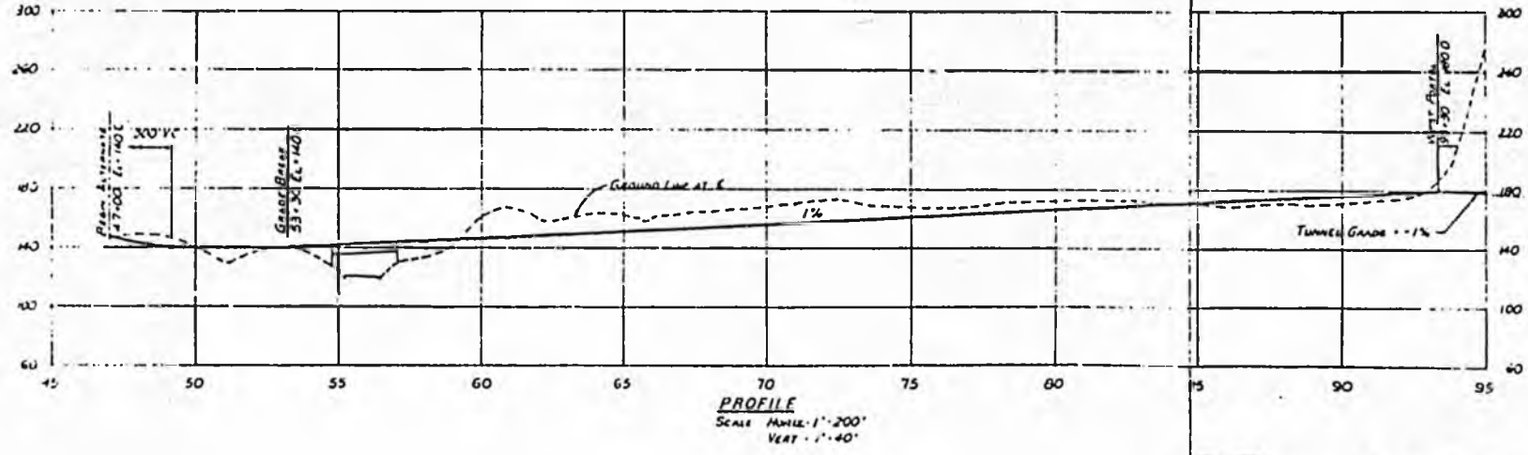


SHEET TITLE

WHITTIER ACCESS STUDY
ARTIST'S SKETCH
ROADWAY ALONG PORTAGE LAKE

APPENDIX 1 EXHIBI



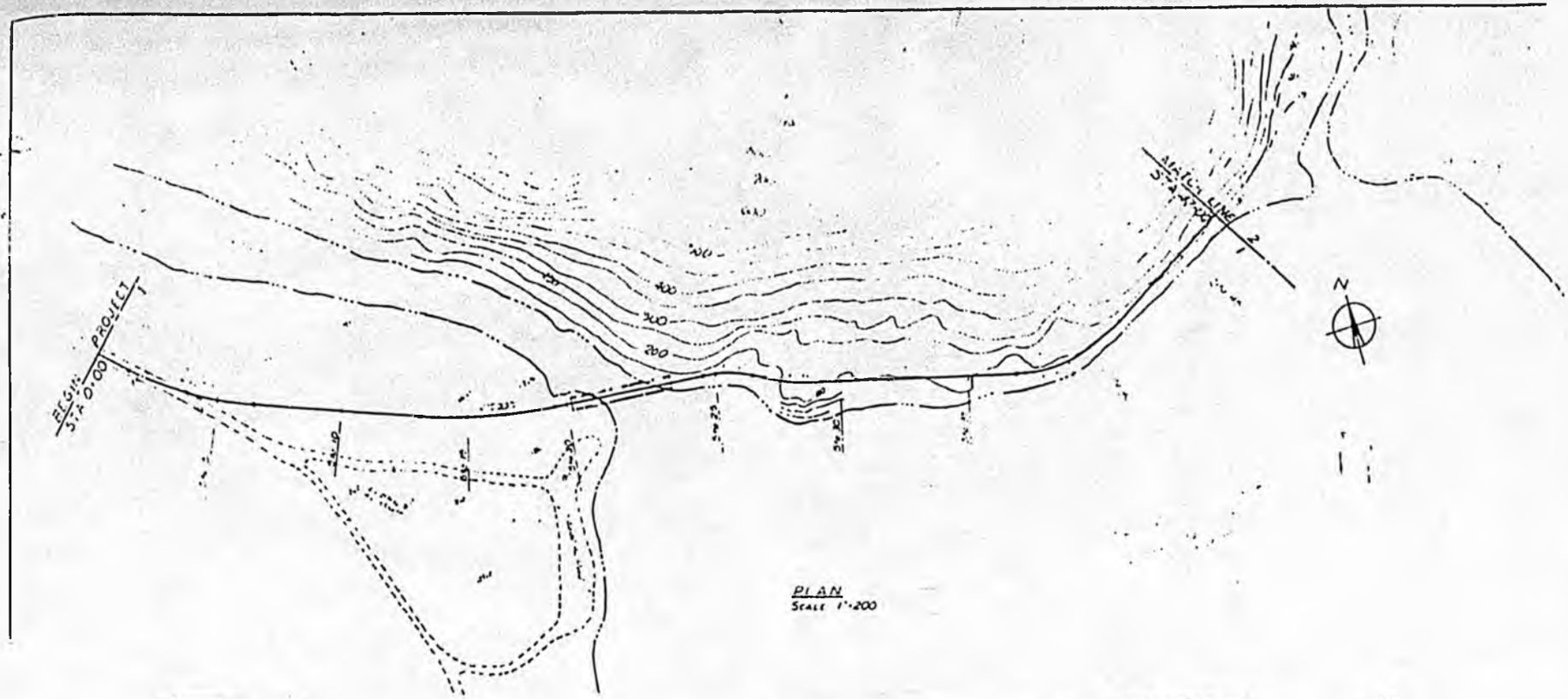


SHEET TITLE

WHITTIER ACCESS STUDY

PLAN & PROFILE
BEAR VALLEY AND TUNNEL ALIGNMENT

APPENDIX 2 EXHIBIT A



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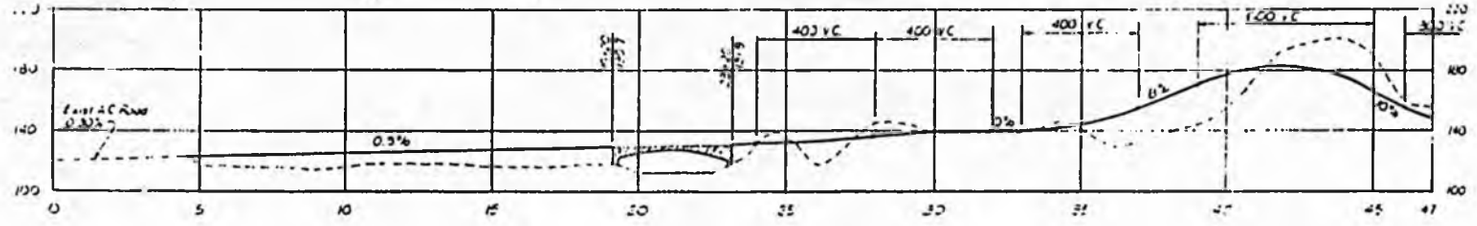

PROFILE
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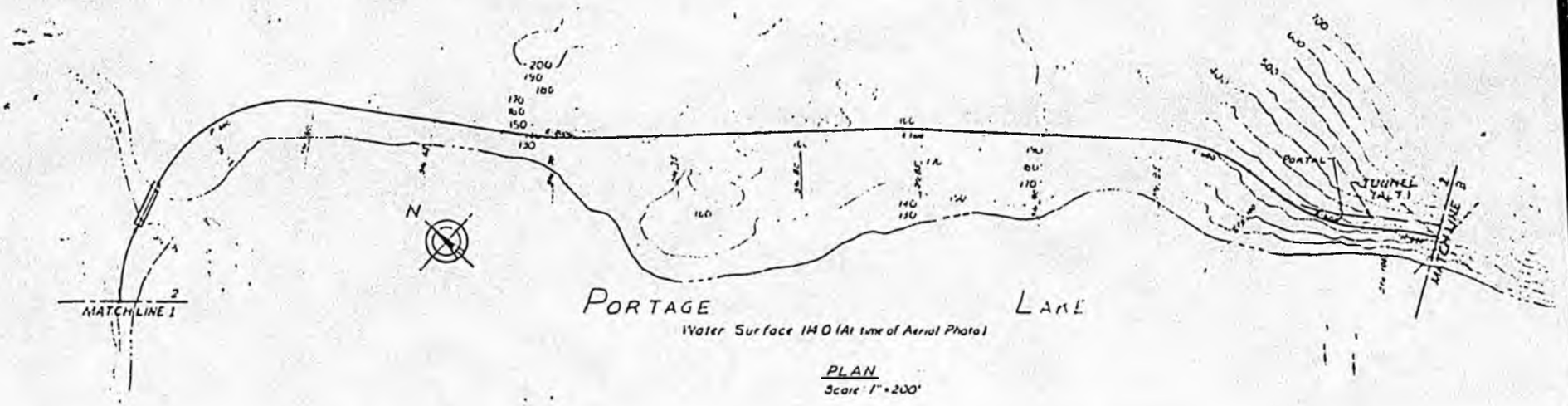
SHEET TITLE

WHITTIER ACCESS STUDY
PLAN & PROFILE STATIONS 0-47
BRIDGE AT PORTAGE CREEK

APPENDIX 1 EXHIBIT E



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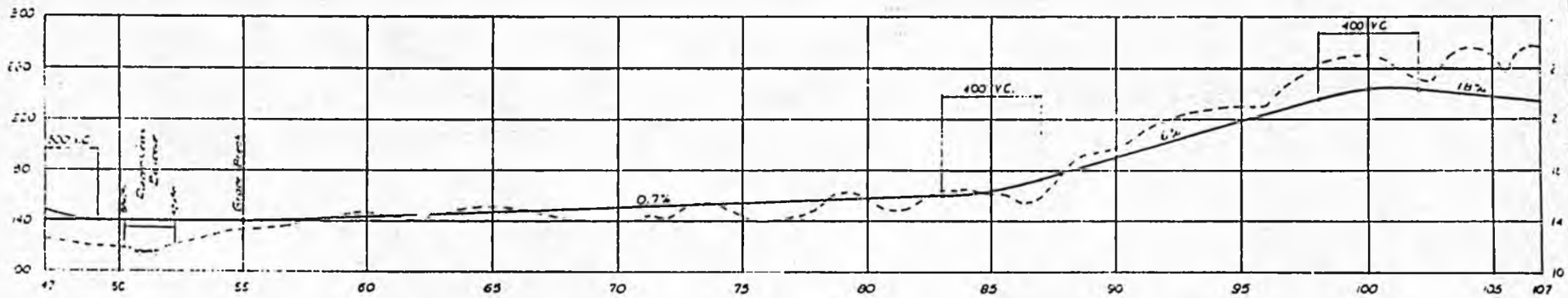

PROFILE
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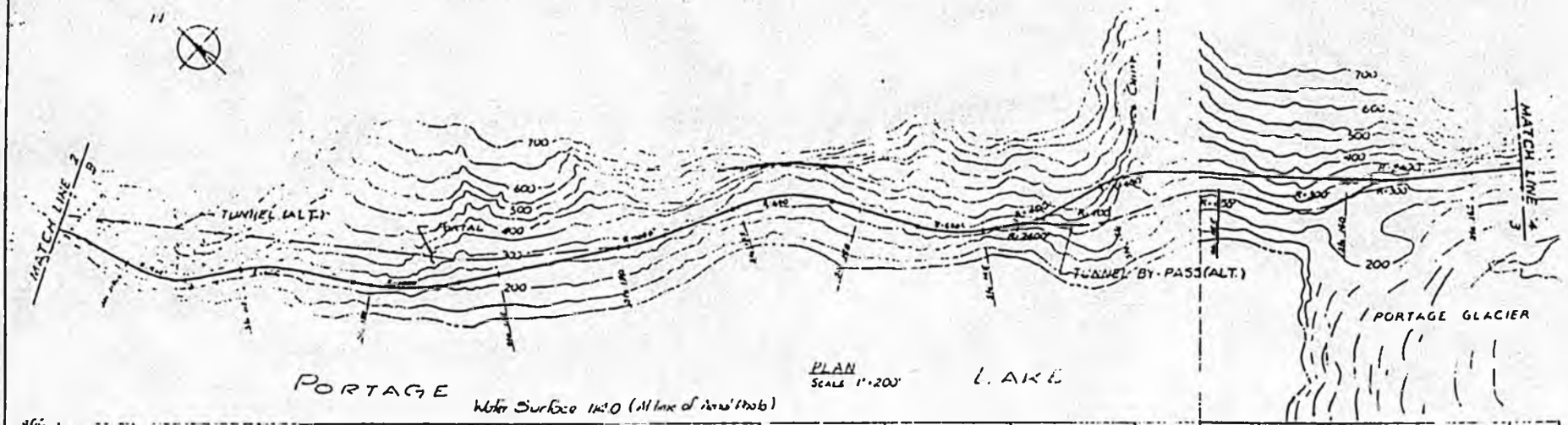
SHEET TITLE

WHITTIER ACCESS STUDY
PLAN & PROFILE STATIONS 47-107
PLACER CREEK BRIDGE TO PORTAGE LAKE

APPENDIX 1 EXHIBIT 1



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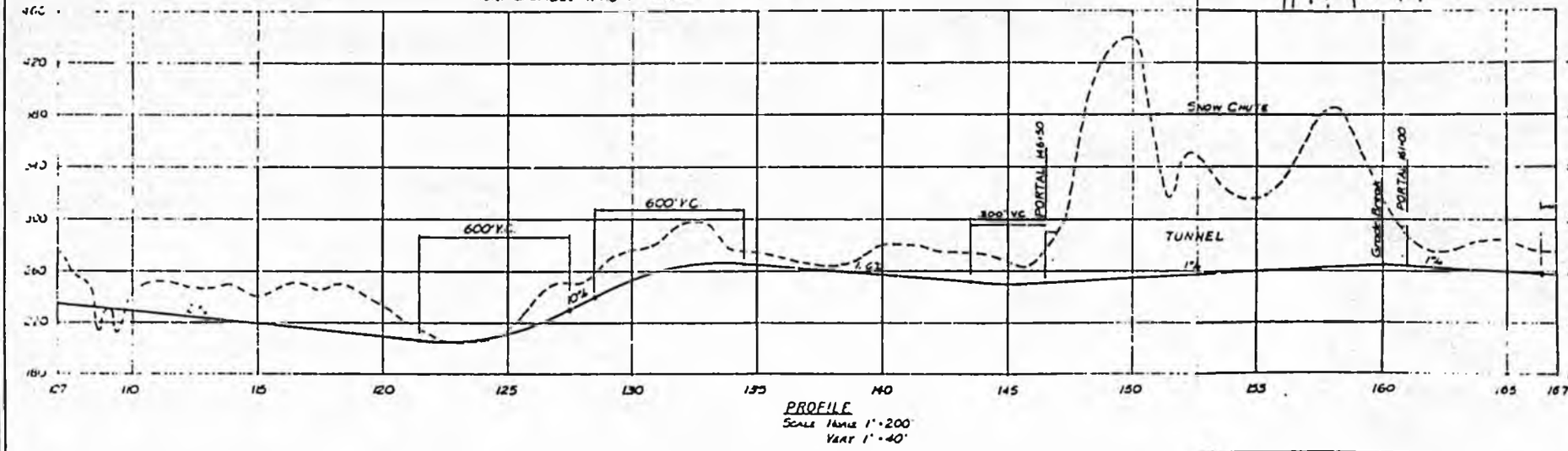

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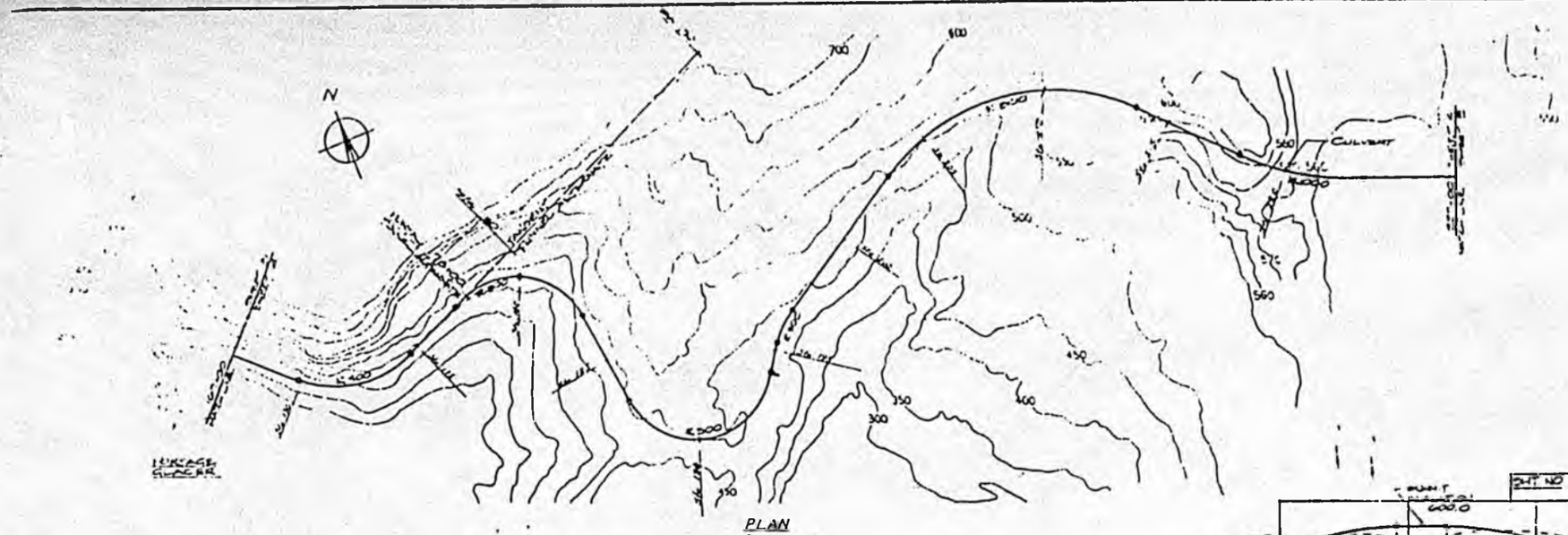
SHEET TITLE

WHITTIER ACCESS STUDY
PLAN & PROFILE STATIONS 107-167
PORTAGE LAKE TO PORTAGE GLACIER
APPENDIX 1 EXHIBIT C

167



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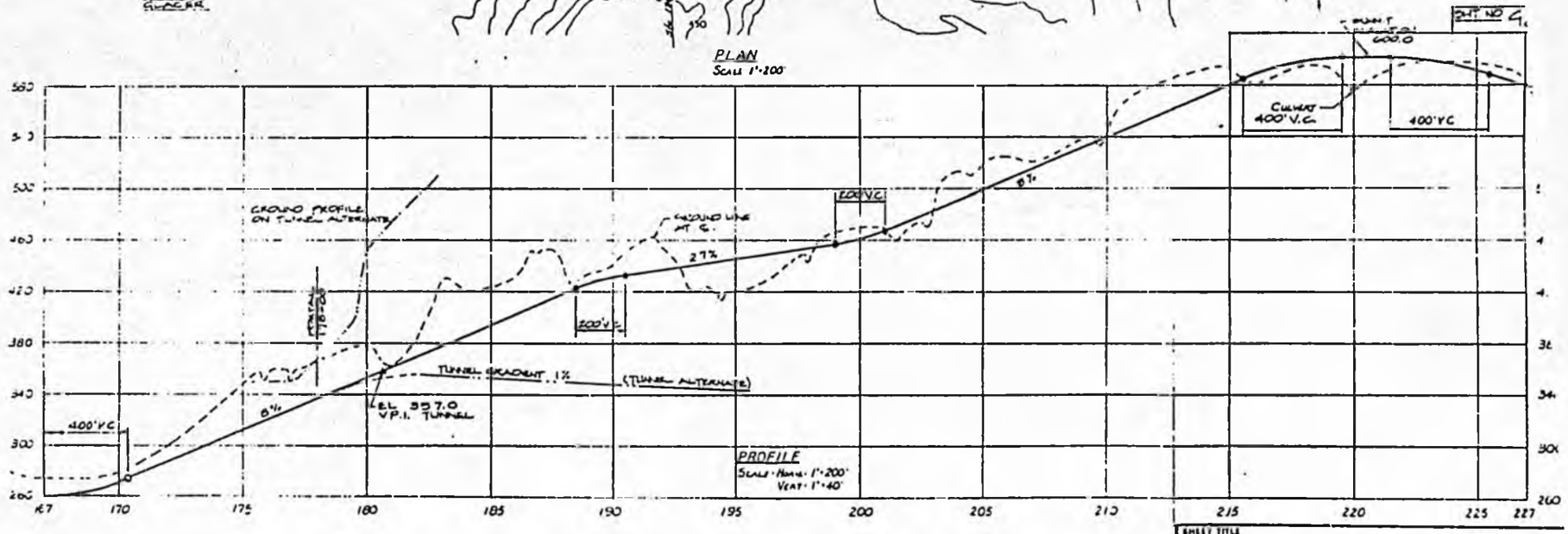

PROFILE
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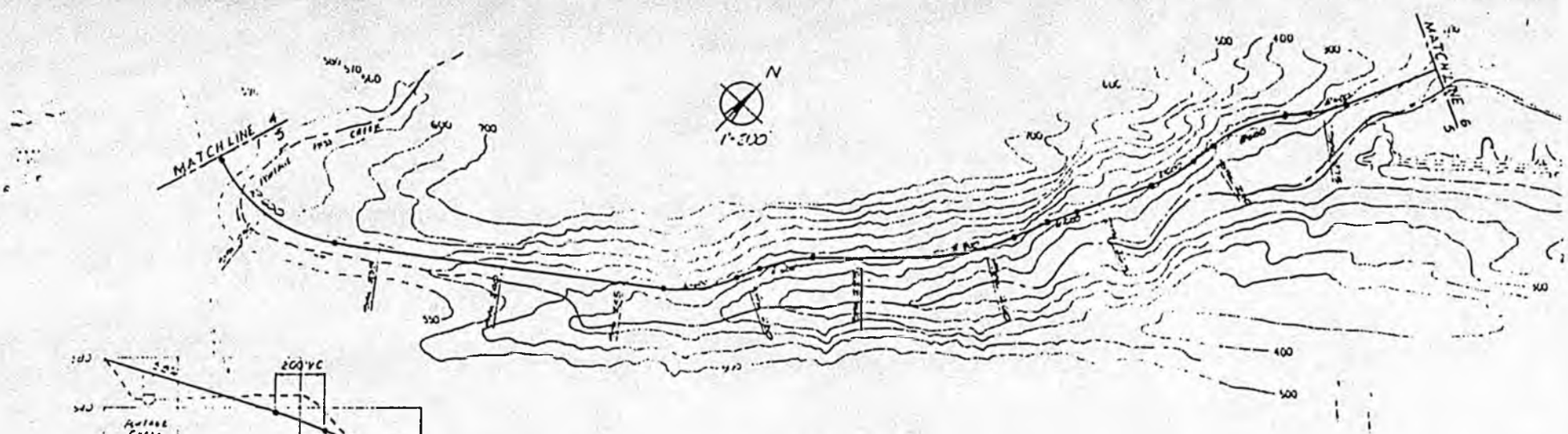
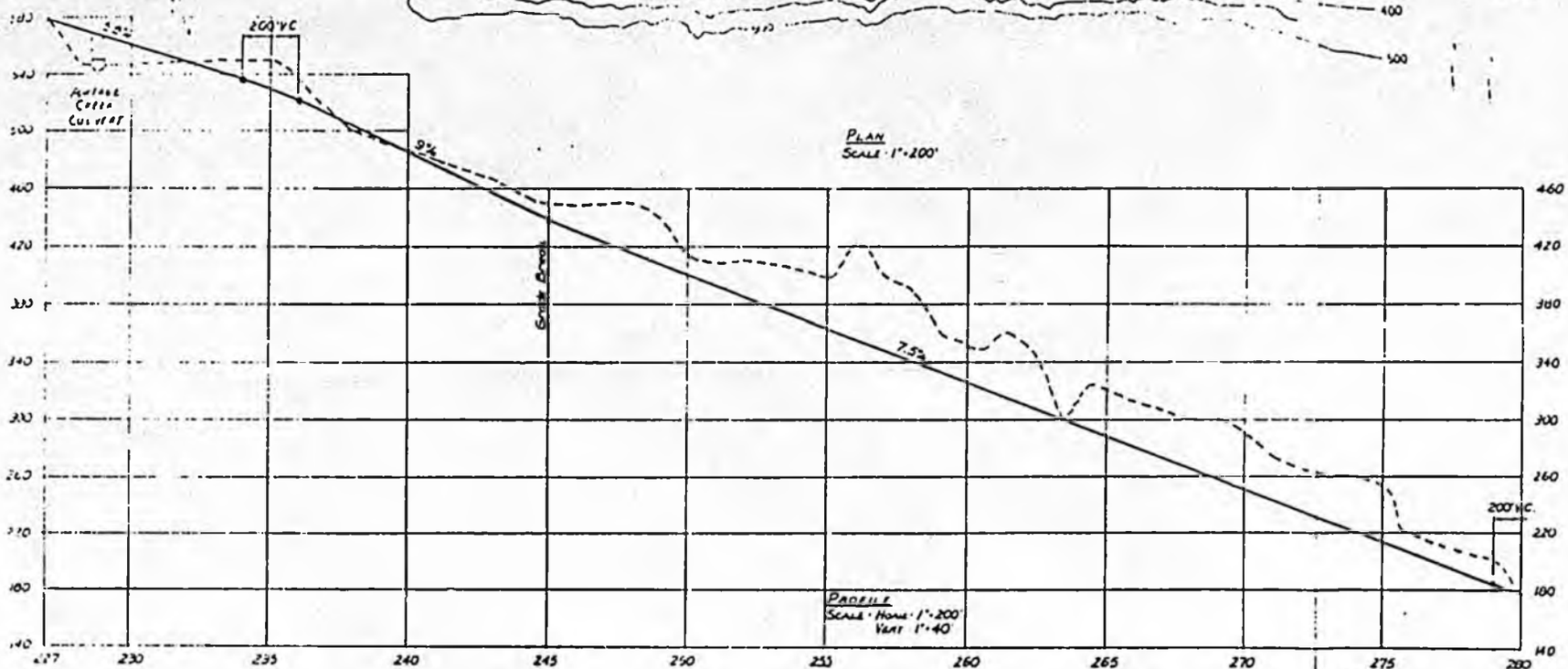
SHEET TITLE

WHITTIER ACCESS STUDY
PLAN & PROFILE STATIONS 167-227
PORTAGE GLACIER TO PASS LAKE

APPENDIX 1 EXHIBIT H





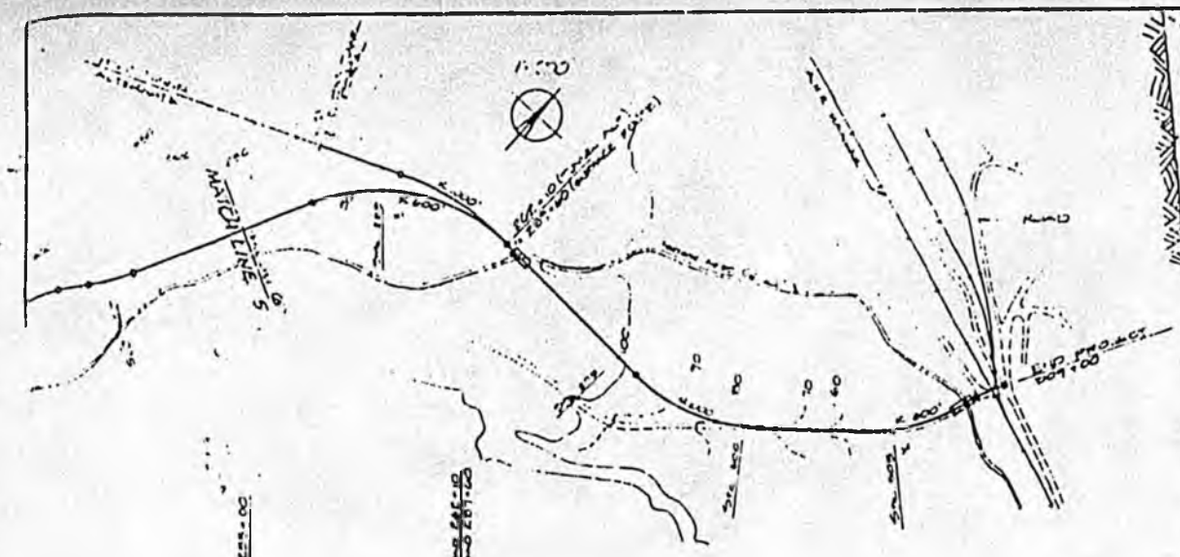
SHEET TITLE

WHITTIER ACCESS STUDY

PLAN & PROFILE STATIONS 227-277

PORTAGE PASS CREEK DRAW

APPENDIX 1 EXHIB



Tunnel Alternate: West Portal VPI 950.0 Station 200+00
East Portal El. 150.0 Station 230+00

Tunnel Gradient 1.91%

PLAN
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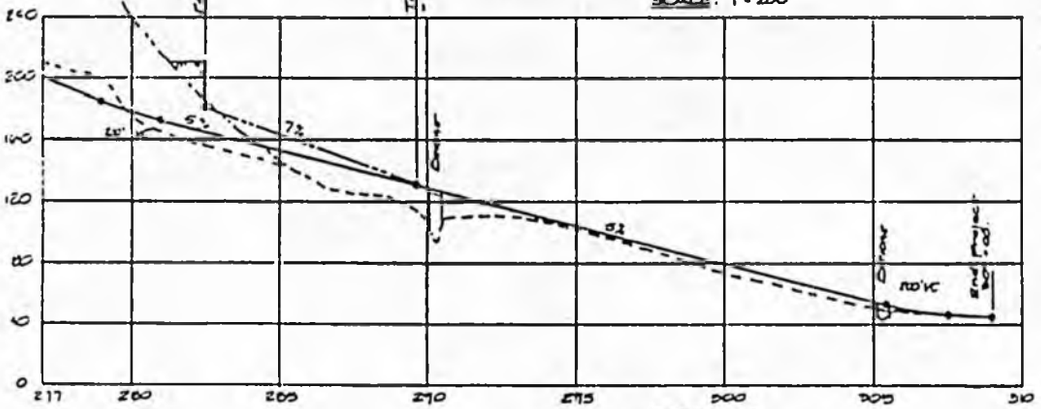

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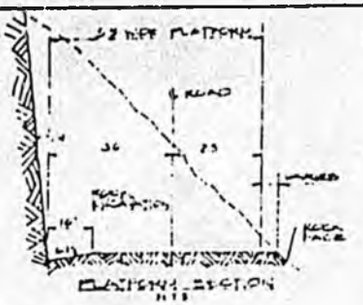
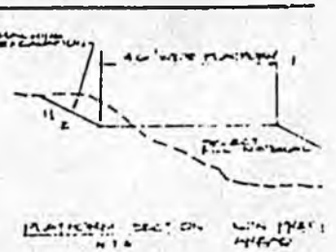
Vertical: 1"=40'



PLATFORM SECTION
N.T.S.



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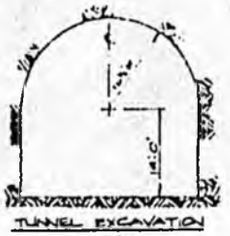

TUNNEL EXCAVATION
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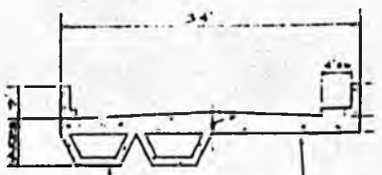
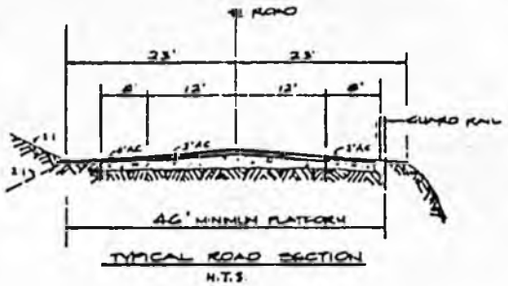


TYPICAL BRIDGE SECTION
N.T.S.



TYPICAL ROAD SECTION
N.T.S.

SHEET TITLE

WHITTIER ACCESS STUDY
PLAN & PROFILE STATIONS 277-310
PORTAGE PASS CREEK BRIDGE

APPENDIX 1 EXHIBI

TAS

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

MEMORANDUM

TO: Committee Members

From: Committee Staff BL

Re: SB 374

The Senate Transportation Committee will be hearing SB 374 today, February 12. The purpose of the bill is to allow the Department of Transportation to set up toll facilities as part of its duties, to amend the Alaska Statutes dealing with toll facilities to include tunnels, and to amend the Statute dealing with the Knik Arm Crossing to include the Whittier Toll Road.

The City of Whittier contends that they are waiting for passage of this legislation before they can go ahead with plans to sell bonds to finance the Whittier Toll Road.

Section 1 of the bill amends the Powers of the Department Section of the Title 19 by adding the word "tunnels" to subsection 11, dealing with toll facilities.

Section 2 amends Title 37 (Public Finance) by adding the word "tunnel" to 37.15.720. This Subsection was added to allow for financing of the Knik Arm Crossing.

Section 3 amends Title 37 by including the Whittier Toll Road in the Section dealing with the order in which state toll facilities would be constructed. 37.15.730 currently states that the Knik Arm Crossing will be the first toll facility to be constructed by the Department of Transportation. SB 374 amends this Section by allowing the Whittier Toll Road to be one of the first <u>two</u> toll facilities.

Section 4 adds a new Subsection, the intent of the Subsection is to allow for one of the facilities to be built without the concurrence of the other project. The Section is mis-numbered in relation to the Statute and proposed amendment #1 is in your packet.

Section 5 is similar to Section 1, in that it adds the word tunnel to a Statute dealing with toll facilities. This Section is also mis-numbered and you will find proposed amendment #2 deals with that problem.

Unique — even in Alaska!

THE CITY OF WHITTIER

TELECOPIER COVER LETTER

DATE: 1-28-86

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Edna DeVries 4989

FIRM: U.S. Senate

CITY: Juneau Ak

TELEPHONE NO: _____ TELECOPY NO. 465-3700

FROM: City of Whittier

DESCRIPTION OF MATERIAL: Information letter in support of Highway Toll Authority

TOTAL NUMBER OF PAGES (INCLUDING COVER LETTER): 9

If you do not receive all the pages, please call back as soon as possible.

Phone: 472-2327 or 472-2337

Operator: Duane Dvorak

We are transmitting from a CANON FAX520

Telecopier No. 472-2404

THE CITY OF WHITTIER

TELECOPIER COVER LETTER

DATE: 1-29-86

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Margaret ; Senator De Vries Office

FIRM: Alska Senate

CITY: Juneau

TELEPHONE NO: _____ TELECOPY NO. 465 3700

FROM: City of Whittier

DESCRIPTION OF MATERIAL: Typed items - Original maps from DOT Study - Artwork

TOTAL NUMBER OF PAGES (INCLUDING COVER LETTER): 11

If you do not receive all the pages, please call back as soon as possible.

Phone: 472-2327 or 472-2337

Operator: _____

We are transmitting from a CANON FAX520

Telecopier No. 472-2404

There was not enough time to get more info off to you today. Have to go to Anchorage Today on the train. If you cant get the information from other sources I will try to get it together next week if it is not too late.

Could we please have a membership list of the committee that you mentioned on the phone the other day

Thanks Dave,

PRESS RELEASE (January 29, 1986): SB 374

Senator Edna DeVries (R-District E) today submitted legislation that would amend Alaska State Statutes to allow for the establishing of the Whittier Toll Road authority and the construction of a new tunnel through Mt. Maynard. At this time, only the Alaska Railroad tunnel provides land access to Whittier.

The Statutes presently give the Knik Arm Crossing priority as the first State Toll Facility to be funded. DeVries' amendment stipulates that either or both project(s) may be funded depending upon the communities' abilities to meet the legal criteria for a comprehensive feasibility study and a financial plan for repaying the bonds with which the facility is funded.

DeVries feels that the Toll Authority may represent an alternative to direct funding of capital projects. Without such an alternative, she said, facilities such as the Whittier Road will fall victim to the revenue decline. DeVries urged that proposals such as this one be seriously entertained by the Legislature.

This project, according to DeVries, is the essential key to the development of Prince William Sound infrastructure. She feels that the resulting tourism, recreation opportunity, transportation and commercial fishing industries would not only provide a strong financial base for the Whittier-Prince William Sound area but would benefit the rest of the State as well.

A very strong statement of support for the project has come from various professional and administrative groups and individuals that serve the Chugach area, State of Alaska and interstate commerce as well as the local residents. DeVries received a petition signed by 108 of the 338 residents of Whittier asking that she sponsor this legislation.

WINGREN
ENTERPRISES

(907) 225-4365
P.O. BOX 5197
KETCHIKAN, ALASKA 99901

1 February, 1986

Senator Robert H. Ziegler Sr.
Alaska State SEnate
Pouch V
Juneau, Alaska 99811

Dear Bob

I have read with interest about the introduction of SB 374, by Senator DeVries, to create a Toll Road Authority for a tunnel to Whittier.

I have long been an advocate, along with others, of the creation oa a Toll Road Authority to build bridges to Pennock and Cravina Islands, to connect Ketchikan with our Cravina Island airport. Unfortunately, in the past, our local legislative delegations have never shown much enthusiasm for such a project. I would hope that now you might be able, with the support of our newer House members, to stimulate to work for such interest, and either amend SB 374 to include our bridges, or introduce a similar bill for the same purpose.

Sincerely

Paul J. Wingren

cc: Rep. John Sund
Rep. Robin Taylor
Sen. Edna DeVries
Mayor Ted Ferry, City of Ketchikan
Mayor Ralph Gregory, Ketchikan Gateway Borough
James Raabe, Chairmen, Greater Ketchikan Chamber of Commerce Econ. Dev
Paula Easley, Resource DEvelopment Council
Lew Williams, Publisher, Ketchikan Daily News
Gary Larson, Alaska Airlines

IRELAND TRANSFER & STORAGE CO.
615 Stedman Street
Ketchikan, Alaska 99901-6696
Phone (907) 225-2121

FEB 7 _ RECD

February 5, 1986

The Honorable Robert H. Ziegler, Senator
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Ziegler:

With reference to the letter from Paul Wingren relating Senator DeVries proposal for a Toll Road Authority for a Whittier tunnel to our need for a hard link to Ketchikan Int'l Airport, he may be right in assuming that there is no other way to finance those construction costs.

I have been against a toll as I have been assuming that the annual employee costs would eat up the income until such a time as Pennock and Gravina are developed by residential and commercial growth. My feelings have been that the state has provided highway connections to all other state airports, and that we should expect that our hard link would also be provided. With the state income going down, it is probable that I would not live long enough to see construction of the project in the time I have left, especially if the state funds are mostly routed to the Susitna project each year.

I have attached the past two years passenger and vehicle totals for our airport ferry operation that could help in any discussions that you may have on this proposal. You are aware that the figures shown are only for airport travel, and that the vehicle number would increase substantially if they could be driven to the airport, whereas most people today do not take their cars across to the airport.

The lack of a hard link is a leading cause of our failure to attract the air tour industry as they can't load tour buses at the airport for delivery to hotels or for visitor tours. This in turn, keeps us from being able to support the hotel industry and contributes to our failure to be able to handle the convention circuit. Any of our industrial or commercial proposals at the airport also fail as the first question we get is how do we get our trucks or employees back and forth.

Our future residential growth would probably be on Pennock and Gravina Islands if the hard link is ever contructed. As you know, we have approximately 4,000 acres of Borough land on those islands, and it is of little value if future owners have no wheeled access.

Thanks for keeping this project active.

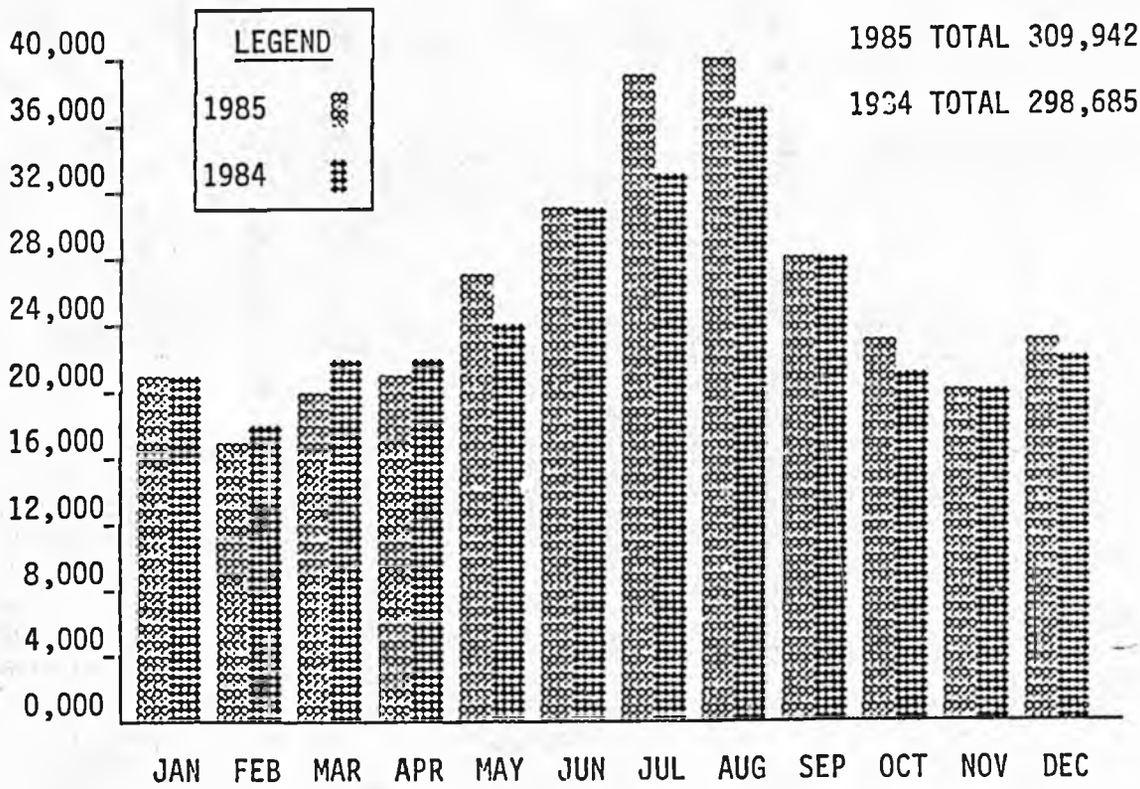
Sincerely,

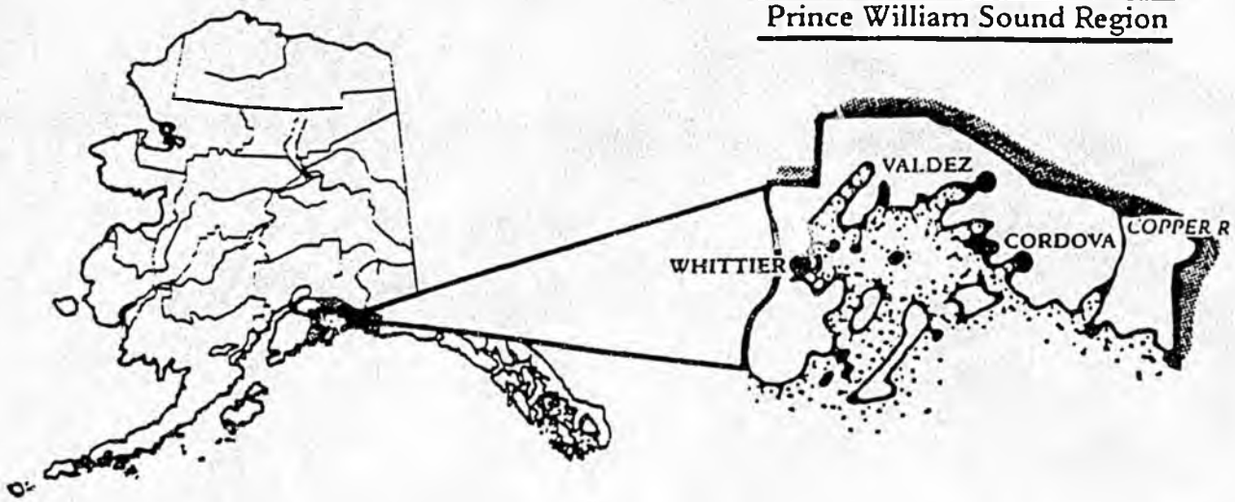
Ralph M. Bartholomew

cc: Sen. DeVries, Rep. Sund & Taylor

KETCHIKAN INTERNATIONAL AIRPORT

TOTAL PASSENGERS CARRIED BY AIRPORT FERRY
1985 VS. 1984





PRINCE WILLIAM SOUND REGION

A. Introduction

The Department of Natural Resources is currently preparing the Prince William Sound Area Plan for this region . The plan will be finished in 1987 and develop the policy the department will follow for offering land in this area. Until this plan is completed, the department will follow the policy outlined below.

B. Supply and and Demand for Settlement Land

The state owns or has selected approximately 850,000 acres in the Prince William Sound Area. Approximately 70,000 acres of this state owned land is accessible and suitable for settlement. Almost all this accessible and suitable land is located on the water in the area's many attractive bays and fjords. Most of the land with potential for settlement is also valuable for either recreation, fish and wildlife and/or mining.

Although the great majority of land in the Prince William Sound region is federally owned, Native corporations own several large blocks of land in the region that also are suitable for settlement. The Native corporations own almost all the land between Valdez and Cordova, and much of the land near Chenega and Latouche Islands.

To date, the state has offered only the Blying Sound remote parcel area. Despite difficult access, this disposal was one of the most popular in the state's history. Any additional waterfront land the state offers in this region will be extremely popular.

C. State Land Offerings

1. Total Land Designated for Disposal

The total amount of land that is likely to be identified for offering over the next twenty years as a result of the Prince William Sound area planning process is between 1,500 and 15,000 acres. Through the Prince William Sound Area Plan, the Commissioner of DNR will determine the amount

and location of state settlement areas, establish the land disposal policies that will guide the department's actions in the area and help determine the pacing of annual land offerings.

2. Average Amount of Land for Disposal Each Year

The average amount of land sold each year for settlement over the next twenty years will be identified by the Commissioner through the Prince William Sound area planning process. Until the plan is completed, land sales will proceed at a moderate rate in Prince William Sound.

3. State Land Offerings - FY86 through FY88

Table 1 below shows the preliminary list of disposal projects the department currently intends to offer in FY86, 87 and 88. These projects are now in various stages of DNR's Land Availability Determination System (LADS) process. LADS is the detailed three year process DNR uses to evaluate, design and offer all planned state land offerings. The process includes an evaluation of building conditions, title to the land, access, regulations of other agencies affecting the planned disposal, public opinion, etc. Because the projects have not completed this assessment process and also because not all projects are funded, the disposal project timing, design and acreages are all subject to change.

TABLE 1

PRINCE WILLIAM SOUND REGION
PLANNED LAND DISPOSAL OFFERINGS, FY86 - FY88

FISCAL YEAR	PROJECT NAME/ TYPE	ACREAGE		ACCESS IMPROVEMENTS REQUESTED	LOCATION
		GROSS	NET		
FY86	Heiden View Sub	171	100	Yes-fill or barricade wash out in existing road	North of Valdez
	Eccles Creek Odd Lot	1.3	1.3	None needed	Near Cordova
	Jack Bay Hstd.	755	400	None needed	On coast west of Valdez
FY87	Poe Bay Sub	750	140	None needed	Passage canal near Whittier
FY88	Logging Camp Bay	280	160	None Needed	Passage canal near Whittier

4. State Land Offerings—After FY88

Currently, there are no specific projects identified for sale after 1988. The planning team for the Prince William Sound Area Plan will identify projects that will be offered after FY88. One project will be identified in this region this fiscal year to start through the three year LADS process.

THE CITY OF WHITTIER

January 31, 1986

The Office of Senator DeVries
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Attention: Margaret

Dear Margaret:

Enclosed is some material which Councilmember, Fred Joiner has asked me to forward to you.

I am also enclosing information which the City Clerk compiled and attempted to fax to you on Wednesday. This is all the information he could locate at that time. I believe that he intends to forward additional information at a later date.

In the meantime, if you think of any other information that would be helpful to you, please let us know.

Sincerely,

Betty L. McClain

Betty L. McClain
Deputy City Clerk

Enclosures

cc: The Honorable Bette Cato
The Honorable Jalmer Kerttula

P.O. Box 608 Whittier, Alaska 99693 (907) 472-2327

Whittier Small Boat Harbor
P. O. Box 608
Whittier, Alaska 99693
472-2330

July 26, 1985

Mr. Fred Joiner, Jr.
Whittier, AK 99693

Dear Fred:

In response to your request, a copy of the economic and traffic flow study conducted for the new Portage Visitor Center was obtained from the Chugach National Forest. I've enclosed a copy of Scenario I, Alternative A for your information.

As a caution, do not take the average expenditure column at face value. This was calculated on the dollar turn over in the local economy. It is therefore an indicator of value in an economic system and is not true dollar income.

The increase in use was projected on the basis of per cent of past increase. There may be some hazard in use of this concept since it could well be affected by the recent economic down turn. The study was completed in 1981. Also, I would doubt that the Resident-Visitor projection will increase at the rate shown. The population growth curve for south central Alaska has leveled out faster than expected.

I think we can safely assume that the capacity figures shown in year 13 will be reached; however, it may be further in the future than projected. The expected use in Portage Valley will ultimately reach 2,183,800 plus residents and 608,200 visits or a total of 2,792,000 visits per year. As a general rule an average of three people per vehicle cn be expected. This would mean about 930,666 vehicles will enter Portage Valley when use reaches the capacity of the area.

Some questions that can be asked then are (1) How many of these vehicles will come into Whittier if there is an access or transportation capacity? and (2) If Portage Valley is receiving use to capacity, how much of the future growth will come through to Whittier for an alternative recreation recreation experience or maybe even select this area for a primary experience? Regardless, there will be an exciting future for Whittier if things are

are encouraged to proceed, as planned, in an orderly manner.

If I can provide additional information, please let me know.

Sincerely,

B. Lynn Mitchell
Harbor Master

SCENARIO 1

ALTERNATIVE A KCM DESIGN

Assume VC in full operation CY 86 Max. visitation/year 2 592,000

	NON RESIDENT VISITORS Visits	RESIDENT VISITORS Visits	AVG. EXPENDITURE NON RESIDENT $84/visit	AVG. EXPENDITURE RESIDENT $16/visit	TOTAL EXPENDITURE
year 0-1985	424,800	165,900	35,683,200	2 654,400	38,337,600
1	560,700	207,375	47,098,800	3,318,000	50,416,800
2	633,600	228,100	53,222,400	3,649,600	56,872,000
3	715,900	250,900	60,135,600	4,014,400	64,150,000
4	809,600	276.000	68,006,400	4,416,000	72,422.400
5-1990	914,200	303,600	76,792,800	4,857,600	81,650,400
6	1,033,000	333,900	86,772,000	5,342,400	92 114,400
7	1,167,400	367,300	98,061,600	5,876,800	103,938,400
8	1,319,000	404,200	110,804,400	6,467,200	117,271,600
9	1,490,600	444,500	125,210,400	7,112,000	132,322,400
10	1,684,400	502,285	141,489,600	8,036,560	149,526,160
11	1,903,300	537,900	159,877,200	8,606,400	168,483,600
12	2,150,800	591,700	180,667,200	9,467,200	190,134,400
13*	2,183,800	608,200	183,439,200	9,731,200	193,170,400
14	2,183,800	608,200	183,439,200	9,731,200	193,170,400
15-2000	2,183,800	608,200	183,439,200	9,731,200	193,170,400
16	2,183,800	608,200	183,439,200	9,731,200	193 170,400
17	2,183,800	608,200	183,439,200	9.731,200	193,170,400
18	2,183,800	608,200	183,439,200	9,731,200	193,170,400
19	2,183,800	608,200	183,439,200	9,731,200	193,170,400
20-2005	2,183,800	608,200	183.439,200	9,731,200	193,170,400
	32,277,800	9,479,260	2,711,335,200	15,166,816	2,863,003,360

÷ 20 = 143,150,160
year average

* Maximum capacity reached.

NOTE: Constant 1981 dollars without adjustment for inflation.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SSSB 374
Title: An Act Relating to State Toll Facilities

Sponsor: DeVries and Faiks
Requestor: Senate Transportation
Date of Request: 2/10/86

FISCAL DETAIL
Agency Affected: DOT&PF
BRU: Design and Construction

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0
CAPITAL		0.0	0.0	0.0	0.0	0.0
REVENUE		0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME		0.0	0.0	0.0	0.0	0.0
PART-TIME		0.0	0.0	0.0	0.0	0.0
TEMPORARY		0.0	0.0	0.0	0.0	0.0

ANALYSIS: There is no fiscal impact in adding tunnels to existing toll authority. The specific fiscal impacts of a Whittier Toll Road would be subject to AS 37.15.730.

Prepared By: William R. Snell, Deputy Commissioner (Signed) Phone: 266-1440
Division: Central Region DOT&PF Date: 2/11/86

Approved by Commissioner: Date: 2/11/86
Agency: DOT&PF

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: SSSB 374

APPROVED: R. J. Knapp
Commissioner

TITLE: An Act Relating to State Toll Facilities

DATE: 2/11/86

The Department of Transportation and Public Facilities supports expanding the current toll facility authority to include tunnels. In addition, we support the addition of the Whittier Toll Road facility to AS 37.15.730. This legislation reinforces the desire to ensure that projects such as this are financially feasible and able to produce revenues to cover their costs whenever possible.

The Department is currently conducting an economic analysis and financial plan for transportation access to Whittier. A key part of this financial plan, which will be available in mid-March, will be to look at funding the project through the use of revenue bonds generated from tolls.

For further information call Susan Fleischhauer at 465-3900.

THE CITY OF WHITTIER

January 27, 1986

The Honorable Edna DeVries
Pouch V
Juneau, AK 99811
Mail Stop 3100

Dear Senator DeVries,

Thank you for your inquiry of January 27, 1986, regarding information on the request from the City of Whittier for a Highway Toll Authority. Before considering this, perhaps some of the City's goals can be discussed. Overall, the City plans an orderly development program to encourage and support tourism, recreation, transportation and commercial fishing. (including fish processing)

To facilitate this program an overall goal has been established to improve access from Portage Valley to Shotgun Cove. Admittedly, this is an expensive undertaking, but it is supported by a willingness to require users to pay associated costs over an extended time period. Hence, our inquiry into the establishment of a toll authority to cover the entire length of the Access route. This will be discussed further in this letter.

Before the City can accommodate much of an increase in vehicular traffic, space must be developed for them. This has led to development of a proposal to divide access improvements into segments, with supporting facilities being developed simultaneously.

LANDS

A major factor which could influence growth in Whittier stems from the recent aquisition by the State of about 4800 acres of what was previously federal land. Of this land grant, 600 acres has already been designated as an entitlement to the city of Whittier. Another 418 acres has been designated as settlement to the Chugach Native Corporation. Out of the remaining lands, several areas in the Whittier vicinity have been designated by the State for potential disposal into private hands.

These areas are, Pigot Bay, 295 acres; Poe Bay 440 acres; Logging Camp, 325 acres and Billings Creek for a yet unknown amount of acreage. These areas will eventually require service from Whittier and will support user funded access when it is realized.

SHOTGUN COVE - WHITTIER SUBDIVISION

According to the Shotgun Cove Steering Committee, a joint organization of Whittier and the Chugach Native Corporation, the first stage of development in support of improved access should be the Shotgun Cove Road. Total cost of this will be 19.5 million dollars, based on the existing engineering design. This project may be broken into two parts with a requirement of approximately 10 million dollars needed to build the road from Whittier to trinity point beginning in 1986.

If the road can be started this year, the City will advertise a request for proposals to develop 200 acres of Municipal Entitlement Land known as the Whittier Subdivision. This could be by a private developer with the lands being furnished by the City of Whittier. Application for these lands has been filed with the Alaska Department of Natural Resources and a letter of entry is expected before the coming spring.

A preliminary site plan indicates approximately 197 residential lots can be developed. In addition, the Chugach Alaska Corporation owns approximately 318 acres adjacent to the proposed subdivision. This is proposed for residential and commercial development through private capital. At a density of about 2 people per acre this combined development could support up to 1030 people depending on the actual form development may take.

Before the summer of 1986, the City of Whittier and Chugach Alaska Corporation will, through a joint venture, select an additional 400 acres of Municipal Entitlement Land and 100 acres of Corporation Land in Shotgun Cove. The Shotgun Cove Steering Committee has recommended that a request for proposals for private development should be advertised soon after the land selection has been finalized. While the ultimate form of development is unknown, it has been agreed that the RFP will include some high density residential development, harbor facilities, commercial enterprises and improved marine freight handling and passenger facilities as standards for the project. If future population density were to reach 4 people per acre, not an exceptionally high figure, the combined development could support about 2000 residents.

Again, this aspect of future development could easily be accomplished with private capital, with a long range benefit to the City being a stable tax base. The Chugach Alaska Corporation has mentioned on occasion the potential for winter recreation facilities they could develop. If followed through, this would result in a year round influx of recreational enthusiasts. Access to the area would cost another 9.5 million dollars in road construction as it is currently engineered.

Once the Whittier Subdivision and Shotgun Cove projects are under way, access improvement from Portage Valley to Whittier, via a toll road, ~~could easily be supported~~ by the increased traffic generated by the developments.

We understand that a report is forthcoming to this legislature from the Alaska Department of Transportation evaluating the feasibility of financing alternatives for Whittier access based on various studies completed in the past. This study is apparently due about February 15, 1986. We have deep concerns that this study will reflect only traffic projections to Whittier at it's existing level of development and not what the potential will be with development as proposed above. However, we believe that access from Portage to Whittier should be user paid. The best way to provide for this would be to charge those who derive the most benefit from the development. In order to establish this as a possibile alternative however, will require ammendment of the toll authority established for the proposed Knik Arm Crossing.

Obviously the above proposals are quite ambitious. However, we are certain they are reasonable. We have collected some informmation which supports our position. The following will show some of the diverse considerations that are operative in our area which may not have been adequately adressed elsewhere.

HARBOR FACILITIES

Harbor facilities, or the lack thereof, is a major concern. The existing harbor was constructed in 1972. It was full the following year. In 1980 the size was doubled. It was again immediately over subscribed.

At present, there are 332 slips in the harbor. Of these, 279 are permanently assigned. 53 are held open for transient vessels.

Presently, 86 transient vessels are spending the Winter

moored in the harbor. This is a 29% increase over the same period last year. The only problem is, They are large vessels which occupy most of the slips for the larger size classes. It is getting more difficult to accomodate winter use primarily from fishing vessels.

In the summer, from April 15, through September 15, the situation becomes chaotic. There was an approximate increase of 15% use in the harbor. With July 1985 being an example, there was 279 assigned berths with an average of 227 transient boats in the harbor for and average of 506 boats in the harbor designed for 332 boats. On five occasions in 1985, the Harbormaster broadcasted to all boats entering the harbor that there was no more space available. Up to 105 boats were on the priority list awaiting permission to enter the harbor. Some were anchored up for three days before space could be make available. The need for additional harbor space is desparate. Shotgun Cove can provide it.

In the analysis of the reason for this demand the following facts can be verified.

1. 87% of the vessels using the harbor are from Anchorage and Eagle River.
2. 3% are from the Mat-Su Borough.
3. 1% are from Whittier.
4. 7% are from either Seward, Homer, Cordova or Valdez.
5. 2% are from other areas including out of state.

Arthur Young and Associates has prepared a summary of various studies conducted between 1979 and 1983 to prepare a demand analysis of boating requirements for Anchorage and the Kenai Penninsula. It was concluded that 1 in every 13 people in that area require boating facilities.

If the population of Anchorage is approximately 244,000, as mentioned in the 1985 Municipal Officials directory, then there is a demand for 18,769 slips to satisfy Anchorage alone. Less than a third of these are available in the Anchorage/Kenai Penninsula area.

Whittier is only 60 miles from this demand; compared to over twice that distance to Seward and over four times that

distance to Homer. In addition Whittier is a major gateway to prince William Sound, which contains some of the best recreational waters in the state. All that prevents it from being used to its potential is access and facilities.

The U.S. Army Corps of Engineers is nearing completion of the feasibility study for a harbor in Shotgun Cove. This report is due for completion by the Spring of 1986. The Preliminary draft shows definite feasibility. There are two viable alternatives for construction. One alternative is for approximately 832 slips. The other, approximately 790 slips for a total of 1622 spaces which could ultimately be developed. While this does not meet all of the Anchorage needs, it would certainly help.

If the State is unable to help in construction of a new harbor in Shotgun Cove, then perhaps a private corporation could develop it. For example part of the slips could be sold into private ownership on a condo arrangement to recover a large part of the investment.

MARITIME ACTIVITIES

In 1986 there are 34 Cruise Ship dockings scheduled into the Port of Whittier. Each of these ships carry about 800 passengers to and from Alaska. This adds up to a total of 27,200 people entering and 27,200 departing for a total of 54,000 passengers that will pass through Whittier and Anchorage next season. In addition each ship carries approximately 200 crew members for a total of 6800 crew person visits to the city. This is a considerable contribution to the economy of Alaska. It constitutes a tremendous impact on the City however, which provides EMS, Fire and Police support, in addition to water and sanitation services.

In addition to the above, 18,066 passengers were accomodated by private cruise ship between Whittier and Valdez. This number will increase significantly in 1986 with the addition of two more vessels of about ninety foot in length, catering to the demand. It is concievable that this number will triple in the next two years.

This is in large part due to lack of capacity on the Marine Highway System (M.V. Bartlett) which operates at over capacity during the summer months. This vessel in 1984 transported about 22,000 walk on passengers between Whittier and Valdez and about 5000 automobiles and recreational vehicles. It can accomodate no more. Perhaps it is only proper that additional demand be met by the private sector. However, moorage must be provided for the private vessels.

The City port facilities are already over taxed. Added harbor facilities in Whittier and Shotgun Cove will help provide the necessary moorage facilities and passenger services which are now totally lacking.

Another form of maritime activity is the amount of rail barge freight which passes through Whittier every year. An estimate from the largest of the rail barge companies serving Whittier, Alaska Hydro Train, places a figure of over 500,000 tons on the amount of freight which is shipped northbound alone through Whittier. The Alaska Railroad has plans to expand their capabilities to handle rail barge traffic by upgrading their second slip, which is now used only for staging. This project has been slated to begin in the Spring of 1986.

ALASKA RAILROAD

The Alaska Railroad and the other transportation companies plan on moving more freight through Whittier to Anchorage than ever before. Present summer passenger and vehicle shuttles are increasingly coming into conflict with the movement of freight. Additionally it is well documented that rail passenger service does not pay for itself when the tourist season and the off season are averaged together. More passengers are showing up each year than the Alaska Railroad cares to handle between Portage and Whittier in the summer.

According to Alaska Railroad conductor estimates, about 160,000 people rode the shuttle in 1985. In addition, 22,000 vehicles, including buses, motor homes, van trucks and personal vehicles were transported. When considered on the basis of train days, or the number of day per year that the train makes at least one regularly scheduled shuttle run, it appears that an average of 615 passengers were served each day. Since the train runs every day for the four months of summer, that equals 120 train days. In the 8 winter months the train runs three days a week or 15 days a month also equal to 120 train days.

Obviously the people moved in 1984 were not all Whittier residents of Whittier. In 1985 Whittier had only 338 residents, based on revenue sharing information filed with the state. If the projection for the 1986 cruise ship schedule and the actual number of people served by public and private ferry service in 1985, are subtracted from the 1985 railroad figures, the average daily figure for activity on the train would still nearly equal the population of Whittier or about 334 passengers a day.

U.S. ARMY PETROLEUM TANK FARM

While there is not a lot of information available, the U. S. Army Petroleum Tank Farm is continuing its program to expand and upgrade facilities. This is bound to have an effect on Whittier. They will complete three new tanks in summer of 1986 and this may require either more rail tank service or more tanker ship service to be brought to the area.

CONCLUSION

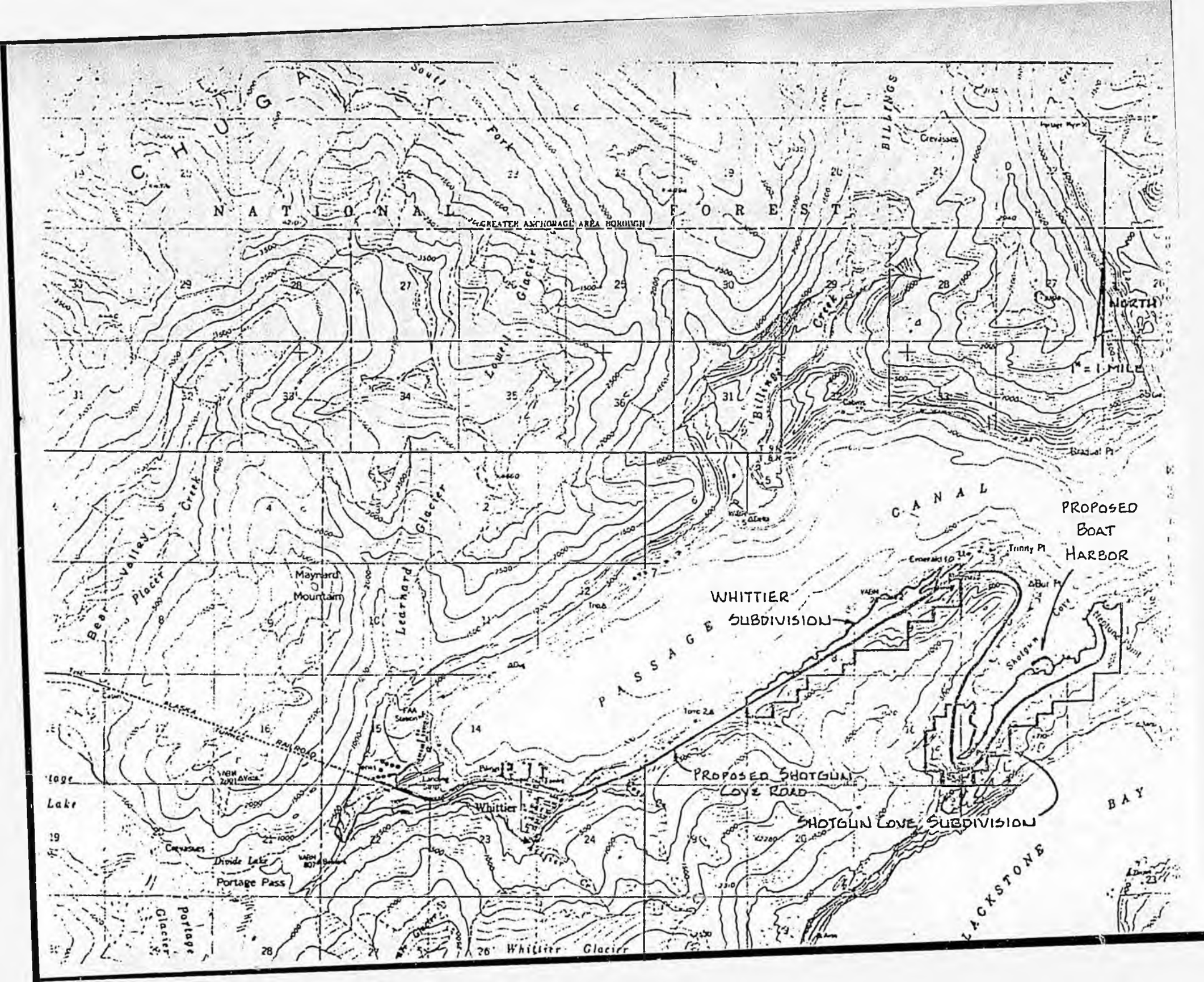
We of the City of Whittier visualize a great future for our community. The potential is here. To realize it, your support and assistance is badly needed. The demand exists for what we can offer. If we do not guide our growth, it will happen in a manner which will not reflect well on our city or the state. The major key is providing access and facilities on a timely basis.

We are asking for help from the legislature and administration in making it happen.

Best Regards,

Duane Dvorak

Duane Dvorak
Acting City Manager, Whittier


CHUGACH NATIONAL FOREST
GREATER ANCHORAGE AREA BOROUGH
South Fork
Lower Bilings Glacier
Billings Creek
Bear Valley Creek
Placer
Maynard Mountain
Learhard Glacier
PASSAGE CANAL
PROPOSED BOAT HARBOR
WHITTIER SUBDIVISION
Trinity Pt
Shotgun Cove
PROPOSED SHOTGUN COVE ROAD
SHOTGUN COVE SUBDIVISION
BAY
ALASKA RAILROAD
Whittier
Portage Pass
Divide Lake
Portage Glacier
Whittier Glacier
1" = 1 MILE
NORTH

THE CITY OF WHITTIER

January 17, 1986

JAN 2 8 RECD

The Honorable Edna DeVries
P.O. Box 321
Palmer, AK 99645

Dear Senator DeVries,

The enclosures of this letter are the result of a project that was undertaken by our city council and other community members at the close of last summer. Through administrative oversight, these documents were not distributed in a timely fashion; however, the Whittier City Council felt it would be a shame to lose the efforts of so many people. Therefore, the City of Whittier humbly submits a petition, a resolution, and a state information guide that was used as a basis for our discussions of a toll authority for the Whittier area.

We hope that you may find time to share our information and our concerns with your colleagues in Juneau. We realize the economics of funding access is not very favorable at present. Yet, we feel strongly that a toll would, in the long run, provide a large measure of revenue toward amortizing a project of the type proposed to link Whittier with the greater Anchorage area.

To live and work in Whittier is to know just what this location can mean to the rest of the state. With our physical proximity to the largest economic and population center in the state, Anchorage, we are aware almost daily of the potential for increased freight handling and recreation opportunities for the entire region.

If there is any further information that you require, please call our city office at 472-2327, or FAX 472-2404. Thank you for your attention.

Sincerely,

Duane Dvorak

Duane Dvorak
City Clerk, Whittier

P.O. Box 608 Whittier, Alaska 99693 (907) 472-2327

RESOLUTION NO. 11-05-85B

A RESOLUTION SETTING FORTH THE LEGISLATIVE PRIORITIES FOR THE CITY OF WHITTIER, ALASKA, FOR CONSIDERATION DURING THE 1985-86 STATE LEGISLATIVE SESSION.

WHEREAS, the City of Whittier is in need of funding to continue the growth and improvement of the community, and;

WHEREAS, funding is available from the Alaska State Legislature for development projects within small communities, and;

WHEREAS, the City Council, realizing that the Legislature has limited funds available, has met and carefully considered and determined their priorities for funding,

NOW, THEREFORE, THE WHITTIER CITY COUNCIL RESOLVES:

That, the City Council of the City of Whittier requests funding from the Legislature for the following projects, which are presented as a statement of needs assessment.

"Our priority is to support development of improved access from Bear Valley (Portage Galacier Visitors Center), situated in the southeastern corner of the Anchorage borough, to Shotgun Cove, located on Passage Canal in beautiful Prince William Sound. This corridor encompasses access from Bear Valley to the Whittier core, from the core area to Whittier subdivision, and from the subdivision to Shotgun Cove."

PASSED AND APPROVED THIS 5th day of November, 1985 by a duly constituted quorum of the City Council of Whittier, Alaska.

Rawson E. Knight, Mayor

Mel Wopten, Councilmember

Sue Rains, Councilmember

Kent Barker, Councilmember

Amanda Hale, Vice-Mayor

Georgia Buck, Councilmember

Fred Joiner, Councilmember

ATTEST: Duane Dvorak
Duane Dvorak,
City Clerk, Whittier

A RESOLUTION OF THE CITY OF WHITTIER, ALASKA, CALLING FOR THE AMENDMENT OF AS 37.15, AS 19.05, TO INCLUDE THE FINANCING AND CONSTRUCTION OF TUNNELS AS PROPER ACTIVITIES SUBJECT TO THE INTENT AND AUTHORITY OF THE ACTS.

WHEREAS, the current ferry, barge and rail lines linking Whittier and Anchorage constitute an important, established supply link for the State of Alaska and its citizens; and,

WHEREAS, increased demand for supplies by a growing economy has resulted in a stricture on the growth potential of Whittier and the State of Alaska because of the lack of adequate access by road; and,

WHEREAS, increasing economic activity has been shown to increase employment as well as revenue for state and local government; and,

WHEREAS, the cost-effective and timely movement of goods to the major economic and population centers of the state would result in lower cost to consumers and improved distribution to remote communities; and,

WHEREAS, the City of Whittier expects to one day benefit from a road which would connect the community, via a tunnel, to the major ecomonic and population centers of the state; and,

WHEREAS, the City Council wishes to express that which would be beneficial to the state and the general public whenever possible;

NOW, THEREORE, THE WHITTIER CITY COUNCIL RESOLVES:

FIRST: That legislation which pertains to the financing and construction of toll road facilities be amended to allow for the consideration of a tunnel and concomitant road to connect Portage, Alaska with Whittier, Alaska; specifically, Alaska Statute 37.15.730 to be amended to read that a Portage to Whittier access road with tunnel to be the first state toll facility.

SECOND: In addition, Alaska Statutes 37.15.720, 37.15.760, and 19.05.040, in refering to those activities of potential toll authority be amended to include the term tunnel as part of the definition.

PASSED AND APPROVED this 3rd day of September, 1985 by a duly-constituted quorum of the city council of Whittier, Alaska.

Rawson E. Knight, Mayor

Amanda L. Hale, Vice-Mayor

T. Kent Barker, Councilmember

Don Hatmaker, Councilmember

Fred L. Joiner, Councilmember

Don Shofner, Councilmember

Clyde M. Wooten, Councilmember

ATTEST:

City Clerk
Whittier, Alaska

OF A STATE TOLL AUTHORITY A TOP PRIORITY SO THAT NEW ROADS MAY BE CONSTRUCTED WITHIN THE STATE WITHOUT CAPITAL APPROPRIATIONS FROM THE STATE BUDGET.

NAME	ADDRESS	TELEPHONE NO.
Marcia Bauer O'Dell	PO Box 748 Whittier Ak 99693	472 2545
Roger A. Casad	PO Box 608 Whittier Ak 99693	
Mary Lee Brown	P.O. Box 714 Whittier AK. 99693	907 472-2355
Marilyn C Scott	P.O. Box 608, Whittier, AK 99693	(907) 472-2524
Darcy Parker	P.O. Box 695 Whittier AK 99693	907-472-2502
Troy Carlisle	P.O. Box 602 Whittier AK 99693	907-472-2305
Myrtle L. Worden	Apt 311, Whittier Towers Box 681, Whittier AK 99693	907-472-2367
Myal D. Horsham	Box 673, Apt. # 904 Whittier, AK. 99693	(907) 472-25
Pauline R. Ivers	P.O. Box 663 Whittier, AK 99693	907-472-2517
Willi A Hartman	P.O. Box 675 Whittier 99693	907-472-2370
Robert K. Wardlow	P.O. Box 721 Whittier, Alaska 99693	907-472-2388
Wanda Tolman	P.O. Box 704 Whittier, Alaska P.O. Box 624	907-472-2501
Peter Stutzmaker	Whittier, AK.	907-472-25
Wilma Wal	P.O. Box 614 Whittier, AK	907-472-25
Dave E Bol	Box 717 Whittier Alaska	907-472-2
Roscoe Harrell	Box 634 Whittier 99693	472 2587
Linda M. Romo	P O Box 626 Whittier Alaska	907 2551
Lucy D. Tenny	7424 E 20th Anchorage, Ak. 99504	333-1217

	GEN DEL WHITTIER ALASKA 99693	
Barb Raymond	Box 665 Whittier, AK	472-2374
Tanya Smoth	Box 612 Whittier, Ak	472-2351
Lawrence R Mori	Box 669 Whittier AK 99693	472-2510
Douglas J Bolle	Box 712 Whittier AK 99693	472-2572
Ronda G. Bolle	Whittier Ak 99693	472 2572
Bruce Solem	GEN DELIV WHITTIER AK 99693	472-2411
Lance L Parks	P.O BOX 695 WHITTIER, ALASKA, 99693	472-2502
Vicky M. Johnson	P.O. Box 623 Whittier AK 99693	472-2328
D.E. McElhaney Jr.	P.O. 663 Whittier AK	472-2517
W Beemer	Box 737 WHITTIER, AK	472-2542
C J Ewing	P.O. Box 697 WHITTIER, AK 99693	472-2408
Jon C Kohnke	PO Box 624 whittier, AK	472-2514
Randall Hardman	P.O Box 675 Whittier AK	472-2378
Doreen V Bender	PO Box 711 whittier ak 99693	472-2355
Rawson E Knight	P.O. Box 698 Whittier, Ak	472-2523
[illegible]	[illegible]	472-2514
D.J. Pohlen	POBOX 698 WHITTIER AK 99693	-
S Bartlett	[illegible]	272-3210
John I. Casuse	Box 666 Whittier AK 99693	472-2334

Larry Roberts	212 Whittier AK	472-2585
John B. Coy	1510 Beaver Loop Rd	333-7224
Larry Marlow	PO Box 716 Whittier, AK	472-2400
Thomas W. Lamoureux	P.O. Box 642 WHITTIER, AK 99693	472-2506
Cynthia Sherman	PO Box 746 Whittier AK 99693	472-2354
Fred P. Jones	P.O. Box 777 WHITTIER, AK 99693	472-2348
Grace Addington	Gen. Del. Whittier, AK.	
Ted Stepan	Box 643 Whittier AK 99693	472-2344
Earl L. Jones	P.O. Box 722 Whittier AK	472-2393
Peggy A. Buck	P.O. Box 747 Whittier Alaska 99693	907-472-2379
Cecil Zeigler	Apt 511 Begich Towers	472-2318
Geraldine Zeigler	Apt 511 Begich Towers. Box 886 Whittier AK	472-2318
Kay Shepherd	Box 727 Whittier, AK.	472-2350
Tom Fox	Gen Del Whittier AK	
Wm L. Howard	Box 645, Whittier, AK.	472-2526
Pamela K. Howard	PO Box 645 Whittier, AK.	472-2526
Pauline K. McCahill	Box 732 Whittier, AK	472-2369
Tom K. McCahill	Box 732 Whittier Ak	472-2369
Sue Lains	PO Box 724 Whittier, AK 99693	472-2347
Charles Rains	P.O. Box 724 AK	472-2347

Tom Kubik	Box 1194 Cordova, AK 99574	424-3589
Jane M. Roberts	Box 713 Whittier, AK 99693	472-2364
Lyle C Roberts	Box 713 Whittier, AK 99693	472-2364
[illegible]	Whittier AK 99693 #1412	
Laura J. Kotter	Whittier #108	&
Mark T. Kotter	GEN DEL WHITTIER #108	
Boni D. Colbert	P.O. Box 642 Whittier Alaska	472-2324
Pamela Townsend	P.O Box 676 Whittier Alaska	
Vicki Christensen	P.O. Box 635 Whittier, AK 99693	472-2314
Kristy M. Wilson		472-2375
Catherine J Cawthon	PO Box 953 Whittier AK 99693	472-2558
Todd McKendrick	P.O. BOX 687 WHITTIER, AK. 99693	NO PHONE
Julie Trillingham	General Delivery Whittier, AK. 99693	472-2584
Joe Wilcox	Whittier AK 99693 P.O. Box 613	472-2541
David Keyton	Whittier, AK 99693	472-2577
Chon Glen	P.O. 746 Whittier AK 99693	472-2354
Ricky Duncan	Anchorage AK	277-5983
Bear Lewis	Whittier PO 746	472 2354
Kathy Bartels	Whittier 99693	472 2453
Kirk Christensen	Box 676 Whittier AK 99693	472-2314

	WHITTIER AK 99693	
Lorraine Y. Hall	POB 671	
	WHITTIER AK 99693	
Florence Lawhorne	P.O. Box 685	472-2336
	Whittier, AK 99693	
Claude Fatta	P.O. Box 738	472-2535
	Whittier, AK 99693	
Connie M. Fatta	P.O. Box 738	472-2535
	WHITTIER, AK 99693	
Linda L Harbo	Box 671	472-2376
	Whittier AK 99693	
Chuck Lee Harbo	Box 671	472-2376
	Whittier Alaska 99693	
BJ Smith	Gen Del.	
	Whittier AK	
Claudia B. Smith	99693	
	Same as above	
Marion D. Wilson	Box 635 Whittier AK	472-2375
J. Morgan	1800 Dellwood Acc.	349-1857
	418 CAMELOT DR. #7	
Ken Fagle	ANCH, AK 99508	337-3187
	PO BOX 657	
Dennis Hoyt	Whittier, AK	472-2528
	PO Box 747	
Georgia Burke	Whittier Alaska	472-2379
	Po Box 611	
C.W. Bolton	WHITTIER, AK 99693	472-2316
	GEN. DEL	
G.F. Bright	WHITTIER AK 99693	472-3306
	5020 Rabbit Ck. Rd.	
Pamela V Kuhn	Anchorage AK 99516	
Donald V. Coffman	Box 643 Whittier AK	472-2384
	99693	
Laura Steger	3581 Wisconsin	262-5265
	Fairbanks AK 99669	
Arlene Young	Box 1691	
	Seward AK 99664	
Marilyn L. Stranberg	Box 627	472 2384
	Whittier, AK 99693	

Typed Name of Toll Road Authority Petition

MARCIA BAUER ODELL BOX 748
ROGER A. CASAD BOX 608
MARY LEE BROWN BOX 714
MARILYN C. SCOTT
FROY CARLISLE BOX 602
APRYLE WOOTEN BOX 681
NYAL WORSHAM BOX 673
PAULINE R. IVERS BOX 663
VICKI L. HARTMAN BOX 675
ROBERT L. WARDLOW BOX 721
BRENDA TOLMAN BOX 704
PATSY HATMAKER BOX 624
WILMA WILCOX BOX 614
MARE E. ROBERTS BOX 727
ROSCOE HARRELL BOX 634
HEIDI M. REMER BOX 626
LUCY D. TERRY 7426 E. 20TH ANCHORAGE 99504
AARON REMER BOX 626
THOMAS J. TEL
BABS REYNOLDS BOX 665
STACY SMITH BOX 612
LAWRENCE MORIN BOX 669
DOUGLAS BOLLE BOX 712
RONDA BOLLE BOX 712
BRUCE SOLEM
JAMES L. PARKS BOX 695
VICKY M. JOHNSON BOX 623
D.E. MCELHANEY JR. BOX 623
W. BREWSTER BOX 737
C.D. EWING BOX 697
DON C. HATMAKER BOX 624
RANDALL HARTMAN BOX 675
DORIS V. BENDER BOX 711
RAWSON E. KNIGHT BOX 698
ROSEANNE M. BAKKER
D.J. ROBERTS BOX 698
S. HAZLETT 1201 DENALI #112, ANCHORAGE
JOHN I. CASUE BOX 666
ED BECKER
LARRY ROBERTS BOX 727
JOHN BAILY 1510 BEAVER ANCHORAGE
LARRY MALOW BOX 716
THOMAS N. TOWNSEND BOX 642
YEN WEN SHEN BOX 746
FRED D. JOINER BOX 777
GRACE ADDINGTON
JACK COFFMAN BOX 643
FRED L. JOINER BOX 722
PETR A. BUCK BOX 747
CECIL ZEIGLER BOX 686
BERNADINE ZEIGLER BOX 686
KAY SHEPARD BOX 727
TOM FOX
ALLEN L. HOWARD BOX 645

PAULINE K. MCCAHILL BOX 732
TOM H. MCCAHILL BOX 732
SUE RAINS BOX 724
CHARLES RAINS BOX 724
TIM MCDANIEL BOX 1118 CORDOVA 99574
TOM KOHLER BOX 1194 CORDOVA 99574
IONE M. ROBERTS BOX 713
LYLE C. ROBERTS BOX 713
JEFF D. JASON
LAURE J. KOTTER
MARK KOTTER
BONI COLBERT BOX 642
CAMILLA TOWNSEND BOX 642
VICKI CHRISTENSEN BOX 676
DORTHY M. WILSON BOX 635
CATHERINE J. CAWTHON BOX 753
LOYD MCKINLEY BOX 687
JULIE TRILLINGHAM
JOE WILCOX
DAVID KEYTON BOX 613
CHOU SHEN BOX 746
RAY DIWEUTS 833 E. 20TH ANCHORAGE
BEN LENOZ BOX 746
KATHY BARTELS
KIT CHRISTENSEN BOX 676
THEODORE A. MELCHER
AMANDA L. HALE BOX 654
FLORENCE RAWHOUSER BOX 685
DOUGLAS W. LATTA BOX 738
JANICE M. LATTA BOX 738
LINDA H. HARKER BOX 671
GRADY LEE HARKER BOX 671
B. J. SMITH
CLAUDIA B. SMITH
MARION D. WILSON BOX 635
A.E. SHAGGI 1800 DELLA ANCHORAGE
KEN TAYLOR 418 CAMELOT DR. #7 ANCHORAGE 99508
DENNIS HOYT BOX 657
GEORGIA BUCK BOX 747
C.W. TALTON BOX 611
C.R. BRIGGS
PAULA V. KREBS 5620 RABBIT CREEK RD. ANCHORAGE 99516
BRENDA D. COFFMAN BOX 643
LAURA STEGER 35810 VIEW LANE SOLDOTNA 99669
ANNA YOUNG BOX 1644 SEWARD 99664
MR. AND MRS. E. ODIN STRANDBERG BOX 627
IVAN COOK
ADAM PENEBERG
WALT CODY
RICHARD PARRY BOX 105 GIRDWOOD 99587
JOHN CUNNIFE PLAZA 7, #180 BOX 2117 EAGLE RIVER 99577
DOUG WILSON
CHANCE YOUNG
FRED MORINO 935 GAMBELL ANCHORAGE

JOHN P. TURNAGE BOX 1209 WASILLA
DEBORAH A. MCDONALD 3205 DAVIS PL.
HAROLD BISHOP BOX 707
JUANITA FARRINGTON 202 BUNNELL ANCHORAGE 99508
CYNTHIA SMITH 1200 W. DIMOND ANCHORAGE
JOHN KRISTOVAL 617 KATLIAN A17 SITKA 99835
VERA HALL BOX 954 CORDOVA
CHERI PROBST
WILLIE E. BRAGG BOX 8726 ANCHORAGE 99508

ALL ADDRESSES ARE WHITTIER AK 99693 UNLESS OTHER WISE INDICATED

IF NO POST OFFICE BOX IS LISTED SEND IN CARE OF GENERAL DELIVERY

SB

411

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

MEMORANDUM

TO: Committee Members
Senate Transportation

FROM: Committee Staff

RE: SB 411 Relating to Road Maintenance Service Areas

Wednesday, April 9, the committee will be holding a hearing on SB 411 "An act relating to road maintenance serviec areas." Enclosed in your packet you will find an introduction by Senator Faiks to SB 411, with a sectional analysis and its rationale, a fiscal note and postion paper by DOT/PF and a copy of the bill.

Also enclosed are two proposed amendments to SB 411 as per Senator Faik's request.

Offered: 3/21/86
Referred: Transportation

Original sponsor: Faiks

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 411 (C&RA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to road maintenance service areas."

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

* Section 1. AS 19.30.260 is amended to read:

Sec. 19.30.260. PURPOSE. The purpose of AS 19.30.260 - 19.30.320 is to facilitate funding for the upgrading, reconstruction, rehabilitation, or paving of existing subdivision roads within a road maintenance service area established under AS 29.35.450 or under a home rule charter. Grants to road maintenance service areas under AS 19.30.260 - 19.30.320 are limited to those road maintenance service areas in which road improvement was not financed through the issuance of municipal debt during the three previous fiscal years.

* Sec. 2. AS 19.30.280 is amended to read:

Sec. 19.30.280. ELIGIBILITY. (a) After establishing a road maintenance service area under AS 29.35.450, or under a home rule charter, a municipality may apply to the department for a grant as money is available for road improvements, subject to regulations adopted by the department to carry out the provisions of AS 19.30.260 - 19.30.320. The department shall require a municipality to submit a five-year plan for the upgrading, reconstructing, rehabilitating, or paving of maintenance service area roads for approval before October 1 of each fiscal year and to show the source of funds used for road improvement within each road maintenance service area during the prior three fiscal years.

(b) A municipality shall establish design standards for

MAR 13 1986

Alaska State Legislature

CO-CHAIRMAN
FINANCE COMMITTEE
907-465-3740

JAN FAIKS
POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

Senate

March 11, 1986

MEMORANDUM

TO: Senator DeVries, Chairman
Senate Community and Regional Affairs Committee

FROM: Senator Jan Faiks

SUBJECT: Request for Committee Substitute and Background on Senate Bill 411

Alaska Statutes 19.30.260 through 19.30.320 contain legislation which I introduced during the Thirteenth Legislature. This legislation was intended to facilitate the funding of road improvements to outlying areas through the establishment of road maintenance service areas - "RMSA's".

This bill will make changes to the RMSA program in order to bring it into line with the original intent of this legislation and to help the Department of Transportation and Public Facilities implement this program.

The original intent of the program was to provide road improvement funds to those outlying districts which do not have access to such funds. Since the program came into being, however, some RMSA's have been established within road service areas which already have improvement funds available to them. These funds are based upon the the issuance of municipal debt, i.e., the selling of general obligation bonds.

Those RMSA's within the Anchorage Roads and Drainage Service Area (ARDSA) are an example. In FY 1985, ARDSA sold approximately $15 million worth of general obligation bonds for road improvements within its boundaries. In the same year, at least $317,357 was granted by the RMSA program for road improvements to service areas within its boundaries. This represents about 10% of the total $3,000,000 distributed by the RMSA program that year.

OUT OF SESSION
1024 WEST SIXTH AVENUE, SUITE 302 ANCHORAGE, ALASKA 99501 907-274-6611

In other words, about 1/10th of the money under this state program was given to service areas which already had improvement funds available to them, instead of being reserved for those areas which have no other funding sources. This was certainly not the intent of my legislation two years ago.

Sections 1 and 2 of this bill will solve this problem by excluding from the RMSA program any service area whose road improvements have been financed by the issuance of municipal debt during the preceding three years.

The remaining sections of the bill contain amendments which were proposed by the Department of Transportation and Public Facilities. These are offered to help the Department administer the RMSA program.

Section 3 makes it clear that road improvements may be performed by municipal forces as well as private contractors. Section 4 changes the reporting date to October 1st so that it is consistent with the reporting date for the 5-year plan in AS 19.30.280 and the Local Service Roads and Trails program. This will simplify the administration of both programs by the municipalities.

Section 5 clarifies that financing costs are excluded, but that costs to realign and widen existing roads are included for program funding. Finally, Section 6 expands the definition of municipality to make it consistent with more common terminology in our statutes.

Since this bill was introduced, I have discovered several changes which are needed to further accomplish these goals. I offer them to you as a possible committee substitute for this bill. These changes are:

1. On page 1, line 15, the word "maintenance" should be changed to "improvement". "Maintenance" is not proper here because I have been advised that road maintenance can never be funded through municipal debt.

2. On page 2, line 29, replace the word "or" with the word "and" since some municipalities possess maintenance powers but not construction powers.

Thank you.

AMENDMENT NUMBER ONE

On Page 1, Line 15:

DELETE "maintenance"

ADD "improvement"

AMENDMENT NUMBER TWO

On Page 2, line 29

DELETE "or"

ADD "and"

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

3/21/86

Date 4-9-86

Mr. President

The Committee on TRANSPORTATION considered SB 411

relating to raod maintenance service areas.

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

[X] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 411
Title : An act relating to road maintenance service areas

Sponsor : Faiks
Requestor : DeVries
Date of Request : March 11, 1986

FISCAL DETAIL

Agency Affected : DOT&PF
BRU : Capital Program

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

ATTACHED

Prepared by : Charles D. Karella
Division : Plans, Programs and Budget
Phone : 465-2171
Date : 3/13/86

Approved by Commissioner : _____
Agency : Transportation and Public Facilities
Date : 3/14/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Fiscal Note

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB411

ANALYSIS

The proposed bill is strictly a housekeeping measure and has no fiscal impact on either the operating or capital budget. No additional positions are required.

The proposed bill revised AS 19.30 in five areas:

1) AS 19.30.260 and 19.30.280 prohibit funding in those road improvement areas that are financed through the issuance of municipal debt. For clarity, the addition to 19.30.260 should read as follows: Grants to road maintenance service areas under AS 19.30.260 - 19.30.320 are limited to those road maintenance service areas in which road improvement was not financed through the issuance of municipal debt during the three previous fiscal years.

2) AS 19.30.290(b) clarifies the fact that road construction can be performed by the municipality.

3) AS 19.30.310 changes the due date for reports. This change does not adversely affect the departments capability to submit a combined annual report to the Governor by December 1.

4) As 19.30.320(1) clarifies exceptable expenditures related to road improvements by expanding the definition.

5) AS 19.30.320(3) clarifies the definition and requirements of a municipality and should be revised as follows to reflect the powers necessary to qualify for a road improvement grant:

(3) "municipality" means an organized borough of any class, a unified municipality, or a city of any class, that has road construction and [OR] maintenance powers.

COMMITTEE REPORT

SENATE

FURTHER: TRSP
FINANCE

2/14/86

Date 3/20/86

Mr. President

The Committee on C&RA considered SB 411
relating to road maintenance service areas.

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

[ ] do pass

[ ] do pass with attached amendment(s)

[X] replace with/or adopt CS for SB 411 (C+RA)
[ ] new title
[ ] same title and recommends

[ ] and attached a "LETTER OF INTENT"

[✓] ~~NEW~~ 2nd FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Carlson Stimpson

MEMBERS HAVING
OTHER RECOMMENDATIONS

NR

Edna deVries
Chairman

No Pass
Chairman recommendation

Article 4. Road Maintenance Service Areas.

Section
260. Purpose
270. Allocation of money
280. Eligibility
290. Administration
300. Maintenance
310. Report
320. Definitions

Effective date of article. — Section 2, ch. 56, SLA 1984, provides "This Act takes effect July 1, 1984."

Sec. 19.30.260. Purpose [Effective January 1, 1986]. The purpose of AS 19.30.260 — 19.30.320 is to facilitate funding for the upgrading, reconstruction, rehabilitation, or paving of existing subdivision roads within a road maintenance service area established under AS 29.35.450 or under a home rule charter. (§ 1 ch 56 SLA 1984; am § 47 ch 74 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, substituted "AS 29.35.450" for "AS 29.63."

Sec. 19.30.270. Allocation of money. (a) During each fiscal year each municipality shall receive money from the department that has been appropriated or otherwise designated for expenditure for road improvements within the municipality, based on the total road mileage in each road maintenance service area in the municipality. The amounts that are available shall be distributed pro rata among eligible municipalities.

(b) Money allocated to a municipality under this section shall be disbursed by the municipality for road maintenance service areas based on a first come, first served priority of road maintenance service area applications, subject to a 50 percent match by each road maintenance service area.

(c) Money allocated under this section shall be available for expenditure in the road maintenance service area for which the funds are authorized for a period of five years after the end of the fiscal year for which the funds are authorized. Money allocated for a road maintenance service area that is unexpended and unobligated at the end of the five-year period shall be used for other road maintenance service areas in the same municipality in accordance with AS 19.30.260 — 19.30.320. If there are no other road maintenance service areas in the municipality for which the money can be used, the municipality shall remit the unexpended and unobligated money to the department and it shall lapse into the general fund.

(d) Fifty percent of the cost of construction in a road maintenance service area shall be paid by the road maintenance service area through road improvement district assessments, grants, or other appropriate financing means. (§ 1 ch 56 SLA 1984)

Sec. 19.30.280. Eligibility. (a) [Effective January 1, 1986] After establishing a road maintenance service area under AS 29.35.450, or under a home rule charter, a municipality may apply to the department for a grant as money is available for road improvements, subject to regulations adopted by the department to carry out the provisions of AS 19.30.260 — 19.30.320. The department shall require a municipality to submit a five-year plan for the upgrading, reconstructing, rehabilitating, or paving of maintenance service area roads for approval before October 1 of each fiscal year.

(b) A municipality shall establish design standards for construction in a road maintenance service area. An application for a grant for improving an existing road under this section which is constructed after July 1, 1984 may not be granted by the department until the existing road meets the minimum design standards of the municipality. (§ 1 ch 56 SLA 1984; am § 48 ch 74 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, substituted "AS 29.35.450" for "AS 29.63" in the first sentence of subsection (a).

Sec. 19.30.290. Administration. (a) A contract entered into by a municipality for road construction within a road maintenance service area for which funds allocated to the municipality under AS 19.30.260 — 19.30.320 are used shall be awarded only on the basis of the lowest responsible bid by a bidder meeting established criteria of responsibility.

(b) Construction under AS 19.30.260 — 19.30.320 shall be administered by the municipality in which the road maintenance service area is located. (§ 1 ch 56 SLA 1984)

Sec. 19.30.300. Maintenance. The road maintenance service area shall be responsible for maintaining roads constructed under AS 19.30.260 — 19.30.320. The road maintenance service area may contract with a municipality for maintenance of the roads. (§ 1 ch 56 SLA 1984)

Sec. 19.30.310. Report. No later than August 1 of each year, a municipality that has received money under AS 19.30.270 shall submit a report to the department showing the use of the money by the municipality during the preceding fiscal year. No later than December 1 of each year, the department shall prepare and submit to the governor a report showing the use of the money allocated under AS 19.30.270 during the preceding fiscal year. (§ 1 ch 56 SLA 1984)

Sec. 19.30.320. Definitions. In AS 19.30.260 — 19.30.320

(1) "construction" or "road improvement" has the meaning given in AS 19.45.001 and includes utility and drainage costs but excludes financial costs, right-of-way costs, and new road construction;

(2) "department" means the Department of Transportation and Public Facilities;

(3) "municipality" means a municipality that has road construction or maintenance powers;

(4) "subdivision" has the meaning given in AS 40.15.190(2). (§ 1 ch 56 SLA 1984)

STATUTES

SB

416

Daily News 1/12/86

Lemon squeeze

Laws protect owners of bum cars, pickups

By KAY MONROE LEVINE
Daily News reporter

Your car says ka-chunk, ka-chunk, ka-thwwwwwup. Then it's "The Sounds of Silence."

The mechanic tells you it'll be $42 an hour for exploratory tinkering, the nearest parts are in Los Angeles and he's up to his eyebrows in work. Weeks later you have to threaten mayhem to get the car back and now it has this strange whine . . .

That may sound like an episode from "I Love Lucy," but consumer advocates say it can happen in Alaska.

More people complain about their cars — and repairs performed on those cars — than about anything else handled by the Attorney General's Consumer Protection Section. During fiscal year 1985, there were 660 vehicle-related complaints, topping the 404 complaints dealing with mail-order companies.

Rhonda Huffman, who runs the Alaska Better Business Bureau Auto Line program, doesn't know how many complaints her bureau handles but says the load is heavy.

Automotive complaints are high in Alaska because we don't have an abundance of

See Page D-2, STATE

State and federal laws aim to protect car buyers stuck with new or used lemons

Continued from Page D-1

mechanics — especially mechanics who know what they're doing, says Ronald "Scotty" Dawkins, who investigates auto fraud for the attorney general.

"If you look at some numbers, you'll find from 1977 till 1982, Alaska auto dealers had an increase in sales, measured in dollars, of 80 percent. During that same period, they increased the number of employees in the five or six percent range. You go into any of the dealers, there are lots if sales folks but there's nobody to fix the damned automobiles.

"We also don't pay the mechanics very well — the good ones move on to (North) Slope jobs, move on to construction jobs, move on to fixing fishing boats. Most good mechanics don't stay working for car dealers."

Dieter Wuerth, general manager at Pacific Mitsubishi, agrees that good mechanics are hard to come by, but he says wages are not the reason.

"Mechanics, by and large, are well-paid," he says. He attributes the nationwide shortage — despite healthy wages — to the complexity of modern automobiles and to the fact that mechanics have to work with asbestos and toxic chemicals.

Wuerth adds that customers fume about the cost of car maintenance because cars start depreciating in value just when they become more expensive to keep up.

If you're having trouble with cars or repairs, your options dealing with the problem include:

- Talking to the car dealer or repair shop involved in the dispute;
- Writing the manufacturer;
- Notifying the Attorney General's Consumer Protection Section;
- Notifying the Better Business Bureau;
- Going to court.

Before you file a formal complaint anywhere, you should talk to the owner of the shop or dealership first, consumer advocates say. This step is recommended by Consumer Protection but is *required* by the Better Business Bureau.

Another smart preliminary step is to check with a national auto safety hotline to find out if your problem is related to anything that's the subject of a manufacturer's recall. The hotline is operated by the National Highway Traffic Safety Administration. The number is (800) 424-9393.

This suggestion applies to used cars as well as new ones, says Dawkins, especially if your complaint relates to premature failure of some part or if your car has a problem with brakes or steering that mechanics can't diagnose. You'll also be helping to build up a valuable national record about mechanical defects in automobiles if you register your complaint with the traffic safety administration.

At this point, the complaint-resolution path begins to branch.

USED CARS

- **Complaints against private parties:** If you're having trouble with a car you bought from an individual, your only recourse — if the person won't take responsibility — is legal action. Small claims court is the place to go if the amount is less than $2,000; superior court handles cases that are more than $2,000.

- **Complaints against dealerships:** If you bought your secondhand car from a licensed dealer, you'll find several mechanisms for settling disputes.

One is the Attorney General's Consumer Protection Section. Workers here will ask you to fill out a complaint form or submit a letter describing your problem. It doesn't cost anything. Dawkins probably will handle your case unless it centers on deceptive advertising. In that case, you'll be working with attorney Sheridan Strickland.

Both these investigators rely on informal mediation whenever possible: They will telephone the shop owner or car dealer and try to convince him to "make it right," as Dawkins puts it. Because the caseload is so high, however, legal action is reserved for businesses that violate consumer protection statutes flagrantly or often.

Consumer Protection can require any business to respond to customer complaints and can file lawsuits in civil court against owners who commit fraud, run false advertising or misrepresent their goods.

Further, the section can turn over its most serious cases — like those involving automobile odometer rollbacks — to the District Attorney's office for criminal prosecution.

Another way to settle used-car complaints is through the voluntary mechanism run by the Alaska Better Business Bureau. This group, which opened in 1984, mediates complaints between nearly 600 member companies and their customers; expenses are paid by business membership fees. Businesses don't have to join the bureau, but those that do are required to respond to complaints and participate in arbitration if necessary.

NEW CARS

Owners having problems with new cars that are still under warranty have more ways to settle disputes. The ultimate solution is filing suit under the 1984 Alaska Lemon Law. The first known Lemon Law suit was filed against Ford Motor Co. on Jan. 8.

Your car might qualify as a lemon if:

- Mechanics have tried three times to repair the same defect while the warranty is in effect or while the original owner has had the car for a year or less;
- If the vehicle is out of service for repair for 30 or more business days during the same one-year period;
- Or if the problem substantially impairs the use or the market value of the vehicle.

For more details, contact Con-

sumer Protection for a brochure on the Lemon Law.

The law requires you to submit your Lemon Law case to an approved arbitration board before filing a civil suit in court. In Alaska, the attorney general has the authority to approve or disapprove such arbitration boards. The only one it has approved so far is the one at the BBB.

The BBB's Auto Line got under way in November 1984 and covers these manufacturers:

American Motors, Audi, Buick, Cadillac, Chevrolet and Chevrolet truck, General Motors Corp. (trucks only), Honda, Jeep, Nissan, Oldsmobile, Pontiac, Porsche, Renault, Rolls-Royce, Volkswagen, Volvo, Jaguar, Maserati, Peugeot and Saab.

But before you go to the BBB with a potential Lemon Law problem, there are several steps you should take first.

To start with, talk to the dealer or authorized repair shop about your problem. Follow up those calls with letters. If that doesn't resolve your grievance, write to the manufacturer's headquarters. If the car dealer won't give you the address, you can get it from the reference desk at the Z.J. Loussac Library. Always keep copies of letters and retain the originals of any documentation such as receipts, experts advise.

If the manufacturer agrees with your position, it may instruct the local dealer to handle your complaint.

If that doesn't work, your next step is the Better Business Bureau. The manufacturers listed above have volunteered to participate in arbitration. The arbitrator's decision is binding on the manufacturers, but not on you.

If you're not satisfied with the decision, you can hire an attorney and file a lawsuit.

Two major manufacturers not participating in the BBB's program are Ford and Chrysler Corp. They have in-house arbitration set-ups, and both have taken steps to gain Consumer Protection approval for their procedures.

If Consumer Protection approves these manufacturers' arbitration boards, participation will be mandatory for complaining customers.

In November, the attorney general rejected Chrysler's application because it was decided the process favored the manufacturer. Last Monday, Ford's application was turned down for the same reason. However, consumer officials say the door is open for both companies to re-apply.

Until and unless Ford and Chrysler arbitration boards are approved, the customer may bypass arbitration and take his case directly to court.

Since the Alaska Lemon Law and the BBB arbitration mechanism both are new, consumer experts say, it's not yet certain whether the Ford and Chrysler customers have a better deal. They may be fortunate because they can sue immediately; they may also be missing an opportunity for cheap and relatively easy complaint resolution.

A strong, private-sector arbitration program, seen as fair by industry and customers alike, would be invaluable, say consumer advocates; however, it may take some years to build such a program.

Linda Chamberlain is a paralegal who volunteers as an arbitrator for the Auto Line program. Before moving to Alaska, she served as an arbitrator in an Auto Line program in New York state.

She says the Alaska BBB should provide a comprehensive training program for arbitrators (they get a one-night meeting now); she also advocates a three-person panel to review "buy-back" decisions, those cases where an arbitrator orders the manufacturer to refund the customer's money.

☐ Where to find help:

• Alaska Better Business Bureau, 417 Barrow St., Anchorage 99501. 276-5901.

• State Consumer Protection Section, 1031 W. 4th Ave., Suite 300, Anchorage 99501. 279-0428.

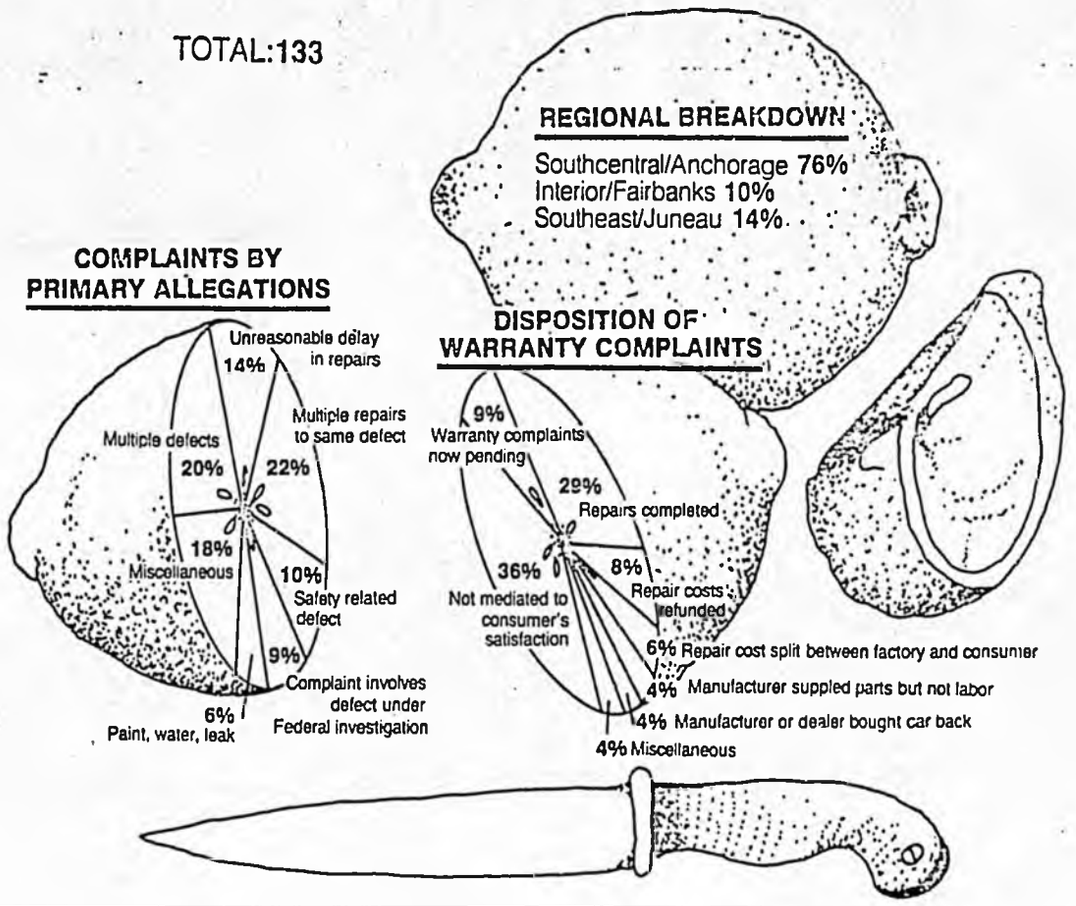
• Workers at either agency can tell you how to contact a car manufacturer's in-house arbitration board.

ALASKA'S AUTO LEMONS

PROFILE OF AUTO WARRANTY COMPLAINTS TO CONSUMER PROTECTION

January, 1981 to April,1983

TOTAL:133



SOURCE: Alaska Department of Law

Anchorage Daily News/ Pamela Dunlap-Snohl

USED CAR LEMON LAW USED CAR LEMON LAW

USED CAR LEMON LAW

State of New York Attorney General Robert Abrams

STATE OF NEW YORK
DEPARTMENT OF LAW
ALBANY 12224

ROBERT ABRAMS
ATTORNEY GENERAL

Dear New Yorker:

We have all heard stories of people who bought used cars only to experience breakdown after breakdown. Some people even have had difficulty making it from the used car lot to home without mishap. Unfortunately these stories are not fiction -- but painful facts.

Buyers of new cars are protected by the manufacturer's warranty and by various state laws. But until now, there has not been adequate protection for used car buyers even though used cars outsell new cars two to one. Now, New York State has passed the first law in the nation to offer real protection to the hundreds of thousands of New Yorkers who buy used cars each year from dealers.

The Used Car Lemon Law represents a great victory for consumers. My office was instrumental in formulating this bill and, along with others, worked hard to secure its passage. The new law, which went into effect November 1, 1984, provides long-needed consumer protection for used car buyers. It requires dealers to give consumers a written warranty when they buy a used car costing $1,500 or more. If the car has over 36,000 miles, the warranty lasts for 30 days or 1,000 miles; if the car has under 36,000 miles, the warranty lasts for 60 days or 3,000 miles. Most essential mechanical parts are covered.

The workings of this new law are explained in this publication prepared by my office to help consumers understand the law and how it affects and protects them.

If you have further questions about the lemon law for used cars or require additional assistance, write to my nearest local office.

Sincerely,

Robert Abrams

What Is The Purpose Of The Used Car Lemon Law?

The Used Car Lemon Law (General Business Law §198-b) provides a new legal remedy for buyers of used cars that turn out to be lemons. The law requires dealers to give consumers a written warranty the duration of which is determined by the mileage on the used car purchased. Under the warranty, dealers must either repair, free of charge, or replace used cars that turn out to be lemons.

Who Is Protected By The Used Car Lemon Law?

The law protects consumers who purchase any used passenger motor vehicle sold for $1500 or more from a dealer in New York State on or after November 1, 1984. A consumer is the purchaser of a used motor vehicle normally used for personal, family or household purposes. The spouse or child of the purchaser is covered if the car is transferred to either during the duration of any applicable warranty. Any other person entitled by the terms of the warranty to enforce its obligations is also covered.

The private sale of a used car between individuals is not covered by the lemon law.

Which Used Motor Vehicles Are Covered?

A used motor vehicle is a passenger motor vehicle which has been driven more than the limited use necessary in moving or road testing a new car prior to delivery. Used motorcycles, motor homes, off-road vehicles and cars which sell for less than $1,500 are not covered by the law. A "classic car" registered under §401 of the vehicle and traffic law is not covered.

Which Used Car Dealers Are Included?

A dealer is any person or business which sells or offers for sale a used car after selling or offering for sale three or more used cars in the previous twelve month period. Banks or other financial institutions are not included. Others excluded are: a business selling a used car to its own employee; a lessor selling a leased car to the lessee of that car; a family member or an employee of such lessee; the state or local government.

What Does The Law Require The Dealer To Do?

A dealer who sells a used car to a consumer is required to give the consumer a mandatory written warranty whose terms are specified in the law. This warranty is called a statutory warranty and must be honored by the dealer. The statutory warranty must specify that while it is in effect the dealer or

his agent will repair, free of charge, the failure of any part of the used car covered by the warranty. The dealer may elect to reimburse the consumer for the reasonable cost of repairing the failure of any covered part.

How Long Does The Warranty Last?

If the used car has 36,000 miles or less, the warranty must last for at least 60 days or 3,000 miles, whichever comes first.

If the used car has more than 36,000 miles, the warranty must last for at least 30 days or 1,000 miles, whichever comes first.

What Parts Are Covered?

Covered parts must at least include:

ENGINE -- All lubricated parts, water pump, fuel pump, manifolds, engine block, cylinder head, rotary engine housings and flywheel.
TRANSMISSION -- The transmission case, internal parts, and the torque converter.
DRIVE AXLE -- Front and rear axle housings and internal parts, axle shafts, propeller shafts and universal joints.
BRAKES -- Master cylinder, vacuum assist booster, wheel cylinders, hydraulic lines and fittings and disc brake calipers.
RADIATOR
STEERING -- The steering gear housing and all internal parts, power steering pump, valve body, piston and rack.
ALTERNATOR
GENERATOR
STARTER
IGNITION SYSTEM EXCLUDING BATTERY

What If The Dealer Does Not Give The Statutory Warranty?

If a dealer fails to give a consumer the written statutory warranty as required, the dealer is nevertheless considered to have given the warranty.

Can A Dealer Limit Coverage Under The Statutory Warranty?

Yes, but only as specified in the law. The law permits a dealer to add additional language to the statutory warranty excluding coverage:

(a) for a failure of a covered part caused by a lack of customary maintenance;
(b) for a failure of a covered part caused by collision, abuse, negligence, theft, vandalism, fire or other casualty and damage from the environment (windstorm, lightning, road hazards, etc.);

(c) if the odometer has been stopped or altered such that the vehicle's actual mileage cannot be readily determined or if any covered part has been altered such that a covered part was thereby caused to fail;

(d) for maintenance services and the parts used in connection with such services such as seals, gaskets, oil and grease unless required in connection with the repair of a covered part;

(e) for a motor tuneup;

(f) for a failure resulting from racing or other competition;

(g) for a failure caused by towing a trailer or another vehicle unless the used motor vehicle is equipped for this as recommended by the manufacturer;

(h) if the used motor vehicle is used to carry passengers for hire;

(i) if the used motor vehicle is rented to someone else;

(j) for repair of valves and/or rings to correct low compression and/or oil consumption which are considered normal wear;

(k) to the extent otherwise permitted by law, for property damage arising or allegedly arising out of the failure of a covered part; and

(l) to the extent otherwise permitted by law, for loss of the use of the used motor vehicle, loss of time, inconvenience, commercial loss or consequential damages.

Can The Dealer Cause Buyers To Waive Their Rights Under The Lemon Law By Use Of A Contract Clause?

No. Any contract clause which seeks to waive a buyer's rights under the Used Car Lemon Law is void.

Can A Dealer Give Additional Warranty Protection?

Yes. The statutory warranty sets only minimum obligations for dealers. A dealer may agree as part of the sale to give a consumer more warranty protection than the law requires. Extra warranty protection can be a matter of negotiation between the dealer and consumer.

What Should A Used Car Buyer Do If There Is A Problem?

The buyer should immediately report any malfunction or defect of a covered part to the dealer and give the dealer the opportunity to make the necessary repairs. If the consumer has notified the dealer of a problem within the warranty period, the dealer must make the repair even if the warranty has expired.

What Happens To The Warranty When The Car Is Being Repaired?

The warranty is extended during any in-shop time for repairs.

How Can The Buyer Help Prove He/She Is A Lemon Owner?

It is very important to keep careful records of complaints and copies of all work orders and repair bills.

What If The Dealer Does Not Repair The Car?

If the dealer is unable to repair the problem after a reasonable number of attempts, and if the problem "substantially impairs the value of the used car" to the consumer the dealer must accept the return of the car and make a refund. A refund includes the full purchase price plus the sales tax. A reasonable allowance may be taken by the dealer for any damage beyond normal wear or use. An adjustment may also be made for any modification to the car which either increases or decreases its market value.

Does The Law Set Limits On The Number Of Repair Attempts?

Yes. It is presumed that there have been a reasonable number of repair attempts by the dealer if during the statutory warranty period: (1) the same problem has been subject to repair three or more times and the problem continues to exist - or (2) the car is out of service by reason of repair for a cumulative total of 15 or more days. When calculating this 15 day total, days during which repairs could not be completed due to the unavailability of necessary parts are not included. However, the dealer is required to exercise due diligence in attempting to get the necessary parts and there is an absolute 45 day limit.

Under The Law, Can The Dealer Provide A Replacement Vehicle Instead Of A Full Refund To The Consumer?

Yes, if the consumer is willing to accept a replacement car instead of a full refund. But the decision to offer a replacement car rests with the dealer. If the dealer offers a replacement vehicle and the consumer agrees, the parties must negotiate between themselves any adjustment in price.

If A Trade-in Was Involved, How Is A Refund Determined?

The dealer can choose either to return any vehicle traded-in by the consumer at the time of the sale of the used car; or, to refund the wholesale value of the car when it was traded-in. The wholesale value must be determined by referring to the "NADA Used Car Guide"*. An adjustment may be taken for mileage, improvements or major defects that existed at the time of the trade-in. The dealer need not refund the value of the trade-in car listed in the sales contract. The sales contract must clearly describe this required method of calculating the value of any trade-in vehicle which is not returned to the consumer.

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* The State Motor Vehicle Department is authorized to approve the use of an alternative guidebook.

Are There Any Exceptions To The Requirement For Refund Or Replacement?

Yes. The dealer does not have a duty to make a refund of the purchase price if: (1) the problem does not substantially impair the value of the car to the buyer; or (2) the problem is the result of the buyer's abuse, neglect or unreasonable alteration of the car.

What Type Of Problem Will Be Considered A Substantial Impairment Of The Value Of The Used Car To The Buyer?

There is no easy answer. It will depend on the facts in each case. In general, the buyer's complaint must be about a serious problem. A defect in the engine which makes the car inoperable is clearly substantial. Some courts have found that the cumulative effect of numerous minor defects can add up to a substantial impairment of value.

Is The Buyer Automatically Eligible For A Refund After A Reasonable Number Of Repair Attempts?

No. The buyer must first participate in any mediation procedure that the dealer may have established or joined if that procedure conforms to Federal Trade Commission regulations.

What Are The Major Federal Trade Commission Requirements For Mediation Procedures?

The mediation procedure must be: (1) free of charge; (2) non-binding on the buyer; (3) explained in the car warranty; (4) a decision must be generally given within 60 days after receipt of the buyer's complaint; and (5) the decision must be free from the influence of the dealer.

How Can A Buyer Find Out If A Particular Dealer's Mediation Procedure Complies With Federal Trade Commission Requirements?

A buyer can write to the Federal Trade Commission, Washington, D.C. 20508, or to the nearest office of Attorney General Robert Abrams.

What Happens After The Buyer Participates In A Mediation Procedure And Is Not Satisfied With the Decision?

The buyer can sue the dealer in court to enforce his/her rights under the law. In court, a car which has not been repaired after three attempts, or 15 days, will be presumed to be a lemon.

If The Buyer Decides To Sue The Dealer When Must The Lawsuit Be Started?

The lawsuit must be started within four years of the date of original delivery to the consumer.

If The Buyer Wins In Court Can Attorney's Fees Also Be Recovered?

Yes. The law authorizes the court to award reasonable attorney's fees to a buyer who wins in court.

Does The Used Car Lemon Law Eliminate Or Limit Any Of The Other Legal Remedies Already Available To Buyers Of Defective Cars Or Other Goods?

No. The Used Car Lemon Law adds to the buyer's arsenal of existing legal remedies. The most important of these remedies is the warranty of serviceability. (Vehicle and Traffic Law §417) This warranty cannot be waived by the buyer. It requires a dealer to certify to a used car buyer that the car is in condition and repair to render, under normal use, satisfactory and adequate service at the time of delivery. In addition, specified safety equipment must be in good working order. The Motor Vehicle Department can help a buyer to enforce this warranty.

Where Can I Get Help On Any Questions Regarding The Used Car Lemon Law?

You can contact the nearest office of Attorney General Robert Abrams listed in this pamphlet. You may also wish to consult your own lawyer.

This fact sheet was prepared by Assistant Attorney General Sandy Mindell and Assistant Attorney General In Charge of the Consumer Frauds and Protection Bureau, Peter Bienstock. Produced by the Office of Public Information, Joan Libby, Director.

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Two World Trade Center
New York, New York 10047.....(212) 488-7330

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190 Willis Avenue
Mineola, New York 11501.....(516) 742-3700

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70 Clinton Street
Plattsburgh, New York 12901.....(518) 563-8012

235 Main Street
Poughkeepsie, New York 12601....(914) 485-3900

16 Main Street East
Rochester, New York 14614.....(716) 454-3412

333 East Washington Street
Syracuse, New York 13202.....(315) 428-4283

207 Genessee Street
Utica, New York 13501.....(315) 793-2225

317 Washington Street
Watertown, New York 13601.....(315) 782-0100 Ext. 444

SB

424

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

April 14, 1986

TO: All Committee Members

FROM: Committee Staff

RE: SB 424, Snow Tires

Last Wednesday the committee heard a committee substitute for SB 424, requiring snow tires on rental vehicles.

This CS reflects the concerns of the committee. It was observed that the committee is concerned about safety, but also desired setting up a workable structure for the rental owner.

In Sec. 1 (f) the CS reflects the dates now used throughout the state when snow tires can be used. The sponsor's original language is maintained, "shall equip vehicles from the rental fleet at each rental location," but no percentage or minimum number of vehicles is required to comply with this law.

"Rental fleet" is defined as unrented vehicles and those already rented. This provision would insure that the renter would not be penalized because he or she does not have a car available with snow tires.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 424
Title : "An Act relating to studded tires or chains on rented motor vehicles."

Sponsor : Senator Sackett
Requestor : Senate Transportation
Date of Request : 4/03/86

FISCAL DETAIL

Agency Affected : PUBLIC SAFETY
BRU : DPS Administration

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

K Niles
Prepared by : Kathy Niles, Admin Assistant — Phone : 465-4336
Division : Commissioner's Office — Date : 4/03/86

Approved by Commissioner : _____ — Date : 4/3/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Ford
4/16/86

Original sponsor: Sackett

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 424 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to studded tires or chains on rented motor vehicles."

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

* Section 1. AS 28.35.024 is amended by adding a new subsection to read:

(f) Except for that period when studded tires or chains are prohibited under AS 28.35.155, a person who rents motor vehicles to others shall, upon request of the person to whom the vehicle is to be rented, provide a vehicle equipped with studded tires or chains adequate to inhibit skidding or loss of control of the vehicle. This subsection does not apply to a person who rents motor vehicles to others if all available motor vehicles equipped with studded tires or chains are temporarily not at the rental location because they have been rented to a customer.

Car and Truck Renting and Leasing Association
State Wide Headquarters
P.O. Box 190028
Anchorage, Alaska 99519
Telephone (907) 243 - 4300

March 17, 1986

MAR 2 0 1986

Senator John B. (Jack) Coghill
Chairman, Senate Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Coghill:

I'm now writing under a different hat as President of the Car and Truck Rental and Leasing Association (CATRALA) of Alaska. Representing that organization, I am most concerned about Senate Bill No. 424 - "An Act relating to studded tires or chains on rented motor vehicles.". We don't understand what triggered this, but here are our concerns:

- None of us are aware of any identified safety problem that requires this legislation. Indeed, knowledgeable Alaskan drivers know that under some winter conditions, the use of chains can be more rather than less hazardous -- or at best, offer no greater degree of safety.
- As a matter of policy, chains are not provided for local city travel or travel to nearby locations. Experience has shown that chains encourage some customers to try to go where they shouldn't during winter months or drive faster than is safe. The proposed bill could inadvertently result in unsafe use of our vehicles.
- Most rental agencies provide studded snow tires on the majority of rental vehicles, on the drive-wheels. However, at least one rental agency does not use them. The customer thus can make the choice.
- Certain of the high-quality radial tires are all-weather and are used year-round on some makes of cars.
- Thus, the bill imposes an added cost for no apparently justifiable reason.
- In general, such specificity in the law is poor practice and to the degree justified should be left to regulation.
- To the best of our knowledge, rental car operators are providing customers with cars that drive adequately under winter conditions. For example, chains are often provided as a matter of course to intercity travelers.

I understand that a hearing has been scheduled at 3:30 p.m., March 26, using the teleconference room here in Anchorage. Mr. Bob Vitale of Holiday Payless in Fairbanks would also like to testify at your Fairbanks teleconference center if that is possible. Please ask your staff to let me know.

Thank you for your consideration.

Sincerely,

Jack B. Hayes

J. B. Hayes
President
CATRALA

:cm

cc Senator John C. Sackett

Alaska State Legislature

SENATOR
John C. Sackett
CO-CHAIRMAN
SENATE FINANCE COMMITTEE

MEMBER
LABOR & COMMERCE COMMITTEE
BUDGET & AUDIT COMMITTEE
SENATE ADVISORY COUNCIL
COMMITTEE ON COMMITTEES

Senate

HOME ADDRESS
P. O. BOX 11
RUBY, ALASKA 99768

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
TELEPHONE 465-3753

ANCHORAGE
TELEPHONE 272-3404

M E M O R A N D U M

Date: April 9, 1986

To: Senator Sackett

From: Max Gifford,
Administrative Aide

Subj: SB-424 relating to studded tires or chains on rental motor vehicles

The proposed Sen. Transportation Committee CS effectively kills the purpose and intent of your original bill. A rental agency would be happy to rent any vehicle to anyone who wanted studded tires or chains if they had them available. The fact is (and testimony to the committee verified that fact) rental agencies do not have studded tires or chains readily available for those who request them. Your bill simply requires that rental agencies make the effort to have such equipment on hand during certain months so that those who want them may request the equipment for the rental vehicle. If all the equipment is being used, then the potential customer has the choice to accept a vehicle without studded tires or chains or move on to another rental agency.

I talked with Mike Ford, Legal Services, and he said that the CS effectively makes the intent of the bill, moot.

MEMO - Gifford to Sackett
Effect of Trns. CS

Original sponsor: Sackett

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO. 424 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to studded tires or chains on rented motor vehicles."

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

* Section 1. AS 28.35.024 is amended by adding a new subsection to read:

(f) During the period from October 1 to April 1 of each year, a person who rents motor vehicles to others shall, upon request of the person to whom the vehicle is to be rented, provide a vehicle equipped with studded tires or chains adequate to inhibit skidding or loss of control of the vehicle, if the person has a vehicle equipped with studded tires or chains available for rental.

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

March 26, 1986

TO: All Committee Members

FROM: Committee Staff

RE: Today's meeting

Today the committee will hear SB 424, "An Act relating to studded tires or chains on rented motor vehicles." This bill, sponsored by Senator Sackett, would add a new section to Chapter 35, the miscellaneous provisions of the motor vehicle code. This bill would make it mandatory for car rental agencies to supply cars with studded tires or chains from October 1 to April 1 upon the request of the renter.

Mr. Jack Hayes, president of the Car and Truck Renting and Leasing Association and Mr. Bob Vitale of Holiday Payless in Fairbanks will be testify via teleconference.

Mr. Max Gifford of Senator Sackett's office will testify on the merits of the bill.

On another subject, the committee substitute for SB 428, the prepared rights of way bill, will be up for consideration.

Alaska State Legislature

SENATOR
John C. Sackett
CO-CHAIRMAN
SENATE FINANCE COMMITTEE

MEMBER
LABOR & COMMERCE COMMITTEE
BUDGET & AUDIT COMMITTEE
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M E M O R A N D U M

Date: March 26, 1986

To: Senator Jack Coghill
Chair - Senate Transportation Committee

From: John C. Sackett
Senator

Subj: SB-424, an Act relating to studded tires or chains on rented motor vehicles

As a result of a personal experience which happened to me last Fall, I have introduced SB-424, which adds a new subsection to AS 28.35.024, pertaining to the rental of motor vehicles.

I rented a vehicle in Anchorage last year on the day snow first fell last Fall. I inquired about having studded tires but was informed that the vehicle was equipped with adequate tires for the icy road conditions. Shortly after leaving the rental facility I attempted to brake and found that I had little or no control over the rental car. I bumped into the rear of another vehicle. Following the mishap I inquired as to the laws pertaining to renting vehicles and whether it was required to provide studded tires or chains when weather conditions warranted. I learned that such a law did not exist.

My staff contacted the National Safety Council and learned that chains and studded tires provided greater safety to motorists when ice and snow make road conditions dangerous. With this information at hand I decided it would be in the best interest of the driving public that they at least have the option of having studded tires or chains on vehicles they may rent. The facts seem clear, all-weather radial tires do not provide the driver of a vehicle with any additional safeguards while driving in snow or ice. The attached fact sheet from the National Safety Council supports the conclusion that the statutes should be amended to include provisions for studded tires or chains for those drivers who desire them.

☐ **FANCY SNOW TIRES STILL SPIN:** All that fancy tread work on snow tires doesn't do a heck of a lot for winter drivers, according to a National Safety Council study. In fact, the average snow tire performed *worse* than regular tires on glare-ice braking tests. Adding metal (i.e. studs or chains) to their rubber is the best safeguard for winter drivers, the study concludes. Here's the test results, based on percent improvement over regular tires:

TRACTION ON GLARE ICE:

snow tires	28 percent
studded snow tires	218 percent
tire chains	630 percent

TRACTION ON LOOSELY PACKED SNOW:

snow tires	51 percent
studded tires	no data
tire chains	313 percent

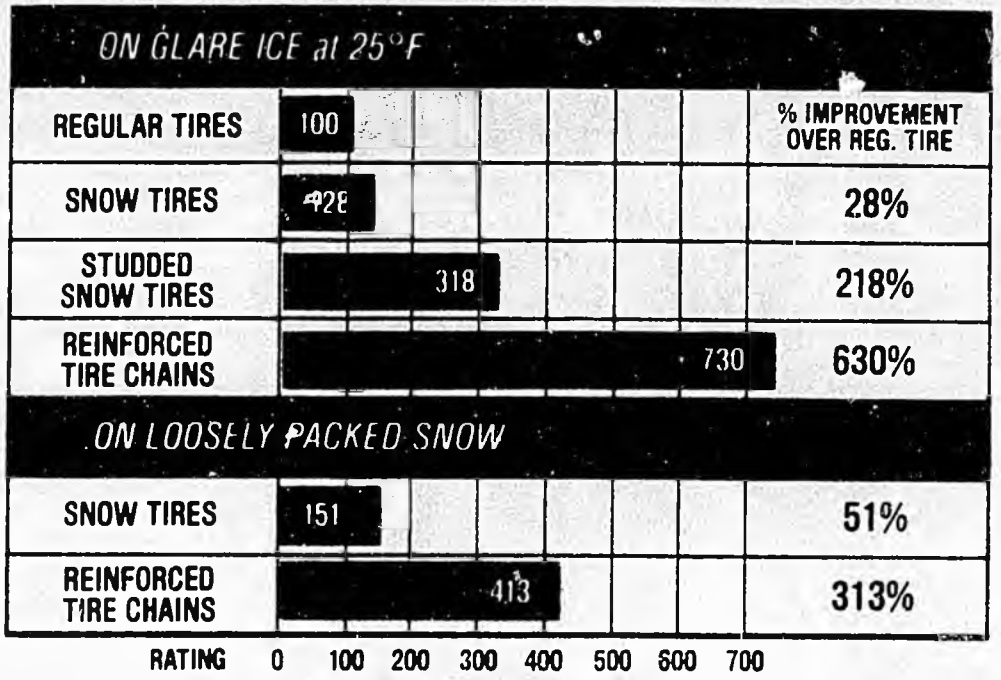
BRAKING ON GLARE ICE:

snow tires	-1 percent
studded tires	19 percent
tire chains	49 percent

BRAKING ON LOOSELY PACKED SNOW:

snow tires	13 percent
studded tires	no data
tire chains	37 percent

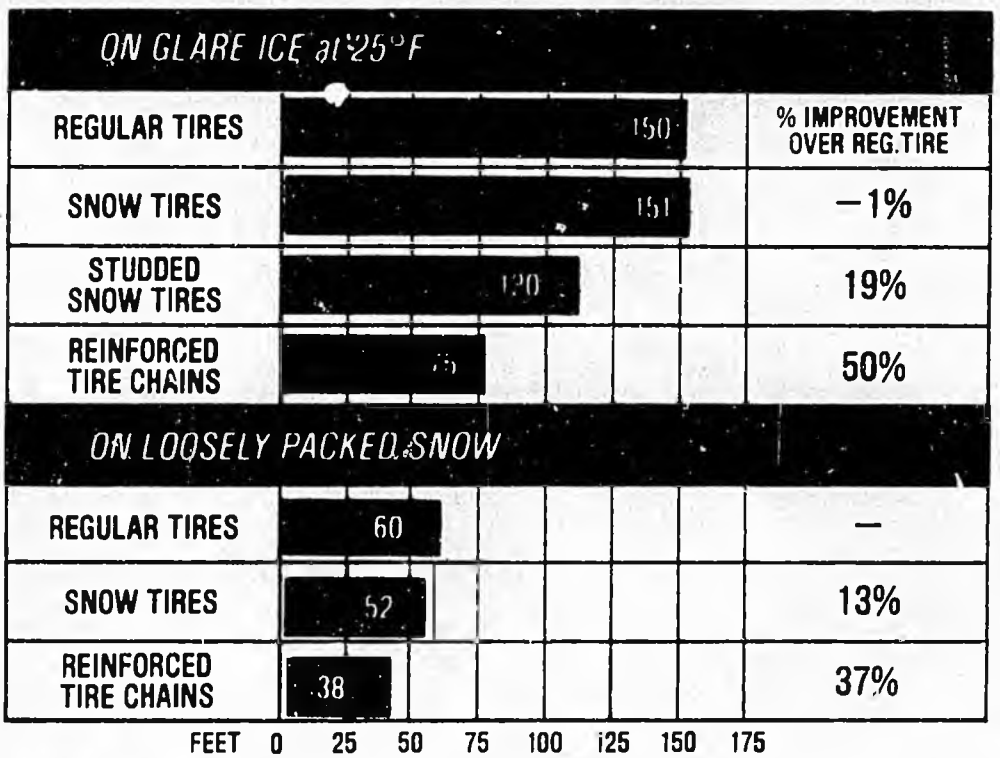
TRACTION RATING



BRAKING DISTANCE

FROM 20 MPH—AFTER YOU GET YOUR FOOT ON THE PEDAL

(REACTION TIME ADDS ANOTHER 22 FEET TO THE FIGURES SHOWN)



National Safety Council

444 North Michigan Avenue • Chicago, Illinois 60611

SB

428

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: Senate Bill 428
Title : An Act relating to acquisition of right of way by DOT&PF and providing for an effective date
Sponsor : Coghill
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Department of Transportation & Public Facilities
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-				
TRAVEL		-0-				
CONTRACTUAL		-0-				
SUPPLIES		-0-				
EQUIPMENT		-0-				
LAND & STRUCTURES		-0-				
GRANTS, CLAIMS		-0-				
MISCELLANEOUS		-0-				
TOTAL OPERATING		-0-				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		-0-				

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

2/24/86

Prepared by : Milton H. Lentz, CRA
Division : Engineering & Operations Standards
Phone : 465-2985
Date : 2/24/86

Approved by Commissioner : _____
Date : 2/25/86
Agency : Department of Transportation & Public Facilities

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 600 and SB 428

The Department of Transportation and Public Facilities has some concern regarding the language of both House Bill No. 600 and Senate Bill 428. We do not understand the intent of these bills in view of present Alaska Statutes 44.42.020 and 09.55. Our major concern is with the words: "...prepared rights-of-way..." By statutes, acquisition would be limited to fair market value regardless of whether the right of way is "prepared" or not.

These bills appear to have no measurable fiscal impact on the Department of Transportation and Public Facilities as any funding for the acquisition would be by legislative appropriation.

CITY AND BOROUGH OF SITKA, State of Alaska, and Alaska Lumber and Pulp Co., Inc., a Corporation, Appellants,

v.

CONSTRUCTION AND GENERAL LABORERS LOCAL 942, International Unions of Operating Engineers Local 302, and Teamsters Local 959, State of Alaska, Appellees.

No. 5774/5811.

Supreme Court of Alaska.

May 7, 1982.

Unions filed complaint alleging various charges against a proposed timber contract between a lumber company and a city and alleging, in effect, that workers had received less than the prevailing wage in violation of statute. The Superior Court, First Judicial District, Sitka, Duane Craske, J., held that the unions were entitled to recover. Appeal was taken. The Supreme Court, Compton, J., held that: (1) the statute requiring payment by a contractor or a subcontractor who performs work on public construction in the state to pay not less than the prevailing rate of wages for work of similar nature in the region in which the work is done was applicable to a timber sale contract entered into by the lumber company and the city, since the clearing of timber pursuant to the contract was a substantial portion of a project for the construction of a hydroelectric dam, and (2) a stipulation entered into between the lumber company and the unions that, if the unions prevailed on the claim concerning the applicability of the statute, the remedy would be in the form of damages precluded a challenge to the issue whether the statute authorizes a private right of action.

Judgment affirmed.

1. Labor Relations ⇐1132

Timber sale contract is not generally subject to statute requiring payment by contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done. AS 36.05.010.

2. Labor Relations ⇐1132

In determining whether timber sale contract between lumber company and city was subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done, focus of inquiry was whether clearing of timber pursuant to contract related to construction of dam which was to be built on site. AS 36.05.010.

3. Labor Relations ⇐1132

Logging to be done pursuant to timber sale contract between lumber company and city was substantially related to construction of dam on that site and, therefore, was "public construction" subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done. AS 36.05.010.

See publication Words and Phrases for other judicial constructions and definitions.

4. Labor Relations ⇐1132

Fact that timber sale contract between lumber company and city was separated from contract for construction of dam for hydroelectric project did not preclude determination that timber sale contract was subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done. AS 36.05.010.

5. Labor Relations ⇐1132

Focus of statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of

similar nature in region in which work is done is benefit of employees, not of contracting principals. AS 36.05.010.

6. Labor Relations ⇐1132

Whether government pays contractor or whether contractor pays public agency does not determine whether contract in question is subject to statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is performed. AS 36.05.010.

7. Stipulations ⇐14(12)

Stipulation agreed to by lumber company that if unions prevailed in litigation seeking determination of whether statute requiring contractor or subcontractor who performs work on public construction in state to pay not less than prevailing rate of wages for work of similar nature in region in which work is done was applicable to timber sale contract between lumber company and city, remedy would be damages paid to workers, precluded lumber company from raising issue of whether statute authorized private right of action to recover back wages. AS 36.05.010.

James F. Clark, Robertson, Monagle, Eastaugh & Bradley, Juneau, and Peter S. Hallgren, Sitka, for appellants.

Bruce Monroe and Paul L. Dillon, Birch, Horton, Bittner, Monroe, Pestinger & Anderson, Juneau, for appellees.

Before BURKE, C. J., and RABINOWITZ, CONNOR, MATTHEWS and COMPTON, JJ.

OPINION

COMPTON, Justice.

This is an appeal from the judgment of the superior court which held that a timber sale contract executed between Alaska Lumber and Pulp Co., Inc. (ALP) and the City and Borough of Sitka (Sitka) was subject to the provisions of Alaska's "Little Davis-Bacon Act," AS 36.05.010.110. The logging and related clearing took place on land Sitka owned and upon which the Green Lake Hydroelectric Project, a dam, was to be built. The superior court further held that pursuant to a stipulation negotiated by the parties, the Unions were entitled to an award of damages. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

During 1974 Sitka began planning the Green Lake Project as a source of hydroelectric power. In 1977 the State of Alaska withdrew land needed for the Project from federal ownership pursuant to its statehood land acquisition rights. It then conveyed the land to Sitka on March 16, 1979.

In March 1979, Sitka published its intent to receive sealed bids through May 1 for the construction of the Green Lake Project. The bid offering, Contract No. 3, originally set out all the specifications for the construction of the dam, including the timber clearing specifications.[1]

On April 19, 1979, ALP submitted an irrevocable offer to pay Sitka two million dollars for the right to remove the commercial timber and to accomplish the clearing in accordance with the pertinent specifications set forth in Contract No. 3.

1. Sitka submits that it never intended to include the timber clearing with the dam construction bid offering. When Sitka Municipal Administrator, Fermin Gutierrez saw that the engineering consultant firm which had prepared the bid offering had included the timber clearing within Contract No. 3, Gutierrez directed the firm to analyze the cost differential between a separate timber sale contract and including the timber clearing in the dam contract. Ultimately, the firm concluded that a separate timber sale contract would be to Sitka's advantage, ostensibly because many dam contractors would not view the timber as a commercial asset.

The Unions dispute whether Sitka always intended for the timber contract to be separate from the dam construction contract. However, since the Unions obtained summary judgment below, we must construe all disputed factual inferences in Sitka's favor. *See Kodiak Island Borough v. Large*, 622 P.2d 440, 446 (Alaska 1981).

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4. AS 36.05.030
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Sitka promptly published Addendum No. 2 to Contract No. 3 in order to notify prospective bidders that Sitka would award a separate contract for substantially all of the reservoir clearing. Sitka stated that to be awarded this separate contract, the bidder would have to offer more than ALP offered. Addendum No. 2 noted that ALP had offered to pay $2,000,000.00 to perform the reservoir clearing pursuant to the requirements of Contract No. 3.

The bids were opened on May 15. Sitka awarded the dam construction contract to S. J. Groves and Company and the timber sale contract to ALP. Sitka and ALP signed on June 13, 1979 an agreement entitled "Timber Sale Contract." The ALP-Sitka contract provided that Contract No. 3 was incorporated by reference. The original bid offering, Contract No. 3, stipulated that Little Davis-Bacon was applicable.[2] All parties agree that the dam construction contract is subject to the Act. The parties dispute, however, whether Addendum No. 2 exempted from the wage provision employees engaged in the severed logging and clearing activities, the work ultimately performed by ALP.[3] The ALP–Sitka contract did not contain any express wage stipulations.

The Alaska Department of Labor has the authority pursuant to AS 36.05.030 to determine whether a contract is subject to Little Davis-Bacon.[4] In April 1979, Sitka received a form letter from the Wage and Hour Division of the Department stating that the proposed timber sale contract would be subject to the Act. Sitka disagreed with that conclusion, and persuaded the Director of the Division, Dale Cheek, to investigate the matter further. The Director subsequently stated his tentative opinion that the Act did not apply to the timber sale contract. An advisory memorandum issued by the Office of the Attorney General reached a similar result.[5]

The Department of Labor declined, however, to issue a formal determination of Little Davis-Bacon coverage.[6] As a result, in June 1979 two workers filed a complaint in superior court containing two causes of action against Sitka and ALP (hereafter collectively referred to as Sitka). The first

2. The relevant provision in Contract No. 3 provided:

   303.12 Section 205.10, "Wage Rates".

   a. The contractor or its subcontractor shall pay wages which are not less than the current prevailing rate of wages as determined by the Alaska Department of Labor for labor of a similar nature in the region in which the work is done. The rate of wages shall be adjusted to the wage rate for each pay period as applicable under AS 36.05.010.

3. The Unions submit that the reference to Contract No. 3 incorporated the general wage stipulation set forth in section 303.12 of the contract. Sitka contends that Addendum No. 2 distinguished between the Contractor and the Clearing Contractor. The Clearing Contractor, in Sitka's view, was bound only by those sections of Contract No. 3 *specifically* required of the Clearing Contractor. As a consequence, Sitka's interpretation of Addendum No. 2 is that only the Contractor was bound by the wage stipulation.

   For purposes of this appeal, we will accept Sitka's interpretation of Addendum No. 2. *See supra* note 1. Accordingly, our disposition of this appeal is not based upon an interpretation of the timber sale contract.

4. AS 36.05.030(a) provides in pertinent part:

   The Department of Labor has the authority to determine the prevailing wage, and whether or not sections 10–110 of the chapter are being violated.

   See Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978).

5. The relevant portion of the advisory memorandum provided:

   While it is apparent that the contract between AL&P and Sitka necessarily involves work preparatory to the construction of the Green Lake Hydro Project to be performed by a general contractor, it is equally apparent that the primary purpose of the contract is one involving timber sales, not construction of a public work.

   Accordingly, it is our view that the provisions of AS 36.05.010 do not apply to the contemplated contract between [Sitka] and [ALP].

   Memorandum from Bruce Botelho, Assistant Attorney General, to Dale Cheek (May 15, 1979).

6. The superior court requested briefing from the parties regarding the propriety of remanding the matter to the Department of Labor. Both parties opposed the remand.

   We do not decide whether the Department of Labor is required pursuant to AS 36.05.030 to issue a formal determination of Little Davis-Bacon coverage where such coverage is disputed.

cause of action set forth various charges against the proposed Sitka-ALP timber contract. The second cause of action alleged, in effect, that the workers had received less than the prevailing wage in violation of Little Davis-Bacon.

In August 1979 all parties entered into a stipulation which was then filed with the superior court and signed by the judge. Pursuant to the stipulation, the Construction and General Laborers Local 942, the International Union of Operating Engineers Local 302 and the Teamsters Local 959 (hereafter collectively referred to as the Unions) were substituted as plaintiffs. Both the Unions and Sitka gave up certain rights in the stipulation. The Unions agreed not to seek a preliminary injunction or other injunctive relief. Sitka agreed not to raise procedural defenses. The parties also stipulated as follows:

> 5. Plaintiffs seek declaratory relief in this case. In the event the court rules in Plaintiffs' favor, on those issues raised in Plaintiffs' Second Cause of Action, it is agreed that Plaintiffs' remedy will be in the form of damages to be paid to workers doing the work, which is the subject matter of this lawsuit, in accordance with Alaska law. Damages shall be paid to the workers as ordered by the Court, but in no event shall the sum ordered paid to the workers exceed the gross amount of Fifty One Thousand Dollars ($51,000.00).

After entering into the stipulation, both parties moved for summary judgment. The sole issue disputed was whether the Sitka-ALP timber contract was for "public construction" and thus covered by Little Davis-Bacon. The superior court ruled that the timber contract was for public construction. Accordingly, the court granted summary judgment to the Unions on November 3, 1980.

One portion of the judgment awarded the Unions as damages the back wages which the workers would have received if ALP had paid them the prevailing wage. On April 6, 1981, the United States Supreme Court held that the federal Davis-Bacon Act, 40 U.S.C. § 276a (1969), (hereafter referred to as Davis-Bacon), does not provide workers a private cause of action for back wages under a contract which administratively has been determined not to call for Davis-Bacon work. *Universities Research Association, Inc. v. Coutu*, 450 U.S. 754, 101 S.Ct. 1451, 67 L.Ed.2d 662 (1981). Relying on *Universities Research*, ALP filed a motion in superior court on April 24 to set aside the portion of the judgment which awarded the Unions damages. ALP argued that Little Davis-Bacon does not give the Unions a private right of action to recover back wages. ALP also contended that the award of damages should be set aside because no evidence on damages existed in the record. Sitka filed on May 8 a memorandum in support of ALP's motion. The superior court denied the motion on June 1, 1981, holding that paragraph 5 of the stipulation, quoted above, precluded consideration of the issue.

Sitka and ALP appeal. They submit (1) that the court erred in holding that the timber contract concerned public construction subject to Little Davis-Bacon coverage, and (2) that it was improper for the court to award the Union damages. For the reasons discussed below, we affirm the superior court judgment.

II. TIMBER SALE CONTRACT

The principal issue presented on appeal is whether the work performed pursuant to the ALP-Sitka contract was "public construction" subject to the wage protections afforded by Little Davis-Bacon.[7] AS 36.05.-010 provides in part:

> A contractor or subcontractor who performs work on public construction in which the state, as defined by AS 36.95.-010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done.

7. We employ de novo review to the question of law raised by the summary judgment motion. *See Armco Steel Corp. v. Isaacson Structural Steel Co.*, 611 P.2d 507, 516 n.22 (Alaska 1980).

Public construction is defined in AS 36.95.-010(3) as "the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, a political subdivision of the state; . . ."

[1] All parties properly agree that a timber sale contract is typically not subject to the Act. Sitka, accordingly, labels the disputed contract a "timber sale contract," arguing that any site preparation work was incidental to the dominant purpose of the contract, the sale of timber. The Unions, on the other hand, argue that the sale of merchantable timber was incidental to the site preparation necessary for the construction of the Green Lake Project, and thus characterize the contract as a "clearing contract." The labels employed by the parties are merely the conclusions of a more substantive analysis. The dispositive issue in our view is whether a contract, which may independently be outside the scope of Little Davis-Bacon, may nonetheless be subject to the Act where the specified work is substantially related to "public construction."

No prior Alaska court has addressed this issue. We turn, therefore, to federal authorities pertaining to the federal Davis-Bacon Act, 40 U.S.C. § 276a (1969), the model of the Alaska statutory scheme. *See Fowler v. City of Anchorage*, 583 P.2d 817, 821 (Alaska 1978); *1961 Op. Att'y Gen. No. 17* at 4 (Alaska, August 8, 1961).[8]

The federal regulations, 29 C.F.R. §§ 4.116(b)(1), 5.2(f) and 5.2(g) (1980), clearly indicate that clearing done at a dam site in preparation for the dam's construction is "construction" within the purview of Federal Davis-Bacon.[9] Section 5.2(g) defines construction under Davis-Bacon as "all types of work done on a particular building or work at the site thereof." "Building" or "work" is defined in section 5.2(f) as including: [10]

> *without limitation*, buildings, structures, and improvements of all types, such as bridges, *dams*, plants, highways, park-

8. It is useful here to set out the statutory construction rules for Alaska statutes modelled after those of other jurisdictions. A rebuttable presumption arises that when Alaska bases a statute on one from another jurisdiction, it adopts into the Alaska statute all previous cases from the other jurisdiction's statute. *Zerbe v. State*, 583 P.2d 845 (Alaska 1978); *Nicholson v. Sorensen*, 517 P.2d 766, 770 n.9 (Alaska 1973). *See also Fowler v. City of Anchorage*, 583 P.2d 817 (Alaska 1978). There is no such presumption when the cases from the other jurisdiction are decided *after* Alaska adopts its statute, though such cases may be persuasive. *Nicholson v. Sorensen*, 517 P.2d at 770 n.9.

No federal cases address the question of whether logging preliminary to dam construction is subject to Davis-Bacon coverage. The most important federal authorities to have discussed this issue are 29 C.F.R. §§ 4.116(b)(1), 5.2(f) and 5.2(g) (1980). Sections 5.2(f) and (g) were promulgated in 1951, before AS 36.95.-010(3), which defines "public construction," became law in 1972, but after the original sections of Little Davis-Bacon became law in 1931. While this court is not bound by the federal regulations, we will look to the federal regulations construing Davis-Bacon for assistance in interpreting Little Davis-Bacon.

9. The parties refer to three position letters promulgated by the United States Solicitor of Labor. The most recent letter, dated December 13, 1961 states that the clearing and selling of timber preliminary to dam building is not itself "construction" under federal Davis-Bacon. That opinion, however, does not discuss 29 C.F.R. §§ 5.2(f) and (g). It is also noteworthy that the December 13, 1961 letter opinion is contradicted by two other Solicitor of Labor opinions. One opinion, dated May 23, 1961, was signed by Charles Donahue, the same Solicitor of Labor who signed the other opinion discussed above. The May 23 opinion discusses a contract in which the Forest Service permits Boise Cascade to log timber in exchange for money and the construction of permanent roads within the national forest. The opinion states that Davis-Bacon covers the logging of timber preliminary and necessary to build the roads but not the other logging. The second opinion, dated September 27, 1960, concluded that the clearing of timber necessary to build a runway and aircraft parking for the navy was public construction.

The parties do not cite to any more recent positions adopted by the United States Solicitor of Labor with respect to the scope of Davis-Bacon coverage.

10. The federal government has proposed changes in 29 C.F.R. Part 5 (1980). *See* 44 Fed. Reg. 77,080 (1979). Sections 5.2(f) and (g) remain unchanged, however, except that they are renumbered sections 5.2(i) and (j).

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Section 4.116(b)(1) was promulgated in 1968 pursuant to the McNamara-O'Hara Act. This act regulates service contracts with the federal government. It exempts from its requirements the contracts which the Davis-Bacon Act covers. Section 4.116(b)(1) states in part:

For example, a contract for clearing timber or brush from land or for the demolition or dismantling of buildings or other structures may be a contract for construction activity subject to the Davis-Bacon Act where it appears that the clearing of the site is to be followed by the construction of a public building or public work at the same location. If, however, no further construction activity at the site is contemplated the Davis-Bacon Act may be considered inapplicable to such clearing....

[2] We conclude that the federal regulations set forth an appropriate test to establish the parameters of Little Davis-Bacon. Accordingly, the focus of inquiry in determining whether the ALP-Sitka contract concerned "public construction" subject to the Act is the extent to which the work relates to the construction of the dam.

[3] The superior court, properly employing this analytic approach, concluded that "the predominant characteristic [sic] is that the work to be done is an integral part of the dam construction and is therefore 'public construction'." We agree. The logging occurred on the dam site, land acquired from the state expressly for the purpose of constructing the dam and its watershed. Moreover, it is uncontroverted that the clearing specifications incorporated by reference in the contract were intended to render the site suitable for the construction of the dam. The fact that the clearing work was initially included in the bid offering is further evidence of the strong linkage between the ALP-Sitka contract and the construction of the dam. In sum, the logging and related clearing work performed by ALP pursuant to the contract was preliminary and essential to building the dam, and would not have occurred when it did but for the dam.

[4] Sitka rejects this mode of analysis. Sitka instead submits that the determination of Little Davis-Bacon coverage should only reflect the isolated characteristics of the timber contract without consideration of the broader context in which the contract arose. Sitka thus argues that once severed from the dam construction bid, the ALP-Sitka contract is essentially the same as any other timber sale contract, and is therefore outside the scope of Little Davis-Bacon coverage. We recognize, in this regard, that the disputed contract does in fact have many of the attributes of a prototypical timber sale contract.

Sitka's position, however, unduly exalts form over substance. Had the logging remained in the parent construction bid, it is clear that the wage protections would have been applicable. That Sitka determined that it was to its benefit to sever the logging and clearing work is functionally irrelevant. It is the nature of the work and the relationship of the logging work to the dam project which are the salient considerations.

[5] Sitka's reliance on the fact that the timber contract was severed from the dam contract is misplaced for the additional reason that such a rule would thwart the policies which underly Little Davis-Bacon. The fundamental purpose of Little Davis-Bacon is to assure that employees engaged in public construction receive at least the prevailing wage. The focus of the Act, quite clearly, is to the benefit of the employees, not the contracting principals.[11] To argue that Sitka should

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that Sitka should be allowed to maximize the economic benefit to be derived from the sale of merchantable timber simply miscasts the focus of the Act. Presumably, ALP would have payed Sitka less for the right to remove the timber had the timber contract been determined to be subject to Little Davis-Bacon wage guarantees. Quite unlike the mythical sailor torn between Scylla and Charybdis, Sitka found itself in the enviable position of having to choose whether to maximize the return from the sale of timber or whether to stipulate that Little Davis-Bacon wage guarantees attached to the contract. Where "public construction" is involved, however, the legislature has provided that the tension must be resolved in favor of the employees. Sitka's position, in essence, invites the government to sever from a public construction bid offering any aspect of the endeavor which may have an unrelated profit incentive, such as the removal of a natural resource. Such a rule impermissibly enables a public agency to profit at the expense of workers engaged in activities instrumental to a public construction project.

Sitka also argues that the logging should not be considered public construction because ALP paid Sitka to log the timber whereas in the typical public construction contract the public agency pays the contractor. Sitka notes that AS 36.05.070(a) applies only to "a public construction contract exceeding $2,000." The statutory language cited by Sitka is plainly intended to restrict Little Davis-Bacon coverage to "substantial" public construction projects, i.e., those in excess of $2,000. The ALP-Sitka contract concerns an activity which can hardly be characterized as insubstantial. Viewing only the timber transaction, Sitka has conferred on ALP a benefit, the merchantable timber, which is valued by the parties at two million dollars.[12]

[6] In support of its contention that it is the flow of money from the government to a private contractor which is determinative of Little Davis-Bacon coverage, Sitka notes that AS 36.05.070(c)(4) requires the contracting public agency to withhold payments to contractors who violate the Act by failing to pay the prevailing wage. Sitka argues that section 36.05.070(c)(4) is the enforcement mechanism of the Act. The mechanism fails to work when, as in the instant case, the contractor pays the public agency rather than vice versa. Actually AS 36.05.070(c)(4) is only one of several enforcement mechanisms under the Act. The other enforcement mechanisms work equally well whether the contractor pays the public agency or the public agency pays the contractor. Under AS 36.05.060, violators of Little Davis-Bacon can be prosecuted criminally. AS 36.05.080 permits the contracting agency to terminate the contract if the contractor violates the Act by not paying the prevailing wage. AS 36.05.090(b) permits the workers to sue for back wages.[13] Under AS 36.05.030 the Department of Labor has the power to investigate violations, including the power to hold hearings where it can compel the attendance of witnesses and the production of books, papers and documents. Thus, we conclude that adequate enforcement mechanisms exist regardless of whether the money flows from the government to a private contrac-

contractors, but rather to protect their employees from substandard earnings by fixing a floor under wages on Government projects." *U.S. v. Binghamton Cons. Co.*, 347 U.S. 171, 177, 74 S.Ct. 438, 441, 98 L.Ed. 594, 599 (1953). *See Walsh v. Schlecht*, 429 U.S. 401, 411, 97 S.Ct. 679, 686, 50 L.Ed.2d 641, 650 (1977).

12. Once a sufficient nexus has been established between a contract and a public construction project, we may look to the value of the entire endeavor to ascertain if the $2,000 threshold requirement has been satisfied.

13. AS 36.05.090(b) provides in part:

> If the accrued payments withheld under the contract are insufficient to reimburse all the laborers, mechanics, or field surveyors with respect to whom there has been a failure to pay the wages required under section 70 of this chapter, the laborers, mechanics or field surveyors have the right of action or intervention or both against the contractor and his sureties conferred by law upon persons furnishing labor or materials. . . .
>
> As we discuss in part III, *infra*, the scope of the workers' private right of action remains undetermined.

tor, or from the contractor to a public agency.

III. PRIVATE RIGHT OF ACTION

[7] Sitka next contends that even if the logging work is deemed to be public construction within the meaning of Little Davis-Bacon, the Act does not authorize a private right of action for back wages.[14] As a consequence, Sitka submits that the award of damages was inappropriate. In paragraph 5 of the 1979 stipulation, however, Sitka agreed that if the Unions prevailed in the litigation, the remedy would be damages paid to the workers. The threshold inquiry, therefore, is whether or not to give effect to the stipulation agreed to by the parties.

The parties dispute the nature of the stipulation. The Unions characterize the stipulation as an "issue stipulation," and thus invoke the settled rule that such stipulations are binding on the parties.[15] Sitka, on the other hand, submits that the question of whether or not Little Davis-Bacon authorizes employees or their representatives to maintain a private right of action to recover back wages is a legal issue and thus cannot be foreclosed by stipulation.[16]

In our prior cases we have dealt with stipulations which merely foreclose consideration of a legal issue in a different fashion than stipulations which seek to resolve without judicial scrutiny a legal question.

Issue stipulations, on the one hand, save time and money for the litigants and for the court. *Godfrey v. Hemenway*, 617 P.2d 3, 8 (Alaska 1980); *Interior Credit Bureau v. Bussing*, 559 P.2d 104, 106 (Alaska 1977); *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1031 (Alaska 1972). Moreover, issue stipulations are oftentimes a negotiated compromise in the parties' respective legal positions. Accordingly, we have on several prior occasions given effect to a stipulation which foreclosed consideration of a legal issue. *Hilbers v. Municipality of Anchorage*, 611 P.2d 31, 39 n.19 (Alaska 1980), is a recent example. In that case the parties stipulated that plaintiffs would raise only four identified constitutional challenges to ordinances regulating and licensing massage parlours in Anchorage. We rejected on appeal the plaintiff's attempt to raise constitutional challenges not sanctioned by the stipulation. Similarly, we have enforced a stipulation which precluded consideration of a due process challenge to the composition of a medical review committee,[17] and one which precluded consideration of the respective rights of the City and Borough of Anchorage regarding the installation of utility lines.[18]

14. At issue is whether the right of action authorized in AS 36.05.090(b) where a contract contains wage stipulations is also available where the contract in dispute does not contain wage stipulations. The United States Supreme Court held that federal Davis-Bacon does not provide workers a private cause of action to recover back wages where there has been an administrative determination of no Davis-Bacon coverage. *Universities Research Association, Inc. v. Coutu*, 450 U.S. 754, 101 S.Ct. 1451, 67 L.Ed.2d 662 (1981). We do not reach this issue.

15. *Fieser v. Stinnett*, 509 P.2d 1156, 1159 (Kan. 1973). *See generally* 83 C.J.S. Stipulations § 22 (1953).

16. Sitka relies on *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106, 114, 60 S.Ct. 1, 6, 84 L.Ed. 110, 119 (1939) to support its contention that a stipulation which prevents consideration of a legal issue is void. In *Case*, one party argued that in a stipulation his adversary had waived his right to attack the fairness of a plan. The Supreme Court ruled that even if under the terms of the stipulation the adversary had waived his right to attack the plan's fairness, the court still would permit the adversary to make the attack. The court declared that as a matter of law "a stipulation does not foreclose legal questions."

In *Utah v. United States*, 394 U.S. 89, 89 S.Ct. 761, 22 L.Ed.2d 99 (1969), however, the Supreme Court implicitly overruled *Case*. The court ruled that parties to a lawsuit may generally limit the issues which are tendered to the court for decision. Specifically, the court found valid a stipulation between Utah and the United States which precluded the parties from raising certain legal issues. *See also Perera Co. v. Goldstone*, 491 F.2d 386, 388 (9th Cir. 1974).

17. *Storrs v. Lutheran Hosp. and Homes Soc'y of America, Inc.*, 609 P.2d 24, 28 (Alaska 1980).

18. *Greater Anchorage Area Borough v. City of Anchorage*, 504 P.2d 1027, 1031 (Alaska 1972). The court noted that "[s]ound judicial policy

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We recently reiterated, on the other hand, that "[a]lthough the parties' efforts toward simplifying the issues in a case are always appreciated, stipulations as to the law are not binding upon the court." *Dresser Industries, Inc. v. Alaska Department of Labor*, 633 P.2d 998, 1004 (Alaska 1981). *See generally* 73 Am.Jur.2d. Stipulations § 5 (1974). Unlike stipulations which limit the issues presented to a court, stipulations as to questions of law may have a profound impact on third parties, the public, and the judicial process itself. Accordingly, we have refused to give effect to stipulations regarding a question of law which unduly interfere with vital interests of the public or which impermissibly impinge on judicial functions. *Dresser Industries, Inc. v. Alaska Department of Labor*, 633 P.2d at 1004 (Alaska 1981); *Harris v. Morris*, 531 P.2d 517, 519 (Alaska 1975); *Marks v. State*, 496 P.2d 66, 67 (Alaska 1972).[19]

We conclude that Sitka's agreement that the Unions' "remedy will be in the form of damages ... in accordance with Alaska law" necessarily encompassed a waiver of any legal issue which would defeat the award of damages. Sitka agreed not to raise procedural defenses and that damages would be the appropriate remedy were the Unions to prevail. The Unions, in return, agreed to dismiss the first cause of action, challenging the validity of the contract, and most importantly, to forego any attempt to obtain injunctive relief. Abandoning any entitlement to injunctive relief was a significant concession, since the cost attendant any delay in the construction of the project would undoubtedly have been substantial. The work now completed, it is of course impossible to "rescind" the stipulation and to return the parties to their respective status quo ante positions. It is particularly noteworthy that at the time the stipulation was negotiated, Sitka did not contend that the Unions could not maintain a private right of action to recover back wages. Only after the United States Supreme Court announced its decision in *Universities Research*, several months subsequent to the superior court's entry of summary judgment in favor of the Unions, did Sitka question the effect of the stipulation.

Sitka's attempt to classify the stipulation in dispute as one pertaining to a question of law is not persuasive. To be sure, the question of whether Little Davis-Bacon confers a private right of action to recover back wages is a question of general public importance. Yet resolution of the instant dispute by reference to the parties' stipulation does not in any manner taint the future consideration of that important issue. The impact on nonparties is inconsequential. Further, the stipulation between the parties does not impermissibly invade the prerogatives of this court.

We conclude that the stipulation precludes consideration of whether Little Davis-Bacon authorizes a private right of action to recover back wages. In accordance with the terms of the stipulation, therefore, the award of damages was appropriate.[20]

dictates that private settlements and sti lations between the parties are to be favored and should not be lightly set aside." *Id.* (footnote omitted.)

19. In *Harris* we refused to allow the parties to stipulate as to the content of jury instructions since "the trial judge has the direct responsibility of correctly instructing the jury." 531 P.2d at 519. Similarly, we declared in *Marks* that "[t]he public interest in criminal appeals does not permit their disposition by party stipulation." 496 P.2d at 67. And most recently, in *Dresser Industries* we rejected the parties' invitation to heed a stipulation which attempted to unduly restrict the judicial review of an administrative regulation.

In rejecting the stipulations at issue in *Dresser Industries* we noted the peculiar policy considerations implicated where stipulations impair a court's assessment of the validity of a regulation. "Laws are not to be declared invalid upon the consent of parties. We must determine their purpose and tendency for ourselves." 633 P.2d at 1005, *quoting, E. Fougera & Co. v. City of New York*, 224 N.Y. 269, 120 N.E. 642, 643 (1918).

20. The summary judgment order provides that the Unions will receive as damages the difference between what the employees would have received had the work been classified as public construction with the wage protections of Little Davis-Bacon and what the employees received pursuant to the contract. The order further

The judgment of the superior court is AFFIRMED.

STATE of Alaska, Appellant,

v.

ALASKA PUBLIC EMPLOYEES ASSOCIATION, Edward B. Coleman, Don Allen, Joe Anderson, Loy R. Bolt, Dwane Burgess, Frank Byerly, David Cooper, Harold Fencl, Fred C. Fowler, Tom Furbush, Steve Kosenic, Kurt Masingill, Homer Mayo, Ron Murry, Paul Tannenbaum, Jerry Velez, and Stan Wells, Appellees.

No. 5810.

Supreme Court of Alaska.

May 7, 1982.

Probation-parole officers and their employee association brought suit challenging firearms policy, promulgated by the Health and Social Services Commissioner, concerning the carrying of concealed firearms by probation-parole officers. The Superior Court, Third Judicial District, Anchorage, Ralph E. Moody, J., found the policy, which restricts the carrying of firearms to very limited circumstances, to be unworkable and, after reference of the dispute to a special master, propounded its own firearms policy and ordered the Commissioner to implement it. On the State's appeal, the Supreme Court, Matthews, J., held that the Commissioner, not the Superior Court, is charged with the responsibility for the day-to-day operation of the probation service, and the methods and equipment to be used by probation officers fall within the ambit of that responsibility; accordingly, the Superior Court may not, under the guise of an exercise of its authority to direct probation officers, propound a firearms policy, except in regard to firearms on court premises.

Reversed.

1. Courts ⇐55

Commissioner of the Department of Health and Social Services, not the superior court, is charged with the responsibility for the day-to-day operation of the probation service, and the methods and equipment to be used by probation officers fall within the ambit of that responsibility; accordingly, the superior court may not, under the guise of an exercise of its authority to direct probation officers, propound a firearms policy, except in regard to firearms on court premises. AS 33.05.010, 33.05.020, 33.05.030.

2. Courts ⇐55

Merely because probation officers are officers of the court and subject to its authority by virtue of statute does not mean that the court has administrative authority over them. AS 33.05.030.

3. Courts ⇐55

Superior court may direct individual probation officers to perform appropriate services, but it may not control the details by which those services are accomplished by establishing general policies. AS 33.05.010 et seq., 33.05.030.

provides that damages are to be paid directly to the workers who performed the reservoir clearing work. We note, though, that no evidence regarding the amount of damages exists in the record. The superior court ordered that the amount of damages will be determined through the submission of memoranda by the parties. We conclude that in the particular context of this case, such a procedure is adequate. The amount of damages can be readily and accurately ascertained since the Department of Labor determines the prevailing wage under 8 AAC 30.050 (Eff. 7/8/73), and both ALP and the Unions should have records which clearly indicate the wages previously received by the workers. If, however, the parties dispute the amount of damages, so that a genuine issue of material fact exists, the superior court must hold a hearing on this question.

NEGLIGENT MISREPRESENTATION — BREACH OF CONTRACT — INVESTMENT TAX CREDIT — DAMAGES

Orsini v. Bratten, Op. No. 3012, January 24, 1986

Investors sued investment consultant for negligent misrepresentation and breach of contract. The Superior Court, Van Hoomissen, J., entered judgment on behalf of investors. Rabinowitz, C.J., HELD:

(1) since consultant agreed to the amounts of lost investment tax credits, the court would not review the propriety of that award;

(2) the investors were not entitled to receive as damages interest repayed to federal or state governments since the investors had the use of such monies during the interim and were able to earn interest while they held it;

(3) given the record, the award for prospective tax liability could not be sustained; and

(4) the methods of calculating damages proposed by the investors were not appropriate since: (a) the investors were not entitled to be awarded what the consultant promised them since they did not bargain to receive a guaranteed return, but instead only bargained for investment advice, and (b) investors were not entitled to an amount representing the amount they would have received had they invested in real estate since that was too speculative a measure as a matter of law. AFFIRMED in part and MODIFIED.

PUBLIC CONTRACTS — BIDS — UNIT PRICES

Vintage Corporation, Inc. v. State, Op. No. 3013, January 31, 1986

Low bidder on a state project challenged award to bidder with lower unit prices. Van Hoomissen and Blair, JJ., granted summary judgment to the state. Matthews, J., HELD:

(1) the specifications applicable to the bids taken together clearly suggest that the total of the extensions of unit prices was to be used for informational and initial comparative purposes only — the critical terms are the written unit prices;

(2) in unit price contracts, the unit prices are written in words, while the total price is only written in figures — in bids for lump sum contracts, the total is required to be written in words as well as figures;

(3) the agency's interpretation that the specification addresses only discrepancies between prices in words and figures, rather than just unit price discrepancies, is reasonable and should control;

(4) a contracting officer, in determining whether a bidder obtained a competitive advantage because of such a discrepancy, must: (a) determine whether the bidder's claimed actual intent is apparent from the bid submitted; (b) if the contracting officer is unable to say from the documents that the bidder's intent was to bid the higher figure, no relief should be given and the unit prices bid should control; and (c) if the bidder's intent to bid at the higher figure is apparent, the officer must ask if it would be unconscionable to hold the bidder to his bid using the rule of construction that unit prices control — if not, no relief should be provided; and

(5) no competitive advantage was afforded here since: (a) the contracting officer could not say from reviewing the bid documents that the total bid figure, rather than the unit prices correctly added, was the bid apparently intended, and (b) thus, there was no occasion to consider the question of whether it would be unconscionable to hold the bidder to his bid despite his apparent intent. AFFIRMED. Compton, Burke, JJ., concurring, but arguing that resort to the specifications was inappropriate where there was no discrepancy in the bid — the error was, however, harmless.

LITTLE DAVIS-BACON ACT — ATTORNEY'S FEES — PUBLIC INTEREST LITIGANT

Alaska State Federation of Labor v. State, Op. No. 3014, January 31, 1986

Worker and labor federation sought declaratory and injunctive relief, alleging that Juneau construction project was subject to the Little Davis-Bacon Act. Superior Court, Carpeneti, J., granted summary judgment to the defendants. Burke, J., HELD:

(1) the project was not public construction subject to the act, even though expenditures of state monies occurred — the statute only applies to contracts with the state or a political subdivision;

(2) nor was the project primarily state funded — the state's funding by grant was indirect and relatively small;

(3) Civ. R. 82 gives the trial court broad discretion to award attorney's fees and such an award is reviewable only for an abuse of discretion — to constitute abuse, the discretion must be manifestly unreasonable or motivated by an inappropriate purpose;

(4) whether a party qualifies as a public interest litigant depends upon: (a) the effectuation of strong public policy; (b) the fact that numerous people would benefit from the litigation; (c) the fact that only a private party would have been expected to bring the action; and (d) the lack of economic incentives to bring the suit in the absence of important public issues;

(5) the trial court's award of attorney's fees was not an abuse of discretion since the federation was motivated primarily by private rather than public concerns; and

(6) there was no merit in the federation's argument that the work done by the defendants' attorneys was duplicative and excessive where no evidence of duplication was provided. AFFIRMED.

DIVORCE — PROPERTY DIVISION — EQUITABLE DIVORCE

Burcell v. Burcell, Op. No. 3015, January 31, 1986

Husband challenged property division by Superior Court, Souter, J., as clearly unjust and based on erroneous findings. Moore, J., HELD:

(1) the property division in a divorce proceeding is within the broad discretion of the trial court and will not be disturbed on appeal unless it is clearly unjust;

(2) AS 25.24.160(4) places all property acquired during a marriage, whether joint or separate, before the court for division — it also authorizes invasion of premarital holdings of either spouse when the balance of the equities requires;

(3) the trial court has broad discretion to invade premarital assets — some fact situations are sufficiently compelling that a refusal to invade is clearly unjust;

(4) on review, findings of fact are clearly erroneous if, based on the record as a whole, the court is left with a definite and firm conviction that a mistake has been made;

[2] Because the letters were not recorded, we agree with the Whites that they cannot revive any time-barred remedies based on the deed of trust, which is an "instrument affecting real estate" within the meaning of AS 09.10.200. The superior court reached the same conclusion in dictum in its opinion, and from our reading of the Walkers' briefs we believe they have conceded this point. Thus, we affirm the portion of the superior court's judgment enjoining the Walkers from seeking to enforce the deed of trust, and ordering them to request the trustee to reconvey the property at issue to the Whites.

[3] However, we have concluded that the portion of the judgment prohibiting the Walkers from acting to enforce their promissory note against the Whites personally must be reversed. Although this note was executed in connection with the sale of real estate, it is a personal note, and therefore is not subject to the recordation requirement of AS 09.10.200. Construing the letters most favorably to the Walkers,[4] we are of the opinion that excerpts from the letters of both William and Catherine White constitute, as a matter of law, acknowledgments of the debt within the intendment of AS 09.10.200.[5]

[4] The Whites contend that an acknowledgment under AS 09.10.200 must be "direct, unqualified and unconditioned." We cannot agree. The purpose of the statute of limitations is "to protect against the difficulties caused by lost evidence, faded memories and disappearing witnesses." *Byrne v. Ogle*, 488 P.2d 716, 718 (Alaska 1971). This purpose is not advanced by imposing rigorous requirements of formality on acknowledgments. Such requirements, in our opinion, would only heighten the statute's unfortunate effect of occasionally barring meritorious claims. *See* 1A A. Corbin, Corbin on Contracts § 223 (1963) (written promise or acknowledgment "may be sufficient even though it is informal and is in need of much explanatory evidence").

The judgment of the superior court is affirmed in part and reversed in part, and the case is remanded for further proceedings upon the Walkers' counterclaim based upon the subject promissory note.

BOOCHEVER, J., not participating.

Curwood GACKSTETTER and Betty Gackstetter, Appellants,

v.

STATE of Alaska, Appellee.

No. 4976.

Supreme Court of Alaska.

Oct. 24, 1980.

Owners appealed award of master in eminent domain proceeding. The Superior Court, Fourth Judicial District, Fairbanks, Warren W. Taylor, J., held that consideration of value to state of fill and gravel it received from the owners' land was an inappropriate measure of just compensation, and the owners appealed. The Supreme Court, Rabinowitz, C. J., held that the owners were justly compensated through employment of a fair market valuation measure for appropriated residential property,

4. In a motion for summary judgment, the trial court is required to draw all reasonable inferences in favor of the non-moving party and against the movant. *Alaska Rent-A-Car, Inc. v. Ford Motor Co.*, 526 P.2d 1136, 1139 (Alaska 1974).

5. William White wrote, "I would like to get things together and settle up with you in full. Or monthly or how ever." Catherine White's letter refers to "the debt owed herein," and calls her advice to the Walkers on how they might collect that debt "my last opportunity to try to help make it right." We observe that the note signed by the Whites made them jointly and severally liable to the Walkers, so that the Walkers need only show acknowledgment by either Mr. or Mrs. White, or both.

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1. Eminent Domai

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2. Eminent Domai

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3. Eminent Domain

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and consideration of value to state of fill and gravel it received from the owners' land was an inappropriate measure of just compensation.

Affirmed.

1. Eminent Domain ⇐131

"Fair market value" is defined as the amount of money which a purchaser willing but not obliged to buy property would pay to an owner willing but not obliged to sell it, taking into consideration all uses for which the land was suited and might in reason be applied.

See publication Words and Phrases for other judicial constructions and definitions.

2. Eminent Domain ⇐122

The just compensation to which an owner is entitled when his property is taken by eminent domain is regarded in law from the point of view from the owner and not of the condemnor; just compensation in the constitutional sense is what the owner has lost, and not what the condemnor has gained.

3. Eminent Domain ⇐131

Fair market value is usually equated with just compensation, in a taking by eminent domain, as it provides an objective standard by which to measure the loss to the owner; fair market value is not the end in itself, but merely a means to achieve the goal of just compensation.

4. Eminent Domain ⇐131

Consideration of value to the state of fill and gravel it received from land taken by eminent domain was an inappropriate measure of just compensation to the owners, who were justly compensated through employment of a fair market valuation measure for appropriated residential property.

Teresa L. Foster, Cole & Downes, Fairbanks, for appellants.

William R. Satterberg, Jr., Asst. Atty. Gen., Fairbanks, and Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C. J., CONNOR, BURKE and MATTHEWS, JJ., and ROWLAND, Superior Court Judge.

OPINION

RABINOWITZ, Chief Justice.

This appeal arises from an eminent domain proceeding. In 1976, the State of Alaska, in connection with the construction of the New Steese Expressway, condemned 3.464 acres of Curwood and Betty Gackstetter's property. Dirt and gravel, useful as fill for the cuts and depressions created by the highway construction, were removed by the state and deposited elsewhere along the project.[1]

[1] The case was referred to a master for determination of just compensation to be paid to the Gackstetters. The master awarded the Gackstetters $24,740.00, based on a conclusion that the highest and best use of the property was residential. It is undisputed that applicable Fairbanks North Star Borough zoning ordinances and restrictions prohibited development of the subject property as a gravel pit. The award was reached by determining the fair market value of the Gackstetters' property before and after the taking.[2]

The Gackstetters appealed to the superior court. The state then moved for partial summary judgment, seeking a ruling that

1. The Gackstetters' property was bounded by Engineer Creek Basin to the north and the bowl occupied by Fairbanks to the south. Materials utilized from the Gackstetters' land were deposited elsewhere on the project to fill the depression existing in the adjacent valley. The Gackstetters maintain they should be compensated for the value of the material taken from their land.

2. Fair market value is defined as the amount of money "which a purchaser willing but not obliged to buy the property would pay to an owner willing but not obliged to sell it, taking into consideration all uses for which the land was suited and might in reason be applied" 4 J. Sackman, Nichols on Eminent Domain § 12.-2[1] (rev. 3d ed. 1979) (footnotes omitted).

evidence of the value of the fill material would be inadmissible at trial. The superior court granted the motion, ordering that:

> Any evidence of special value or benefit to the property by virtue of the condemnation or due to the condemnor's needs or uses shall be inadmissible.

The Gackstetters have appealed this ruling of the superior court.[3]

On appeal, the Gackstetters do not contest the master's finding as to highest or best use of the property, nor do they dispute the compensation award as it was determined by the fair market value method. They admit that evidence of the value of the fill material was properly excluded from the determination of fair market value, since the value of the fill was created solely by the taker's demand for it. *United States v. Cors*, 337 U.S. 325, 332, 69 S.Ct. 1086, 1090, 93 L.Ed. 1392, 1399 (1949); *United States v. Miller*, 317 U.S. 369, 375, 63 S.Ct. 276, 280, 87 L.Ed. 336, 343 (1943). Instead, the Gackstetters proceed on the theory that fair market value is not constitutionally mandated, is inapplicable on the instant facts, and did not accord them just compensation. In their view, a form of unjust enrichment resulted from the state's non–compensable use of the fill material, and because of this, the measure of just compensation should be the value of the land to the condemnor. In addition, the Gackstetters contend there were material issues of fact in dispute which rendered summary judgment inappropriate.[4]

[2] We cannot agree that employment of the fair market value test in the case at bar precluded the Gackstetters from receiving just compensation. It is a basic tenet of eminent domain law that just compensation is determined by what the owner has lost and not by what the condemnor has gained. In *Nichols* it is stated that:

> The just compensation to which an owner is entitled when his property is taken by eminent domain is regarded in law from the point of view of the owner and not of the condemnor. In other words, just compensation in the constitutional sense is what the owner has lost, and not what the condemnor has gained.[5]

The United States Supreme Court defined just compensation in the following manner:

> The just compensation required by the Constitution to be made to the owner is to be measured by the loss caused to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public.

Bauman v. Ross 167 U.S. 548, 574, 17 S.Ct. 966, 976, 42 L.Ed. 270, 283 (1897); *see also Kimball Laundry Co. v. United States*, 338 U.S. 1, 5, 69 S.Ct. 1434, 1437, 93 L.Ed. 1765, 1772 (1949). This court has followed the same principle in measuring just compensation:

> The term just compensation implies full indemnification to the owner for the property taken. In other words the property owner should be placed as fully as possible in the same position as he was prior to the taking of his property.

Ketchikan Cold Storage Co. v. State, 491 P.2d 143, 150 (Alaska 1971).

3. The order of partial summary judgment was entered on August 13, 1979. The final judgment was entered in this case on September 25, 1979, pursuant to a stipulation for entry of final judgment, signed by the parties on August 13, 1979. That stipulation provided that the Gackstetters retained the right to appeal the superior court's order of partial summary judgment, and that the final judgment would be regarded as the operative document for appeal time computations.

4. The Gackstetters raised the following issues:

1. Whether the highway project in question was designed to take advantage of fill material on Defendant's property.

2. Whether from a purely engineering standpoint, and taking into account the goals of the highway project, it was necessary for the route to cross Defendant's property.

3. The amount of fill removed and used in the project, and the dollar value of such fill.

5. 3 J. Sackman, Nichols on Eminent Domain § 8.61 (rev. 3d ed. 1979) (footnotes omitted). *See also id.* at § 12.21; Uniform Eminent Domain Code, committee comment to § 1004, reprinted in *id.*, App. D-3 at App. 344.133.

[3] Fair market value is usually equated with just compensation, as it provides an objective standard by which to measure the loss to the owner.[6] Nevertheless, as the Gackstetters point out, fair market value is not the end in itself, but merely a means to achieve the goal of just compensation. 4 J. Sackman, Nichols on Eminent Domain § 12.2 (rev. 3d ed. 1979); *see also Babinec v. State*, 512 P.2d 563, 570 (Alaska 1973) *appeal after remand*, 586 P.2d 966 (Alaska 1978).[7] However, none of the authorities cited by the Gackstetters support their contention that value–to–the–taker is an appropriate measure of just compensation in the factual context of this case. In particular, the Gackstetters' reliance on *State v. Hammer*, 550 P.2d 820 (Alaska 1976), is misplaced. In *Hammer* we held that a temporary loss of profits during relocation, necessitated by condemnation, was compensable. In criticizing the argument that no recovery should be had for the destruction of a business incidental to condemnation, we stated:

> This approach has several serious flaws. First, it conflicts with our principle of compensation, which, instead of looking at the benefit to the condemnor as a measure of compensation, looks to the loss to the owner, as measured by an objective standard.[8]

[4] In the case at bar, the state appropriated residential property from the Gackstetters for which the Gackstetters were justly compensated through employment of a fair market valuation measure. We thus conclude that the superior court did not err in its determination that consideration of value to the state of the fill and gravel it received from the Gackstetters' land was an inappropriate measure of just compensation.[9]

AFFIRMED.

BOOCHEVER, J., not participating.

Jim BOOKEY, d/b/a Bookeys, Appellant,

v.

KENAI PENINSULA BOROUGH, Appellee.

No. 4878.

Supreme Court of Alaska.

Oct. 24, 1980.

In an action in which municipality sought to impose a civil penalty for failure to remit sales taxes, appeal was taken from a judgment of the District Court, James C. Hornaday, J. The Superior Court, Third Judicial District, James A. Hanson, J., entered a judgment permitting the imposition of civil penalties, and appeal was taken. The Supreme Court, Matthews, J., held that municipality had power to impose a civil penalty for failure to remit sales tax.

Affirmed.

6. *Ketchikan Cold Storage Co. v. State*, 491 P.2d 143, 150 (Alaska 1971).

7. In 4 J. Sackman, Nichols on Eminent Domain § 12.1[5] (rev. 3d ed. 1979) (footnotes omitted), it is stated that:

> The basic concepts of value which have been developed with relation to property acquired by means of eminent domain fall generally into three categories:
> (a) Value to taker,
> (b) Value to owner,
> (c) Market value.
> Value to the taker, while ordinarily rejected as a standard, is occasionally considered as an element in the determination of value where, as a factual proposition, the present adaptability of the property for the projected use is a determinative factor in creating a demand for such property by purchasers in the ordinary market. In other words, where special availability of the property for public use is an element in the establishment of general market value it may be considered.

8. *State v. Hammer*, 550 P.2d 820, 824 (Alaska 1976).

9. Our holding makes it unnecessary to address the Gackstetters' contention that the existence of genuine issues of material fact precluded the entry of partial summary judgment.

Alaska Statutes

Title 19. Highways and Ferries.

Chapter
05. Administration (§ 19.05.040)
10. State Highway System (§§ 19.10.060, 19.10.170)
20. Cooperation by and with the State (§ 19.20.015)
30. Access Roads (§§ 19.30.080, 19.30.127, 19.30.241, 19.30.260 — 19.30.320)
40. James Dalton Highway (§§ 19.40.100, 19.40.200, 19.40.210)
60. Ferry Terminal Facilities (§ 19.60.070)
65. Alaska Marine Highway System (§ 19.65.010)

Chapter 05. Administration.

Article
1. Department of Transportation and Public Facilities (§ 19.05.040)

Article 1. Department of Transportation and Public Facilities.

Section
40. Powers of department

Sec. 19.05.040. Powers of department. The department may

(1) acquire property:

(2) exercise the power of eminent domain;

(3) take immediate possession of real property, or any interest in it under a declaration of taking or by other lawful means;

(4) acquire rights-of-way for present or future use;

(5) control access to highways;

(6) regulate roadside development;

(7) preserve and maintain the scenic beauty along state highways;

(8) dispose of property acquired for highway purposes;

(9) accept and dispose of federal funds or property available for highway construction, maintenance, or equipment;

(10) enter into contracts or agreements relating to highways with the federal government, municipalities, a political subdivision, or with a foreign government, if the contract is approved by the federal government;

(11) establish, levy, and collect tolls, fees, charges, and rentals for the use of state roads, highways, bridges, crossings, and causeways; and

(12) exercise any other power necessary to carry out the purpose of AS 19.05 — 19.25. (§ 2 art III title I ch 152 SLA 1957; am § 3 ch 35 SLA 1971; am § 2 ch 162 SLA 1984)

Effect of amendments. — The 1984 amendment deleted "and" at the end of paragraph (10), inserted present paragraph (11), and redesignated former paragraph (11) as present paragraph (12).

Chapter 10. State Highway System.

Article
1. Designation, Marking and Use (§ 19.10.060)
3. Construction (§ 19.10.170)

Article 1. Designation, Marking and Use.

Section
60. Regulation of weight and load of vehicles and use of highways during certain seasons

Sec. 19.10.010. Dedication of land for public highways.

NOTES TO DECISIONS

A utility may construct a powerline on an unused section line easement reserved for highway purposes under this section. Fisher v. Golden Valley Elec. Ass'n, Sup. Ct. Op. No. 2606 (File No. 5902), 658 P.2d 127 (1983).

AS 19.25.010 places Alaska among those states which permit powerline construction by a utility as an incidental and subordinate use of a highway easement. Fisher v. Golden Valley Elec. Ass'n, Sup. Ct. Op. No. 2606 (File No. 5902), 658 P.2d 127 (1983).

Sec. 19.10.060. Regulation of weight and load of vehicles and use of highways during certain seasons.

The department, with respect to highways under its jurisdiction, may

(1) establish limitations on weight, size, and load of vehicles;

(2) *[Repealed, § 25 ch 144 SLA 1977.]*

(3) prohibit the operation or impose restrictions on vehicular use of highways during certain seasons of the year. (§ 5 art III title II ch 152 SLA 1957; am § 1 ch 55 SLA 1963; am § 25 ch 144 SLA 1977; am § 2 ch 77 SLA 1982)

Cross references. For the duties of the Department of Commerce and Economic Development to operate weighing stations and enforce weight and load limitations based upon directions of the Department of Transportation and Public Facilities, see AS 44.33.020(25).

Effect of amendments. — The 1982 amendment inserted "size" in paragraph (1).

Article 3. Construction.

Section
170. Construction by department

Sec. 19.10.170. Construction by department.

(a) Except as provided in AS 36.98 and AS 44.33.300, it shall be the general policy of the department to require the construction of all highways under bid contract. However, subject to the provisions of (b) of this section, when the estimated cost of a construction project is less than $100,000 or when it appears to be in the best interests of the state, the department may perform the work notwithstanding any other provisions of law.

(b) Construction or professional services in connection with the construction of highways performed by the department under (a) of this section which have an estimated cost exceeding $5,000 may not be performed by the department unless the commissioner determines, in writing, that the cost to the state will be less than that incurred as a result of a formally advertised or negotiated contract. The determination of the commissioner shall be supported by findings of fact which shall set out enough facts and circumstances to clearly justify the determination. The determinations and findings shall be maintained as a permanent record of the department.

(c) In this section, "professional services" means architectural, engineering, or land surveying services. (§ 1 art III title IV ch 152 SLA 1957; am § 2 ch 277 SLA 1976; am §§ 1, 2 ch 104 SLA 1978; am § 1 ch 144 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "AS 36.98 and" in the first sentence of subsection (a).

Chapter 20. Cooperation by and with the State.

Section
15. Local control of state transportation corridors

Sec. 19.20.015. Local control of state transportation corridors.

(a) A municipality, by resolution of its governing body, may request of the department the assumption of the department's responsibilities relating to planning of transportation corridors which are to be located within the boundaries or operating area of the municipality. After receipt of the request, the department shall provide by agreement for assumption by the municipality of the department's responsibilities relating to planning of transportation corridors, unless the commissioner determines that assumption of

is vacated, title to the strip inures to the owner of the tract of which it formed a part by the original survey. (§ 1 ch 123 SLA 1951; am § 1 ch 35 SLA 1953)

Opinions of attorney general. — For opinion discussing section line dedications for construction of highways, see 1969 Op. Att'y Gen., No. 7.

NOTES TO DECISIONS

Acceptance of federal grant. — The enactment of ch. 35, SLA 1953, was a positive act clearly manifesting the territorial legislature's intent to accept the federal grant under 43 U.S.C. § 932 of right of way for the construction of highways over public lands, not reserved for public uses. Girves v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1168 (File No. 2016), 536 P.2d 1221 (1975).

Scope of use of easement. — Although the state expressly reserved a section line easement of 100 feet for use as a public highway when it sold two parcels of land, a development corporation planning to construct a public road along the easement could clear only the amount of trees reasonably necessary to construct the roadway. Anderson v. Edwards, Sup. Ct. Op. No. 2274 (File No. 4586), 625 P.2d 282 (1981).

Applied in Wessells v. State, Dep't of Hwys., Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 22-24.

39A C.J.S., Highways, § 1.

Right of municipality or public to use of subsurface of street or highway for purposes other than sewers, pipes, conduits for wires and the like. 11 ALR2d 180.

Description with reference to highway as carrying title to center or side of highway. 49 ALR2d 982.

Sec. 19.10.015. Establishment of highway widths. (a) It is declared that all officially proposed and existing highways on public lands not reserved for public uses are 100 feet wide. This section does not apply to highways which are specifically designated to be wider than 100 feet.

(b) Notwithstanding (a) of this section, a municipality may designate the width of a road which is not a part of the state highway system if the municipality maintains the road. (§ 1 ch 35 SLA 1963; am § 1 ch 158 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (b).

Collateral references. — Width and boundaries of public highway acquired by prescription or adverse user. 76 ALR2d 535.

NOTES TO DECISIONS

Applied in State v. I'Anson, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 188 (1974).

Sec. 19.10.020. Designation of state highway system. The department may designate, locate, create, and determine what highways constitute the state highway system. In designating, locating, creating and determining the several routes of the state highway system, the department shall strive to attain the purposes and objectives set out in AS 19.05.125. (§ 1 art III title II ch 152 SLA 1957)

Sec. 19.10.030. Responsibility for system. The department is responsible for the construction and maintenance of the state highway system. (§ 2 art III title II ch 152 SLA 1957)

Sec. 19.10.040. Uniform system of marking and posting. The department shall classify, designate and mark highways under its jurisdiction and shall provide a uniform system of marking and posting these highways. The system of marking and posting shall correlate with and shall, as far as possible, conform to the recommendations of the Manual on Traffic Control Devices as adopted by the American Association of State Highway Officials. (§ 3 art III title II ch 152 SLA 1957)

Sec. 19.10.050. Traffic control signals. The department shall prescribe types of traffic control signals to regulate traffic on highways. These signals shall correlate with and, as far as possible, conform to the recommendations of the Manual on Uniform Traffic Control Devices as adopted by the American Association of State Highway Officials. The department shall prescribe uniform rules for the placing and installation of traffic control signals. (§ 4 art III title II ch 152 SLA 1957)

NOTES TO DECISIONS

Quoted in State v. I'Anson, Sup. Ct. Op. No. 1102 (File No. 2032), 529 P.2d 188 (1974).

Sec. 19.10.052. Local control of traffic control device systems.

Transferred to AS 19.20.017.

Revisor's notes. — This section was renumbered by the revisor of statutes pursuant to AS 01.05.031.

To impose liability on the state for its negligent failure to maintain Alaska highways through the winter would not place an "impossible burden" on the state. State v. Abbott, Sup. Ct. Op. No. 804 (File Nos. 1463, 1467), 498 P.2d 712 (1972).

Sec. 19.05.040. Powers of department. The department may

(1) acquire property;

(2) exercise the power of eminent domain;

(3) take immediate possession of real property, or any interest in it under a declaration of taking or by other lawful means;

(4) acquire rights-of-way for present or future use;

(5) control access to highways;

(6) regulate roadside development;

(7) preserve and maintain the scenic beauty along state highways;

(8) dispose of property acquired for highway purposes;

(9) accept and dispose of federal funds or property available for highway construction, maintenance, or equipment;

(10) enter into contracts or agreements relating to highways with the federal government, municipalities, a political subdivision, or with a foreign government, if the contract is approved by the federal government; and

(11) exercise any other power necessary to carry out the purpose of chs. 5 — 25 of this title. (§ 2 art III title I ch 152 SLA 1957; am § 3 ch 35 SLA 1971)

Legislative history reports. — For report on ch. 35, SLA 1971 (HB 387), see 1971 House Journal, p. 776.

NOTES TO DECISIONS

Department may acquire real property for highway through eminent domain. — The Department of Highways [now Department of Transportation and Public Facilities] may acquire real property for the purpose of constructing a highway through the exercise of eminent domain power, under the authority of this section, AS 19.05.080 — 19.05.120 and AS 19.20.040. Babinec v. State, Sup. Ct. Op. No. 908 (File No. 1539), 512 P.2d 563 (1973), rev'd on other grounds, 586 P.2d 966 (1978).

Sec. 19.05.045. Relocation payments.

Repealed by § 2 ch 60 SLA 1969.

Editor's notes. — The repealed section derived from § 1, ch. 93, SLA 1968.

Sec. 19.05.050. Roads in tourist and trailer camps. The department may adopt regulations governing the use of roads in tourist, trailer and other camps when public and private roads in or through the camps are used by, or are open to, the general public. (§ 1 ch 59 SLA 1955)

Sec. 19.05.060. Sale of obsolete equipment and material. The department may sell, exchange or otherwise dispose of obsolete machinery, equipment and material no longer needed, required or useful for construction or maintenance purposes. Money derived from the sale of the property shall be credited to the funds from which the purchase was originally made. (§ 3 art IV title IV ch 152 SLA 1957)

Sec. 19.05.070. Vacating and disposing of land and rights in land. (a) The department may vacate land, or part of it, or rights in land acquired for highway purposes, by executing and filing a deed in the appropriate recording district. Upon filing, title to the vacated land or interest in land inures to the owners of the adjacent real property in the manner and proportion considered equitable by the commissioner and set out by him in the deed.

(b) If the department determines that land or rights in land acquired by the department are no longer necessary for highway purposes the department may:

(1) transfer the land or rights in land to the Department of Natural Resources for disposal, or

(2) sell, contract to sell, lease, or exchange land or rights in land according to terms, standards and conditions established by the commissioner.

(c) Proceeds received from disposal of land or rights in land as authorized by this section shall be credited to the funds from which the purchase of the land was made originally. (§ 4 art IV title IV ch 152 SLA 1957; am § 4 ch 35 SLA 1971)

Article 2. Acquisition of Property

Section
80. Acquisition of land, rights-of-way, and materials by purchase or eminent domain
90. Declaration of taking
100. Acquisition of excess lands
110. Authority to condemn or acquire publicly owned property for the purpose of exchange
120. Authority to purchase property for the purpose of exchange
122. Utility corridor for extension of the Alaska Railroad

Sec. 19.05.080. Acquisition of land, rights-of-way, and materials by purchase or eminent domain. The department on behalf of the state and as part of the cost of constructing or maintaining a highway may purchase, acquire, take over, or condemn under the right and power of eminent domain land in fee simple or easements which it considers necessary for present public use, either temporary or permanent, or which it considers necessary and reasonable for the public use. By the same means, the department may obtain material, including clay, gravel, sand, or rock, or the land necessary to obtain material, including access to it. The department may acquire the land or materials notwithstanding the fact that title to it is vested in the

state or a department, agency, commission or institution of the state. (§ 1 art I title IV ch 152 SLA 1957)

Cross references. — For general provisions concerning eminent domain, see AS 09.55.240 — 09.55.460. For power of department of transportation and public facilities to exercise power of eminent domain, see AS 44.42.020(b).

NOTES TO DECISIONS

Department may acquire real property for highway through eminent domain. — The Department of Highways [now Department of Transportation and Public Facilities] may acquire real property for the purpose of constructing a highway through the exercise of eminent domain power, under the authority of AS 19.05.040, this section through AS 19.05.120, and AS 19.20.040. Babinec v. State, Sup. Ct. Op. No. 908 (File No. 1539), 512 P.2d 563 (1973), rev'd on other grounds, 586 P.2d 966 (1978).

Construction of state lease reserving right to grant right-of-way. — Provision in a lease issued by the State of Alaska, division of lands, expressly reserving the right to grant an easement or right-of-way across the leased property was construed to include an interagency transfer of a right-of-way to the Department of Highways. Wessells v. State, Dep't of Hwys., Sup. Ct. Op. No. 1402 (File No. 2834), 562 P.2d 1042 (1977).

Collateral references. — 27 Am. Jur. 2d, Eminent Domain §§ 325-332. 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 32-40.

39A C.J.S., Highways, §§ 2, 25-36.

39 C.J.S., Highways, §§ 1, 2, 25, 39, 53, 67.

Constitutionality of statutory provisions as to political corporations or divisions which shall bear cost of establishing or maintaining highway. 2 ALR 746; 123 ALR 1462.

Classification as regards counties or other political subdivisions permissible in statute imposing cost of construction or maintenance of highways upon property specially benefited. 77 ALR 1285.

Jurisdiction and power in respect of street or road which is part of or touching upon state or federal highway. 144 ALR 307.

Construction of streets and roads constituting part of state highway. 144 ALR 312.

Electric light or power line in street or highway as additional servitude. 58 ALR2d 525.

Inclusion or exclusion of first and last days in computing time for giving notice of hearing for location of public highway, which notice must be given a certain number of days before a known future date. 98 ALR2d 1397.

Extent and reasonableness of use of private way in exercise of easement granted in general terms. 3 ALR3d 1256.

Sec. 19.05.090. Declaration of taking. A declaration of taking in the form of an order signed by the commissioner, or by a designee of the commissioner within the department, declaring that the real property, or interest in it, or an easement, is necessary for the public use of the state vests title in the state. However, a declaration of taking is not effective until eminent domain proceedings have been instituted in the proper court, and a copy of the declaration of taking has been filed in the office of the recorder in the district where the land is located. The department shall pay from the appropriate fund into court the amount it considers represents a reasonable valuation for the lands, easement or materials taken. (§ 1 art I title IV ch 152 SLA 1957; am § 1 ch 88 SLA 1967)

Cross references. — For general provisions concerning eminent domain, see AS 09.55.240 — 09.55.460. For power of department of transportation and public facilities to exercise power of eminent domain, including declaration of taking, see AS 44.42.020(b).

NOTES TO DECISIONS

Access. — Although the language granting access was erroneously included in the declaration of taking of property for a controlled access facility, a party who purchased the remainder of the adjoining parcel for his insurance business acted reasonably in believing that he would have direct access and was entitled to compensation because he did not receive direct access. State v. 18,018 square feet, more or less, Sup. Ct. Op. No. 2232 (File No. 4637), 621 P.2d 887 (1980).

Sec. 19.05.100. Acquisition of excess lands. When a part of a parcel of land is taken and the remainder is in such shape or condition as to be of little value to its owner, or give rise to claims or litigation concerning severance or other damage, the department may acquire the whole parcel and may sell the remainder or exchange it for other property needed for state highway rights-of-way. (§ 2(1) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.110. Authority to condemn or acquire publicly owned property for the purpose of exchange. When property, which is devoted to or held for another public use for which the power of eminent domain may be exercised, is taken for highway purposes, the department may, with the consent of the person or agency in charge of the other public use, condemn the real property to be exchanged for the real property so taken. This section does not limit the authorization of the department to acquire, other than by condemnation, property for that purpose in any other manner. (§ 2(2) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.120. Authority to purchase property for the purpose of exchange. When the commissioner formally declares that it is in the best public interest of the state to do so, the department may acquire by purchase or otherwise privately or publicly owned land or an interest in it for the purpose of exchanging it for privately or publicly owned land which the department is authorized by law to acquire. (§ 2(3) art I title IV ch 152 SLA 1957; added by § 3 ch 122 SLA 1960)

Sec. 19.05.122. Utility corridor for extension of the Alaska Railroad. (a) Not later than April 1, 1982, the interior division of the department shall delineate a proposed utility corridor for the extension of the Alaska Railroad to the Canadian border. The proposed utility corridor shall include a complete legal description of the proposed railroad right-of-way.

(b) Within 90 days after receiving a report transmitting the work of the interior division of the department under (a) of this section, the

Cross references. — For appointment of masters, see Civ. R. 53; for hearing before master, see Civ. R. 72(h)(2).

NOTES TO DECISIONS

Judicial review inappropriate to proceedings under declaration of taking. — The concept of judicial review embodied in Alaska's general eminent domain statutes is inconsistent with, and inappropriate to, proceedings under a declaration of taking. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

The question of necessity under a declaration of taking is not one for initial judicial consideration as in the case of other condemnation proceedings. Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

For distinction between proceedings in condemnation under a declaration of taking and those under a complaint seeking condemnation and an order for possession, see Arco Pipeline Co. v. 3.60 Acres, More or Less, Sup. Ct. Op. No. 1177 (File No. 2419), 539 P.2d 64 (1975).

Determination of whether parcel is within original scope of public project. — A determination in a particular case of whether a parcel is within the original scope of a public project subsequently enlarged to require the taking of the tract is a question for the trier of fact. State v. Alaska Continental Dev. Corp., Sup. Ct. Op. No. 2254 (File Nos. 4121, 4122), 630 P.2d 977 (1980).

No finding necessary to issuance of order appointing master. — No "finding" seems to be necessary to the issuance of the order appointing commissioners (now master) to appraise damages. Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 655 (1927).

And such order is not appealable. — The order appointing commissioners (now master) cannot be regarded as appealable. Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 655 (1927).

Except for abuse of discretion. — An order appointing commissioners (now master) can only be reviewed for an abuse of discretion, if at all. Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 655 (1927).

"Owner" includes purchaser under contract. — An instruction "that the term 'owner' to whom compensation must be paid, may include a purchaser under contract who has an interest in the land sought to be taken or damaged," is entirely proper. State v. Bradshaw Land & Livestock Co., 43 P.2d 674 (Mont. 1935), construing the Montana statute.

Cited in State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, Sup. Ct. Op. No. 2118 (File No. 4861), 613 P.2d 829 (1980).

Collateral references. — Propriety of court's consideration of ecological effects of proposed project in determining right of condemnation, 47 ALR3d 1267.

Sec. 09.55.310. Hearing. (a) The jury or master shall hear the allegations and evidence of persons interested and shall ascertain and assess the following:

(1) the value of the property sought to be condemned, and all improvements on it pertaining to the realty, and of each separate estate or interest in it; if it consists of different parcels, the value of each parcel and each estate or interest in each parcel shall be separately assessed;

(2) if the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought

to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvements in the manner proposed by the plaintiff;

(3) separately, how much the portion not sought to be condemned and each estate or interest in it will be benefited, if at all, by the construction of the improvements proposed by the plaintiff; and, if the benefit is equal to the damages assessed under (2) of this section, the owner of the parcel shall be allowed no damages except the value of the portion taken; but if the benefits are less than the damages so assessed, the former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value;

(4) if the property sought to be condemned is for a railroad, the cost of good and sufficient fences along the line of the railroad, and the cost of cattle guards where fences may cross the line of the railroad.

(b) As far as practicable, compensation shall be assessed for each source of damages separately. (§ 13.08 ch 101 SLA 1962; am § 2 ch 138 SLA 1968)

Cross references. — For related court rules, see Civ. R. 72(e)(4) and (h).

NOTES TO DECISIONS

I. General Consideration.
II. Just Compensation.
A. Generally.
B. Damages to Remainder.
C. Benefits to Remainder.
III. Role of Witnesses.

I. GENERAL CONSIDERATION.

Editor's notes. — All notes from Montana decisions appearing under this section are constructions of the Montana statute from which the section derives.

Measure of damages. — The measure of damages in a proceeding for the condemnation of land for public highway is the fair market value of the land sought to be condemned with the depreciation of such value of the land from which the strip is to be taken, less allowable deductions for benefits proven which values are to be determined as of the date of the commencement of the proceeding. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Independent parcels. — When parts of the same establishment are separated by intervening private lands, they are generally considered as independent parcels. State v. Bradshaw Land & Livestock Co., 43 P.2d 674 (Mont. 1935).

Duty of master. — It is the commissioners (master's) duty to examine the lands sought to be condemned, hear the allegations and evidence of all parties interested, and ascertain and assess the damages done to the persons whose lands are sought to be appropriated. Spratt v. Helena Power Transmission Co., 94 P. 631 (Mont. 1908).

Applied in State v. Hammer, Sup. Ct. Op. No. 1268 (File Nos. 2500, 2660), 550 P.2d 820 (1976).

Cited in Scavenius v. City of Anchorage, Sup. Ct. Op. No. 1182 (File No. 2193), 539 P.2d 1161 (1975).

II. JUST COMPENSATION.

A. Generally.

Valuation of property. — See notes under AS 09.55.330, analysis line II, "Just Compensation."

Fair market value is an appropriate measure of the just compensation guaranteed by Alaska Const., art. I, § 18. Dash

v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

One criterion for determining value is what the property is worth on the market—its fair market value, and this is to be determined by a just consideration of all the uses for which a property is suitable. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

The essential difference between market price and market value lies in the premises of intelligence, knowledge and willingness, all of which are contemplated in market value but not in market price. Stated differently, at any given moment of time, market value connotes what a property is actually worth and market price what it may be sold for. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

"Best use" evidence. — See Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

In determining just compensation, usually measured by the "market value" of the property, the highest and most profitable use for which the land is adaptable may be considered to the extent that the prospective demand for such use affects the property's present market value. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

A truly speculative or imagined use should not be considered. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Evidence of use as subdivision. — Many courts, including Alaska's, have allowed evidence of a reasonably probable subdivision to be admitted to prove the adaptability of the land for subdivision use. Dash v. State, Sup. Ct. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

The majority of courts allow evidence of a potential subdivision only for the limited purpose of showing the adaptability of the land for subdivision purposes. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

The courts are much more liberal in admitting evidence of a potential subdivision when some preliminary steps have been taken to develop the land. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Where there is testimony that the highest and best use of the property is as an industrial subdivision, and evidence that other property in the immediate area was subdivided for industrial purposes, the proposed subdivision is not purely conjectural or speculative. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

If the land were adaptable for subdivision purposes, it would seem that the potential income to be derived from sales of the subdivided lots would be highly relevant to a determination of the "market value," especially to the extent that sophisticated investors who make decisions on the basis of income capitalization take part in market transactions. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Capitalization of income, in contexts other than proposed subdivisions, has been recognized as an accepted method of valuation by a number of jurisdictions. Although capitalization of anticipated proceeds from a proposed subdivision necessarily has a speculative element, it still has a direct impact on the property's market value since it will influence investment decisions and thereby affect supply and demand. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

To the extent that the "just compensation" guarantee in Alaska Const., art. I, § 18, comprises a notion of fair market value rather than merely the price the property will bring in an imperfect market, income capitalization must be considered particularly apposite. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Even in a market place where a parcel's price is unaffected by its income potential, income capitalization must be considered to have a bearing on "market value." The danger that market price will not closely reflect market value is enhanced when the property is not currently generating income. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

An expert's testimony which capitalized the anticipated rentals from a proposed recreational subdivision to arrive at an estimate of fair market value was properly admitted. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

As to admission of expert testimony on market value based on the development costs and income capitalization of a potential subdivision, see Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

Questions relative to revenue produced from the property taken is admissible for the purpose of arriving at the market value of the property. State v. Peterson, 328 P.2d 617 (Mont. 1958).

Value of improvements. — If improvements on the property enhance the market value then the value of those improvements is material; if improvements do not enhance the market value, they are not material. State v. Peterson, 328 P.2d 617 (Mont. 1958).

The true rule seems to be for the witness to testify as to the nature of the improvements, their use, and then, probably, state that the improvements enhance the market value of the land. He may then testify as to the consideration of the improvements and their condition and value at the time of the condemnation. State v. Peterson, 328 P.2d 617 (Mont. 1958).

Testimony as to amounts invested in the lands and improvements would be incompetent, for it is the value of all such at the time summons is served that counts. State v. Peterson, 328 P.2d 617 (Mont. 1958).

Loss of business by relocation of highway. — It is clear that compensation cannot be had for loss of business by relocation of a highway and diversion of traffic. State v. Peterson, 328 P.2d 617 (Mont. 1958).

The owner of land abutting on a highway established by the public has no property or other vested right in the continuance of it as a highway at public expense, and, at least in the absence of deprivation of ingress and egress, cannot claim damages for its mere discontinuance, although such discontinuance diverts traffic from his door and diminishes his trade and thus depreciates the value of his land. State v. Hoblitt, 288 P. 181 (Mont. 1930).

Sale fifteen months after date of taking. — As to admission into evidence of a sale taking place fifteen months after the date of the taking by the state, see Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

B. Damages to Remainder.

Assessment of damages refers to "portion sought to be condemned." — The assessment of damages the award of the commissioners (master) provided for in this section is made with reference to property sought to be appropriated or "portion sought to be condemned," not to property already condemned at the time of the appointment. Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 655 (1927).

The award of damages is a substantial fact, which fixes the just compensation to which relator is entitled, until revised on appeal. State ex rel. Volunteer Mining Co. v. McHatton, 38 P. 711 (Mont. 1894).

Recoverable damages must be the natural and proximate consequence of the action taken; they must be direct and certain, actual and reasonable, readily ascertainable, and not remote speculative or contingent. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928); State v. Bradshaw Land & Livestock Co., 43 P.2d 674 (Mont. 1935).

Not every possible element of depreciation is compensable. — It is not every possible element of depreciation in value for which compensation must be awarded in an eminent domain proceeding. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

And attempt to enumerate elements of depreciation is futile. — Any attempt to enumerate the various circumstances which may enter into depreciation of the market value of a tract of land would be futile. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Highway destroying the close and requiring additional fencing. — One of the circumstances which directly depreciates the market value of land is that the opening of a highway through a fenced tract of land destroys the close and necessitates additional fencing in order to reestablish it. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

An item of damages which would enter into the depreciation of the value of a tract is the cost of constructing a fence along the highway to maintain an enclosure. State v. Hoblitt, 288 P. 181 (Mont. 1930).

The damage suffered and the amount of depreciation is readily ascertainable by testimony as to the reasonable cost of construction of fences to maintain enclosure and the consideration of such an item has generally been up held. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Fence as fence. — In the absence of statutory justification therefor no allowance can be made for a fence as a fence. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Necessity of fencing and cost goes only to show depreciation by reason of taking. — Proof of the necessity of such fencing, and its cost, is proper only as a means of showing the depreciation in market value of the land by reason of the taking and use of a part of the land. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Maintenance of fences is too remote. — Maintenance of fences would be a known future burden upon the lands, but the claim should be disregarded as too remote, and as incapable of definite ascertainment or determination at the time the depreciation in value must be determined, i.e., as of the time of the commencement of the proceeding. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Appraisal of damages prior to construction of improvements. — When damages are appraised prior to the construction of the improvements for which the land is condemned, the estimate should be made on the assumption that the improvements will be properly constructed; and, if they are constructed pending the condemnation proceedings, the rule should be the same. The actual effect of the properly constructed improvements in the manner proposed by plaintiff as to the larger parcels should control the appraisal. If the improvements are improperly or negligently constructed, no additional damage should be given for this reason. City of Anchorage v. Scavenius, Sup. Ct. Op. No. 1183 (File Nos. 2214, 2222), 539 P.2d 1169 (1975).

Depreciation of adjacent tract. — In arriving at a conclusion as to the damages to be awarded, the triers of facts should consider all of the circumstances which immediately and directly depreciate the present market value of the portions of the whole tract adjacent to the strip sought to be taken as a right-of-way. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Costs and attorney's fees. — City was entitled to award of costs and attorney's fees for successful defense of negligence claim pertaining to pavement damage occurring when water main installed. City of Anchorage v. Scavenius, Sup. Ct. Op. No. 1183 (File Nos. 2214, 2222), 539 P.2d 1169 (1975).

C. Benefits to Remainder.

Effect of special benefits. — The rule in Alaska is that special benefits to the remainder can only be used to offset severance damages to the remainder. In the event that special benefits exceed severance damages, the landowner is still entitled to receive the full market value of the portion actually taken. Dash v. State, Sup. Ct. Op. No. 756 (File No. 1405), 491 P.2d 1069 (1971).

General enhancement of land values is not a proper element of benefit. — The general enhancement of values in land in the vicinity because of the construction of a road is not a proper element of benefit to be allowed. Gallatin Valley Elec. Ry. v. Neible, 186 P. 689 (Mont. 1919).

It may be stated as a general rule that general and neighborhood benefits resulting to the owner in common with others may not be set off against the damages to the owner. Gallatin Valley Elec. Ry. v. Neible, 186 P. 689 (Mont. 1919).

The benefits which may be deducted must be special or local, or such as result directly and peculiarly to the particular tract of which a part is taken. Gallatin Valley Elec. Ry. v. Neible, 186 P. 689 (Mont. 1919).

III. ROLE OF WITNESSES.

Role of expert witness in eminent domain proceedings. — See Dash v. State, Sup. Ct. Op. No. 756, (File No. 1405), 491 P.2d 1069 (1971).

Opinions of witnesses. — The opinions of witnesses must be resorted to determine (1) the value of the land taken; (2) the detriment, if any to the portion not taken, or, in other words the value of that not taken; and (3) the benefits, if any, to the portion not taken. Yellowstone Park R. Co. v. Bridger Coal Co., 87 P. 963 (Mont. 1906).

The right mode of proving value is to take the sworn opinions of those who are shown to be competent to give opinions on the subject, and let them be cross-examined as to the foundation of their opinions, their means of knowledge and the motives prompting them. Yellowstone Park R. Co. v. Bridger Coal Co., 87 P. 963 (Mont. 1906).

The question of how the taking of a right-of-way affects the premises in the market should logically be determined by testimony of qualified witnesses as to the cash market value of the premises today and what that value would be today considering the highway as constructed across them and permitting the witnesses, on cross-examination, to state the manner in which they arrived at their conclusion on the subject. Lewis & Clark County v. Nett, 263 P. 418 (Mont. 1928).

Competency of witnesses. — One who knows the real property in question and is familiar with the uses to which it may be put, may testify as to its market value. State v. Peterson, 328 P.2d 617 (Mont. 1958).

It must appear that the witness has some peculiar means of forming an intelligent and correct judgment as to the value of the property in question beyond what is

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presumed to be possessed by men generally. State v. Peterson, 328 P.2d 617 (Mont. 1958).

Value of real estate may be proved by witnesses other than experts. State v. Peterson, 328 P.2d 617 (Mont. 1958).

The witness need not know of any sales and he need not be a technical expert. State v. Peterson, 328 P.2d 617 (Mont. 1958).

A witness as to value of property need not to have been engaged in buying or selling the same. State v. Peterson, 328 P.2d 617 (Mont. 1958).

Who are competent to give opinions on value of property is generally in the discretion of the trial judge. State v. Peterson, 328 P.2d 617 (Mont. 1958).

Weight of testimony is jury question. — The question of what weight to give witness' testimony is one for the jury to decide upon the evidence produced at the trial and under the court's instructions on the law. Alaska State Hous. Auth. v. Vincent, Sup. Ct. Op. No. 261 (File No. 458), 396 P.2d 531 (1964).

Collateral references. — Admissibility of evidence of promissory statements of condemner as to character of use or undertakings to be performed by it, 5 ALR2d 381.

Admissibility in condemnation proceedings of opinion evidence as to probable profits derivable from land condemned if devoted to particular agricultural purposes, 16 ALR2d 1113.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 ALR2d 781.

Admissibility of hearsay evidence as to comparable sales of other land as basis for expert's opinion as to land value, 12 ALR3d 1064.

Propriety and effect, in eminent domain proceeding, of argument or evidence as to landowner's unwillingness to sell property, 17 ALR3d 1449.

Propriety and effect, in eminent domain proceeding, of argument or evidence as to source of funds to pay for property, 19 ALR3d 694.

Propriety and effect, in eminent domain proceeding, of instruction to the jury as to landowner's unwillingness to sell property, 20 ALR3d 1081.

Propriety and effect of argument or evidence as to financial status of parties in eminent domain proceeding,. 21 ALR3d 936.

Admissibility, on issue of value of condemned real property, of rental value of other real property, 23 ALR2d 724.

Admissibility of photographs or models of property condemned, 23 ALR3d 825.

Admissibility of evidence of proposed or possible subdivision or platting of condemned land on issue of value in eminent domain proceedings, 26 ALR3d 780.

Right in eminent domain proceeding to call as witness expert engaged but not called as witness by opposing party, 71 ALR3d 1119.

Necessity of trial or proceeding, separate from main condemnation trial or proceeding, to determine divided interest in state condemnation award, 94 ALR3d 696.

Sec. 09.55.320. Right to jury trial as to damages and value of property. An interested party may appeal the master's award of damages and valuation of the property, in which case there shall be a trial by jury on the question of the amount of damages and the value of the property, unless the jury is waived by the consent of all parties to the appeal. (§ 13.09 ch 101 SLA 1962)

Cross references. — For related court rules, see Civ. R. 72(h)(4) and (5).

Opinions of attorney general. — A prequalification system would appear to be a reasonable measure to implement the power of the department to determine the lowest responsible bidder on any particular job. 1958 Op. Att'y Gen., No. 27.

Sec. 19.10.220. Prior contracts unaffected.

Obsolete.

Revisor's notes. — This section is obsolete. It reads as follows: "Sections 170-250 of this chapter do not apply to contracts entered into before April 1, 1957."

Editor's notes. — The obsolete section derived from § 8, art. III, title IV, ch. 152, SLA 1957.

Sec. 19.10.230. Method of construction of highway ditches. A highway constructed or reconstructed shall be designed to permit water to drain from it into ditches which shall drain into coulees, rivers and lakes according to the surface and terrain where the highway is constructed in accordance with scientific highway construction and engineering in order to prevent the water from overflowing onto adjacent and adjoining lands. The natural flow and drainage of surface water shall not be obstructed, but it shall be permitted to follow the natural course according to the surface and terrain. (§ 7 art IV title II ch 152 SLA 1957)

The legislature distinguished access roads from highways by AS 19.30.020 and AS 19.30.040. Mercer v. Yutan Constr. Co., Sup. Ct. Op. No. 371 (File No. 631), 420 P.2d 323 (1966).

Sec. 19.10.240. Warning signs of road construction. Whenever the department enters into a contract for the construction of a highway, it shall, as a condition of the contract, provide that the contractor shall place suitable warning signs which can be read from a distance of 100 feet in daytime, and that he shall erect and place at night a red and white lantern or a torch or other effective device, of a type approved by the department, at both ends of the construction work, not less than 300 feet from it, warning the public that the road is under construction or improvement and is closed, impassable, or dangerous for travel. Nothing in this section makes the state liable for the failure of a contractor to erect warning signs. (§ 9 art IV title II ch 152 SLA 1957)

Sec. 19.10.250. Penalty for failure to erect warning signs. A contractor, foreman, or person in charge of work or repairs on a highway who fails or neglects to erect and maintain suitable warning signs as provided in AS 19.10.240 is punishable by a fine of not less than $10 nor more than $50, or by imprisonment in jail for not more than 60 days, or by both. (§ 10 art IV title II ch 152 SLA 1957)

Sec. 19.10.260. Replacement of permanent markers and filing of right-of-way map after construction. The department shall:

Opinions of attorney general. — A prequalification system would appear to be a reasonable measure to implement the power of the department to determine the lowest responsible bidder on any particular job. 1959 Op. Att'y Gen., No. 27.

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Sec. 19.10.260. Replacement of permanent markers and filing of right-of-way map after construction. The department shall:

Sec. 34.35.025. Parties to foreclosure. In an action to foreclose a lien created by AS 34.35.005 — 34.35.425, all persons personally liable and all lien holders whose claims have been filed, and all other persons interested in the matter in controversy or the property sought to be charged with the lien may be made parties. Persons who are not parties are not bound by the proceedings. (§ 26-9-6 ACLA 1949)

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 359-373.

Sec. 34.35.030. Lien claim against different properties. If a lien claim is filed for the same labor against two separate kinds of property owned or claimed by different persons, the court shall determine the liability of each kind of property and designate which shall be sold first to discharge the amount of the lien claim. (§ 26-9-7 ACLA 1949)

Sec. 34.35.035. Several judgment for each claimant. In an action to enforce a lien judgment shall be given in favor of each person having a lien for the amount due the person, and the court shall order property subject to the lien to be sold by the peace officer in the same manner that property is sold on execution, or in any manner that the court considers proper. The proceeds of the sale shall be apportioned to the payment of each judgment pro rata, if the amount is insufficient to pay them in full. (§ 26-9-8 ACLA 1949)

Sec. 34.35.040. Order of priority and payment. [Repealed, § 19 ch 175 SLA 1978. For current law see AS 34.35.112.]

Sec. 34.35.045. Lienor's action on contract. Except as otherwise expressly provided, nothing in AS 34.35.005 — 34.35.425 may be construed to prevent a lienor under a contract from maintaining an action as if the lienor has no lien for the security of the debt and the bringing of this action does not prejudice rights under AS 34.35.005 — 34.35.425. (§ 26-9-11 ACLA 1949)

NOTES TO DECISIONS

Liens provided by statute create a cumulative remedy, and a lienor has the right to proceed by way of his lien or by an action at law. Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935).

Where the lien fails, the claimant may nevertheless have a personal judgment against the defendant personally liable in the cause. Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935).

Section
60. Lien for labor
65. Land subject to
70. Priorities
72. Construction fi
74. Notice of right
75. Notice of nonre
77. Recording noti
78. Time periods fo
79. Acknowledgme
80. Claim of lien
81. Notice of compl
82. Bond
85. Record and ind
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Sec. 34.35.0
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Article 2. Mechanics and Materialmen.

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Lien for labor or materials furnished
Land subject to lien
Priorities
Construction financing
Notice of right to lien
Notice of nonresponsibility
Recording notice of right to lien
Time periods for claiming liens
Acknowledgment of right to lien
Claim of lien
Notice of completion
Bond
Record and index of claim
Duration of lien
Lien for improving lot or street

Section
90. Payment to contractor
95. Amount of lien
100. Action against contractor on lien
105. Materials not subject to process
110. Actions to enforce liens
112. Payment of claimant's liens
114. Obligation of claimant and lender to provide information
115. Persons considered agent of owner
117. Waiver of lien rights
118. Claimant liability
119. Waiver of liens on unsold common interest community units
120. Definitions

Sec. 34.35.050. Lien for labor or materials furnished. A person s a lien, only to the extent provided under this chapter, to secure payment of the contract price if the person

1) performs labor upon real property at the request of the owner or agent of the owner for the construction, alteration, or repair of a ding or improvement;

2) is a trustee of an employee benefit trust for the benefit of viduals performing labor on the building or improvement and has irect contract with the owner or the agent of the owner for direct ments into the trust;

3) furnishes materials that are delivered to real property under a tract with the owner or the agent of the owner that are incorpo- d in the construction, alteration or repair of a building or rovement;

4) furnishes equipment that is delivered to and used upon real erty under a contract with the owner or the agent of the owner for construction, alteration or repair of a building or improvement;

5) performs services under a contract with the owner or the agent e owner in connection with the preparation of plans, surveys, or itectural or engineering plans or drawings for the construction, ation or repair of a building or improvement, whether or not ally implemented on that property; or

6) is a general contractor. (§ 26-1-1 ACLA 1949; am § 1 ch 20 SLA ; am § 1 ch 14 SLA 1953; am § 1 ch 57 SLA 1959; am § 1 ch 106 1967; am § 1 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — Many of the cases annotated below were decided under this section as it existed before the 1978 amendment.

Constitutionality of lien laws. — See Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co., 5 Alaska 210 (1915).

The mechanic's lien law of Alaska was adopted originally from the lien law of Oregon. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

Alaska mechanic's lien laws were derived from those of Oregon. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

The purpose of legislatures in enacting mechanic's and materialman's lien laws is for the protection of the mechanic, insuring to him the fruits of his labor and providing the materialman with a speedy and efficacious mode of collecting his pay for materials furnished. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

And to secure lien priority of payment. — It is the purpose of the lien law to secure priority of payment of the price and value of work performed and materials furnished in erecting and repairing a building or other structure. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

This article relating to mechanics' liens should be liberally construed. Russell v. Hayner, 130 F. 90 (9th Cir. 1904); Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914). But see Goldstein v. Noble, 6 Alaska 282 (1920).

The evident spirit and purpose of this article is to do substantial justice to all parties who may be affected by its provisions, and the courts should avoid unfriendly strictness and mere technicality. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Mechanic's lien statutes are to be liberally construed, with a view to effect substantial justice, and the fact that the lien claimant includes in his claim an item of his services for which the law gives him no lien will not defeat the lien if due to an honest mistake, and his lien in such a case may be enforced pro tanto if the true amount for which he is entitled to a lien may be segregated from the remainder. Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Except to protect against undue severity. — Where the particular enactment deals fairly and equitably with both the owner and the lienor, the liberal interpretation seems to be the rule adopted; but where the statute seems to be unnecessarily severe upon one, and in favor of the other, resulting in manifest injustice, the courts have endeavored to relieve the severity, holding the party favored to a strict compliance with the statute. Jorgensen Co. v. Sheldon, 2 Alaska 607 (1905).

And parts upon which existence of lien depends should be strictly construed. — The safe and proper rule of construction of mechanic's lien statutes is that, while the remedial portions of these statutes should be liberally construed with a view to avoid defeating the purpose of the statute, yet those parts upon which the right to the existence of a lien depends, being in derogation of the common law, should be strictly construed. Morris v. Marsh, 3 Alaska 140 (1906).

They must be substantially complied with. — A mechanic's lien is purely of statutory creation, and can only be maintained by a substantial observance and compliance with the provisions of the statute. Whatever is made necessary to the existence of the lien must be performed, or the attempt to create it will be futile. A substantial adherence to the terms of the statute in the notice of the lien is indispensable. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Thus, this section should be strictly construed. Rivers v. Pastro, 11 Alaska 491 (1948).

A strained construction to bring a person within this section is not permissible. Rivers v. Pastro, 11 Alaska 491 (1948).

Prior law construed. — This section as it existed prior to 1978 prohibited the creation of a valid mechanic's lien prior to the commencement of work on the site and the effectuation of visible improvements to the property. Torkla-Korman/Engineers v. Penland Ventures, Sup. Ct. Op. No. 2757 (File No. 6469), 671 P.2d 769 (1983). See now paragraph (4), which allows liens for work done in the preparation of plans "whether or not [they were] actually implemented."

This article is not, of its own terms, made applicable to public property. University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

As to immunity of real prop University of Alaska from lien ment or foreclosure, see Unive Alaska v. Simpson Bldg. Supply C Ct. Op. No. 1113 (File No. 2196), 5 1317 (1975).

The landowner must have knowledge of the construction his interest can be subjected to a m man's lien. Vaara v. Ketchikan Mills, Sup. Ct. Op. No. 441 (File No 432 P.2d 618 (1967).

If the materialman relies on bo credit of the purchaser and the rity of the building, the materi can assert a lien. Dannemiller v. A Distribution Corp., Sup. Ct. Op. No (File No. 2895), 566 P.2d 645 (19).

Materialperson must demon that materials furnished were ally incorporated into the buildi project. Dannemiller v. AMFAC Dis tion Corp., Sup. Ct. Op. No. 1452 (Fil 2895), 566 P.2d 645 (1977).

No requirement that materia see that every piece used in struc — In the foreclosure of a materia lien, the materialman should not b quired to watch the progress of a stru to see that every piece of material plied by him was used therein, and if of the material has been used elsewh it rests with the defendant to show fact. Dannemiller v. AMFAC Distribu Corp., Sup. Ct. Op. No. 1452 (File 2895), 566 P.2d 645 (1977).

A materialperson has a burden to s by a preponderance that its mater were generally used in a project, bu need not show that each and every i was incorporated. Dannemiller v. AMF Distribution Corp., Sup. Ct. Op. No. 1 (File No. 2895), 566 P.2d 645 (1977).

A mechanic's lien will attach property for an improvement placed thereon if it has a physical beneficial connection therewith and essential to the convenient and comfo able use of the premises. Mitford v. Pri 353 F.2d 550 (9th Cir. 1965).

Lots in a subdivision are lienable f an engineer's labor on the subdivisio water and sewerage system. Mitford Prior, 353 F.2d 550 (9th Cir. 1965).

Effect of agreement establishin partnership. — For the purposes of th section, an agreement establishing a par nership or joint venturership does no affect one party's standing to file a lie against the other party's land. Urban Dev Co. v. Dekreon, Sup. Ct. Op. No. 108 (File No. 2028), 526 P.2d 325 (1974).

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 347 (1975).

The landowner must have actual knowledge of the construction before his interest can be subjected to a materialman's lien. Vaara v. Ketchikan Spruce Mills, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

If the materialman relies on both the credit of the purchaser and the security of the building, the materialman may assert a lien. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Materialperson must demonstrate that materials furnished were generally incorporated into the building or project. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

No requirement that materialman see that every piece used in structure. - In the foreclosure of a materialman's lien, the materialman should not be required to watch the progress of a structure to see that every piece of material supplied by him was used therein, and if some of the material has been used elsewhere, it rests with the defendant to show that fact. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A materialperson has a burden to show by a preponderance that its materials were generally used in a project. but it need not show that each and every item was incorporated. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A mechanic's lien will attach to property for an improvement not placed thereon if it has a physical or beneficial connection therewith and is essential to the convenient and comfortable use of the premises. Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Lots in a subdivision are lienable for an engineer's labor on the subdivision's water and sewerage system. Mitford v. Prior, 353 F.2d 550 (9th Cir. 1965).

Effect of agreement establishing partnership. — For the purposes of this section, an agreement establishing a partnership or joint ventureship does not affect one party's standing to file a lien against the other party's land. Urban Dev. Co. v. Dekreon, Sup. Ct. Op. No. 1083 (File No. 2028), 526 P.2d 325 (1974).

The meaning properly attaching to the word "contractor" as used in this section is one who has charge of the construction of the building, alteration, or repair by direction of or contract with the owner or his agent duly authorized to contract for him. Morris v. Marsh, 3 Alaska 140 (1906).

A lien of a contractor may include an item for supervision and overhead. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

Labor for which lien is claim must come within statute. — While mechanic's lien statutes are to be liberally construed, so that their purpose may not be frustrated, and with a view to effecting substantial justice, yet, unless the labor performed for which the lien is claimed is such as comes within the contemplation of the statute, there can be no valid lien. Noble v. Gustafson, 204 F. 69 (9th Cir. 1913).

This section and AS 34.35.070 must be read and construed together, and as applied to an original contractor, in computing the time from which he must file his claim of lien, they provide that he must file it within 90 days from the date of the completion of his contract or within 90 days from the date of the construction of the building, or any part of such construction, under the contract. Bloom v. McCluskey, 7 Alaska 349 (1925).

There must be employment by the owner of the building or his agent. — To authorize a lien under the provisions of this section, there must be an employment by the owner of the building, or his authorized agent, and the employment of contractors by one who was occupying the land under a contract of purchase, does not constitute the employment contemplated by this section. Russell v. Hayner, 130 F. 90 (9th Cir. 1904).

Or owner must know of and fail to disclaim improvement. — If the person in charge is not in fact the agent of the owner, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge and he fails to post the required notice disclaiming responsibility. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Person in charge is prima facie owner's agent. — This section, AS 34.35.055 and 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the prop-

erty of the latter shall be charged with the lien under the express provisions of this section. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

Lessee is not owner's agent. — A lessee, contracting for improvements upon the demised premises, does not, merely by virtue of his relation as lessee, contract as the agent of the lessor, so as to subject the property to mechanics' liens therefor. Morris v. Marsh, 3 Alaska 140 (1906).

And lien is limited to leasehold unless owner fails to give notice of nonresponsibility. — If the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

Or unless lease authorizes lessee to improve or improvements revert. — It is the general rule that where a lease contains a provision authorizing the lessee to make improvements by deducting the cost thereof from the rent, or where part of the consideration of the lease is the making by the lessee of improvements which become a part of the realty, or that the improvements made by the lessee shall revert to the lessor, a mechanic's lien may attach to the property for work done or materials furnished, pursuant to a contract with the lessee. Arctic Lumber Co. v. Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

It will attach to building erected by lessee that is to revert to lessor. — Where a lease provided that construction of a business building on the property by the lessee was a part of the consideration, but also provided that the building was to "attach to the said realty as a part thereof and become the property of lessor" upon the expiration or termination of the lease, as to a materialman's lien, the building had become an integral part of the leasehold estate, and was not an item of personal property to be considered separately from the realty upon which it was constructed and the lessee's interest in that realty. Clay v. Sandal, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

Breach of contract bars enforcement of lien for work performed. — Where a contractor fails to perform a considerable part of the work required by his contract, his failure, regardless of his intentions, constitutes a bar to his enforcement of a lien for the work performed. Gillis v. Gillette, 13 Alaska 55, 184 F.2d 872 (9th Cir. 1950).

As where contract is willfully abandoned before completion. — See Gillis v. Gillette, 13 Alaska 55, 184 F.2d 872 (9th Cir. 1950).

Burden of proof on lien claimant to show compliance with statute. — Where the allegations of the complaint in regard to the work done upon a claim and the character thereof were put in issue by the answer, the burden of the proof is on the lien claimant to show by legally sufficient evidence the accrual of the lien under the terms of the statute which creates it, as well as under the terms of the contract under which the work was done. Pioneer Mining Co. v. Delamotte, 185 F. 752 (9th Cir. 1911).

Bare statement that other projects were being completed by a construction company at the same time that a particular project's modular units were being manufactured is insufficient, under the supreme court's precedents, to raise a triable issue of fact as to whether the material furnished to the construction company was actually incorporated into the particular project. University of Alaska v. Simpson Bldg. Supply Co., Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

A house builder's employee cannot recover back wages directly against the home buyers under a theory that the employee was a third-party beneficiary to a contract between the builder and the buyer. State v. Osborne, Sup. Ct. Op. No. 2034 (File No. 4385), 607 P.2d 369 (1980).

Applied in Kel Weatherstrip Co. v. Rankin, 15 Alaska 204, 124 F. Supp. 553 (D. Alaska 1954).

Quoted in Irvine v. McDougal, 8 Alaska 220 (1915); Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935); Brand v. First Fed. Sav. & Loan Ass'n, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 537 P.2d 529 (1975).

Cited in First Nat'l Bank v. Stout, 9 Alaska 400 (1938); Spalding v. Martin, 241 F. 372 (9th Cir. 1917).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 1 et seq.

"Owner" within meaning of mechanic's lien statutes. 2 ALR 794; 95 ALR 1096.

Lien for labor or material entering into rejected work. 16 ALR 981.

Right to mechanic's lien. 83 ALR 11

Inception of lien. 83 ALR 925.

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Mechanics' liens: mortgagee-lender's duty, in disbursing funds, to protect mortgagor against outstanding or potential mechanics' liens against the mortgaged property. 30 ALR4th 134.

Sec. 34.35.055. Land subject to lien. (a) The land upon which a building or other improvement described in AS 34.35.0[illegible] is constructed, together with a convenient space about the building or other improvement or so much as is required for the convenient use and occupation of it (to be determined by the judgment of the court at the time of the foreclosure of the lien), and the mine on which the work is performed or for which the material is furnished is also subject to the lien created by AS 34.35.050 — 34.35.120 if, at the time the work is started or the materials for the building or other improvements are first furnished, the land belongs to the person who causes the building or other improvement to be constructed, altered, or repaired.

(b) If the person owns less than a fee simple estate in the land, then only the interest of the person in it is subject to the lien.

(c) If the interest is a leasehold interest, and the holder forfeits the rights of the holder to it, the purchaser of the building or improvement and leasehold term, or so much of it as remains unexpired at a sale under AS 34.35.050 — 34.35.120 is considered to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease.

(d) If the lessor regains possession of the land and property, or obtains judgment for the possession of it before the commencement of the construction, alteration, or repair of the building or other improvement, the purchaser may only remove the building or other improvement within 30 days after the purchase, and the owner of the land shall receive the rent due payable out of the proceeds of the sale, according to the terms of the lease, down to the time of the removal. (§ 26-1-2 ACLA 1949)

NOTES TO DECISIONS

The object of this section is to declare to what land the lien shall attend. Cascaden v. Wimbish, 161 F. 241 (9th Cir. 1908).

The legislature intended to confer the right of lien upon every laborer or mechanic whose work tends to improve lands or mines. Morris v. Marsh, 3 Alaska 140 (1906).

The purpose of extending a statutory lien to the land is because the value of the land is increased when a materialperson provides labor or material for a structure which is attached to the land. The lien should extend to the land, which is benefited by the materialperson. Dannemiller v. AMFAC Distribution Corp., Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Complaint is defective unless it alleges labor went to improvement. — The absence of an allegation that the labor went to the improvement of the owner's lands or mines is of itself fatal to the complaint. Morris v. Marsh, 3 Alaska 140 (1906).

And so is lien notice. —A lien notice simply to the effect that materials were

constructed or renovated by the state unless a certificate that the facility complies with adopted facility procurement has been issued. (§ 1 ch 216 SLA 1975)

Sec. 35.10.200. Definitions. In AS 35.10.160 — 35.10.200,

(1) "life cycle costs" means analytic techniques which provide data to describe the first cost of procurement of public facilities and the maintenance cost, operation cost and occupancy cost of the facilities;

(2) "policies" includes but is not limited to budget accounting and cost planning techniques, facility design techniques, and contractual techniques for the procurement of labor, materials and contractual services;

(3) Repealed by § 35 ch 168 SLA 1978. (§ 1 ch 216 SLA 1975; am § 35 ch 168 SLA 1978)

Effect of amendment. — The 1978 amendment deleted paragraph (3), which read "'public facilities' does not include highways or vessels of the marine highway system."

Chapter 15. Construction Procedures.

Section		Section	
10.	Construction by department	80.	Local control of state public works projects
20.	Request for public bids	90.	Use of appropriated funds
30.	Advertisement, bids, contracts, and informal bids	100.	Responsibility of department
40.	Procedures for the award of contracts	110.	Title to site and completion of project
50.	Award of contracts	120.	Definitions
60.	[Obsolete]		

Sec. 35.15.010. Construction by department. (a) Except as provided in AS 44.33.300, it shall be the general policy of the department to require the construction of all public works under bid contract. However, when the estimated cost of a construction project is less than $100,000, or when it appears to be in the best interests of the state, the department may perform the work, notwithstanding any other provisions of law. A complete record shall be kept by the commissioner or his designee of all transactions entered into under this section including names of employees involved in the transactions.

(b) Construction or professional services in connection with the construction of a public work performed by the department under (a) of this section which have an estimated cost exceeding $5,000 may not be performed by the department unless the commissioner determines, in writing, that the cost to the state will be less than that incurred as a result of a formally advertised or negotiated contract. The determination of the commissioner shall be supported by findings of fact which shall set out enough facts and circumstances to clearly justify the determination. The determinations and findings shall be maintained as a permanent record of the department.

(c) In this section, "professional services" means architectural, engineering, or land surveying services. (§ 1 art III title IV ch 152 SLA 1957; am § 5 ch 277 SLA 1976; am § 1 ch 143 SLA 1977; am § 4 ch 104 SLA 1978)

Cross reference. — For provisions requiring consistency with local government plans and ordinances before commencing construction of a public project, see AS 35.30.010 et seq.

Effect of amendments. — The 1976 amendment, in present subsection (a), added "Except as provided in AS 44.33.300" to the beginning of the first sentence.

The 1977 amendment, in present subsection (a), substituted "$100,000" for "$20,000" in the second sentence and added the third sentence.

The 1978 amendment added subsections (b) and (c).

Am. Jur. 2d and C.J.S. references. — 64 and 65 Am. Jur. 2d, Public Works and Contracts, §§ 105, 119, 211, 229.

72 C.J.S. Supplement, Public Contracts, § 1 et seq.

Sec. 35.15.020. Request for public bids. The department may request bids and award contracts for construction work. The department may require the contractor to furnish equipment, labor, materials, and supplies for the project, or it may elect to furnish the materials and supplies. If the department elects to provide materials and supplies for a project, it shall make the election at the time it adopts the construction program. The department shall request bids for the total of the materials and supplies for a project according to the class, type, and nature of the materials and supplies, and may award a contract upon the basis it considers efficient and economical, whether upon the basis of delivery to the construction project directly or to a central storehouse or storehouses maintained by the department. Those materials and supplies so purchased by the department may be delivered to the project site without expense to the contractor, or it may sell them to the contractor at cost and make the materials and supplies a part of the construction cost. (§ 3 art III title IV ch 152 SLA 1957)

ALR references. — Right of public authorities to reject all bids for public work or contract, 31 ALR2d 469.

Revocation, prior to execution of formal written contract, of vote or decision of public body awarding contract to bidder, 1 ALR3d 864.

Sec. 35.15.030. Advertisement, bids, contracts, and informal bids. When the estimated cost of any construction under this chapter exceeds $100,000, the department shall, except as provided in AS 35.15.010 and in AS 44.33.300, proceed to advertise, request bids, and award the contract in the manner provided in §§ 40 and 50 of this chapter. When any proposed construction contract is for a sum less than $100,000, it is discretionary with the department whether the contract is advertised and awarded in accordance with AS 35.15.040 and 35.15.050. In all events the department shall request informal bids from as many contractors as can be requested conveniently. A complete

record shall be kept by the commissioner or his designee of all transactions entered into under this section including names of employees involved in the transactions. (§ 4 art III title IV ch 152 SLA 1957; am § 31 ch 71 SLA 1972; am § 6 ch 277 SLA 1976; am § 2 ch 143 SLA 1977)

Effect of amendments. — The 1976 amendment inserted "and in AS 44.33.300" in the first sentence.

The 1977 amendment substituted "under this chapter exceeds $100,000" for "exceeds $20,000" in the first sentence, substituted "$100,000" for "$20,000" in the second sentence, and added the fourth sentence.

Legislative history report. — For report on ch. 71, SLA 1972 (HCSSB 383 am H), see 1972 House Journal, p. 899.

Am. Jur. 2d, ALR and C.J.S. references. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 30-59.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amount to be let to lowest bidder, 53 ALR2d 498.

72 C.J.S. Supplement, Public Contracts, §§ 7-14, 17.

Sec. 35.15.040. Procedures for the award of contracts. (a) If federal funds are used, the award of the contract shall comply with federal law and the rules and regulations promulgated under it and with state law to the extent it is consistent with federal law.

(b) In all other cases, the award of the contract shall comply with this title, and AS 37.05, and the rules and regulations promulgated under them and which are consistent with this title. (§ 5 art III title IV ch 152 SLA 1957)

ALR references. — Validity of governmental requirement of oath of allegiance or loyalty, 18 ALR2d 302.

Construction and operation of "equal opportunities clause" requiring pledge against racial discrimination in hiring under construction contract, 44 ALR3d 1283.

Sec. 35.15.050. Award of contracts. The department shall award the contract to the lowest responsible bidder, or it may reject all bids. If no satisfactory bid is received, the department may readvertise the project. The department shall make the award in compliance with applicable federal law and the regulations promulgated under it, with this title, and in compliance with AS 37.05, and the rules and regulations promulgated under it, where they are not in conflict with this title and federal law. (§ 6 art III title IV ch 152 SLA 1957)

The purpose of this section and the Fiscal Procedures Act (AS 37.05) is not only to protect the state and the public purse from uneconomic contracts let because of failure to request competitive bids and because of possible favoritism, but also to insure that contractors are insured a certain amount of "fair play" in dealing with the state government and in competing with one another for state contracts. 1959 Op. Atty. Gen., No. 27.

The department has authority to require contractors to set up a system of prequalification of contractors as a prerequisite for bidding on state construction projects. 1959 Op. Atty. Gen., No. 27.

And under such system to require contractors to furnish periodic and financial statement. — 1959 Op. Atty. Gen., No. 27.

Without following the Administrative Procedure Act. — The department would not be required to follow the Administrative Procedure Act (AS 44.62) in adopting regulations to implement a program of prequalification of contractors. 1959 Op. Atty. Gen., No. 27.

Publication of regulations concerning bidding and letting of contracts in Administrative Code. — A policy of publishing regulations concerning bidding and letting of contracts in the Administrative Code is consistent with the Alaska Administrative Procedure Act, since these regulations are regulations in which an important portion of the public has a vital interest and since they are of great use to the portion of the public interested in dealing and contracting with the state. 1959 Op. Atty. Gen., No. 27.

Am. Jur. 2d, ALR and C.J.S. references. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 63-81.

Delays caused by change in plan or specifications of a public construction contract as coming within "no damage" clause with respect to delay appearing in the contract, 10 ALR2d 810.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract, 27 ALR2d 917.

Right of public authorities to reject all bids for public work or contract, 31 ALR2d 469.

Rights and remedies of bidder for a public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employee, 52 ALR2d 792.

"Changed conditions" clause in a public works or construction contract, construction and effect of, 85 ALR2d 211.

Effect of stipulation, in public building or construction contract, that alterations or extras must be ordered in writing, 1 ALR3d 1273.

Revocation, prior to execution of formal written contract, of vote or decision of public body awarding contract to bidder, 3 ALR3d 864.

The validity and construction of "no damage" clause with respect to delay in building or construction contract, 74 ALR3d 187.

Construction contract provision excusing delay caused by "severe weather", 85 ALR3d 1085.

72 C.J.S. Supplement, Public Contracts, §§ 15-17.

Sec. 35.15.060. Prior contracts unaffected [Obsolete].

Revisor's note. — This section is obsolete. It read as follows: "Sections 10-60 of this chapter do not apply to contracts entered into before April 1, 1957."

Editor's note. — The obsolete section derived from § 8 art. III title IV ch. 152 SLA 1957.

Sec. 35.15.080. Local control of state public works projects. (a) A municipality or, if the public work is an educational facility, a regional educational attendance area established under AS 14.08 may, by resolution of its governing body, request the assumption of all of the department's responsibilities relating to the planning and construction of a public works project of the state which is to be located within the boundaries or operating area of the municipality or regional educational attendance area and which would otherwise be constructed in the manner provided in AS 35.15.010. After receipt of the request, the department

(1) shall provide for the assumption by the municipality or regional educational attendance area of all of the department's responsibilities relating to the planning, design and construction of an educational facility;

(2) may provide by agreement for transfer to and assumption by the municipality of the department's responsibilities relating to the

(3) "municipality" means a general law or home rule city or organized borough, including but not limited to a unified municipality organized under AS 29.68.240 — 29.68.440. (§ 1 ch 57 SLA 1976; am § 2 ch 62 SLA 1978)

Effect of amendment. — The 1978 amendment deleted "on behalf of the state" following "rights-of-way and easements" in paragraph (1).

Chapter 20. Acquisition and Disposition of Property.

Section
10. Acquisition of land, rights-of-way, and materials by purchase or eminent domain
20. Declaration of taking
30. Acquisition of excess lands
40. Authority to condemn or acquire publicly owned property for the purpose of exchange
50. Authority to purchase property for the purpose of exchange
60. Sale of obsolete equipment and material
70. Vacating of lands or rights in land

Sec. 35.20.010. Acquisition of land, rights-of-way, and materials by purchase or eminent domain. The department, on behalf of the state and as part of the cost of constructing or maintaining a public work, may purchase, acquire, take over, or condemn under the right and power of eminent domain land in fee simple or easements which it considers necessary for present public use, either temporary or permanent, or which it considers necessary and reasonable for the public use. By the same means, the department may obtain material including clay, gravel, sand, or rock, or the land necessary to obtain the material, and the necessary land or easements to provide access to it. The department may acquire the land or material notwithstanding the fact that the title to it is in the state or a department, agency, commission or institution of the state. (§ 1 art I title IV ch 152 SLA 1957)

Cross reference. — For provisions relating to eminent domain proceedings, see AS 09.55.240 — 09.55.460.

This section and AS 35.20.020 grant to the Department of Public Works eminent domain powers, as well as the right to employ a declaration of taking in eminent domain proceedings. Tallman v State, Sup. Ct. Op. No. 862 (File No. 1612), 506 P.2d 679 (1973).

Am. Jur. 2d and C.J.S. references. — 26 Am. Jur. 2d, Eminent Domain, § 1 et seq.

29A C.J.S., Eminent Domain, § 1 et seq

Sec. 35.20.020. Declaration of taking. A declaration of taking, in the form of an order signed by the commissioner of the department, declaring that the real property, or an interest in it, or any easement is necessary for the public use of the state is sufficient to vest title in the state. However, a declaration of taking is not effective until eminent domain proceedings have been instituted in the proper court,

Right of employee of public contractor to maintain action against latter based upon statutory obligation as to rate of wages or upon provisions in that regard in the contract between contractor and the public. 144 ALR 1035.

Validity of statute, ordinance, or charter provision requiring that workmen on public works be paid the prevailing or current rate of wages. 18 ALR3d 944.

Construction and operation of "equal opportunities clause" requiring pledge against racial discrimination in hiring under construction contract. 44 ALR3d 1283.

Sec. 36.05.010. Wage rates on public construction. A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. The current prevailing rate of wages for each pay period is that contained in the latest determination of prevailing rate of wages issued by the Department of Labor before the end of the pay period. (§ 14-2-1 ACLA 1949; am § 1 ch 142 SLA 1972; am § 1 ch 89 SLA 1976)

Cross references. — As to wage rates for laborers and mechanics on public contracts, see AS 36.05.070.

NOTES TO DECISIONS

City's duty to publish applicable minimum wage schedules as part of bid specifications. — See notes under heading "Duty to publish minimum wage schedules," Fowler v. City of Anchorage, Sup. Ct. Op. No. 1699 (File No. 3586), 583 P.2d 817 (1978). AS 36.05.070.

Quoted in City of Sitka v. Construction & Gen. Laborers Local 942, Sup. Ct. Op. No. 2495 (File Nos. 5774, 5811), 644 P.2d 227 (1982).

Sec. 36.05.020. Basis for determining wage. A subcontract which is performed on public construction may be reduced to a basis of day labor for the purpose of determining whether or not the subcontractor or contractors have paid at not less than the prevailing scale of wage. (§ 14-2-2 ACLA 1949)

Sec. 36.05.030. Authority. (a) The Department of Labor has the authority to determine the prevailing wage, and whether or not this chapter is being violated. The department may when necessary for the enforcement of this chapter

(1) conduct investigations and hold hearings concerning wages;

(2) compel the attendance of witnesses and the production of books, papers and documents;

(3) promulgate regulations.

(b) If a person violates this chapter the attorney general shall, when requested by the Department of Labor, enforce these provisions. (§ 14-2-3 ACLA 1949; am § 2 ch 142 SLA 1972)

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officer in the case of a political subdivision contract shall pay directly to laborers, mechanics or field surveyors from accrued payments withheld under the terms of the contract the wages due laborers, mechanics or field surveyors under AS 36.05.070.

(b) The state disbursing officer or the local fiscal officer shall distribute to all departments of the state government and to all political subdivisions of the state a list giving the names of persons who have disregarded their obligations to employees. No person appearing on this list and no firm, corporation, partnership or association in which the person has an interest may work as a contractor or subcontractor on a public construction contract for the state or a political subdivision of the state until three years after the date of publication of the list. If the accrued payments withheld under the contract are insufficient to reimburse all the laborers, mechanics, or field surveyors with respect to whom there has been a failure to pay the wages required under AS 36.05.070, the laborers, mechanics or field surveyors have the right of action or intervention or both against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in the proceedings it is not a defense that the laborers, mechanics or field surveyors accepted or agreed to accept less than the required rate of wages or voluntarily made refunds. (§ 3 ch 52 SLA 1959; am § 9 ch 142 SLA 1972)

NOTES TO DECISIONS

Quoted in City of Sitka v. Construction & Gen. Laborers Local 942, Sup. Ct. Op. No. 2495 (File Nos. 5774, 5811), 644 P.2d 227 (1982).

Sec. 36.05.100. Effect of AS 36.05.070 — 36.05.110 on other laws. AS 36.05.070 — 36.05.110 do not supersede or impair authority granted by state law to provide for the establishment of specific wage rates. (§ 4 ch 52 SLA 1959; am § 10 ch 142 SLA 1972)

Sec. 36.05.110. Contracts entered into without advertising. The fact that a public contract authorized by law is entered into upon a cost-plus-a-fixed-fee basis or otherwise, without advertising for proposals, does not make AS 36.05.070 — 36.05.110 inapplicable if they are otherwise applicable to the contract. (§ 5 ch 52 SLA 1959)

Sec. 36.05.120. Regulations governing contractors.

Repealed by § 17 ch 142 SLA 1972.

Editor's notes. — The repealed section derived from § 6, ch. 52, SLA 1959.

Chapter 10. Employment Preference.

Section		Section	
10.	Employment preference	40.	Application to contracts involving federal funds
20.	Apprentices	50, 60.	[Repealed]
30.	Reduction of work force		

Chapter 25. Contractors' Bonds.

Section
10. Bonds of contractors for public buildings or works
20. Rights of persons furnishing labor or material
25. Optional municipal exemption

NOTES TO DECISIONS

This chapter is modeled after the federal Miller Act. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Collateral references. — 17 Am. Jur. 2d, Contractors' Bonds, §§ 43-138; 64 Am. Jur. 2d, Public Works and Contracts, §§ 105-136.

72 C.J.S. Supplement, Public Contracts, §§ 41-61; 81A C.J.S., States, §§ 172-193.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability. 9 ALR3d 382.

Sec. 36.25.010. Bonds of contractors for public buildings or works. (a) Except as provided in AS 44.33.300, before a contract exceeding $100,000 for the construction, alteration, or repair of a public building or public work of the state or a political subdivision of the state is awarded to a general or specialty contractor, the contractor shall furnish to the state or a political subdivision of the state the following bonds, which become binding upon the award of the contract to that contractor:

(1) a performance bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond; the amount of the performance bond shall be equivalent to the amount of the payment bond;

(2) a payment bond with a corporate surety qualified to do business in the state, or at least two individual sureties who shall each justify in a sum equal to the amount of the bond for the protection of all persons who supply labor and material in the prosecution of the work provided for in the contract; when the total amount payable by the terms of the contract is not more than $1,000,000, the payment bond shall be in a sum of one-half the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than $1,000,000 and not more than $5,000,000, the payment bond shall be in a sum of 40 percent of the total amount payable by the terms of the contract; when the total amount payable by the terms of the contract is more than $5,000,000, the payment bond shall be in the sum of $2,500,000.

(b) This section does not limit the authority of a contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in (a) of this section.

(c) When no payment bond has been furnished, the contracting department shall not approve final payments to the contractor until the contractor files a written certification that all persons who supplied labor or material in the prosecution of the work provided for in the contract have been paid. (§ 1 ch 49 SLA 1953; am § 1 ch 77 SLA 1964; am § 14 ch 142 SLA 1972; am §§ 1, 2 ch 180 SLA 1976; am § 8 ch 277 SLA 1976; am 34 ch 108 SLA 1982)

Revisor's notes. — Subsection (a)(2) of this section has the figure of $2,500,000 as in the enrolled bill. The 1953 session laws incorrectly carried the figure as $2,800,000.

Effect of amendments. — The 1982 amendment substituted "$100,000" for "$50,000" near the beginning of the introductory paragraph of subsection (a).

NOTES TO DECISIONS

Purpose. — The purpose of this section and AS 36.25.020 is to protect persons who furnish labor or material for a state public works project from the risks of nonpayment. In exchange for providing such protection, the state is assured that material and labor will be readily furnished for its projects. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Like its federal counterpart, Alaska's statute is designed to protect persons who furnish labor or material for a state public works project from the risks of nonpayment. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Weight given to federal case law interpreting federal act. — In resolving disputes brought under this section, the supreme court will give more weight to principles derived from federal case law interpreting the Miller Act than to general common-law principles governing debtor-creditor relations. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Rights of persons furnishing labor or material. — See notes under AS 36.25.020.

Bonds required. — A payment bond as well as a performance bond is required for public contracts by this section. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Presumption. — Since under this section the awarding of the contract, and necessarily the making of payments under the contract, is conditioned upon the furnishing of a payment and performance bond, it may be concluded from the fact that payments were made under the contract that the required bond had been furnished the state. Such a conclusion is based upon the presumption that official duty has been regularly performed and that state officials would not have awarded the contract and made progress payments had the required bond not been filed. United Bonding Ins. Co. v. Castle, Sup. Ct. Op. No. 497 (File No. 876), 444 P.2d 454 (1968).

State duty to investigate validity of bonds. — The State of Alaska has the duty to investigate the validity of payment and performance bonds on state construction projects. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

For cases arising after 1972, there is no doubt about who has the duty to check the validity of public construction contract bonds, since in 1972 AS 36.05.035 was enacted, placing the burden of verifying such bonds on the state or its political subdivision. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Although absent from this section, the burden on the contracting officer to determine the vitality of the surety can be read into the language "the contractor shall furnish to the state . . . a performance bond with a corporate surety qualified to do

business in the state..." Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Construction contractors have a continuing obligation to provide the required bonds even if the state does not discover defects in the bonds until after their acceptance. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Burden of proof as to agency. — The purpose of this section and AS 36.25.020 is best served by placing the burden of proof as to agency on the insurance company, particularly in light of the insurance company's far superior access to the facts surrounding the agency. State ex rel. White v. Neal & Sons, Sup. Ct. Op. No. 733 (File No. 1364), 489 P.2d 1016 (1971).

Subrogation right of surety. — A surety who completes a contract or satisfies the claims of laborers and materialmen has established a subrogation right to all funds, progress payments, or retained percentages which are in the hands of the contractee. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

Subrogation right of surety. — A surety who completes a contract or who satisfies the claims of laborers and materialmen has a superior equitable interest over one who made a loan to the contractor of monies which did not have to be applied to the construction contract. The surety, in such cases, has established a subrogation right to those funds retained by the obligee containing retained percentages. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

The contractor or principal of the surety agreement cannot give an assignee a greater right in a retained percentage than that given the surety so long as the surety performs under the agreement. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

Where the surety had assumed and completed the principal's contract and claimed monies due and payable to the contractor in the way of a progress payment at the time of default, and the assignee of the contractor had also made claim to the progress payment, the surety's claim to the progress payments was granted. Reliance Ins. Co. v. Alaska State Hous. Auth., 323 F. Supp. 1370 (D. Alas. 1971).

Debtor's power to designate account to which his payment should be applied. — A debtor, who is under a duty to a third person to apply funds he tenders to his creditor to a particular account, has the power to so designate that account as the one to which payment should be applied. The creditor is under a correlative duty to apply the money as directed by his debtor, even though he does not consent to the debtor's wishes. This principle does not depend upon misconduct or fraud. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Creditor's duty to apply payment to certain account. — Where there is sufficient evidence that a creditor knew or at least had reason to know that money received from a debtor came from a third party for application to a particular job account, the creditor was under a duty to apply the payment to such account. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

Cases interpreting the Miller Act hold that when a creditor knows, or has reason to know, that the money paid to him is received from a particular bonded project, it is the creditor's duty to apply the payment received against the account for that project. State ex rel. Palmer Supply Co. v. Walsh & Co., Sup. Ct. Op. No. 1583 (File No. 2816), 575 P.2d 1213 (1978).

State did not waive right to require replacement bonds. — State did not waive its right to require and was not estopped from requiring the contractor on a 1962 construction project to obtain new bonds as replacements for bonds found defective after they had been accepted by the state and after the contractor had commenced work. Arctic Contractors v. State, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977).

Collateral references. — What is "accident" within provision of bond or contract indemnifying against damage or injury to person or property by accident in performance of building or construction contract. 12 ALR 1409.

Validity of condition in bond of contractor for public work which is beyond requirements of statute or ordinance with respect to claims of third persons. 18 ALR 1227.

Recovery of premiums paid on bond of contractor for public improvement not legally authorized. 42 ALR 307.

Rental of equipment as within contractor's bond. 44 ALR 381.

Contractor's bond as covering clothing, food, or lodging for laborers. 46 ALR 511, 65 ALR 260.

Effect of affirmative provision in public contractor's bond excluding statutory conditions. 47 ALR 502; 89 ALR 457.

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Contractor's bond, and claims for injuries to person or property. 67 ALR 990.

Claims for repairs or replacements of machinery, tools, and equipment as within contractor's bond. 67 ALR 1232.

Availability in action by third person for damages against public contractor, of provisions in contract as to care to be exercised or precautions to be taken for protection of third persons. 69 ALR 522.

Effect of payment to subcontractors or materialmen by owner or contractor, or by sureties on contractor's bond, within four months of principal contractor's bankruptcy, as a voidable preference. 70 ALR 983.

Construction of paving contract or contractor's bond in respect of the contractor's obligation as to repairs. 72 ALR 644.

Right as between surety on contractor's bond and assignee of money to become due on contract. 76 ALR 917.

Effect of recitals or provisions of bond to secure performance of contract as an interpretation of the terms of the contract. 76 ALR 941.

Construction and effect of provision in bond purporting to protect contractee in building contract against release of surety. 77 ALR 229.

Claim for medical or hospital services to employees as within coverage of contractor's bond. 81 ALR 1051.

Statutory conditions prescribed for public contractor's bond as part of bond which does not in terms include them. 89 ALR 446.

Necessity of giving obligee notice of claim or action or making it a party to action by laborer, materialman or subcontractor upon bond of contractor for public work. 96 ALR 1185.

What constitutes "public work" within statute relating to contractor's bond. 101 ALR 565.

Workmen's compensation insurance premiums as within coverage of contractor's bond. 102 ALR 135; 164 ALR 1468.

Loss of profit of subcontractor, laborer, or materialman as within coverage of contractor's bond. 119 ALR 1281.

Money loaned or advanced to contractor as within coverage of bond of building or construction contractor. 127 ALR 974; 164 ALR 782.

Contractor's bond as covering insurance premiums other than workmen's compensation insurance. 129 ALR 1087.

Who is contractor or subcontractor, as distinguished from materialman, for purposes of mechanic's lien, contractor's bond, or other provision or securing compensation under construction contract. 141 ALR 321.

Bond of contractor for eradication or control of termites or other pests or vermin. 43 ALR2d 1237.

Liability on bid bond for public works. 70 ALR2d 1370.

Responsibility of construction contractor or his bond to contractee for defects or insufficiency of work attributable to plans and specifications furnished by latter, his engineer or architect. 6 ALR3d 1394.

Construction of attorneys' fees provision in contractor's bond. 8 ALR3d 1438.

Building contractor's liability, upon bond or other agreement to indemnify owner, for injury to death of third persons resulting from owner's negligence. 27 ALR3d 663.

Liability of builder or subcontractor for insufficiency of building resulting from latent defects in materials used. 61 ALR3d 792.

Liability of subcontractor upon bond or other agreement indemnifying general contractor against liability for damage to person or property. 68 ALR3d 7.

Validity and construction of "no damage" clause with respect to delay in building or construction contract. 74 ALR3d 187.

Construction contract provision excusing delay caused by "severe weather". 85 ALR3d 1085.

Sec. 36.25.020. Rights of persons furnishing labor or material. (a) A person who furnishes labor or material in the prosecution of the work provided for in the contract for which a payment bond is furnished under AS 36.25.010 and who is not paid in full before the expiration of 90 days after the last day on which the labor is performed or material is furnished for which the claim is made, may sue on the payment bond for the amount unpaid at the time of the suit.

Chapter 95. General Provisions.

Section
10. Definitions

Sec. 36.95.010. Definitions. In this title unless the context requires otherwise.

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(2) "laborer, mechanic, or field surveyor" means a person who engages in work which is basically physical or unskilled in nature; or who engages in work, requiring the use of tools or machines, which basically consists of the shaping and working of materials into some type of structure, machine or other object; or who engages in outdoor tasks related to the operation of findings and delineating contour, dimensions, position, topography, as of any part of the earth's surface, by preparation of measured plan or description of any area or other portion of country or of road or line through any area or other portion of country;

(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161;

(4) "qualified" means a person who, except for apprentices, is a journeyman mechanic in that person's particular trade;

(5) "resident" means a person who maintains a domicile in the state; domicile is the true and permanent home of a person from which that person has no present intention of removing and to which that person intends to return whenever away from that home;

(6) "state or a political subdivision of the state" means any state department, state agency, state university, borough, city, village, school district or other state subdivision;

(7) "wages" includes fringe benefits;

(8) "retainage" means money withheld from a contractor until completion of a contract or satisfaction of other contingency as evidenced by approval of the applicable pay estimate. (§ 16 ch 142 SLA 1972; am § 3 ch 89 SLA 1976; am § 16 ch 14 SLA 1978; am § 2 ch 85 SLA 1982)

Effect of amendments. — The 1978 amendment, in paragraph (3) deleted "or" following "for the state" and added "or a regional school board with respect to an educational facility under AS 14.08.161" to the end.

The 1982 amendment, effective July 1, 1982, substituted "this title" for "AS 36.05 — 36.25" in the introductory language and added the definition of "retainage" in paragraph (8).

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Editor's notes. — Section 3, ch. 85, SLA 1982, provides that the 1982 amendment to this section applies to contracts entered into after the effective date of this act [July 1, 1982].

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

AS 14.08.161 referred to in (3) of this section was repealed by § 10, ch. 92, SLA 1982.

Opinions of attorney general. — Alaska State Housing Authority is a state agency within the definition of AS 36.95.010(6). May 28, 1974, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in Hicklin v. Orbeck, Sup. Ct. Op. No. 1435 (File No. 3025), 565 P.2d 159 (1977), rev'd, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

Quoted in City of Sitka v. Construction & Gen. Laborers Local 942, Sup. Ct. Op. No. 2495 (File Nos. 5774, 5811), 644 P.2d 227 (1982).

Collateral references. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 1-238.

65 Am. Jur. 2d, Public Works and Contracts, §§ 1-238.

72 C.J.S. Supplement, Public Contracts, §§ 1-61.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract. 27 ALR2d 917.

Right of public authorities to reject all bids for public work or contract. 31 ALR2d 469.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amount to be let to lowest bidder. 53 ALR2d 498.

Amount of compensation of attorney for services as to public contract, in absence of contract or statute fixing amount. 56 ALR2d 195.

"Changed conditions" clause in a public works or construction contract, construction and effect of. 85 ALR2d 211.

Effect of stipulation, in public building or construction contract, that alterations or extras must be ordered in writing. 1 ALR3d 1273.

Revocation, prior to execution of formal written contract, of vote or decision of public body awarding contract to bidder. 3 ALR3d 864.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability. 9 ALR3d 382.

Contract for personal services as within requirement of submission of bids as condition of public contract. 15 ALR3d 733.

Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility. 81 ALR3d 979.

Duty of public authority to disclose to contractor information, allegedly in its possession, affecting cost or feasibility of project. 86 ALR3d 182.

Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 ALR4th 991.

Chapter 98. Professional Services Contracts.

Section

10. Application of chapter
20. Professional services contractors register
30. Solicitation of proposals
35. Standard overhead rate
40. Evaluation of proposals and award of contract
45. Review and approval by Department of Law
50. Contract administration
60. Filing of proposal and contract
70. Regulations governing contract procedures
80. Definitions

Collateral references. — 39 Am. Jur. 2d, Highways, Streets, and Bridges, § 1 et seq.
39A C.J.S., Highways, § 1 et seq.

Sec. 44.42.010. Commissioner of transportation and public facilities. The principal executive officer of the Department of Transportation and Public Facilities is the commissioner of transportation and public facilities. (E.O. No. 39, § 2 (1977))

Sec. 44.42.020 Powers and duties. (a) The department shall

(1) plan, design, construct and maintain all state modes of transportation and transportation facilities and all docks, floats, breakwaters, buildings and similar facilities;

(2) study existing transportation modes and facilities in the state to determine how they might be improved or whether they should continue to be maintained;

(3) study alternative means of improving transportation in the state with regard to the economic costs of each alternative and its environmental and social effects;

(4) develop a comprehensive, long-range intermodal transportation plan for the state;

(5) study alternatives to existing modes of transportation in urban areas and develop plans to improve urban transportation;

(6) cooperate and coordinate with and enter into agreements with federal, state and local government agencies and private organizations and persons in exercising its powers and duties;

(7) manage, operate, and maintain state transportation facilities and all docks, floats, breakwaters and buildings, including all state highways, vessels, railroads, pipelines, airports, and aviation facilities;

(8) study alternative means of transportation in the state, considering the economic, social, and environmental impacts of each alternative;

(9) coordinate and develop state and regional transportation systems, considering deletions, additions, and the absence of alternatives;

(10) develop facility program plans for transportation and state buildings, docks and breakwaters required to implement the duties set out in this section, including but not limited to (A) functional performance criteria; and (B) schedules for completion;

(11) supervise and maintain all state automotive and mechanical equipment, aircraft, and vessels, except vessels and aircraft used by the Department of Fish and Game or the Department of Public Safety;

(12) supervise aeronautics inside the state, under AS 02.10;

(13) complete and maintain a current inventory of public facilities, including a projection of the serviceability of the facilities and projections of replacements and additions to facilities needed to provide the level of services programmed by the various user agencies, for municipalities with populations of less than 12,000 and for unincorporated communities, and perform those duties on a cooperative basis with larger municipalities;

(14) adopt energy performance standards for public facilities of the state, the construction of which begins after July 1, 1980; the standards shall be based on thermal and lighting energy standards established by the American Society of Heating, Refrigeration and Air Conditioning Engineers as adapted for application in high latitude, cold climate environs;

(15) provide planning assistance, including but not limited to energy audits and related technical services, to school districts and regional educational attendance areas to develop and implement

(A) standards for the design, construction and operation of rural educational facilities; and

(B) energy conservation measures for rural educational facilities.

(b) The department may

(1) engage in experimental projects relating to available or future modes of transportation and any means of improving existing transportation facilities and service;

(2) exercise the power of eminent domain, including the declaration of taking as provided in AS 09.55. (E.O. No. 39, § 2 (1977); am § 13 ch 168 SLA 1978; am § 12 ch 83 SLA 1980; am E.O. No. 50, § 10 (1981))

Cross references. — For the responsibility and authority of the supreme court over state court facilities, see AS 22.05.025.

Effect of amendments. — The 1980 amendment added paragraphs (14) and (15) to subsection (a).

The 1981 amendment, in subsection (a), deleted "communication facilities" following "transportation facilities" in paragraph (1), deleted "and communication facilities" following "modes and facilities" in paragraph (2), deleted "and communication" following "improving transportation" in paragraph (3), deleted "communication facilities" following "transportation facilities" in paragraph (7), deleted "and communication facilities" following "plans for transportation" in paragraph (10), deleted "and" at the end of paragraph (11), deleted "and communications" following "aeronautics" and substituted a semicolon for a period near the end of paragraphs (12) and (13). The amendment also deleted "and communication" following "facilities and service" in paragraph (1) of subsection (b).

Sec. 44.42.030. Regulations. The department may adopt regulations under the Administrative Procedure Act (AS 44.62) to implement, interpret, or make more specific its powers and duties. (E.O. No. 39, § 2 (1977))

Sec. 44.42.040. Departmental organization. The commissioner shall establish regions within the state. The functions of the department within each region shall be performed, to the maximum extent

SB

450

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

April 16, 1986

TO: All Members of the Committee

FROM: Committee Staff

RE: SB 450, Iliamna-Nondalton Intertie

The Iliamna-Nondalton Intertie has been an on-going state road project since the 1970s. In 1983 the Legislature appropriated $1,500,000 to begin construction of Phase I and another grant of $3,021,000 in 1984 for Phase II.

SB 450 would make a special appropriation of $9,000,000 to complete Phase III and IV of the project.

Phase III and IV would consist of bridge construction on the Newhalen River, estimated at $3.2 million with the remainder of the funds used for excavation, final dressing work and inspection and acceptance.

Without the additional appropriations the communities of Iliamna and Nondalton will be left with a uncompleted road, ending at the Newhalen River. This pioneer road can only be used in the winter, when the river is frozen over.

This road is especially important to the Nondalton community. A linkage to Iliamna will lower transportation costs substantially, since the airport at NonDalton cannot accommodate large aircraft due to runway length. Freight must be broken down at the Iliamna airport and loaded on smaller aircraft. This process adds significant costs to Nondalton's freight. Also Medivac aircraft cannnot land at Nondalton.

Included in today's packet are:

DOTPF fiscal note

Letters of support from Nondalton, Newhalen

Adolph Jackinsky

Municipal Status Report

DOTPF historical overview of project

FY 87 CIP REQUEST
CITY OF NONDALTON

November 25, 1985

Division of Budget Review
Office of Management and Budget
Pouch AM
Juneau, Alaska 99811

Attention: Thelma Cutler
Program Budget Analyst

Re: Capital Project Priorities

Dear Ms. Cutler:
d
The following is a list of the capital projects prioritized by the Nondalton City Council.

1. Iliamna-Nondalton Intertie. This project is our road project which will connect the Iliamna Airport to Nondalton. This project will remain a high community priority until completion as it will be a vital part of our transportation link to economic well-being of our community. Planning, design and cost estimates for the next phase are complete and will follow this letter.

2. Erosion Control. We received $50,000 in FY'85 for this project which will be used to plan and estimate costs to further prevent erosion in our city. More funds will be needed to do the actual work to control our erosion problem. Planning, design and cost estimates will follow when complete.

3. ~~Nondalton City~~ Hall Building. This building was built with funds from Municipal Assistance which, as you know, has been left unfunded by the legislature. There is currently $80,000 worth of work left to be done to this building before it is complete. Part of this is also landscaping to return the earthwork done back to its original condition. Planning, design and cost estimates will follow.

4. Water & Sewer. Additional funding for this project would hade all existing homes and businesses in the city on a water and sewer system. Public Health Service is currently connecting new HUD (U. S. Dept. of Housing and Urban Development) and BIA (Bureau of Indian Affairs) homes into the existing system, and, also, upgrading this existing system. Planning, design and cost esti-

mates can be obtained from Mr. Larry Lockyer, District Engineer; Environmental Health Branch; 701 C Street, Box 65; Anchorage, Alaska 99513.

5. Small Hydro Project. This project would be to utilize a creek for electrifying our water and sewer system. The cost of running our present system is high so if we could run it off a small creek near the village the cost would be reduced drastically. Planning, design and cost estimates are not available at this time.

Thank you for your time and consideration of the above capital projects priorities as defined by the Nondalton City Council.

Sincerely,

Lydia K. Wilson
Mayor

FY86 CIP REQUEST
CITY OF NONDALTON

CITY OF NONDALTON

General Delivery
Nondalton, Alaska 99640

January 30, 1985

To: Rep. A. Herrmann
Sen. F. Zharoff
Office of the Governor

Ref: Capital Appropriation Request

Pursuant to your letter of January 21, 1985, the Council of the Municipality of Nondalton has established the following priorities for FY 85/86.

1. Phase 3 of the Iliamna Nondalton Inter-Tie Road Project. Including bridge installation and substantial completion of the project. Total funding required is $6.2 million dollars. Project equipment is on-site and Phase 2 will be completed by June 30, 1985.

2. Erosion Control for municipal roads, embankments and streams to eliminate the continued filling of the Nondalton Bay in Six Mile Lake. Funding requirement of $250,000. An expenditure in this amount at this time for hydroseeding equipment and supplies will eliminate a major dredging/containment program five years from now which could cost 10 to 20 times this prevention expense.

3. Municipal Hall Completion, consisting of interior finishes on the lower level, site work and exterior sealing and painting. Total funding required is $80,000.

4. Mini-Hydro Site Study. Two streams within the city limits have the potential to be developed into mini-hydro site with no significant impact to the fishery or the surrounding environment. We would like these sites studied to determine the feasibility of these site being used to offset municipal operating electrical costs.

Your time and consideration of these appropriations is greatly appreciated. Mr. James D. Wilson and Mr. Duffy Jackinsky, both Councilmen and former Mayor's, will be acting on our behalf this year in Juneau during the legislative process. If either myself or our staff can be of help or if you require additional information please do not hesitate to contact me.

Cooperatively yours,

Duffy Jackinsky
By Direction of
Rick Delkittie, Mayor

FY 86 CIP REQUEST
CITY OF NEWHALEN

Newhalen City Council

P.O. Box 153
Iliamna, Alaska 99606

Senator Fred Zarhoff
Pouch V
Juneau, Alaska 99811

January 17, 1985

Re: Newhalen's Capital Improvement Projects

Dear Senator Zarhoff:

Enclosed are Newhalen's Capital Improvement Priority List:

1. Newhalen Elementary School
   (Budget presented by Lake & Peninsula School District)
2. Newhalen Sewer System
3. Newhalen Municipal Garage/Storage
4. Nondalton Road Project
   (Budget presented by Nondalton City Council)
5. Newhalen T.V. Disk

Thank you for your assistance.

Sincerely,
CITY OF NEWHALEN
Agnes Rychnovsky
Agnes Rychnovsky
City Administrator

Adolph W. Iwalinsky
General Delivery
Nondalton, Ak. 99640
February 20, 1986.

Senator Fred Zharoff
P.O. Box V
Juneau, Ak. 99811

Dear Fred,

Thank you for introducing ~~the~~ SENATE 450 Bill which would appropriate funds to complete the ~~Iliamna~~ Nondalton Intertie. As a resident of Nondalton and as a member of the Nondalton City Council, here are some of the reasons that I think the bill should pass and the benefits the community will enjoy.

1. Fuel Costs: The original purpose of the road was to lower fuel costs. In 1975, when I first moved here, it was possible to buy a 55 gallon drum of gasoline for $40.00. That same 55 gallon drum can cost as much as $220.00 now. If the road were completed it would be possible for petrolium products (regular and avaition gas, heating oil, and lubercating oil mainly) to be barged up the Kvichak River To Iliamna or Newhalen and trucked to Nondalton at a savings of over $2.00/gal. We do have a bulk fuel storage here in the city but because of the prohibitave cost of flying oil and gas, or barging-trucking-barging fuel we have never been able to utilize the tanks to their full potential.

2. Local Hire: All of the heavy equipment operators who are working on the road project are residents of the Iliamna, Newhalen, Nondalton area. Many of our local residents depend solely on seasonal incomes from Bristol Bay fishing or firefighting for income. Passing the bill would insure the operators and laborers of a steady income until the completion of the project. Beyond the short term employment, the training and experience gained while working on the road would enable them to either seek employment elsewhere as trained operators or to work on other construction projects in the surrounding area.

3. Freight Costs: Other than local subsistance meat, fish, and berries, all food is flown in to Nondalton from Anchorage via Iliamna. The same is true of clothing, building materials and other essentials. The savings to residents, local business, school district and post office would be quite substantial if it were possible to truck from the Iliamna airfield rather than fly the freight and mail.

4. Airfares: It is presently cheaper to fly from Anchorage to Seattle than from Nondalton to Anchorage; again the double hauling of passengers. The road would benefit residents of the area, school district personnel, tourists, government officials and other travelers as it would be less expensive to travel by land than air.

5. Safety: Each year we must play our version of Russian Roulette when crossing Six Mile Lake or Newhalen River on the ice and each year someone loses and goes through the ice. We have been very fortunate that no lives have been lost recently, but a bridge would insure that no loss of life would occur while crossing the river. Another safety feature would be the possibility of transporting Med-evac patients from Nondalton to Iliamna. Our field here is not long enough for a Lear Jet to land so if the weather is bad a patient has to wait to get to the Med-evac plane.

6. Education: With the decreasing oil revenues and the possibility of a new funding formula for school districts it seems inevitable that our Local Regional School District will have less money to spend educating a growing population of students. The school district would save on the hauling of passengers and freight which is presently done by air. Another possible solution of saving money would be a centralized high school. Students from the three communities at a lower cost and better quality.

7. Future Local Economic Development: Nondalton has been designated Gateway to Lake Clark National Park. As there is no scheduled air transportation from Nondalton to Anchorage it is possible that the Gateway could be bypassed. We have a Doll Factory which is staffed by local people. More people passing through would mean more local sales. The local store, post office and lodges would also benefit. Individuals with property, boats, snowmachines, off road vehicles could increase sales and services or create business opportunities that do not now exist. The boat owners who have Bristol Bay Drift vessels could store them in their backyards instead of paying some boat storage facility in the Bristol Bay area as much as $2,000.00 per winter.

8. The City of Nondalton, as contractor for the road, has invested in heavy equipment for the road project. If we do not receive additional funds we will most likely have to sell the equipment. It would be much cheaper to continue to completion, rather than a yearly start up close down proceedure with the uncertainty of additional state appropiations.

I suppose the list of advantages for the Intertie and the benefits which would follow could go on and on but these are the most important that come to mind. Of course there is the other side of the picture...those who do not want the road. The most obvious are the Air Taxi operators and lodge owners. In all likelyhood they will adjust to the increased flow of people and benefit with more customers.

Well, guess that's the brunt of the wind in my sails. Would like to thank you for assisting our delegation from Nondalton, as well as the favor you did for me personally, while we were down in Juneau...and of course, also, introducing the Bill for completing the Intertie.

Sincerely,

Adolph W. Jackinsky

Adolph W. Jackinsky
General Delivery
Nondalton, Ak. 99640

ILIAMNA-NONDALTON INTER-TIE

MUNICIPAL STATUS REPORT

In 1983, the Legislature appropriated $2,000,000 for the INIT project. The major planning decisions of the project were based on this amount. Despite various promises, $500,000 was chopped from this budget at the last possible minute. INIT was left with the responsibility of completing $2,000,000 of work, with only $1,500,000. All plans were modified immediately and cost became the major concern. The work was completed on schedule and within budget and the DOT/PF audit has been completed.

For 1984, the City of Nondalton's first pricrity was Phase II funding of the INIT project. This effort was supported by INNEC, in the non-profit arena, and by various private industry efforts in the region. The net result was a total funding of $3,000,000 for Phase II.

As was anticipated, the Newhalen municipality and communities of Iliamna and Pedro Bay had other higher priorities for their constituency (voters) and having already helped Nondalton with the initial funding of Phase I, in 1983, had to move on to their own local projects. The City of Nondalton has not forgotten the assistance given by the many people and organizations during that period.

As the only municipality with the INIT project in its top three (3) priorities, the City requested the grant assumption under AS 35.15.080 (a)/(b) from DOT/PF. A Transfer of Responsibility Agreement (TORA) was entered into last month making the City of Nondalton responsible for the work and the accounting.

As a result of this TORA the following is a brief outline of the intended municipal project guidelines.

PHILOSOPHY: During the early stages of a major project it is usually "Paper Driven" because the planning, engineering, permits etc. must be done. This portion of the INIT project was Phase I. Phase II will be "Work Driven" with the primary emphasis on moving dirt, building bridges and installing culvert.

FINANCIAL: The municipal approved project budget is attached. In general, the city will expend about $1,800,000 for this season and in preparation for 1985. The remaining $1,200,000 will be expended next spring as soon as weather allows construction to begin. It is anticipated that this will be sufficient to carry the project forward into September, 1985 when Phase III funding will be available.

EQUIPMENT: The City intends to use whatever equipment is locally available, provided that the rates charged are equitable to the equipment's ability to work. Certain large pieces of equipment will be purchased by the City for use on the project, with the intent that any surplus equipment at the end of the job will be sold locally pursuant to the requirements of AS Title 29. The City does not intend to purchase duplicate equipment to that in the region. The determination of the ability of the equipment to work and the equipment's operators will be made by the Project Superintendent, Donald Wright.

PAYROLL: Payroll will be weekly with a one week delay for all INIT project personnel. There will be no advances, normal overtime procedures for work in excess of 40 hours per week will apply. The work week will begin at 0001 each Monday morning and end at midnight on Sunday night.

EMPLOYMENT STATUS: As with all City of Nondalton municipal personnel, all project employees will be employees of NELCOR, and affiliate of the National Employee Leasing Corporation. These employees will be on lease to the municipality. The NELCOR program will include health insurance benefits, workmen's compensation, and a Federally approved 7.5% tax free, pension program in which employees are immediately vested. The NELCOR account will carry approximately six weeks salaries in a payroll account to insure that no delays occur in meeting the pay periods.

PROJECT HOURS: The initial working hours will be 10 hours per day, 6 days per week. This may change to fewer hours, pending weather. Hours will be set by the Project Superintendent.

ACCOUNTING & ADMINISTRATION: These functions will be performed at the municipal offices at Nondalton and Anchorage and at the Iliamna/Newhalen field offices as determined appropriate. An independent CPA accounting firm has been retained by the City to advise on accounting and audit proceedures.

LEGAL COUNSEL: The Municipality has retained Mr. Dave Walsh, Esq., as legal counsel. Mr. Walsh has considerable hands-on experience running a municipality, elections, municipal authority, and other background essential to a growing area.

FACILITY COORDINATION: Over the past three (3) years the municipality has done considerable work to find and activate the remaining ingredients necessary for regional economic independence, through the offices of the Facility Coordinator. Considering the long term successes of the INNEC, LPSD and others, our contract with NNC will be continued.

PROJECT SUPERINTENDENT: Don R. Wright, 33 years of road construction experience 10,000 hours operating cats, scrapers, backhoes etc., has moved over 6,000,000 million yards of dirt. Started and operated Alaska's largest equipment training program. AFN Chairman, ANSCA Settlement etc. His analysis of project performance, employment, contracts, and on-the-job decisions are final.

PROJECT SUPERVISOR: Harry E. Carter, 31 years administrative experience with village corporations, state government, AFN, Federal government, private industry etc. His determinations on administrative matters of how things get done on the project are final.

SAVINGS PROGRAM: The municipal economic planning studies show that one of the major components neessary during this stage of economic growth is the

establishment and implementation of an area wide savings program. This allows for the build-up of capital which in turn finances private industry, thus moving the area from dependence upon government programs into active participation in the financial world. The municipality will lead this program through its employee pension plans.

AUTONOMY: Upon completion of the INIT project, there will be a sufficiently large enough number of people interacting, that autonomy of certain groups will begin to occur. This can result in poor communications and a breakdown in the organizational structure, or may be utilized to stimulate economic independence.

ADVISORY COMMITTEE: The municipality recognizes that while it may be a catylst in the funding process, that its activities effect many. The purpose of the committee will be to receive input from private business, renewable resource managers, leaders of the government infrastructures, and other interested regional residents and leaders. It is hoped that the members of the Advisory Committee will keep the appropriate members of their autonomous groups informed on the matters of this project.

Attending Advisory Committee members will receive a stipend of $40.00 per meeting plus associated travel costs to the location of the meeting. Attendance is by invitation only and is anticipated to be every two months.

In accordance with the direction of the City Council Of Nondalton, and the power vested in the Office of Mayor thereof, the following Advisory Committee members are hereby appointed, subject to their acceptance of the position.

Ricky Delkittie, Maypr

Date: September 24, 1984

City Council (Trustees)
Serfean Alexy
Paul Cusma, Jr.
Bob Tracy
William Trefon, Jr.
Ralph Mujica
James D. Wilson

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
CENTRAL REGION DESIGN & CONSTRUCTION

NONDALTON-NEWHALEN ROAD PROJECT
AUGUST 30, 1984

I. Project Scope

A. SLA 82/81 - 15.5 mile length; 20' width per AASHTO local road standards.

B. FY'83 Supplemental - Pioneer Road between Newhalen and Nondalton. Administered as grant.

II. Project History/Funding History

1972 - FHWA funding: Road construction project identified which included 7 miles of road between Newhalen and Iliamna and a new 18 mile road between Iliamna Airport and Nondalton.

1975 - Public Hearings: The Village of Nondalton was opposed to project. The Iliamna-Nondalton road portion of the project was eliminated. Limited turnout at public hearings.

1981 - SLA 82/81: $150,000 appropriated to update Design Field Survey and material work accomplished. Significant amount of design work remained to be done.

1982 - Public hearings: Overwhelming public support for the project. Communities urged DOT&PF to pursue acquisition of construction funds.

1983 - SLA 10/83: $1,000,000 for Pioneer Road construction.

1983 - Senate proposed FY'84 Capital Budget: $1,500,000 State match for FHWA road construction.

III. 1983 - SLA 107/83/75/17: The proposed $1,500,000 was reduced to $500,000 for the following reasons:

- $1.0 million has already been appropriated in SLA 10/83. It was felt that an additional $1.5 million could be used within the same fiscal year.

- Wanted to keep the community efforts going but also wanted to determine total cost of project, what standard of facility should be constructed who should have responsibility for completing project, and when project should be funded for completion.

IV. May 1983 - Executed transfer of responsibility agreement with City of Nondalton for 1.0 M to construct Pioneer Road 15.5 miles from Newhalen to proposed site of bridge crossing.

October 1983 - TCRA amended to 1.4 M.

June 1984 - First phase of project complete audit by DOT&PF.

July 1984 - Legislative funding:

CH 24	SLA	1984	$1,000,000
CH 171	SLA	1984	$1,500,000
CH 171	SLA	1984	$ 500,000

July 1984 - Executed TCRA with City of Nondalton for $15,000 for city to provide DOT&PF with proposal for use of 3.0 M for second phase of project.

August 1984 - DOT&PF received plans and proposal for second phase of project. Plans include stabilization of 15.5 miles of Pioneer Road; update bridge design and refurbish bridges for Newhalen River; purchase and installation of culverts and small bridge for Alexie Creek.

August/
September 1984 - DOT&PF will review plans; concur on scope of work; establish payment schedule; execute TCRA for 3.0 M.

MH:csb

SB

458

TESTIMONY TO SENATE TRANSPORTATION COMMITTEE
SB 458
March 5, 1986

Chairman Coghill and members of the Senate Transportation Committee, my name is Bob Jacobsen and I am here today as President of the Alaska Air Carriers Association. I would like to thank you for your willingness to deal with these small but important technical amendments to HB 133 enacted last year.

Very simply, the bill before you today (SB 458) is deemed necessary by the Division of Weights and Measurement Standards to adequately enforce the law which requires commercial air carriers to maintain at least $150,000 per seat in liability insurance ($300,000 for scheduled carriers). Statistics provided to you by the Division early this session indicate a less than satisfactory level of compliance based on the initial letters of notice to commercial carriers.

We have submitted as part of your committee packet a sectional rationale for each provision, and if you wish, I will go through each of the proposed changes with you.

As you are aware, the fiscal note for HB 133 last session was not funded, accounting, in part, for low compliance to date. The Governor has requested about $100,000 in his FY 87 operating budget for this program, and we urge you to support the request.

I would also like to take this opportunity to briefly mention our industry's serious problem with insurance rates. While we maintain our strong support for the minimum insurance requirements as a condition of business, we are having the same problems with dramatic escalation of rates as most other industries. We have lost several members during the last year due to bankruptcies or failure to obtain insurance at rates which would permit an operating profit. Others are on the verge of collapse.

If you want to help maintain viable air transportation in the future, we strongly urge your support of SB 377 this session.

Thank you for the opportunity to testify, and for your attention to our concerns.

Amendment 1 (Sec. 42.30.200(c)) specifically authorizes the Department of Commerce to stop aircraft from carrying passengers for hire until they secure the minimum required liability insurance. It also authorizes the Department to conduct investigations if necessary to find violators.

Amendment 2 (Sec. 42.30.200(e)) increases the size and severity of a fine to an air carrier who flies passengers for hire without first securing the minimum insurance levels required by HB 133 ($150,000 per seat). Without a more strict penalty, carriers may find it cheaper to ignore the law than to comply.

Amendment 3 (Sec. 42.30.225(b)) allows the insurance "certificate of compliance" to be posted in a visible location other than in the aircraft. This would be particularly helpful to the jet carriers which often interchange planes, thus making it difficult to post certificates in the aircraft. It would also reduce the cost of a certificate from $50 to $25.

Amendment 4 (Sec. 42.30.225(e)) provides specific authority to issue stop use orders if a carrier is operating without a state certificate of insurance.

Amendment 5 (Sec. 42.30.225(d)) provides for a specific penalty for a carrier who fails to obtain a certificate of insurance from the State.

Amendment 6 (Sec. 42.30.380(3)) clarifies the definition of aircraft to include rotor devices (helicopters).

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

March 4, 1986

TO: All Committee Members

FROM: Committee Staff

RE: SB 458

This bill adds enforcement capabilities to the legislation passed last year setting up insurance requirements and certificates of compliance for air carriers.

Sect. 1 (c) allows the Department of Commerce and Economic Development, Division of Weights and Measures to investigate possible violations of financial responsibility requirements. It also enables DCEC to issue a stop work order when it is found that the air carrier is in noncompliance.

Sect. 2 (e) defines the penalties for violating the insurance requirements. The current penalty, a Class B misdemeanor, is upgraded to a Class A. The fine is increased from a minimum of $500 to a minimum of $1000 with the maximum fine to be $5000 per day of violation. The fine has been capped at $10,000 for each violation.

Sec. 3 amends AS 42.30.225 (b) and lowers the annual fee for the certificate of compliance from $50 to $25.

Sec. 4 amends AS 42.30.225 (e), dealing with certificates of compliance, and allows the Department to investigate whether an air carrier has a certificate of compliance. If not in compliance, the department may issue a stop work order.

Sec. 5 adds a new subsection to AS 42.30.225. The penalty for violating the certificate of compliance requirement is a Class B misdemeanor and may be fined not less than $500 or no more than $1000.

Sec. AS 42.30.380(3), a definition section, is amended to add rotor craft to the definition of aircraft.

PURPOSE

The purpose of the certification of compliance of air carriers is to provide the assurance that all persons who carry passengers or freight for commercial purposes intrastate in an aircraft, comply with the provisions in AS 42.30.200 and AS 42.30.225.

These provisions specify that the identified persons procure and maintain minimum amounts of insurance security and that the aircraft used for these purposes must be in compliance with federal safety regulations.

WHO DOES IT APPLY TO

AS 42.30.200 states that a person who carries passengers or freight for commercial purposes intrastate in an aircraft shall procure and maintain security as specified. For purposes of filing with the Department of Commerce and Economic Development, this paragraph is interpreted to mean those aircraft operating intrastate under Federal Aviation Administration regulations part 121 and 135.

AS 42.30.225 further requires that an annual certificate of compliance be obtained before a person uses an aircraft in air commerce.

In defining the applicability of the provisions of AS 42.30.200 - 42.30.380:

1. "air carrier" means a person undertaking to engage in air commerce, whethe directly or indirectly, or by lease, contract, or any other arrangement and whether over regular or irregular routes;

2. "air commerce" means carriage by aircraft of persons or freight for commercial purposes or hire in intrastate commerce, including the carriage by aircraft of persons or freight that move partly by aircraft and partly by other forms of transportation;

3. "aircraft" means a propeller or jet powered device used or designed for flight in the air;

4. "commercial purposes" means activities for which the person receives direct monetary compensation and does not include activities incidental to and done in furtherance of the persons primary business.

5. "freight" means commodities, articles, and cargo of whatever nature or value excluding garbage and trash.

REQUIREMENTS

A person who carries passengers or freight for commercial purposes intrastate in an aircraft must maintain the following minimum security:

1. $150,000 per seat for bodily injury or death in a single occurrence; and

2. $100,000 for property damage in a single occurrence.

Evidence of insurance must be filed with the Department of Commerce and Economic Development, Division of Measurement Standards, and may not be cancelled on less than 30 days written notice to the Division of Measurement Standards. This notification of cancellation must be clearly stated in the policy or endorsement for an insurance policy submitted as proof of financial responsibility. This 30 day notice period is measured from the date on which the Division of Measurement Standards receives notice.

A person may not use an aircraft in air commerce before obtaining an annual certificate of compliance for that aircraft from the Department of Commerce and Economic Development, Division of Measurement Standards. The application for the certificate of compliance must include:

1. proof of financial responsibility in the amounts previously identified;

2. a copy of the Federal Aviation Administration's air carrier operating certificate, for each aircraft;

3. a Federal Aviation Administration certificate to operate if you are a scheduled air carrier; and

4. a $50.00 annual fee for each aircraft being certified.

PROCEDURES

1. Complete an application for a certificate of compliance.

2. Attach copies of all required documents as outlined on the application.

3. Include the $50.00 annual fee for each aircraft.

4. Mail complete application package to:

Division of Measurement Standards
P.O. Box 111686
Anchorage, Alaska 99511

INSTRUCTIONS
APPLICATION FOR
ALASKA AIR CARRIERS CERTIFICATE OF COMPLIANCE

1. Name of the individual making application.

2. Name of business.

3. Mailing address. If the operating location is different, please specify.

4. Date of application.

5. Business telephone number.

6. List those aircraft that are used intrastate in Federal Aviation Regulations part 121 and 135 operation. Do not list those aircraft that are used in parts 61, 91, and 141 operations.

   Aircraft Description:
   Type of aircraft; make and model.

   Passenger Configuration:
   Number of passengers the aircraft is configured to carry. If aircraft is used for freight only, so designate. (AS 42.30.200(a) requires $150,000 per seat for bodily injury or death and $100,000 for property damage.)

   FAA Registration Number:
   Federal Aviation aircraft registration number.

7. The total number of aircraft listed in #6. If an addendum sheet is used, include total from #6 plus total from addendum sheet in this section.

8. AS 42.30.225(a). A person may not use an aircraft in air commerce before obtaining an annual certificate of compliance for that aircraft from the Department of Commerce and Economic Development, Division of Measurement Standards.

   AS 42.30.225(b). The annual fee for a certificate of compliance is $50.00.

   Multiply the number of aircraft listed in #7 times $50.00. Place that result in section #8. Enclose that amount with the application.

9. Attach a copy of the Federal Aviation Administration's, Air Carrier Operating Certificate, form number 8430-18.

10. Attach a certificate of insurance or have the insurance company mail the certificate direct. A telex message can be used for temporary verification while waiting for the original certificate. A certificate of compliance cannot be issued without proof of insurance per AS 42.30.225(1).

11. For State Use Only - Do Not Fill In. This form will be returned to you with this section filled in and all required certificates attached.

ORIGINAL AND ONE COPY OF ALL FORMS TO BE RETURNED TO THE DIVISION OF MEASUREMENT STANDARDS

Sec. 42.30.200. AIR CARRIER FINANCIAL RESPONSIBILITY. (a) A person who carries passengers or freight for commercial purposes intrastate in an aircraft shall procure and maintain security in the following minimum amounts:

(1) Liability for bodily injury or death of persons:

A limit of at least $150,000 for any one person in any one occurrence and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying one hundred fifty thousand dollars ($150,000) by seventy five percent (75 percent) of the total rated seating capacity of the aircraft. [$150,000 PER SEAT FOR BODILY INJURY OR DEATH IN A SINGLE OCCURRENCE; AND]

(2) Liability for loss of or damage to property:

A limit of at least one hundred thousand dollars ($100,000) for each occurrence. [$100,000 FOR PROPERTY DAMAGE IN A SINGLE OCCURRENCE]

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

Commerce's Proposed Changes to AS 42.30.200, .205, 380 - (Air carrier financial responsibility)

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days written notice to the department. This requirement must be clearly stated in the policy or endorsement for an insurance policy submitted as proof of financial responsibility under AS 42.30.225(a)(1). The 30 day notice period is measured from the date on which the department receives notice.

(e) A person who violates [(a) OF] this section is guilty of a class [B] A misdemeanor and is punishable by a fine of not less than [$500] $1,000 or more than [$1,000] $5,000.

Sec. 42.30.225. CERTIFICATION OF COMPLIANCE OF AIR CARRIERS. (a) A person may not use an aircraft in air commerce before obtaining an annual certificate of compliance for that aircraft from the department. The department shall issue or renew a certificate of compliance upon application and presentation of

(1) proof of financial responsibility required under AS 42.30.200;

(2) proof of compliance with Federal Aviation Administration requirements, and, where applicable, federal certification for scheduled airline service.

(b) The annual fee for a certificate of compliance is $50. The certificate is valid for a period of 12 months following the date of certification. The certificate shall be displayed [ON THE AIRCRAFT] so that it [IS] is visible to boarding passengers.

(c) The department may investigate complaints or violations of this section and conduct other investigations that the department considers appropriate and advisable to develop information on possible violations of AS 42.30.200 or AS 42.30.225 and may, upon completion of this investigation

where a violation of AS 42.30.200(a) exists, issue a stop use order. [USE OF AN AIRCRAFT IN AIR COMMERCE BEFORE OBTAINING A CERTIFICATE OF COMPLIANCE REQUIRED UNDER (a) OF THIS SECTION MAY BE CAUSE FOR DENIAL OF THE CERTIFICATE]

(d) A person who violates this section is guilty of a class B misdemeanor and is punishable by a fine of not less than $500 or more than $1,000. [A PERSON WHO HAS OBTAINED A CERTIFICATE TO USE AN AIRCRAFT IN AIR COMMERCE FROM THE ALASKA TRANSPORTATION COMMISSION BEFORE THE EFFECTIVE DATE OF THIS ACT IS NOT REQUIRED TO OBTAIN A CERTIFICATE OF COMPLIANCE UNDER (a) OF THIS SECTION UNTIL THE DATE THE INSURANCE POLICY FOR THE AIRCRAFT IS RENEWED]

(e) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

Sec. 42.30.380. DEFINITIONS. (a) In AS 42.30.200 - 42.30.380,

(1) "air carrier" means a person undertaking to engage in air commerce, whether directly or indirectly, or by lease, contract, or any other arrangement, and whether over regular or irregular routes;

(2) "air commerce" means carriage by aircraft of persons or freight for commercial purposes or hire in intrastate commerce, including the carriage by aircraft of persons or freight that move partly by aircraft and partly by other forms of transportation;

(3) "aircraft" means a propeller, rotor or jet powered device used or designed for flight in the air;

(4) "commercial purposes" means activities for which the persons receives direct monetary compensation and does not include activities incidental to and done in furtherance of the person's primary business;

TESTIMONY TO SENATE TRANSPORTATION COMMITTEE
SB 458
March 5, 1986

Chairman Coghill and members of the Senate Transportation Committee, my name is Bob Jacobsen and I am here today as President of the Alaska Air Carriers Association. I would like to thank you for your willingness to deal with these small but important technical amendments to HB 133 enacted last year.

Very simply, the bill before you today (SB 458) is deemed necessary by the Division of Weights and Measurement Standards to adequately enforce the law which requires commercial air carriers to maintain at least $150,000 per seat in liability insurance ($300,000 for scheduled carriers). Statistics provided to you by the Division early this session indicate a less than satisfactory level of compliance based on the initial letters of notice to commercial carriers.

We have submitted as part of your committee packet a sectional rationale for each provision, and if you wish, I will go through each of the proposed changes with you.

As you are aware, the fiscal note for HB 133 last session was not funded, accounting, in part, for low compliance to date. The Governor has requested about $100,000 in his FY 87 operating budget for this program, and we urge you to support the request.

I would also like to take this opportunity to briefly mention our industry's serious problem with insurance rates. While we maintain our strong support for the minimum insurance requirements as a condition of business, we are having the same problems with dramatic escalation of rates as most other industries. We have lost several members during the last year due to bankruptcies or failure to obtain insurance at rates which would permit an operating profit. Others are on the verge of collapse.

If you want to help maintain viable air transportation in the future, we strongly urge your support of SB 377 this session.

Thank you for the opportunity to testify, and for your attention to our concerns.

Amendment 1 (Sec. 42.30.200(c)) specifically authorizes the Department of Commerce to stop aircraft from carrying passengers for hire until they secure the minimum required liability insurance. It also authorizes the Department to conduct investigations if necessary to find violators.

Amendment 2 (Sec. 42.30.200(e)) increases the size and severity of a fine to an air carrier who flies passengers for hire without first securing the minimum insurance levels required by HB 133 ($150,000 per seat). Without a more strict penalty, carriers may find it cheaper to ignore the law than to comply.

Amendment 3 (Sec. 42.30.225(b)) allows the insurance "certificate of compliance" to be posted in a visible location other than in the aircraft. This would be particularly helpful to the jet carriers which often interchange planes, thus making it difficult to post certificates in the aircraft. It would also reduce the cost of a certificate from $50 to $25.

Amendment 4 (Sec. 42.30.225(e)) provides specific authority to issue stop use orders if a carrier is operating without a state certificate of insurance.

Amendment 5 (Sec. 42.30.225(d)) provides for a specific penalty for a carrier who fails to obtain a certificate of insurance from the State.

Amendment 6 (Sec. 42.30.380(3)) clarifies the definition of aircraft to include rotor devices (helicopters).

(5) "department" means the Department of Commerce and Economic Development;

(6) "freight" means commodities, articles, and cargo, of whatever nature or value, excluding garbage and trash.

SB

461

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

April 5, 1986

TO: All Committee Members

FROM: Committee Staff

RE: SB 461, An Act relating to the naming of the Robert J. Mitchell Expressway

SB 461 proposes to name a section of the South Fairbanks Expressway between the Parks Highway and Airport Road interchange to the Richardson Highway after Robert J. Mitchell.

Sect.1 of the bill lays out background information about Mr. Mitchell explaining why the naming is appropriate.

On March 27 a public hearing was held in Fairbanks to gather comments regarding the naming. Of the twenty people testifying, 16 were in favor of naming the road the Robert J. Mitchell Expressway. Enclosed in your packets is the written testimony from the public hearing.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
Bill/Resolution No.: HB664/SB461
Title: An act relating to naming the Robert J. Mitchell Expressway.

Sponsor:
Requestor: Senator Coghill
Date of Request: 3-10-86

FISCAL DETAIL
Agency Affected: DOT&PF
BRU: Design and Construction

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS, ETC.						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL		12.0				
REVENUE						

FUNDING:(Thousands of Dollars)

GENERAL FUND		9.0				
FEDERAL FUNDS		3.0				
OTHER						
TOTAL		12.0				

POSITIONS:

FULL TIME						
PART TIME						
TEMPORARY						
TOTAL						

ANALYSIS: Attach a separate page if necessary
Signs must be changed from "Parks Highway" to "Mitchell Expressway". Six existing signs must be replaced and four proposed signs must be increased from 7 ft. to over 12 ft. in length. This portion of road is currently designated as the Parks Highway on the State road system. Recommend that the Fairbanks community be made aware of the proposed renaming and that they be allowed adequate opportunity for comment.

Prepared by: Paul Prusak Phone: 474-2427
Division: DOT&PF, Planning Date: 3-12-86

Approved by Commissioner: R. J. Knapp Date: 3/12/86
Department: DOT&PF

Distribution: (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

DOT Fiscal Note

10/25/85

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 664
Title : An Act relating to naming the Robert J. Mitchell Expressway

Sponsor : Rep. Franks
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : _____
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	2000	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Amy M. Daugherty
Division : House Transportation Committee
Phone : 465-4858
Date : 3/14/86

Approved by ~~Commissioner~~ : Bette Ward
Agency : Chairperson
Date : _____

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

House Trans Fiscal Note

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Ahwood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

Text from Public Hearing in Fairbanks

Thursday, March 27, 1986

On House Bill 664, Senate Bill 461

12 Noon to Two P.M., Noel Wien Public Library

Senator Coghill

"Okay, we will bring our public hearing to order and its 12:10 p.m. and its the 27th of March 1986. The purpose of the hearing today is to discuss and gather opinions on House Bill 664 and Senate Bill 461, Both entitled an act relating to naming the Robert J. Mitchell Expressway. My name is Jack Coghill and I am chairman of the Senate Transportation Committee. It is my responsibility to hold the hearing. In order for us to name a road or a expressway after a person using federal funds we have to have a public hearing in the area in which it is going to effect.

I have known Bob Mitchell for as long as I can recall, I remember when he was working with the old road commission. After we all got out of the service he had already started his truck and tractor business. A lot of us boys, when we got out of the service, the first place that we went was to work with Bobby Mitchell. We were either greasing cats or working in one way or another. It was his way of keeping the home town boys going. After he expanded to the point that he had a freight service and got involved with Ghemm Company and was involved and was a tremendous supporter of the Interior of Alaska...the purpose of projecting this name forward as far as the transportation committee is concerned is that it is time that we in Alaska start naming some of our road and rights-of-ways after our old timers that are our contemporaries. We have people signing up, and as you come in we would like you to come forward and sit on one of the front seats so that we can tape you and put you in the record."

Senator Coghill read the letter from Bruce Stacer, dated March 26, 1986.

Testimony Given

Francis Erickson
1205 10th Avenue
Fairbanks, AK 99701
456-5358

"I am also a life long Alaskan, I have lived in Fairbanks for 64 years. I believe that this is very fine and very commendable, however, there are a lot of other pioneer truckers in this country that have not had much recognition, like Gezzy (spelling?) and Roggy (spelling?) just to name two. I think that it is about time that we get these older timers in. As far as a pioneer trucker, of course, Bobby started in 1945-46 after the war; and his partner Gerhatty, and his family, are certainly well know here. They have extended themselves over quite some expanse. Clyde is going to be the grand president of the grand igloo here in a couple of years. I think that he deserves some recognition also.

There are quite a few here, and as far as the Railroad Spur and the Mitchell race way and so on, there are other partners in that enterprise that never have received some recognition either. I don't know if you have to be deceased to receive recognition, but it kind of seems that way. I think that it is about time that we turned to some of the others here. Don't misunderstand, I was a friend of Bob Mitchell's and knew him all my life, but you people have a little more say so and when you get behind all of these things, it seems that when I read in the paper it has already been done. By the time that we get here and get to the hearing...this is the first time we heard of it. I didn't have time for...well to get background on some others that I would have named probably, because I just read it in the paper yesterday. So sometimes, I feel that we need a little more advanced warning of these hearing too."

Joe Tremarello
Box 80974
College, AK 99753

"I am a forty year resident of the Fairbanks area and I feel that it is very appropriate, and certainly support, House Bill 664 and Senate Bill 461 as stated. Not only for Bob's contribution to the area of construction, but as a parent raising his family here and his support to my background in teaching. His support to the schools and the staff over the years has been commendable. He did a lot for youth and I feel that it would be very appropriate to name this expressway after Bob."

Ken Fanning
Box 80292
College, AK 99708

"I would like to concur on the previous comments. I appreciate the fact that you are considering naming something after somebody of recent generation who, in fact, has left a strong family unit that is continuing on that way. I think, personally, that it is a good idea to consider naming this road after people that are continuing to support the community."

Oliver Backlund
No Address Given
President of the Fairbanks Pioneers Igloo

"I support this bill, I think that there is going to be a lot of other roads that we can name a lot of other Alaska pioneers after. I think Robert Mitchell was really active in the area and a respected local businessman. I really support this bill."

Joe Balch
7665 Salcha Road
Salcha, AK 99714

"I like Mitchell, although that was a few years ago, to tell you the truth. I would like to see the roads named after a man that was so industrial instead of some politician. He has seen his schooling through the school of hard knocks, actually, and I think that this is an appropriate name for it."

Shirley Demientieff
1205 Kennicott
Fairbanks, AK 99701

"I have been in Fairbanks for twenty years in all and I was born and raised in Nenana, as you know Mr. Coghill. I have no problem with naming roads after people. That does not bother me at all. I like the idea of the South Expressway, I think that it is long overdo, I think that it is something that we really needed. But my problem, Jack, is that when I first heard the name I said 'who is Robert Mitchell?' So far I heard...I don't even know if he is dead or alive...with no disrespect, I have no idea of his contributions have been. I am assuming that he is someone who is a good guy. My idea is a little bit different. I would think that...Natives make a population of 10-15% of the statewide population now and there is really nothing named after Native people in the interior...

What I would like to see is that the expressway be named after our champion dog racer. George Attla, seven time winner of the North American, eleven time winner of the Rondevue in Anchorage. He is a Huslia Hustler, he lives in North Pole, he will be using that road. That would be something that would be current, that is well known; when you ask who George Attla is, nobody is going to say 'who is George Attla?' they are going to know who he is. It would be something that I would be extremely proud of and that other people could be extremely proud of too. I just heard about this early this week but I have been able to get these names of people. This is strictly grass roots, not going anywhere other than FNA and Tanana Chiefs. Those are over a hundred names of people that feel the same way that I do about this expressway. (Ms. Demientieff brought a petition to the table and presented it to Senator Coghill) That (the petition) is in support of the name "George Attla Expressway."

Pete Eagan
P.O. Box 1170
Fairbanks, AK 99701
456-4793

"My name is Pete Eagan, I was born and raised here in Fairbanks and I have known Bob Mitchell since I was a child. He was a real good friend of my family's. Later on I had the honor to have worked for Bob when I was in high school and college. I learned a great deal from Bob. He was a very fine man, well liked by everyone in town. He had a terrific sense of humor, and he was definitely from the old school, where your word was your bond. If Bob told you he would do something, he would do it. He was very involved in the whole development of the South Fairbanks, Industrial area and I think that this would be a very fitting tribute to Bob to name this new expressway after him. Thank you."

Harold R. Herning
Box 1792
Fairbanks, AK 99701
488-2291

"I knew Bob for 43 years up until the time of his death. I think Bob, of all the people in Fairbanks, probably is one our truest Alaskans we have ever had. He was truly Alaskan in every sense and the naming in appropriate. This is his home ground. That is his life, to develop that area and I think that it is no more than appropriate that a man of his caliber be recognized. There is nothing that can be said about Bob that is wrong. The only thing that can be said is praise as far as Bob is concerned. I thank you."

Jim Desmond
No Address Given

"I would certainly like to testify for the bills to name the Expressway the Robert J. Mitchell. I knew Bob for years and years. A wonderful man, and inspiration to all the people that were my age when I was a teenager when we interacted with Bobby a lot. And I certainly feel that he is worthy of the honor."

Terry P. McLean
1907 Capital
Fairbanks, AK 99709

"Yes, Jack, I would like to testify in favor of the Robert J. Mitchell Expressway. I personally owe a great deal to Robert Mitchell and his partners in Ghemm Company. I was able to complete my education at the University of Alaska due to their summer and winter employment. Bobby Mitchell was always a friend as well as the boss. Although when he made up his mind to do something it was often difficult to get him to change his mind, he would always hear you out or listen to your suggestions and ideas. Although Air North is no longer flying it provided jobs for many many people and pilots that are today flying jets all over the United States and the World. Bobby Mitchell worked thousands of hours to building the runway at Metro Field and was always able to help people, no matter what the situation. Thousands of people have enjoyed stock car racing because Bobby Mitchell and Ghemm company allowed GFRA to build the race way across from the float pond at Metro Field. Many of the roads that were built that will intertie with the Expressway were built by Bobby Mitchell or people that he helped provide employment for. I feel that it really makes sense to honor those that have helped build the community and the character of the people living in the Fairbanks area."

Mark Ringstad
502 Monroe Street
Fairbanks, AK 99701
456-5734

"I knew Bob Mitchell all my life, was raised with him here in Fairbanks. Bob was in the construction industry and trucking industry all of his adult life. He was one of the prime movers for the railroad to go to the South Fairbanks area. He was one of the major developers of the entire Van Horn Road area. I think that it is most fitting and most appropriate to name that expressway after him."

Gary Wilken
2600 Riverview Drive
Fairbanks, AK 99701

"I carry with me some written testimony, Senator, from Bill Gordon and a letter from Pete Eagan Sr. and Dan Eagan, they are out of town and wanted to be sure that they heard today. Just a couple of things...it is difficult for me to talk about Bob Mitchell, he was such a big part of my life, Bob, as far as the South Fairbanks area, we all know, was one of the leaders in developing that area. I went to work with Bob in the early sixties when there was nothing but a dirt road and he lead us off into the muskeg and said 'this shall be a airport.' So, we know that he was one of the people that was instrumental. To name that highway after him is very fitting. I appreciate the opportunity to provide testimony and look forward to bills passing. Thanks, appreciate the opportunity."

Nancy Lee Baker
49 Timberland Drive
Fairbanks, AK 99701

"I would like to comment, and I am going to comment before I read the bill, my idea is that the road should be called the Parks Highway Extension, because that is what it logically is. That is what people will call it naturally. One reason that I am a little concerned is that I happen to make a small map myself (in the record). To put another name on it, for map makers and for tourists it seems to me that it would be utter confusion. Logically it is the Parks Highway extension. I have a lot of respect for the person named here, but that is beside the point. I don't think that we have a right to go around confusing the public."

Walley Burnett
1901 Crosson
Fairbanks, AK 99701

"Senator Coghill, it is nice to be here. Yesterday I talked to a couple of people and they mentioned that there was a possibility that they would be naming the South Fairbanks Expressway. Bob Mitchell was a long time Fairbanksan from a long time Fairbanks family. He was very instrumental in developing the Van Horn and Peger Road, in which this road will be passing through. If you will recall in the early days of the pipe line, Bob Mitchell was one of the main people involved in the development of the Railroad that went into the South Fairbanks area. He moved lots of gravel and made lots of roads, often with out pay. I feel that when we drive back and forth on Airport Road, Van Horn and Peger, and we do go through the expressway, we do think of our good friend Bob Mitchell. I whole heartedly would like to give my approval of putting his name into naming it the Mitchell Expressway."

Harvey Marlin
665 10th Ave.
Fairbanks, AK 99701

"I have lived in Fairbanks since 1929 and have know Bob Mitchell from that day forward. Not only as a classmate, but as a good and personal friend. When it came to my attention that this expressway was to be named, perhaps anyway, in memory of Bob Mitchell, I was very definitely impressed and I still am. I think that it is a very wise move. Bob was a gentleman that promoted for the City of Fairbanks all of his working years. As a matter of fact, he began his working career with the Alaska Road Commission. Both he and his partner began a trucking operation from Valdez to Fairbanks with the assistance of the veterans aid. There again they continued on in to the highway program, Clyde previous to that was a master mechanic to the road commission. Bob Mitchell has always been associated with the road system and has always done a great amount over and above walking the extra mile to make the roads within our community better, not always for pay, by the way. I think that this is a very wise choice and I am one thousand percent in favor of it."

Con Frank
200 Gold Dust Drive
Fairbanks, AK 99707
479-2828

"Well, I would like to say that I would endorse the naming of this section of highway for Robert Mitchell. I have known him almost forty years since I came to Alaska. He was one of the first people that I met when I came here. I have been a partner with him and closely associated with him for twenty years. He was a very positive person and dedicated a lot of his efforts to the development of Fairbanks, and especially the South Fairbanks area. He started out on South Cushman, he and his partner, started in there in 1948-49 and then gradually moved further south there to the Van Horn Road area. I would just like to say that I would endorse this naming."

Senator Coghill

"Thank you very much Mr. Frank, is there anyone else that would like to make a statement? If not, then our public hearing is closed. This will be transcribed and will be put into the record. It will be used in the deliberation of both the House and Senate. They may want to have more hearings. If that is the case, then this will be part of that record."

Interior
Business Products, Inc.
3180 Peger Road
P.O. Box 74690, Fairbanks, AK 99707
907 456-1104

March 25, 1986.

To Whom It May Concern:

As a property owner and life-long resident of Alaska, I wholeheartedly support the naming of the "30th Avenue Bypass", the Robert J. Mitchell Expressway.

Bob Mitchell has made a lasting impact on the development of our community. More specifically, Bob contributed to much of the growth in South Fairbanks and the area south of Van Horn Road. His very business located along Cushman Street, along with his development of Metro Industrial Airport, inspired many others to follow. Without his dedication and early belief in Fairbanks' future the need for this bypass would probably be many years yet in the future.

It would be most fitting to name this highway in honor of one of Alaska's pioneers who gave so much of his time to his community. Please designate the "30th Avenue Bypass" the Robert J. Mitchell Expressway.

Sincerely,

Bill Gordon

Bill Gordon
Vice President

lr/BG

March 26, 1986

Senator Jack Coghill
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Coghill:

It has come to my attention that there is a bill or resolution before the legislature regarding the naming of the new South Fairbanks Expressway. As proposed, this expressway between the Airport Road overpass and the proposed Richardson Highway overpass would be named the "Bob Mitchell Memorial Expressway."

I knew Bob since I was a child, and later on had the great fortune of working for him during my high school and college years. I learned a great deal about life and the value of good hard work during this time. Bob was a very fine man, and was heavily involved in the development of this South Fairbanks industrial area, rail spur, and road system.

I think that the naming of this expressway after Bob would be a very fitting tribute to a fine, highly-regarded individual. I would welcome and appreciate your support in this matter.

Sincerely,

Pete Eagan

Pete Eagan
Box 1170
Fairbanks, Alaska 99707

March 25, 1986

Senator Jack Coghill
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Coghill:

I respectfully request your consideration in naming that section of the South Fairbanks Expressway, between the Airport Road overpass and the proposed Richardson Highway overpass, the "Bob Mitchell Memorial Expressway".

Mr. Mitchell was a very fine individual and very instrumental in the development of the South Fairbanks Industrial area and its road system.

Thank you for your consideration on this request.

Very truly yours,

Dan F. Eagan

Dan F. Eagan
Box 1170
Fairbanks, Alaska 99707

Mar 26, 1986

To Whom It May Concern:

As a life-long Alaskan, I strongly Recommend that the 30th Ave By-Pass be Named ~~the~~ in honor of, and in memory of, Robert J. Mitchell. Bobby Mitchell was also a life-long Alaskan. Even more importantly, he was truly a pioneer in the development of transportation, in particular, the highway system in and around Fairbanks. I knew him personally since 1937. He was a life-long resident of Fairbanks. After WWII, he used his GI loan to buy a caterpillar. Before the war (WWII) he worked ~~on~~ with the Alaska Highway Commission. He developed a trucking operation with Clyde Geraghty that serviced Valdez and Fairbanks. He was one of the founding partners in GHEMM Construction Co. and built many roads and bridges throughout Alaska. Bobby Mitchell devoted all 63 years of his life and his boundless energy and optimism to ~~the~~ his unshakable belief in the future of Fairbanks. He deserves to be remembered.

Bruce I. Staser

Bruce I. STASER
1351 Hillcrest Dr.
Anchorage AK 99503

SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA ~~EXPRESS~~ Expressway FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING. PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

SD

SIGNATURE	PRINTED NAME	ADDRESS
Sally Bluekens	SALLY Bluekens	1863 Bridgewater Dr
Thomas P. Bluekens	Thomas P. Bluekens	1863 Bridgewater Dr.
Maureen Monroe	MAUREEN MONROE	419 Northward Bldg.
Dorothy Jones	Dorothy Jones	172 Parker Way
Anthony Tilma	Anthony Tilma	808 Eighth Ave
David W Pearson	DAVID W PEARSON	POBox A365, FAIRBANKS 9970
Jeanne Baker	JEANNE BAKER	1606 Marilla St. #1 FBKS
Maudry Tanner	Maudry Tanner	710 Wales Rd - Fbks AK
Sharon Williams	Sharon Williams	1607D Washington - Fbks, A
Jackie Sims	JACKIE SIMS	2933 S. Kobuk FBKS 9970
Kathy Lydon	KATHY LYDON	1007 28th Ave. FBKS, 99701
Veritian L. Riddle	VERITIAN RIDDLE	4H10 Fairview Manor FBKS 99701
Brenda K. Krupa	BRENDA K. KRUPA	128 Concordia Dr.

13

SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA ~~HERAS~~ FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING. PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Marie Yaska	Marie Yaska	318 Slater Dr. West
Anna Barker	Anna Barker MARIE YASKA	1190 Nenana St. Fbks
D Shanks	A Hla Expressway D. Shank	1329 Wake Forest Fbks
Janet L. Demientieff	402 Est #1 Box	Janet Demientieff
Lillian Preston	LILLIAN PRESTON	P.O. BOX 1559 FAIRBANKS, AK. 99707

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SD

SIGNATURE	PRINTED NAME	ADDRESS
Rita Stewart	RITA STEWART	1087 Steele Creek Rd Fairbanks AK 99712
Kenneth D. Abbott	Kenneth H. Abbott	1404 21st Ave Fairbanks, AK 99701
Bernice V. Aragon	BERNICE V. ARAGON	4646 ELECTRA AVENUE FAIRBANKS, ALASKA 99709
Ruth Evans	Ruth EVANS	2933 Salmon Ct North Pole AK 99705
Susie Frantz	Susie Frantz	379 Division St FAIRBANKS, AK. 99701
~~[illegible]~~	~~[illegible]~~	
Michael E. Smith	Michael E Smith	1335 Heldiver FBKS AK
Diane D. Ervin	DIANE D. ERVIN	303 Badger St.
Fred Eczey	FRED ECZEY	3040 DAVIS RD. FBKS. AK
Sarah Kienzle	Sarah Kienzle	8026 Dersinger No Pole Ak
Susan Barrett	Susan Barrett	4813 Putnam Lane No Pole AK
Tom L Chapin	Tom L CHAPIN	201 1st Ave Fbks 99701
Thomas P Rehm	Thomas P Rehm	555 Wilcox FBKS 99701
Axel E. Johnson	Axel Johnson	2826 Totem DR FBKS
Mark H. Mattson	MARK H. MATTSON	SR 50525V FAIRBANKS AK 99701
Michael J. Gillenwater	Michael J. Gillenwater	310 Slater - FBKS 99701
Ronnie M. Sims	RONNIE M. SIMS	POBOX 73363 FBKS. 99705

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SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA ~~EXPRESS~~ FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING./ PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

Expressway SD

SIGNATURE	PRINTED NAME	ADDRESS
Patricia Baker-Benally	Patricia Baker-Benally	1606 Marika #1 Fairbanks Alaska
Annabel L Culler	Annabel L. Culler	1113 6th Avenue, #7 Fairbank AK 99701
Donald D Fisher	Donald D Fisher	130[illegible] 4th St. Apt. 4 Fairbanks AK. 99701
Susheila Khera	Susheila Khera	1511 Goldenview Dr Fbks AK 99701
Robert Zy Keller	Robert Keller	143 4th Ave Fbks
Elizabeth M Guinn	ELIZABETH M. GUINN	P.O.B 83324 AK 99708
Barbara J Bluekens	BARBARA J. BLUEKENS	1863 Bridgewater Dr Fairbanks, AK 99709
Carol Pitka	CAROL PITKA	1028 7th Ave. Fbks AK.
Mary A Bennett	MARY A. BENNETT	P.O. Box 75168 - Fbks, AK 99707
Mike Galbreath	MIKE GALBREATH	1220 Bunnel St Fbks
Banarsi Lal	BANARSI LAL	4532 Dartmouth, Fbks.

SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NCEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA [redacted] FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING./ PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Velma Schafer	Velma Schafer	Box 80885 College, AK 99708
Kornelia Grabinska	Kornelia Grabinska	3120 Totem Dr. Fairbanks, AK 99709
Dorothy Haskins	DOROTHY HASKINS	509 WILCOX AVE FBKS. AK. 99701
Joan Pulse	JOAN S. PULSE	Box 60356 Fairbanks AK 99706
Lucy A.K. Carlo	LUCY A.K. CARLO	310½ FIRST AVE FAIRBANKS
Minge Clark	Minge Clark	3206 RIVERVIEW DR.
Nellie K. Hamsley	NELLIE K. HAMSLEY	PO Box 1613 FBX AK 99707

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Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Elbio Suarez	ELBIO SUAREZ	308 — 12TH Ave.
Donna D. Scott	DONNA L. SCOTT	BOX 3447 - F Box 99707

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SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA ~~BYPASS~~ FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING. / PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Shirley A. Dementieff	Shirley A. Dementieff	P.O Box 15450 99707
	Elston W. Longesen II	447 Corlton Dr. 99701
Bill Ambrose Jr.	Bill Ambrose Jr.	1919 Jarnett #1
Paul Mountain	Paul Mountain	1023 24th Ave.
Susan George	Susan George	87-11 Slater Drive
Roxanne M. Frank	Roxanne M. Frank	1578 Bridgewater Dr. Fbks, Ak
Patricia A. Stickman	Patricia A. Stickman	1112 4th Ave, Apt. A
Virginia T. Sweetsir	Virginia T. Sweetsir	529 Glacier Fbks
Ray Kent	Ray Kent	97 A Trinidad ST Fairbanks, Ak, 99709
Marilyn M. Oliver	marilyn m. oliver	1655 University Ave E-4 Fbks
Tom Alton	TOM ALTON	1426 4TH AVE. FAIRBANKS
Janet E. Abbe	JANET E. ABBE	1701 2ND #3A, FAIRBANKS
Sharon Sunnyboy	SHARON SUNNYBOY	2691 DAWSON Rd. -N. Pole. 99705
Vernon Malcolm	Vernon Malcolm	201 Bentley Dr E Fbks

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Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Carol M Yaska	Carol M Yaska	5½ Mi Farmers Loop
Katherine E. McGraw	Katherine E. McGraw	525 Dunbar Ave
Albert John	Albert John	General Delivery Nenana, Ak. 99760
Edna Ketzler	Edna Ketzler	Box 28, Nenana, AK.
Barbara A. Harris	Barbara A. Harris	Box 32, Nenana, AK.
Priscilla Roth	Priscilla Roth	227 Kody Dr, FBKS 99701
Reva Wulf	Reva Wulf	1019 23, Apt. #1
Don Shircel	Don Shircel	201 1st Ave FBKS 99701
Doug McCotter Jr.	Doug McCotter Jr	1914 Southern Ave FBK
Harriet McCotter	Harriet McCotter	1914 Southern Ave Fbks
Martha Hayward	Martha Hayward	4815 Drake st.
Mickey Woods	Mickey Woods	Pioneer Lounge
Stephen J Schwab	Stephen J Schwab	Po Box 171 Tanana AK
Randy Joseph	Randy Joseph	Rampart City AK
Charles Mayo	Charles Mayo	Box 2802 Fairbanks AK
Pete Evans	Pete Evans	Gen. Del. FBKS. AK.
Paul Woods		
Stephanie Stoperich	341 Brandt St Apt 1	Fairbanks Ak 99701
Terry Esau	Terry Esau	Nenana AK
Willie Lord	Willie Lord	P.O. Box 426 Fbks AK
Lewis A. Thomas	Lewis A. Thomas	Box 157 Nenana AK.
Paul Head	Paul Head	1000 3rd Ave
[illegible]	David Rush	P.O. 75365. Fairbanks, AK 99707
[illegible]	Al Stevens	2506 Mercier Apt. A - FBKS, AK
Karen Rollin	Karen Rollin	3142 Lawrence Rd, North Pole
Shannon D. Craig	Shannon D. Craig	2326 Freedom North Pole

-2-

SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA ~~FOR~~ FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING./ PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.
Expressway
SD

SIGNATURE	PRINTED NAME	ADDRESS
Denise James	Denise James	5490 Antler ST FBKS AK
Gilbert Dugaqua	Gilbert Dugaqua	2002 Sandvik #160
Richard R. Purdy	Richard R. Purdy	1623 Market ST.
Donald W.Y. Kilbuck	Donald W.Y. Kilbuck	2002 Sandvik Rd., #110
Annette Fickus	Annette Fickus	455 3rd Ave, Fbx. AK
Eloise Isaacson	Eloise Isaacson	455 3rd Ave Fbks.
Walter J. Peter	Walter J. Peter	1620 Work Dr Fai
Vernon Malcolm	Vernon Malcolm	201 Benlley Dr E Fbks
Robert A. McGee	Robert A. McGee	6432 Rich Hwy, Salcha. 99714
Isaac A. Juneby	Isaac A. Juneby	Box 61142 Fairbanks Alaska
JoAnn Miller	JoAnn Miller	29A Goldrush Estates
Walter Tommy	Walter Tommy	Box 27 Nenana, Ak.
Celia J. Peterson	Celia J. Peterson	Box 27 Nenana, AK
James R. Fickus	James R. Fickus	Box 10587 - FBKS 1411
Darlene F. Riley	Darlene F. Riley	334 Brandt St. Fbks. AK
Gary Carlo	Gary Carlo	5653 McCabe Dr. FBKS
Harold E Howard	Harold E Howard	General Del FBKS
Dottie Shover	Dottie Shover	1230 Wildrose Ave

SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA ~~HIGHWAY~~ FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING./ PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Becky Gibson	Rebecca Gibson	Minto Alaska
Hanna Carter	HANNA CARTER	/
Violet Titus	VIOLET TITUS	minto Alaska
J. Riber Jr.	J. Riber Jr.	1000 3rd Ave. FBKS
Sygon	SYGON	
Roland Riley	Roland Riley	Minto, Alaska
Davy Jimmie	Davy Jimmie	Minto
Andrew Folger	ANDREW FOLGER	TANANA AK.
Morris Bergman	Morris Bergman	Allakaket AK
George Wholecheese	George Wholecheese	Nulato, Alaska
Zelma Silas	Zelma Silas	Minto, Alaska
BOB R Charlie	BOB R CHARLIE	MANTO ALASKA
~~Bergman Silas~~ Bergman Silas	Bergman Silas	Minto Alaska
Rose M. Duyck	Rose M. Duyck	Nenana, Ak.
Philip J. Titus	Philip J. Titus	Minto, Alaska 99758
William R. Charlie	WILLIAM R. CHARLIE	MINTO, ALASKA 99758
Kenneth B. Charlie	KENNETH B. CHARLIE	MINTO, ALASKA 99758
Sarah Silas	SARAH SILAS	MINTO AK 99758
~~Leo Titus~~ Leo Titus Jr.	LEO TITUS JR.	Minto, AK 99758
Julie John	Julie John	MINTO, AK 99758
Carlson Koyukuk	CARLSON KOYUKUK	Hughes, AK. 99745
Earl Henry	Earl Henry	Venetie AK 99781
Norma Charlie	norma Charlie	MD ak 99758
Darlene Demientieff	Darlene Demientieff	1620 WASHINGTON DR #18 Fairbanks, AK 99709
Gloria G. Riley	GLORIA G. RILEY	1001 24th Ave. FBKS 9970

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Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Marc R. Mulleny	MARC R. MULLENY	P.O. BOX 83573 COLLEGE, AK
Richard Frank	Richard Frank	1576 Broadway Ave - FBKS, AK
Esther L Roberts	Esther L Roberts	P.O. Box 72 Minto, Alaska 99758
Annie Tennison	ANNIE TENNISON	MINTO, ALASKA P.O. BOX 13
Ronald O Baker Sr	Ronald W. Baker Sr	Birch Creek AK 99740
Eugene Roberts	EUGENE ROBERTS	MINTO AK. 99758
Thomas Algobson	THOMAS ALGOBSON	MINTO AK 99758
Larry Charlie	Larry Charlie	Minto AK.
Howland Van Silas	Howland Van Silas	Minto. AK.
Darrell Linus	DARRELL LINUS	Allakaket AK
Cliff Adams sr	CLIFF ADAMS	Beaver AK
Eddie James	Eddie James	Birch Creek AK
Wilford Johnson	Wilford Johnson	Ft Yukon, AK
Cliff Alexander	CLIFF ALEXANDER	GEN DEL Minto AK. 99758
Percy Duyck Jr	PERCY DUYCK JR	NENANA, AK
Steven Phillips	Steven Phillips	Delta Jct. AK
John T Duyck	JOHN T DUYCK	GEN DEL CHALKYITSIK AK 99788
Roy M. Charlie	ROY M. CHARLIE	BOX 24 MINTO 99758
Fred Alexander	FRED ALEX	minto alaska Box
Lee Titus	LEE TITUS	BOX 26 MTO
Mark Edward Springer	Mark Edward Springer	Manley Hot Springs
John Woods	John Woods	Rampart AK
Charles Zimmerman	Charles Zimmerman	Manley Hot Spgs.
Philip D Argall	Philip D. Argall	Box 00286 Nenana AK 99760
Leon Titus	Leon Titus	MINTO A.K. 99758
[redacted]	[redacted]	25

SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA ~~EXPRESS~~ FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING. PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

Expressway SD

SIGNATURE	PRINTED NAME	ADDRESS
	Mitch Demientieff	Box 251, Nenana, AK
Kathleen Kokler	KATHLEEN Ketzler	Box 251, Nenana, AK.
Clifford Demientieff	CLIFFORD DEMIENTIEFF	525 DUNBAR FBKS. AK.
Alfred R Ketzler Jr	Alfred R Ketzler	1628 Cottonwood St FBKS
Connie C. Cates	CONNIE C. CATES	PO Box 73646 - 99707
Michael J. Walleri	Michael J. Walleri	P.O. Box 73781 FLK 9970
William C Williams	William C Williams	2514 Riverview Dr FBKS 997
Harry Fiele	HARRY FIELE	BOX 741352 FBKS 997
Dawn M Hold	DAWN HOLD	PO 55902 NP 99705
Kathy Monteith	Kathy Monteith	3142 Laurence 99705
Dorothy Hogge	DOROTHY HOGGE	5273 H BROADWAY, EAFB 997
Janet Toohey	Janet Toohey	Po Box 73383 - 99707
Velma Carroll	Velma Carroll	P.O. BOX 75045 - 99707
Barbara Lauridsen	Barbara Lauridsen	3040 Davis Rd #40A Fbks Ak
Janet Emerick	Janet Emerick	P.O. Box 55397 - N.P. 99705
Irene E Roberts	IRENE E ROBERTS	POB 73115 FBX 99707
Johanna Dright	JOHANNA DRIGHT	4376 DARMOUTH 99701
Edna Telford	EDNA TELFORD	1029 8th Ave FBK 997
Elaine Ertz	ELAINE ERTZ	3243 EDDY RD FBK 55705
Deborah Honea	DEBORAH HONEA	POB 10710 FBKS 99710
Maureen P Higgins	MAUREEN P. HIGGINS	1136 D ST FBKS 99701
Willard G. Mayo	WILLARD G. MAYO	201 1st AVE, FBKS 99701
Alfred R Ketzler Jr	ALFRED R KETZLER JR	4654 Amherst Dr
Annie C Bailey	Annie C. Bailey	RR Box 20163-C Fbks AK 99709
Anne E. Neyhart	ANNE E. NEYHART	2014 SANDVIK #304, FBKS
	125	

SENATOR JACK COGHILL WILL BE IN FAIRBANKS ON MARCH 27, 1986 TO HOLD A HEARING AT THE NOEL WEIN LIBRARY BETWEEN 12 AND 2 P.M.. HE WILL BE TAKING SUGGESTIONS AT THAT TIME FOR A NAME FOR THE STRETCH OF HIGHWAY THAT THEY ARE BUILDING BETWEEN AIRPORT ROAD AND THE RICHARDSON HIGHWAY. SINCE THERE ARE FEW THINGS NAMED FOR NATIVES IN FAIRBANKS I THOUGHT IT WOULD BE NICE TO SUGGEST THE NAME GEORGE ATTLA [redacted] FOR THE HIGHWAY. IF YOU AGREE PLEASE SIGN THIS AND I WILL TURN IT IN AT THE MEETING. PLEASE BE THERE IF YOU CAN TO SUPPORT THE NAME.

Expressway

SD

SIGNATURE	PRINTED NAME	ADDRESS
Denise Bigjoe	Denise Bigjoe	3109 Totem Dr
Carol C. Sholl	CAROL C. SHOLL	1415 22nd Ave.
Dorothy L Lord	Dorothy L. Lord	1716 University Ave
Lora Jones		
Donna John		P.O. Box 129 Fbks Alaska

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SB

471

Validity, construction, and application of age requirements for licensing of motor vehicle operators, 86 ALR3d 475.

Sec. 28.15.040. Instruction permits and temporary licenses. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.041. Classification of drivers' licenses. (a) The commissioner shall provide by regulation for the classification of drivers' licenses. The regulations shall specify license classifications which are reasonably necessary for the safe operation of the various types, sizes and combinations of motor vehicles. The regulations shall also establish medical standards, standards of driving conduct and proficiency, and other standards governing the issuance, renewal, or denial of these licenses. The department may examine each applicant to determine the applicant's qualifications according to the class of license applied for, and upon issuing a driver's license the department shall indicate on the license the classification for which an applicant for a license has qualified by examination. The regulations and any subsequent modifications under this section become effective only if approved by a concurrent resolution adopted by a majority vote of each house of the legislature.

(b) A person may not drive a school bus transporting school children, or a bus transporting school-age children or another motor vehicle when in use for the transportation of persons for compensation until the person has applied for and has been issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has had at least one year of driving experience, and the department is satisfied as to the applicant's good character, competence and fitness to be licensed; nor may the department issue the license until proper application has been made and all required driving, written, and physical examinations have been successfully completed. A license issued under this subsection expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee. (§ 19 ch 178 SLA 1978)

Sec. 28.15.050. Applications. [Repealed, § 19 ch 178 SLA 1978.]

SB 471

Article 1. Issuance, Expiration and Renewal of Licenses.

Section
11. Drivers must be licensed
21. Persons exempt from driver licensing
31. Persons not to be licensed
41. Classification of drivers' licenses
51. Instruction permit, temporary driver's license and special driver's permit
61. Application for driver's license or instruction permit; notice of anatomical gift procedure
71. Application of minors
81. Examination of applicants
91. Department may require re-examination
101. Expiration and renewal of driver's license; re-examination
111. Licenses issued to drivers; anatomical gift document
121. Restricted driver's license
131. License to be carried and exhibited on demand
141. Duplicate driver's license
151. Records to be kept by the department

Sec. 28.15.010. License required. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.011. Drivers must be licensed. (a) A person may not be denied the privilege to drive a motor vehicle upon a highway in this state, except as prescribed by law.

(b) Every person exercising the person's privilege to drive, or exercising any degree of physical control of a motor vehicle upon a highway, vehicular way or area, or other public property in this state, is required to have in the possession of the person a valid Alaska driver's license issued under the provisions of this chapter for the type or class of vehicle driven, unless expressly exempted by law from this requirement.

(c) A person licensed under the provisions of this chapter may exercise in this state the privilege to drive a motor vehicle and is subject to the restrictions prescribed by this chapter. A municipality may not require a person to obtain any other driver's license to drive or operate a motor vehicle in this state. (§ 19 ch 178 SLA 1978)

CS

Original sponsor: Transportation Committee

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE BILL NO.471 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to drivers' licenses."

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

* Section 1. AS 28.15.041 is amended by adding a new subsection to read:

(d) Notwithstanding any other provision of law, a person may not drive a pilot car unless the person has a valid Alaska driver's license in the possession of the person. The operator of a pilot car must be at least 19 years of age, and have held a valid driver's license at least one year. In this subsection, "pilot car" means a motor vehicle used as an extension of the warning system of an oversized motor vehicle with or without a load, or of a motor vehicle carrying a permitted oversized load.

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

April 5, 1986

TO: All Committee Members

FROM: Committee Staff

RE: SB471, proposed pilot car bill

This bill adds a new subsection to the Motor Vehicle Code dealing with classifications of drivers' licenses.

The subsection would require pilot car drivers to have a license for the purpose of driving a pilot car. The drivermust be at least 19 year of age and have a dirvers' license for a year. Drivers' license is defined in Sec. 28.40.100 (a)(5) as "a license, permit or privilege, whether or not a person holds a valid license issued in this or another jurisdiction, to drive a motor vehicle under the laws of this state."

Pilot cars were regulated under the Alaska Transportation Commission. Under ATC, Canadian and Alaskan pilot cars would not cross the border. That is, a load heading north would pick up Alaskan pilot cars at the border and a load heading south would pick up Canadian pilot cars.

Since the sunsetting of the ATC, Alaskan pilot cars have still stopped at the border and the loads have been taken over by Canadian cars. On the other hand, Canadian pilot cars are now handling loads all the way to Prudhoe Bay. Commerce and Economic Development has estimated that there were over 400 Canadian pilot cars that crossed the border last month. At the going rate of $350 for a pilot car from the border to Prudhoe, that works out to a $140,000 loss to the state economy.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF MEASUREMENT STANDARDS

P.O. BOX 111686
ANCHORAGE, ALASKA 99511

PHONE: 907-345-7750

March 25, 1986

MAR 3 1 1986

Senator John B. Coghill, Chairman
Senate Transportation Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

The primary function of a pilot car is to provide safety and warning to the motoring public when encountering oversize loads on the State highway system. The amendment to AS 28.15.041 will assure that pilot car operators are familiar with the road system and driving conditions unique to Alaska.

As the Department charged with the administration and issuance of oversize and overweight permits, the Department of Commerce and Economic Development supports the amendment.

Sincerely,

Joe Swanson
Director

JS:cl

Attachments

DCED POSITION

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 471
Title : An Act relating to drivers' licenses

Sponsor : Senate Transportation
Requestor : Senate Transportation
Date of Request : 4/09/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Motor Vehicles

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Basically no fiscal impact.

Prepared by : Bill Brown BB
Division : Motor Vehicles
Phone : 465-2650
Date : 4-8-86

Approved by Commissioner : _____
Agency : Public Safety
Date : 4/8/86

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

page ____ of ____

10/25/85

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 471

Oppose as written

April 8, 1986

SB 471. An Act relating to drivers' licenses.

I feel it is inappropriate to issue a separate class of license for the purpose outlined in this piece of legislation. Each separate class of license is generally established for safety purposes where it is felt operation of a specific type of vehicle is unique, and different testing methods are necessary. If there were accident statistics to reflect operators of pilot cars were causing a high number of accidents in comparison to miles driven, then a separate class may be justified. I know of no such statistics.

If the purpose of this legislation is to promote local hire, I would recommend an amendment to AS 28.15.011 by adding a subsection (d). The new subsection to contain wording similar to the following:

> "(d) A person may not drive a pilot car unless the person has a valid Alaska driver's license in their possession. An operator of a pilot car is not exempt under AS 28.15.021 (2). The operator of a pilot car must be at least 19 years of age, and have held a valid driver's license at least one year. In this subsection, "pilot car" means a motor vehicle used as an extension of the warning system of an oversized motor vehicle with or without a load, or of a motor vehicle carrying a permitted oversized load.".

This amendment would not require a separate class of license, and would be considerably easier to administer.

ROBERT J. SUNDBERG
Commissioner

SCR

6

Cover Photo by North Pacific Aerial Surveys, Inc.

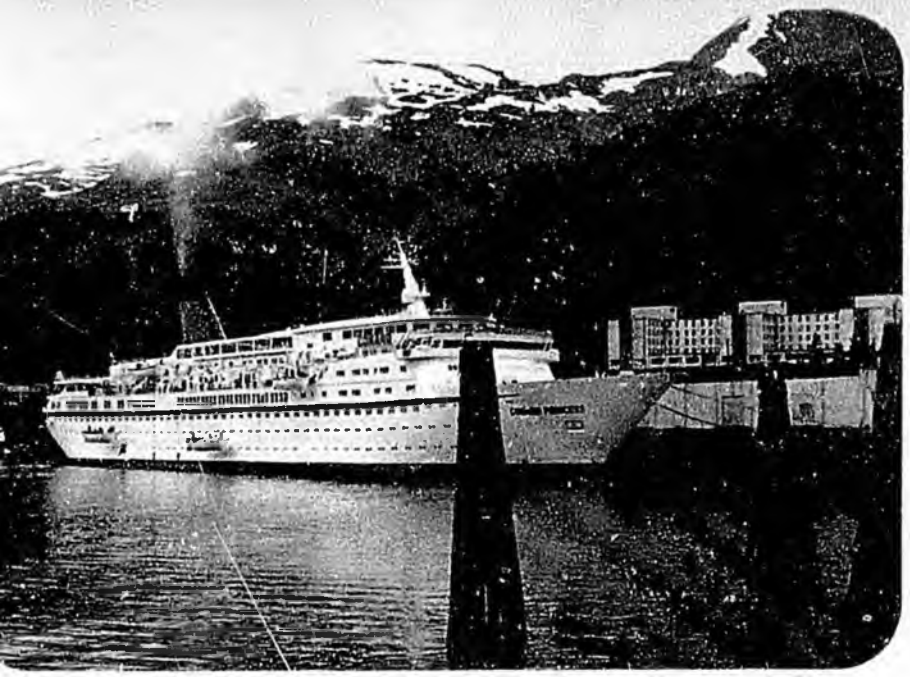
Unique — even to Alaska!

THE CITY OF WHITTIER

Shotgun Cove Road Development Office

P.O. Box 608
Whittier, Alaska 99693
(907) 472-2327

Project Managers
TED FORSI AND ASSOCIATES, INC.
810 East 9th Avenue, Suite 200
Anchorage, Alaska 99501
(907) 274-9517

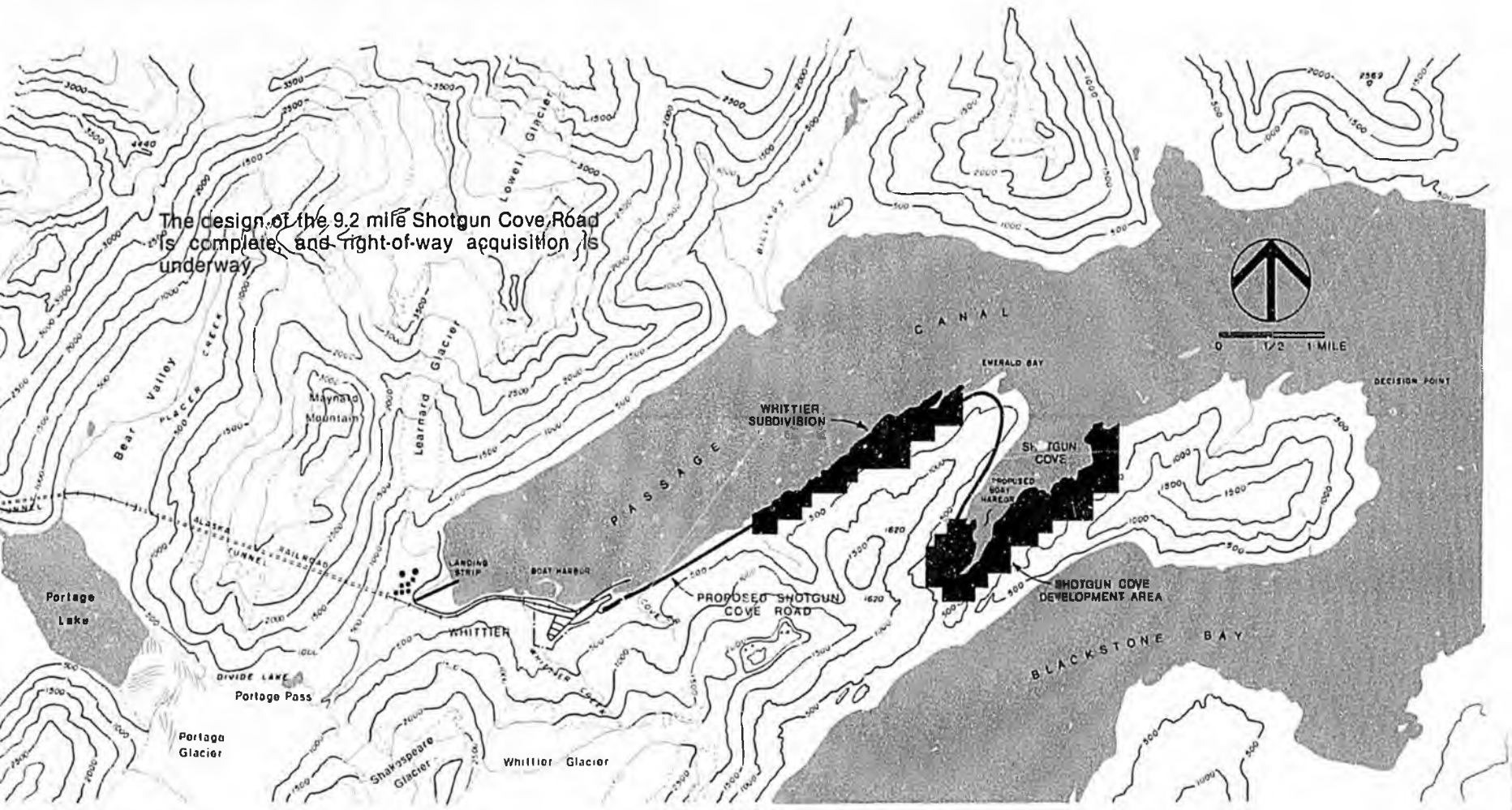


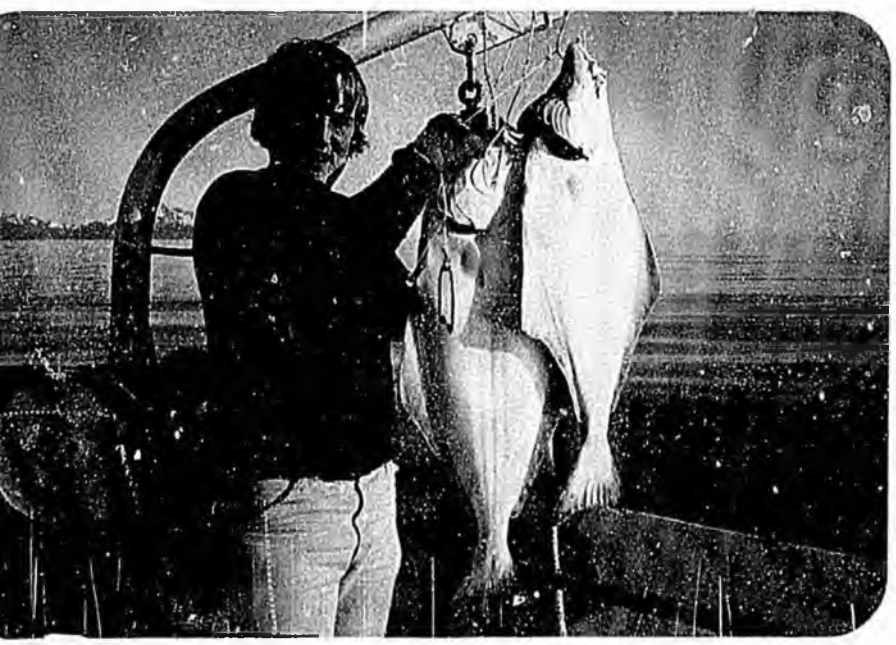
ourism is expanding dramatically in Prince William Sound. During 1983, seven ur boats docked in Whittier, 19 in 1984, and 34 are scheduled in 1985.

The construction of Shotgun Cove Road is vital to the total development of the City of Whittier. The road will provide convenient access to the proposed Shotgun Cove Small Boat Harbor, and to the proposed developments within Whittier Subdivision and Shotgun Cove Development area. The road will also provide a myriad of recreational and tourism related uses for the residents and visitors of Southcentral Alaska

We can use your support. If you are in agreement with the need for construction of Shotgun Cove Road, please contact Gov. William Sheffield, or your legislators.

The design of the 9.2 mile Shotgun Cove Road is complete, and right-of-way acquisition is underway





libut and salmon fishing, shrimping, and crabbing opportunities abound Prince William Sound.

Existing Whittier Small Boat Harbor. There is presently a waiting list of 350 who wish to berth their boats in Whittier.

SCR 6

IDENTIFICATION

Relating to Shotgun Cove Access

DATE INTRODUCED
2-21-85

RELATED BILLS PENDING
None

SPONSOR(S)
Josephson - Kerttula, V. Fischer, DeVries

REFERRALS
Labor & Commerce
Finance
Rules

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

LEGAL DIVISION SUMMARY
None

DEPT OF LAW SUMMARY
None

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes

FISCAL NOTE
N/A

AGENCY RESPONSE
None

OTHER INTERESTED LEGISLATORS NOTIFIED
Yes

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES
None

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
City of Whittier
Chugiach Natives
City of Anchorage

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes

DATE & PLACE SET
4-10-85

STAFF MEMO TO COMMITTEE
Yes

TELECONFERENCE
None

BACKGROUND MATERIAL DISTRIBUTED
Yes

PSA/PRESS RELEASE
None

LIST OF WITNESSES
Ted Forst - City of Whittier
Reed Staops - Chugiach Natives

SUGGESTED AMENDMENTS/CS DRAFTED
None

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: SCR 6

APPROVED: R. J. Knapp, Commissioner 4/8/

TITLE: Whittier to Shotgun Cove Access

DATE:

The Department of Transportation and Public Facilities (DOT/PF) appreciates the supportive comments for its work in investigating ways to improve transportation access to Whittier.

The Whittier to Shotgun Cove road is in the final stage of design. The Department is designing a 9.1 mile long road with a 26 foot wide gravel surface. The road traverses steeply inclined ground and therefore will require extensive rock excavation. The estimated project cost is $19.2 million which includes right-of-way acquisition, utilities relocation at the Whittier end of the road and construction. If funding is appropriated this year, construction could begin in 1986.

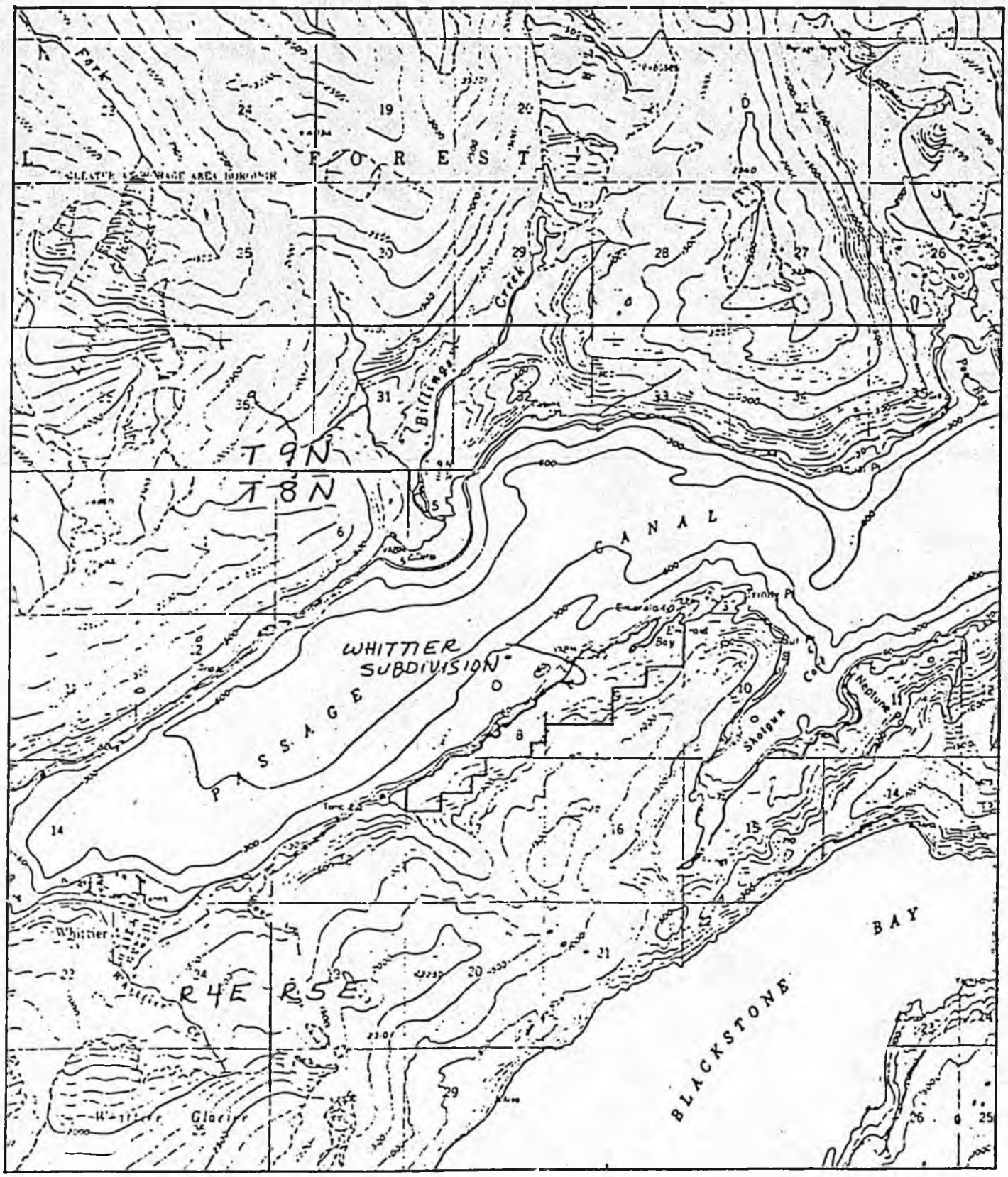
The Portage to Whittier (Whittier Access) project is in the preliminary engineering phase which will evaluate alternatives and make recommendations on a road access into Whittier. The preliminary engineering evaluation will look at several alternatives: 1) a road from Bear Valley around Maynard Mountain, 2) a new tunnel which would accommodate automobiles; and, 3) improvements to the existing tunnnel to allow both trains and vehicle traffic. A consultant has been hired to evaluate tunnel options and recommend an alignment through Maynard Mountain. The Department has begun work on the Environmental Impact Statement which will include the consultant's recommendations for the preferred tunnel alignment.

The current schedule for Federal Highway Administration (FHWA) approval of the Whittier Access project is as follows:

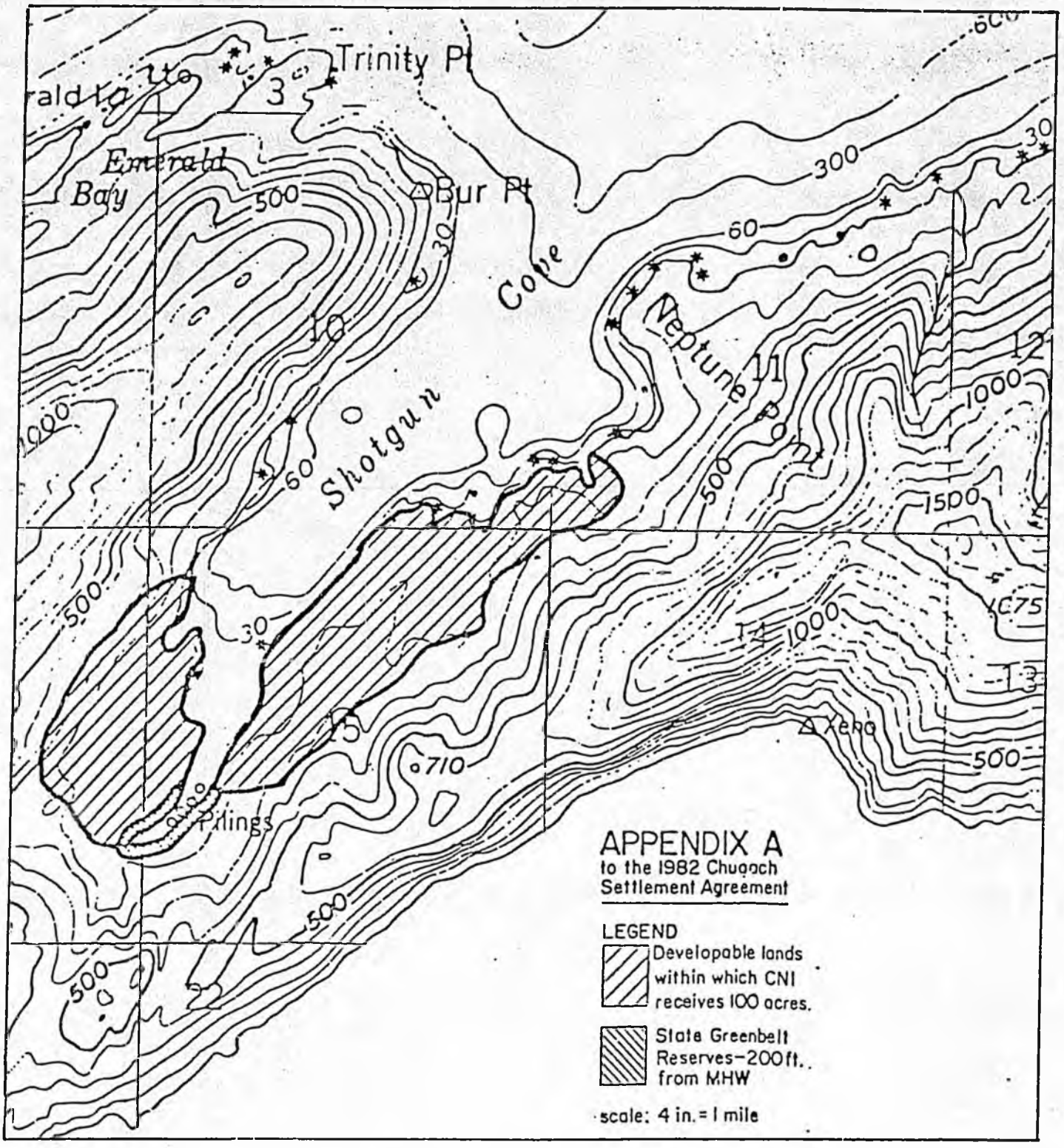
Consultant Contract completion	August, 1985
Draft Environmental Document	May, 1986
Approval to begin Design	December, 1986

For further information call Susan Fleischhauer at 465-3900.

DOT/PF POSITION PAPER



LOCATION MAPS


Trinity Pt
Emerald Bay
Bur Pt
Cape
Neptune
Shotgun
Pilings
Yeho
APPENDIX A
to the 1982 Chugach Settlement Agreement
LEGEND
Developable lands within which CNI receives 100 acres.
State Greenbelt Reserves–200 ft. from MHW
scale: 4 in. = 1 mile

SCR

22

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: SCR 22

TITLE: Alternative Road System in Denali National Park

APPROVED: R. O. Knapp, Commissioner

DATE: 5/1/85

The Department of Transportation and Public Facilities supports SCR22 to initiate and complete environmental and location studies for three alternative routes to construct a road to Kantishna.

These routes may qualify under RS2477 and could be useful in providing a basic route for a road to Kantishna. However, the projected traffic volume on such a road is so high (5,000 vehicles a day during the summer) that a road built to required design standards may vary somewhat from the RS2477 right-of-way.

This road would provide a useful service by providing access for tourists into the park as well as for mining into the Kantishna area.

For further information call Susan Fleischhauer at 465-3900.

IDENTIFICATION

Relating to alternative road systems in Denali National Park

SCR 27

DATE INTRODUCED
4-29-85

RELATED BILLS PENDING
SB 49

SPONSOR(S)
Coghill

REFERRALS
None

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

LEGAL DIVISION SUMMARY
Requested 4-29-85

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS

FISCAL NOTE
N/A

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED
Dick Schultz 4-30-85

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS

HEARING PREPARATION

CHAIRMAN BRIEFED

DATE & PLACE SET

STAFF MEMO TO COMMITTEE

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES

SUGGESTED AMENDMENTS/CS DRAFTED

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

MEMORANDUM

TO: Committee Members

FROM: Committee Staff

DATE: 5-1-85

RE: SCR 22

SCR 22, relating to alternative access in the Denali National Park, will be in front of the committee today. This resolve requests that the Governor direct the commissioner of DOT/PF to study alternative access routes to Denali National Park.

Included in your packet you will find position papers from the divisions of Tourism and Minerals, the departments of Transportation and Fish and Game, and the National Park Service. Also included is part of the Fairbanks Chamber of Commerce's Interior Transportation Needs report. Finally there is a letter from Senator Coghill to members of the Alaska Congressional Delegation asking that they explore the problem of lack of access into the park.

KANTISHNA ACCESS

Warrants

A highway to the Kantishna area can be justified on the following basis:

Tourism is Alaska's second largest industry and Mt. McKinley is the State's number one tourist attraction. The park road is inadequate to serve this industry for the following reasons:

a. Geometrics, the road is substandard in width, alignment and grade. The road is hazardous as demonstrated by the rash of serious bus accidents that have occurred during the past few years.

b. Access is too restrictive, visitors must travel by bus (shuttle school buses or buses operated by park concessionaires). This ride can last up to six hours and is a source of discomfort, especially to senior citizens and young children.

c. Capacity, the demand has increased dramatically during the past decade as has the growth of tourism. The Interior Alaska Transportation Study estimated nearly 5000 vehicles by the year 2005.

d. Because time at vantage viewpoints is extremely limited, over 50% of those seeking a view of Mt. McKinley are disappointed.

e. The increase of traffic on this road has degraded the wildlife viewing aspect of this route.

Mining is also an important industry in Alaska and the Kantishna area is an important mining area. Recent assessments conducted by governmental officials documented the existance of commercial ore deposits. The existing road is inadequate to serve this industry because of slow moving tour bus traffic, and it is substandard.

FBKS. CHAMBER OF COMMERCE

Enhance the State's ability to assure our visitors and residents a quality experience. Mt McKinley is Alaska's crown jewel. Access and vantage viewing are at the sole discretion of the U.S. Park Service. However Alaska's entire tourist industry and the State's reputation suffer when visitors ride an uncomfortable bus for six hours and still do not get to see the main attraction.

Give opportunity for the private sector to provide tourist facilities that are now being provided by the government sector or not being provided at all. Mining claims in the Kantishna area are patented and can be used by the private developer to locate hotels, lodges, camping parks, hostels and other visitors facilities. The area provides an unsurpassed view of Mt. McKinley and visitors would have the opportunity to remain in the area for longer periods increasing their chances of seeing the mountain. (note, the cyclic type weather that occurs during the dry interior summer virtually assures all visitors a view of the mountain if they can remain there for a day or so.

The private sector is more sensitive to visitor satisfaction thus when this sector caters to our visitors the results are happier, longer and more return visits.

An alternate access to the Kantishna area would make it possible for the park service to redirect the park road traffic toward wildlife viewing. This is more compatable to that portion of the park's classification, (wilderness). It also provides a more focused and quality wildlife viewing concession.

A northern access, currently economically viable as far as the Kantishna area, can be extended toward the McGrath area to serve that area as the need warrants.

A northern access would tie into the existing park road, making it

possible to provide a loop system, a limited loop system or limited to wildlife tours. Note this would be a popular concession and with some imagination could be worked in two directions.

There is less precipitation on the north side of the Alaska Range than on the south. This can be documented through weather records but is clearly evident by the lack of glaciers on the north side when compared with the south side. Since viewing of the mountain is of paramount importance, this aspect cannot be overlooked when establishing park facilities, nor should the North or South faciiities be exclusive, both offer differing experiences making improvements not an either/or decision but rather one of establishing priorities.

It should also be recognizied that the Park is such a major attraction that constructing additional facilities will not provide a proportional increase in capacity as visitors will elect to extend their stay to experience all that is offered.

Issues and Strategy

Establishing a northern access will require careful planning and is subject to stipulations established in the National Interest Lands Act as well as the National Environmental Protection Act of 1969. It will be subject to critical review, organzied environmental and philosophical opposition.

Provision has been made in the National Interest Lands Act to mandate access deccision on a timely basis. When the environmental document is officially started a time frame also starts. This is an advantage, if the State has the project well in order. However, it can be a detriment if the State is unprepared to deal with all the issues that may surface, resulting in a decision that may not be in the best interest of the State. If that should occur, the ability to appeal is limited and the State may be required to began the process all over. Because of this, it is important that the DOTPF ensure that

all interested enities are involved, all issues identified and all decision making agencies be as much in accord as possible prior to starting the clock.

This can be accomplished by adding a preliminary phase to the normal location phase of a project. Generally the location report and environmental document are prepared at the same time. In this case it is recomended that the DOTPF prepare a draft location report and in so doing identify and resolve all issues with decision making agencies to gain as much of a consensus as possible, then begin the environmental document. The location report would be finalized concurrent with developing the environmental document.

Project description

Access to Kantishna via the north has three major alternatives, they are:

1. Via the Stampede trail to Stampede then through foot hills to Kantishna.

2. Via the old sled trail leaving the Parks Highway near Rex.

3. Via the proposed Nenana Agriculture access road to the Kantishna River then upriver to Kantishna (note, the route to the Kantishna River is already designed).

It is premature to speculate on which alternate is the most attractive. All have attractive aspects. Some have already been investigated to some degree and some aerial photographs are available. It is conceivable that the final routing will be a combination of these.

The road itself will be a major highway and probably have to be widen to four lanes by the year 2020. Initially it should be paved with two 12' lanes and 8' shoulders. Alignment and grade should be designed for 55 mph and should take advantage of the scenic opportunties. The road should be designed and classified as a State

Scenic Route.

Funding

Immediate funding needs are for the location phase. During that phase the merits of the project will be documented, standards adopted, ... alignment chosen and preliminary costs developed. The project will have location approval with authority to design and construct or it will be determine to be in the best interest of the State or Nation not to proceed.

Because of the sensitive nature of the project the DOTPF should allow ample lead time and funding to ensure that location documents will stand up to close scrutinity. At this time the cost to accomplish this is estimated at $500,000 with a time frame of three years.

This work entails field surveys aerial photography, research, concep-tal design, economic analysis, comparsion of alternatives, indepth agency coordination and public involvememt. The completed product will include:

-approved environmental impact statement with 4(f) determination

-approved location study report

-certified location public hearing documents

-draft soils report

-location approval.

United States Department of the Interior

NATIONAL PARK SERVICE

ALASKA REGIONAL OFFICE
2525 Gambell Street, Room 107
Anchorage, Alaska 99503 - 2892

IN REPLY REFER TO:

A22(ARO-SA)

February 13, 1985

FEB 19 1985

Honorable Jack Coghill
Alaska State Senate
Pouch V
Anchorage, Alasks 99811

Dear Senator Coghill:

We appreciate your request for our review and comments on Senate Bill 49 and the accompanying report and route map.

As you recognize, Denali National Park and Preserve is a major resource and asset to both the State of Alaska and the nation. I believe it is incumbent upon all of us at the state and federal levels to work together to assure that the experience for the visitor is enjoyable and that the wildlife and other resources of the park are preserved.

We agree with and support the goal of improving the visitor's experience. However, it would be inappropriate for the National Park Service to take a position on the proposed bill to appropriate $500,000 for a state feasibility study of a northern access route. As your study recognizes, the Alaska National Interest Lands Conservation Act (ANILCA) and the National Enviro nental Policy Act set forth procedures for analysis and consideration which must be followed before any decision to allow access across a national park. Title XI of ANILCA sets forth the process for reviewing and permitting construction of a new access route.

The quality of the visitor's experience in Denali National Park has been a major concern within our organization. As you know, we are currently in the process of designing a new visitor access center near the park headquarters and we will soon be contracting with another local firm for the design of the reconstruction of Denali Park Hotel. Recommended budgeting for these two projects totals $14.2 million. In addition approximately $15 million is programmed for improvements on the Denali Park Road.

A draft general management plan for Denali National Park will be released in March for public review and comment. This plan invites public comment on alternattive ways of improving the visitor's experience while preserving the wildlife and natural features which they come to see. As soon as it is available we will send copies of this draft plan to you and members of the Senate and House Resources Committees. We would very much appreciate your thoughts and recommendations.

NATIONAL PARK SERVICE

This summer we will also be working with the State Department of Natural Resources and the Department of Transportation and Public Facilities under a cooperative agreement to investigate the possibilities for developing visitor access and facilities on the south side of the Alaska Range. We were pleased to note that your report recognizes that development on the north and south sides is not an either or situation, and that the south side development would offer visitors a different experience in a landscape which is much in contrast to that of the north. Further, it is important to distribute the points of access to the natural resources of the Mt. McKinley massif so that they are readily accessible from both Anchorage and Fairbanks. We will keep you informed of the results of this cooperative study and look forward to your comments.

Sincerely,

Regional Director
Alaska Region

cc:
Commissioner, Department of Natural Resources
Commissioner, Department of Transportation and Public Facilities
Members of Senate and House Resources Committees

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: 907 / 465-4100

February 26, 1985

Mr. John Manly
Committee Aide
Senate Transportation
Committee
c/o Senator Coghill
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Mr. Manly:

This letter is in response to your request dated February 9, 1985, that the department prepare a brief statement on the fish and wildlife values and potential impacts associated with an extension of the state highway system to Kantishna via three alternative routes from the Parks Highway. It is our understanding that the three alternatives under consideration include access:

1. Via the Stampede Trail to Stampede then through the foothills to Kantishna;

2. Via the Rex Trail to the Kantishna River then upriver to Kantishna;

3. Via the proposed Nenana-Totchaket Agriculture access road to the Kantishna River then upriver to Kantishna.

Our Habitat Division has performed a review of the alternatives. An abbreviated summary of the fish and wildlife values and the department's recommendations relative to the three alternative routes follows.

Alternative #1 - Stampede Trail: Wildlife values adjacent to this route are moderate to high in importance. Black bear, grizzly bear, moose, caribou, and a variety of furbearers are present. Dall sheep are present along the north flank of the Alaska Range to the immediate south. The McKinley Caribou Herd historically utilized this area as prime overwintering and limited calving habitat. Although population abundance is currently low, an expansion of the herd size will necessitate use of this historic range. The

proposed route also transects important moose fall and winter concentration areas. Recreational and subsistence use is moderate and occurs predominately along the Stampede Trail. Trapping intensity is moderate to heavy.

Alternative #2 - Rex Trail: Fish and wildlife values adjacent to this route are moderate to high in importance. Black bear, grizzly bear, moose and a variety of furbearers are present in moderate numbers throughout most of the area. Significant populations of these species, however, are present within the Nenana, Teklanika, Toklat, and Kantishna River riparian corridors. Recreational and subsistence use is moderate to heavy within these river corridors. Human use outside of these corridors is limited.

The portions of the upper Kantishna River and Bearpaw River drainages affected by this route are considered critical waterfowl habitat areas, providing nesting and molting habitat for high concentrations of several species of waterfowl and stopover sites for cranes and other species that utilize the western Interior.

The Toklat River Springs located at the confluence of the Toklat and Sushana Rivers supports the largest known population of fall chum salmon in Alaska and is estimated to contribute 27% of the commercial and subsistence fall chum salmon harvest in the Yukon and Tanana River fisheries downstream from the mouth of the Kantishna River. The spring's area also supports a small population (500-600) of overwintering mallards which is believed to be the northern-most freshwater waterfowl wintering area in North America. The Toklat River Springs' fall chum salmon spawning area is considered critical habitat and has been nominated for legislative designation.

Alternative #3 - Totchaket Agriculture Access Road and Extension: Based upon the limited data presently available, most of the area adjacent to this route appears to have moderate to low fish and wildlife habitat value. Recreational hunting, subsistence use and trapping also appear to very light in the area. There are no critical habitat areas yet identified. From the standpoint of potential impacts, the department's primary concerns are related to those portions of the route which are (1) adjacent to the Kantishna River (which is a designated anadromous fish stream) or (2) require crossings of resident fish streams. Rather than influencing route selection, these concerns are normally addressed by the department, via its AS 16 authorities, through the provision of adequate mitigating measures as a component of route design and construction.

Recommendations: From the sole standpoint of minimizing impacts to fish and wildlife or their habitats, the department prefers that any extension of the state highway system to Kantishna be aligned along the Alternative #3 - Nenana-Totchaket Agriculture Access Road and Extension route.

The department appreciates the Senate Transportation Committee's solicitation of our concerns and recommendations. We remain available to provide additional information as may be needed.

Sincerely,

James Ayers
Special Assistant to
the Commissioner

Westours

February 26, 1985

MAR 4 1985

Senator Jack Coghill, Chairman
Senate Transportation Committee
ALASKA STATE LEGISLATURE
Pouch V
Juneau, AK 99811

Dear Senator Coghill:

I have read your Senate Bill #49 and agree wholeheartedly that now is the time to agressively pursue the development of a road to Kantishna. Mt. McKinley is one of Alaska's greatest assets, however, many people have a disappointing experience in the Park because of inadequate facilities and limited viewing opportunities. Although we will never be able to guarantee a view of the mountain, increased access and facilities would provide us with an increased opportunity to satisfy the Alaska visitors.

We greatly appreciate your interest in this vital segment and fully support the efforts to begin this project.

If we can be of any further assistance please let me know.

Sincerely,

Thomas C. Tougas
Vice President
TRANSPORTATION DIVISION

TCT/ss

300 ELLIOTT AVENUE WEST
SEATTLE, WASHINGTON 98119
TELEPHONE 206 281-3535

WESTOURS

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
OFFICE OF MINERAL DEVELOPMENT

POUCH EE
JUNEAU, ALASKA 99811
PHONE: 465-2023

March 4, 1985

MAR 4 1985

The Honorable Jack Coghill
Chairman
Senate Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Coghill:

The Office of Mineral Development has reviewed SB 49 calling for a feasibility study on building the Kantishna access highway.

The Kantishna area has long been recognized for its substantial gold resource. Numerous mining claims have been patented. In addition to gold, significant deposits of strategic metals such as tungsten and antimony have been discovered in the area. With access, the region has much enhanced potential to become once again a significant productive mining region.

Currently, traffic on the Denali Park road is restricted by the National Park Service which severely limits mining activity at Kantishna. This restriction also limits Alaska's rapidly growing visitor industry. Access would allow entry to Denali National Park to many more people now unable to visit because of the severe travel restrictions in effect on the Denali Highway. The Kantishna access would enable firms in the travel industry to construct additional hotels and visitor facilities on privately held land at Kantishna. Additionally, it would greatly facilitate the expanded used of the Stampede Mine as a training property for mining students from the University of Alaska.

Of the three alternative routes being considered, this office supports the Old Stampede Road route. This is the shortest of the options being considered. It makes use of a long established trail to Stampede and requires a relatively short extension through the foothills connecting Stampede to Kantishna.

Sincerely,

John F. M. Sims
Director

JFS/cwREGLR3/Coghill
3485a

DIVISION OF MINERALS

08-H25LH

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

January 28, 1985

Re: SB 49; Feasibility of Building a Road to Kantishna

A road to Kantishna would have two major economic advantages. First, it would provide a northern access for tourists into Denali Park. The Interior Transportation Study estimates that within twenty years such an access could generate 5,000 vehicles a day in the summer months. Secondly, the road would provide access for mining in the Kantishna area, and possible future extension to the Kuskokwim Valley.

The possible benefits to be derived from this project compare favorably with other major system extensions, such as extension of Chena Hot Springs Road to Twin Mountain, construction of a road to the Slate Creek asbestos deposit or a major rail extension.

Provided we receive the cooperation of the National Park Service, the feasibility study through location approval is expected to take about 27 months to complete. Because of this timeframe, we recommend that the lapse date be extended to June 30, 1987.

The amount of $500,000 for the study is adequate.

Wm S. Spurk

R.J. Knapp
for Commissioner

25A-T1LH

DOT/PF

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF TOURISM

POUCH E
JUNEAU, ALASKA 99811
PHONE: 465-2010
TELEX: 45331

February 25, 1985

The Honorable Jack Coghill
Chairman
Senate Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Coghill:

Since statehood, Denali National Park and majestic Mt. McKinley have been one of Alaska's major travel attractions. A recent research report released by our Division of Tourism and compiled by the Department of Labor entitled "Alaska Traveler Survey and Visitor Industry Analysis 1983" shows that more than 70 percent of summer highway pleasure visitors indicated they had visited Anchorage and Fairbanks and 60 percent of these visitors reported they had visited Mt. McKinley/Denali.

Certainly a growing need for access into and through the park suggests that alternative access be explored. The legislation you have proposed in SB 49 calling for a feasibility study of building the Kantishna Access Highway would be a step in this direction.

Because traffic to the park continues to grow and considering the time needed to conduct a feasibility study, the sooner the necessary engineering and cost information is compiled, the sooner our State can move to have some control over the traffic flow to this unique vacation destination. The more visitors who can view the mountain and enjoy our wildlife, the more who will return home with an unequalled vacation experience.

Best regards,

Don Dickey
Director

DD/wfs1752W
22585a

08-H7LH

DIVISION OF TOURISM

Senator John B. (Jack) Coghill
Alaska State Legislature

Box A
Juneau, Alaska 99811
(907) 465-4715

Box 158
Nenana, Alaska 99760
(907) 832-5461

April 3, 1985

The Honorable Frank Murkowski, Stevens Young
317 Hart Building
Washington, D.C. 20510

Dear Frank:

During this legislative session, the Senate Transportation Committee, of which I am chairman, has considered a proposal to construct a Kantishna access road north of the Alaska Range to connect the Kantishna area with the Parks Highway.

Our State's most popular tourist attraction, the viewing of Mt. McKinley, has disappointed many tourists because inclement weather conditions prevent adequate viewing of the mountain. Summer tourists plan well in advance to visit our great state and the continent's highest mountain. According to Denali Park officials over 50% of the visitors do not even get a glimpse of Mt. McKinley because crowded conditions on the park road and at park facilities do not allow them to stay until the weather clears.

The proposed highway will help solve this problem by providing access to many excellent viewpoints of the mountain. The road will also allow access to private property in the area which can be used by individuals for the construction of new hotels and tourist facilities. Tourists can then be assured of a more satisfying visit to the park, and therefore, a more pleasurable trip to Alaska.

I have received correspondence from a variety of interested groups, including private tour groups and the Alaska State Division of Tourism recognizing the need to develop this project.

Tourism is Alaska's second largest industry. In light of the State's declining oil revenues, it seems prudent to me that we invest in this growing sector.

LETTER TO ALASKA DELEGATION

The proposed road to Kantishna would not only have positive effects on the Denali National Park and Alaska's tourist industry, it would also benefit the mining industry.

The Alaska Miners Association and its 2000 members have extended their support. Many rich mineral deposits are being worked - or have been identified - in the Kantishna area, and the existing access road is limited for miners to certain nighttime hours in the summer.

Presently, mining trucks cannot compete with tour buses which use the road all day long. A new highway will solve this problem and should enable further mining development.

The agriculture industry will also share the benefits of construction of a highway. Rich agricultural land exists in the area. Easy access to these lands will be of value.

The Department of Transportation and Public Facilities is in the process of adopting a five-year plan to answer our highway problems. Construction of the Kantishna Highway is part of that answer; particularly when we consider the growing pressure of visitors on Denali and the pivotal role such a road would play. Federal funding will be necessary to study and implement this project. I urge you to consider the construction of the Kantishna Access Highway and look forward to your reply.

Enclosed with this letter is a synopsis of the Kantishna Access Highway and various correspondence in support of this proposal.

Sincerely,

JBC:mcm
Enclosure

SCR

38

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

April 23, 1986

TO: Committee Members
Senate Transportation

FROM: Committee Staff

RE: SCR 38

The committee will be taking up SCR 38 today on its calendar. The resolution would ask that the Governor commemorate the centennial of the automobile with appropriate celebrations by persons and groups for which the automobile holds significant meaning.

SJR

10

M E M O R A N D U M

To: Committee members

From: Committee staff

Date: March 14, 1985

Re: Background materials for CSSJR 10

On Friday, March 15, the committee will consider CSSJR 10 (Res) which urges DNR and DOT/PF to enter into a memorandum of understanding with BLM regarding identification and establishment of RS 2477 rights-of-way throughout the state. These rights-of-way were created under a federal law which dates back to the 1860s, which said in essence that if a person blazed a trail across unappropriated federal lands, that became a public right-of-way. Now, with federal and state bureaucrats formulating land use plans, many of those public access ways are being threatened with vacation, if the State government does not act to assert its public right to the right-of-way.

The background materials, particularly the memorandum from the Citizens' Advisory Commission, explain the problem fairly well. Along with a highlighted copy of the Resources CS, these materials include:

- A statement prepared by Senator Coghill for presentation to the Resources Committee hearing

- The Citizens' Advisory Commission memo explaining the history of the problem

- The currently-effective M.O.U. between DOT/PF, DNR and BLM regarding the northern portion of the state.

- BLM position statement on RS 2477 rights-of-way

- BLM notation memo describing the procedure and effect of BLM notations of RS 2477 rights-of-way on BLM plats

- BLM memo to the Bureau of Indian Affairs regarding RS 2477 rights-of-way over native allotment parcels

- An inventory of RS 2477 trails compiled for assertion by DNR

Offered: 3/4/85
Referred: Transportation
and Finance

Original sponsors: Coghill, Abood,
Bennett, et al

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 10 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Requesting that the Department of Natural Resources and the Department of Transportation and Public Facilities expedite the identification and establishment of rights-of-way for roads and trails on federal Bureau of Land Management plats which qualify under RS 2477.

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

WHEREAS the Alaska National Interest Lands Conservation Act of 1980 placed 124 million acres of land in Alaska into 71 federal conservation units, and outlined specific use requirements and restrictions for those units; and

WHEREAS, contrary to the provisions of the Alaska National Interest Lands Conservation Act of 1980, there was no provision for establishing or protecting a transportation system in the development of comprehensive management plans for each conservation unit by the responsible federal management agency; and

WHEREAS several of the comprehensive management plans have been completed without recognition of existing roads and trails, preventing public access through these units to state and private lands and to state waters; and

WHEREAS comprehensive management plans for a minimum of nine national park and preserve units and five fish and wildlife refuge units are to be completed during calendar year 1985; and

WHEREAS the federal statutory authority for the establishment of

ADDED IN RESOURCES

recognized rights-of-way for roads and trails is contained in RS 2477 (43 U.S.C. sec. 932); and

WHEREAS the Department of Natural Resources and the Department of Transportation and Public Facilities on September 28, 1984, signed a Memorandum of Understanding with the federal Bureau of Land Management involving the northern region of Alaska only, establishing the procedure under which the rights-of-way could be recognized on Bureau of Land Management plats and in comprehensive plans for conservation units;

BE IT RESOLVED by the Alaska State Legislature that the Department of Natural Resources and the Department of Transportation and Public Facilities immediately develop, in consultation with other affected land owners and managers, and propose a Memorandum of Understanding with the Bureau of Land Management relative to the remainder of the state; and be it

FURTHER RESOLVED that the state agencies involved affirmatively solicit information from miners, engineers, land surveyors, environmentalists, outdoor groups, landholders, or other persons or organizations that may have knowledge of the historic use of roads and trails to assist the departments in the identification of those roads and trails that could qualify under the provisions of RS 2477 (43 U.S.C. sec. 932) for addition to the state transportation system, and that may be useful to the federal agencies developing comprehensive management plans for the various Alaska National Interest Lands Conservation units; and be it

FURTHER RESOLVED that the involved state agencies develop draft policies regarding management, maintenance, liability, vacation, categories, widths, and other relevant concerns related to RS 2477 roads and trails, and that the agencies review these draft policies with affected landowners and managers, and then present these draft policies to the legislature during the second session of the Fourteenth Alaska State Legislature.

COPIES of this resolution shall be sent to the Honorable Bill Shef-

field, Governor of the State of Alaska, to the Honorable Esther Wunnicke, Commissioner of Natural Resources, to the Honorable Richard J. Knapp, Commissioner of Transportation and Public Facilities, and to Michael J. Penfold, State Director of the Bureau of Land Management.

Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

TO: ALASKA LAND USE COUNCIL MEMBERS

FROM: CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

RE: [redacted]

DATE: SEPTEMBER 13, 1984

In 1866 the U.S. Congress passed a law entitled "An Act granting the right of way to Ditch and Canal Owners over the Public Lands, and for other Purposes." Section 8 of this act, which generally dealt with mining activities on the public lands, read as follows: "And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

This grant, more commonly known as Revised Statute (RS) 2477 (43 USC §932), was a standing offer by the Federal government until it was repealed with the passage of the Federal Land Policy and Management Act (FLPMA) of 1976. While RS 2477 is no longer the legal basis for the construction of new public highways, valid existing rights granted to the Territory, State and public of Alaska during the period of the act's efficacy are protected by FLPMA Section 701 and reaffirmed by ANILCA Section 1109.

There are perhaps 150 or more RS 2477 rights of way in Alaska, concentrated primarily in the interior, which were accepted directly by the public of the State and the Territory through actual construction and use. This is exclusive of the Section-line right of way dedicated by the State in AS 19.10.010. which legislation acts as formal acceptance of the grant offered. Informal acceptance, that which is accepted directly by the public through actual use, is an equally valid right recognized in case law on the subject.

On State owned lands, authority for the management of these public rights of way is vested in both the Department of Natural Resources (DNR) and the Department of Transportation and Public Facilities (DOT/PF). On Federal and private lands, DOT/PF has primary authority as the managing agency. This authority would extend to those ANILCA lands which were vacant and unreserved public lands during the period of time when the grant was in effect in the Territory and State. The Alaska Organic Act of 1884 was the legislation which brought United States law to Alaska, including RS 2477, and can be regarded as the date at which the grant became effective in the Territory.

In 1923 the Territorial legislature formally accepted the grant by dedicating all Section lines to be public highways with an

private or non-federal public land inholdings within the conservation system units, and to such lands adjacent to conservation system units, and are thus unaffected by the passage of this bill."

The State officials responsible for asserting the State's claims and managing these rights of way on behalf of the Alaskan public have been reluctant to do so. Perhaps this is due to a desire to de-polemicize the relations between the State and Federal governments since the passage of ANILCA. However, an absence of both a clear policy and the political will to follow through on such a policy is tantamount to a "de facto" abandonment of these rights of way. This Commission is implacable in its opposition to such an abandonment.

The Yukon-Charley National Preserve case involves more than the issue of access by RS 2477 and will be settled in a court of law. One thing is clear however, according to personnel in both the Alaska Department of Transportation and the Department of Natural Resources, the trail used in this instance is a valid, documented RS 2477.

The Citizens' Advisory Commission on Federal Areas proposes the formation of a work group or task force which will establish a procedure to confirm the State's RS 2477 claims. The Commission requests that the member agencies of the ALUC cooperate fully in the implementation of this proposal. Such cooperation would include agency acknowledgement of identified RS 2477 rights of way in the planning efforts of the CSUs, as well as adequate personnel and funding for the necessary research.

The Commission recommends that the Alaska Department of Transportation and Public Facilities and the Department of Natural Resources act as the co-lead agencies on behalf of the State in the task force. We recommend the Bureau of Land Management as the lead agency for the Federal government.

This matter is in urgent need of attention. Access to legitimate inholdings on the CSUs is not being adequately addressed despite the guarantees of ANILCA Section 1110. In the absence of a clear initiative on the part of the State, there is little the land management agencies of the Federal government are able or willing to do on the issue of RS 2477 while plans for the CSUs are being prepared. Timely action by the appropriate State agencies is necessary to ensure federal and private recognition of RS 2477 rights of way.

The Citizens' Advisory Commission on Federal Areas believes the ALUC is the proper channel through which this problem may be addressed. Formation of an intergovernmental task force will clear up some of the unanswered questions faced by private and public land managers.

easement of either 66 feet or 100 feet depending on the land status at the time of the dedication. Informal acceptance of the grant has occurred every time men cut their way through the wilderness during the gold rush in effect constructing public highways for all to use. Many years of use by succeeding fortune seekers, trappers, traders, subsistence users and recreationists along these routes has reinforced this legacy. Once granted and accepted, the vacant, unreserved public lands over which the right of way lies are severed from ownership by the federal government and pass to the Territory, the State or the public of those political entities.

The Alaska National Interest Lands Conservation Act (ANILCA) mandated the preparation of management plans for the lands added to the Conservation System Units (CSUs) created by that act. Unfortunately, both the Federal and State agencies have for the most part not adequately considered these public highways in the planning efforts now underway. Failure to confront the issue of RS 2477 has and will continue to do harm to the interests of the State, the Federal government and the Alaskan public.

Recently, a miner was arrested by Park Service personnel within the bounds of the Yukon-Charley National Preserve while moving a bulldozer along the Bulenberg Trail which both he and State officials claim is a valid RS 2477 right of way. The miner has patented and unpatented mining claims in the National Preserve to which he is guaranteed access by Section 1110 of ANILCA. These "guarantees" are honored by requiring miners and other traditional users of the lands in question to contend with considerable amounts of paperwork to receive permits providing access to these lands. This Commission believes that this system of permitting is contrary to the spirit and the letter of the law where legitimate RS 2477s are involved. Formal recognition of valid RS 2477 rights of way by the various Federal agencies would simplify the problem of access and allow the use of a transportation system that has been in existence for over eighty years. The use of valid rights of way belonging to the State of Alaska should not be subject to the issuance of permits by Federal land managers.

This is clearly the intent of the Congress as evidenced by the report of the Senate Energy and Natural Resources Committee (Report #96-413; November 14, 1979; page 303): "Those private lands, and those lands owned by the State of Alaska or a subordinate political entity, are not to be construed as subject to the management regulations which may be adopted to manage and administer any national conservation system unit which is adjacent to, or surrounds, the private or non-federal public lands. Federal laws and regulations of general applicability to both private and public lands, such as the Clean Air Act, the Water Pollution Control Act, U.S. Army Corps of Engineers wetlands regulations, and other Federal statutes and regulations of general applicability would be applicable to

RS 2477 REGIONAL TRAILS

ASSERTION INVENTORY

Compiled By

Dale Stirling
Historian I

February 1985

RS 2477 TRAIL INVENTORY

NORTHERN REGIONAL TRAILS

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Nome-Shishmareff	100	94	X		X	
Penny River	100a	94		X		
Cape Woolley	100b	94		X		
Nome River	104	94		X	X	
Golovin	97	95		X	X	
Council	101	95	X		X	
Solomon	109	95		X		
Norton Bay	112	95		X	X	
Pilgrim Springs	119	95		X		
Kaltag-Nome	156	95	X		X	
Topok-Candle	158	95	X		X	
Norton Sound-Goloum	115	95		X		
Ungalik-Candle	118	96	X		X	
Koyuk-Norton Bay	264	96		X		
Kaltag-Holy Cross	116	97		X		
Lewis Landing-Dishkaket	148	97		y		

Trail Name	Trail #	Quad #	SUPPORTING			
			Known Use	Suspected Use	Documents	Maps
Ft. Gibson-Keltag	155	97	X		X	X
Poorman-Ophir	145	98	X		X	X
Poorman-Cripple	146	98	X		X	X
Telida-Novokaket	219	98		X		
Kantisha River Area	64d	99	X		X	X
Toklat-Lake Minchumina	89	99	X		X	
Kantishna	172	99	X			X
Fairbanks-Ft. Gibbon	191	99	X		X	X
Manley Hot Springs	194	99		X		
Cosjacket-Rampart	233	99		X		
Rex-Kantishna	237	99	X		X	X
Nenana-Kantishna	67	100	X			X
Nenana-Ft. Gibbon	68	100	X		X	X
Rex-Nenana	69	100		X		
Olnes Area	73d	100	X		X	X
Ester Area	73e	100		X		
Bonnifield Trail	188	100	X		X	
Goldstream-O'Conner Creek	189	100		X		

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Dunbar-Livengood	197	100	X		X	X
Fairbanks-Chena Hot Springs	193	100	X		X	X
Gilmore Ski	302	100		X		X
North Fork Fortymile -Big Delta	52	101		X		
Goodpaster-Black Mtn	53	101		X		
Donnelly-Washburn	169	101			X	X
Redmond Cr.-Banner Cr.	184b	101		X		
Salcha-Caribou	185	101	X		X	
Chena Hot Springs	193a,b	101	X		X	
Kechumstuk Winter	77	102		X		
Chistochina-Eagle	167	102	X		X	X
Canyon Cr.-Walkers Fork	174	102	X		X	X
Liberty Cabin-Steel Cr.	175	102	X		X	X
Gravel Gulch-Liberty	176	102	X		X	X
Eagle-North Fort Fortymile	178a,b	102		X		
Yukon R.-Tatonduk R.	180	102		X		
Fortymile R.-Franklin	181	102	X		X	X
Franklin-Chicken	182	102	X		X	X

Trail Name	Trail #	Quad #	SUPPORTING: Known Use	Suspected Use	Documents	Maps
Eagle-Circle Mail	183	102	X		X	X
Cherry Cr.	295	102		X		
Napoleon Cr	296	102		X		
Atwater Cr.	299	102		X		
Fortymile R.-Misquito Fork	300	102	X		X	
Eagle-Alder Cr.	45	103		X		
Nation R-Rampart	196	103	X		X	
4th July Cr.-Nation R.	197	103	X		X	X
Woodchopper Cr.	198	103	X		X	X
Fairbanks Cr.	73c	104		X		
Birch Cr.-Portage Cr.	199	104		X		
Circle-Ft. Yukon	202	104	X		X	X
Fairbanks-Circle	204	104	X		X	X
Central-Circle	231	104	X		X	
Circle-Steese Hwy.	261	104		X		
Birch Cr.	270	104	X			
Bonanza Cr.	276	104	X			
Porcupine Cr.	278	104		X		

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Independence Cr. -Harrison Cr.	279	104		X		
Circle Hot Springs	281	104	X		X	X
Deadwood Cr.	284	104		X		
Moose Cr.	286	104		X		
Chatanika Freight	303	104		X		
Bettles-Stevens Village	49	105	X		X	X
Livengood-Ft. Hamlin	64	105	X		X	X
Dunbar-Livengood	192	105	X		X	X
Chatanika-Yukon	205	105		X		
Beaver Cr.	255	102	X		X	X
Wickersham Dome -Tolovana R.	267	105	X		X	
Hickel Highway	289	105	X		X	X
Ft. Gibbon-Koyukuk	55	106	X			X
Kewalik-Candle	103	109		X		
Ungalik-Candle	118	109		X		
Topkuk-Candle	158	109	X		X	X

Trail Name	Trail #	Quad #	SUPPORTING			
			Known Use	Suspected Use	Documents	Maps
Candle-Kewalik	159	109	X		X	X
Dahl Cr.-Candle	160	109	X		X	X
Haylock-Candle	228	109		X		
Council-Flat Cr.	101	110		X		
Kougarok River	122	110		X		
Davidsons Landing	161	110	X		X	X
Teller-Pilgrim Hot Springs	162	110	X		X	X
Noatak Coast	22	113		X		
Kotzebue-Kiwalik	99	113		X		
Kotzebue-Shungnak	165	113		X		
Noorvik-Kiwalik	98	114	X		X	X
Elephant Point	98b	114	X		X	X
Shungnak River	95	115		X		
Alatna-Shungnak	164	115	X		X	X
Hughes	163	116	X		X	X
Bettles-Allakaket	54	117	X		X	X
Bettles-S.F. Koyukuk R.	62	117	X		X	X

Trail Name	Trail #	Quad #	SUPPORTING			
			Known Use	Suspected Use	Documents	Maps
Ft. Yukon-Beaver	37	118	X		X	X
Yukon-Chandalar	208	118	X		X	X
Circle-Ft. Yukon	202	119	X		X	X
Venetie-Christian	35	122		X		
Coldfoot-Venetie	41	122	X		X	
Caro-Chandalar	36	123	X		X	X
Chandalar-Chandalar L.	40a	123	X		X	
Myrtle Cr.-Bettles	47	123		X		
Wiseman-Chandalar R.	51	123	X		X	X
Nolan-Mascot Cr.	56A	124		X		
Kotzebue-Pt. Barrow	268	128	X		X	X
Corwinn Bluff-Naokak Pass	17	130		X		
Christian-Willow House	33	136		X		
Ramport-Beaufort Sea	211	137		X	X	
Canning River	25f	139		X	X	
Kuparkuk R.	31	140		X	X	
Itkillik R.	31a	141		X	X	
Colville R.	31c	141		X		

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Qumalik R.	9	142		X		
Ikpikpuk R.	14e	142		X		
Kiliqua R.-Awuna R.	15	143		X		
Irisaruk R.-Kaolak R.	37	144		X		
Meade R.	4c	147		X		
Chipp R.	6f	148		X		
Harrison Bay	27	149		X		
Anderson Pt.	25e	151		X		
Canning R.-Simpson Cape	25f	151	X		X	X
Poker Lagoon	25c	152		X		
Okpalik R.-Kaktovik	25d	152	X		X	X

SOUTHCENTRAL REGIONAL TRAILS

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	SUPPORTING Maps
McCord Bay	1	34		X		
Quzinkie	2	34		X		
Neva Cove	3	34		X		
Kodiak-Miller Pt.	4	34		X		
Larsen Bay-Karluk R.	1	35	X		X	X
Egegik-Portage Bay	1	36	X		X	
Egegik-Pilot Pt.	2	36	X		X	
St. Paul-Webster L.	1	38		X		
Zapadni Bay-St. George	2	38		X		
Nushagak R.	1	40	X		X	
Dillingham-Naknek	1	41	X		X	X
Katmai-Savenski	1	42		X		
Kulik Lodge	2	42	X		X	
Laughtan Glacier	1	45		X		
Dewey Lakes	2	45		X		
Dalton	3	45	X		X	X

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Chilkoot	4	45	X		X	X
White Pass	5	45		X		
Situk R.	2	46		X		
Katalla-Takataga	1	47	X		X	X
Humpy Cr.	10	50		X		
Bear Cove	17	50		X		
Nuka Bay	20	50	X		X	X
Iniskin Bay	1	51		X		
Nondalton-Newhalen R.	2	51		X		
Nondalton-Iliamna	3	51		X		
Iliamna-Pile Bay	4	51		X		
Portage Cr.	6	51		X		
Nondalton-Telaquana	7	51		X		
Manakotak-Dillingham	1	52		X		
Dillingham-Naknek	2	52		X		
Nakeen-Igiugig	3	52		X		
Bethel-Goodnews Bay	1	53	X		X	X
Goodnews-Platinum	3	53	X		X	X

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Goodnews-Togiak	6	53	X		X	X
Nightmute-Bethel	1	54		X		
Tanunak-Toksook	1	57		X		
Toksook-Nightmute	2	57		X		
Nightmute-Newtok	2	58		X		
Chefornak-Tuntutuliak	4	58	X		X	X
Kasigluk-Bethel	5	58	X		X	X
Tuntutuliak-Bethel	1	59	X		X	X
Bethel Kasigluk	2	59		X		
Bethel-Tuluksak	4	59	X		X	X
Tuluksak-Bear Cr.	5	59	X		X	X
Marvel Cr.	7	59	X		X	X
Akiak	8	59	X		X	X
Akiak-Russian Mission	10	59	X		X	X
Sleetmute-Taylor Mtns.	1	60		X		
Ninilchik	1	62		X		
7-Lake	2	62		X		
Chickaloon Bay	6	62		X		

SUPPORTING

Trail Name	Trail #	Quad #	Known Use	Suspected Use	Documents	Maps
Kenai-Moose Pass	9	62	X		X	X
Kenai Spurr	10	62	X		X	
Salamatof Beach	14	62		X		
Cottonwood Cr.	18	62		X		
Surprise Mtn.	19	62		X		
Fuller L.	20	62		X		
Skilak L.-Lookout	24	62		X		
Bear Mtn.	25	62		X		
Seward-Mt. Marathon	2	63	X		X	
Lost Lake	3	63		X		
Paradise Valley	63	5	X		X	X
Crescent L.	7	63		X		
Grant L.	8	63		X		
Porcupine Cr.	10	63		X		
Juneau Cr.	11	63		X		
Russian R.	13	63	X		X	X
Cooper L.	15	63		X		
Bench Cr.-Johnson Cr.	17	63		X		

Trail Name	Trail #	Quad #	SUPPORTING Known Use	Suspected Use	Documents	Maps
Summit L.	19	63	X		X	X
Moose Pass-Upper Trail L.	22	63	X		X	
Devils Cr.	23	63		X		
Indian Cr.	26	63	X		X	X
Bird Cr.	27	63	X		X	X
Marathon Mtn.	30	63	X		X	X
Carter-Crescent L.	31	63		X		
Grayline L.	33	63		X		
Crown Pt. Mine	34	63		X		X
Wibel Mine	35	63		X		X
Summit Cr.	36	63		X		
Resurrection Cr.	39	63		X		X
Quartz Cr.	44	63		X		
Cannonball Cr.	46	63		X		
Swetmann Mine	47	63	X		X	X
Bear Cr.-Wagon Road	48	63	X		X	X
Palmer Cr.-Wagon Road	49	63	X		X	X
Katalla-Yakataga	1	64	X		X	X

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Eyak-Cordova	2	64	X		X	X
Carter L.	6	64	X		X	X
Milton L.	7	64		X		
McKinley L.	8	64	X		X	X
Cordova-Shepherd Pt.	16	64		X		
Cordova-Mt. Eyak	17	64		X		
Kattala Sled Road	20	64	X		X	X
Tana R.	4	65		X		
Dan Cr.	3	67	X		X	X
McCarthy--May Cr. Road	6	67	X		X	X
McCarthy-Kennecott Road	9	67	X		X	X
Chisana-Horsveldt	25	67	X		X	X
Hanagita	26	67	X		X	X
Kotsina	28	67	X		X	X
Nizina-Chisana	34	67	X		X	X
Nizina-Chitina R.	37	67	X		X	X
White R.	38	67	X		X	X
Strelna L.	5	68		X		

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Tonsina L.	6	68	X			
Bernard Cr.	14	68		X		
Chitina-McCarthy	18	68	X		X	X
Wortmann's Road	19	68	X			
Valdez Glacier Road	20	68		X		
Robe L.	21	68		X		
Squaw Cr.	26	68		X		
Klutina	33	68		X		
Willow L.	34	68		X		
Copper R. Bluff	35	68		X		
Hudson L.	41	68		X		
Cash Mine	46	68		X		
Hercules Mine	47	68		X		
Tasnuna	79	68	X		X	
Valdez-Fairbanks	81	68	X		X	X
Rabbit Cr.	1	69	X		X	X
Sutton	4	69		X		
Wolverine L.	5	69		X		

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Jonesville Premier Mine	6	69	X		X	X
Tim Cr.	7	69		X		
Lazy Mtn.	8	69	X			
Crow Cr.	9	69	X		X	X
Tahneta Pass	13	69		X		
White Alice Road	17	69	X		X	X
Eureka Cr.	18	69	X		X	X
Alfred Cr.	19	69		X		
Caribou Cr.	20	69		X		
Jackass Canyon Cr.	21	69		X		
Squaw Cr.	22	69		X		
Hicks Cr.	28	69	X		X	X
Glacier Cr.	29	69		X		
Matanuska R.	30	69	X		X	X
Chicaloon R.	31	69	X		X	X
Fish L. Road	33	69	X		X	X
Bonnie L.	36	69	X			
Kings R.	38	69	X			

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Fern Mine	40	69		X		
Lonesome Mine	41	69		X		
Eureka Roadhouse	48	69	X			
Meekins	50	69	X			
Knik-Susitna	52	69	X		X	X
Kern-Iditarod	53	69	X		X	X
Indian	54	69		X		
Eagle R.	57	69	X			
Knik-Talketna	63	69	X		X	X
Gold Bullion Mine	64	69	X			
Susitna-Tyonek	2	70	X		X	X
Susitna-McDougall	8	70	X		X	X
Susitna-Rainy Pass	13	70	X		X	X
McDougall-Cache Cr.	20	70	X		X	X
Nancy-Susitna	22	70	X		X	X
Flat-Crooked Cr.	1	72		X		
Sleetmute-Taylor Mtns.	4	72		X		
Flat-Aniak	5	72		X		

Trail Name	Trail #	Quad #	SUPPORTING			
			Known Use	Suspected Use	Documents	Maps
Sparravohn-Sleetmute	7	72		X		
Bethel-Tuluksak	1	73	X		X	X
Aniak-Tuluksak	2	73	X		X	X
Yukon-Kuskokwim	3	73	X		X	X
Crooked Cr.-Aniak	4	73	X		X	X
Tuluksak-Bear Cr.	5	73	X		X	X
Akiak-Russian Mission	8	73	X		X	X
Holly Cross-Kattshak	16	73	X		X	X
Paimut-Marshall	18	73	X		X	X
Pilot Station-Kotlik	1	74	X		X	X
Scammon Bay-Hooper Bay	1	75		X		
Flat-Holy Cross-Anvik	4	78	X		X	X
Anvik-Kaltag	5	78	X		X	X
Shageluk-Holikachuk	7	78		X		
Takotna-Flat	2	79	X		X	X
Iditarod-Dishkakat	5	79	X		X	X
Rainy Pass-Big R.	1	80	X		X	X
McGrath-Candle	2	80	X		X	X

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Takotna-Nixon Fork	5	80	X		X	X
McGrath-Telida	7	80	X		X	X
Talkeetna-Iron Cr.	1	81	X		X	X
Montana Cr.	4	81		X		
Peters Cr.-Tentna R.	18	81		X		
Cameron Pass	2	82		X		
Little Nelchina	4	82		X		
McClaren R.	5	82	X		X	X
Tazlina R.	3	83	X			
Ewan L.	7	83	X			
Chistochina	24	83	X		X	X
Old Tok Cutoff Road	29	83	X		X	X
Old Richardson Hwy	30	83	X		X	X
Tolsona Military	36	83		X		
Lake Louise Road	37	83	X		X	X
Mae West L.	48	83	X		X	X
Lost Cabin L.	49	83	X		X	X
White Alice Road	50	83	X		X	X

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Cache Cr.	55	83		X		
Mirror L.	56	83		X		
Indian Cr.	67	83		X		
Canyon Cr.	68	83		X		
Gulkana-Valdez Cr.	70	83	X		X	X
Tanada L.	2	84		X		
Platinum Cr.	5	85		X		
Lost Cr.	6	84		X		
Jack L.	9	84		X		
Suslota Cr.	12	84	X			
Copper R.	14	84	X		X	X
Slana R.	15	84	X			
Porcupine Cr.	16	84	X		X	X
Eagle	19	84	X		X	X
Pass Cr.	22	84		X		
Goat Cr.	23	84		X		
Geohenda	49	84		X		
Chisana-Shushanna	51	84	X		X	X

Trail Name	Trail #	Quad #	SUPPORTING			
			Known Use	Suspected Use	Documents	Maps
Copper R.-Nabesna R.	63	84	X		X	
Mentasta-Tetling	64	84	X		X	
Eagle	1	85	X		X	X
Midway L.	5	85	X			
Dennison Fork	9	85	X		X	
Tanacross-Mansfield	10	85	X		X	X
Old Taylor Highway	16	85	X		X	X
Mentasta-Tetlin	29	85	X		X	X
Eagle-McCarty	31	85	X		X	X
Tanana Crossing-Grundler	32	85	X		X	X
Kechumstuk	77	85	X			
Chistochina-Eagle	167	85	X		X	X
Donnelly-Washburn	169	85	X		X	X
Chistochina-Chisana	5	86	X		X	X
Gulkana-Valdez Cr.	8	86	X		X	X
Paxson-Denali	9	86	X		X	X
Lake George Lodge	19	86	X			
Chisana-Paxson	30	86	X		X	X

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Delta Jnct.-Jarris Cr.	52e	86		X		
Lignite-Kantishna	1	87	X		X	X
Cantwell-Denali	2	87	X		X	X
Paxson-Valdez Cr.	3	87	X		X	X
Gulkana-Denali	4	87	X		X	X
Bull R.	6	87	X		X	X
Dunkle Mine	7	87	X		X	X
Savage R.	8	87		X		
Windy Cr.	11	87		X		
Healy-Diamond Coal Mine	13	87		X		
Healy Cr.	15	87		X		
Lignite Cr.	16	87		X		
Healy-Rex	170	87	X		X	
Diamond-Bearpaw	13	88	X		X	X
Kantishna-Moose Cr.	84	88	X			
Lake Minchumina-North Fork Kuskokwim R.	88	88		X		
Toklet R.-Telida	89	88		X		
Mentasta L.	41	84		X		

SOUTHEASTERN REGIONAL TRAILS

Trail Name	Trail #	Quad #	Known Use	Suspected Use	SUPPORTING Documents	Maps
Spurt L.	1	8		X		
Tracy Arm	2	8		X		
Francis-Farragut L.	3	8		X		
Windham Bay	4	8		X		
Taylor L.	5	8		X		
Deboer L.	6	8		X		
Twin Glacier	1	12		X		
Taku R.	2	12	X			
Dewey L.	2	45		X		
Dalton	3	45	X		X	X
Chilkoot	4	45	X		X	X
White Pass	5	45	X		X	X
Situk R.	2	46		X		

SEMINAR
ON
SURVEYING & TITLE PROBLEMS

Friday, May 3, 1985

Egan Room
Centennial Hall
101 Egan Drive
Juneau, Alaska 99801

Totem Chapter 59 is presenting a program on Surveying and Title Problems. This program is designed to offer information on how the various surveying and title problems affect the private sector, Native organizations, municipal governments, and State and Federal agencies.

This program is intended for appraisers, attorneys, engineers, loan officers, realty brokers, R/W personnel, title examiners, and others concerned with the examination and insuring land titles and with platting, recording and surveying of lands in Alaska.

This program includes speakers from surveying organizations (both government and private) and title insurance agencies.

SEMINAR SCHEDULE

2:00-2:10 - Introduction
Thomas P. King, Seminar Coordinator

2:10-3:40 - "The Whys and Wherefores of Survey Controls and Evidence and Right of Way Problems with Case Histories"
Thomas G. Keopple, Owner, Keopple Surveys and
Robert J. Hungerford, Location Section, Southeast Region, Alaska DOT&PF

3:40-3:50 - Break

3:50-4:20 - "Procedures for Ordering Title Insurance"
David Hemmerling, Manager, Trans America Title Company

4:20-4:50 - "What Title Companies Require from Surveyors"
Glenn Prince, Manager, Title Insurance Agency

4:50-5:00 - Seminar Wrap-up
Thomas P. King, Seminar Coordinator

TOTEM CHAPTER 59 MEETING

Friday, May 3, 1985

Lumberjack Room
Cape Fox Sheffield Hotel
51 Egun Drive
Juneau, Alaska 99801

6:30-7:00 - Social Adjustment
7:00-8:00 - Dinner
8:00-9:00 - Chapter Meeting
Speaker: Senator Jack Coghill
Chairman, Senate
Transportation Committee

NONVERBAL COMMUNICATIONS
COURSE 210

Saturday, May 4, 1985

Egan Room
Centennial Hall
101 Egan Drive
Juneau, Alaska 99801

A high percentage of the meaning you place on a face-to-face interaction is nonverbal. This course shows you how to read the nonverbal signals being sent; it makes the students aware of the signals thay are unconsciously sending.

COURSE OUTLINE

Introduction
- External Clues to Internal States
- Touch Behavior
- What Meanings are Conveyed Nonverbally
- How Meanings are Conveyed Nonverbally

Facial Expressions and Eye Behavior
- How to Interpret
- How to Use
- How to Assess Impacts

Body Language
- Posture
- Gestures and Mannerisms
- Body Lean, Body Aim

Are You Close-in or Far-out?
- Territorially
- Human Distances
- Spacial Arrangements
- Social Networks

Course Length: 1 day - 8:30 - 5:00

SR/WA Credits: 16 in negotiations

Recertification Hours: 8

Instructor: Mike Moorman, Juneau, Alaska. Mike obtained his Ph.D. in Business Administration from The University of Washington. He has taught Management at Cal State(Hayward) and University of Alaska (Juneau). He spent 2 years teaching in Japan. He is now employed by the Office of Management & Budget in the Office of the Governor.

For more information contact Course Coordinator:
Thomas P. King at (907) 789-22536(work)

NOTE: The costs and expenses of attending this seminar and course for purposes of improving your career are deductible for income tax purposes.

REGISTRATION FORM

Seminar on Surveying and Title Problems: $25.....$_____

Nonverbal Communications Course 210: Members - $60.....$_____
Non-members - $80

Note: Special rate for attending both the Seminar and the Course.....$_____
Members - $75; Non-members - $90

Totem Chapter Regular Membership Meeting: Reservations - $20.....$_____

TOTAL.....$_____

Make Checks Payable and Mail To:

TOTEM CHAPTER 59, IR/WA
P.O. Box 30
Douglas, AK 99824

Phone Reservations:
Call Jane Selvig or Grace Kack at 364-4222.

RESERVATIONS MUST BE RECEIVED BY:
April 30, 1985.

Name _____

Company Name _____

Address _____

City _____ State _____ Zip _____

Phone _____

TOTEM CHAPTER 59, IR/WA
P.O. BOX 30
DOUGLAS, AK 99824

TOTEM CHAPTER 59

INTERNATIONAL RIGHT OF WAY ASSOCIATION

PRESENTS A 1 1/2 DAY PROGRAM

SEMINAR ON SURVEYING & TITLE PROBLEMS

MAY 3, 1985

* * *

NONVERBAL COMMUNICATIONS COURSE 210

MAY 4, 1985

CENTENNIAL HALL
101 EGAN DRIVE
JUNEAU, ALASKA

HISTORY OF THE ASSOCIATION . . .

The Association was founded in 1934 in Los Angeles by Frank C. Balfour, who was in charge of the right-of-way program for the California Department of Highways. The Association has since grown to 70 chapters with a total membership of over 11,000. Chapters now extend from Puerto Rico to Alaska and Hawaii to Quebec.

During the early years of the Association, representatives from the highway industry made up the major segment of the membership. This has significantly changed, with the Association now representing a wide range of public and private agencies and companies and a corresponding range of real estate activities. As a result, through training and contact, members have the opportunity not only to grow within their own areas of expertise, but also to become better acquainted with related disciplines.

MEMBERSHIP . . .

The International Right of Way Association (IR/WA) is an individual membership Association - there are no corporate memberships. Membership is restricted to individuals who are engaged in the right-of-way field. Right-of-way embraces the variety of specialized disciplines involved in the acquisition, management or disposal of real property for public agencies or investor-owned companies, including:

- Law
- Appraisal
- Property Management
- Engineering
- Relocation Assistance
- Environment
- Acquisition/Negotiation
- Land Titles
- Management

RESOLUTION #2-185

RESOLUTION PERTAINING TO ESTABLISHMENT OF RS 2477 RIGHTS-OF-WAY

WHEREAS, the development and production of natural resources in Interior Alaska is a significant element in the economic base of the Fairbanks community and the welefare of its inhabitants; and

WHEREAS, expansion of resource production is dependent on adequate access to areas in which resources are located; and

WHEREAS, access to a number of resource areas in Interior Alaska may become possible by the use of routes established in the past and which are included in the inventory of trails owned by the State of Alaska as asserted by Memorandum 00-2528, April 8, 1974, to the U.S. Bureau of Land Management; and

WHEREAS, the procedures for the assertion of RS 2477 Rights-of-Way by the State of Alaska has been established in a Memorandum of Understanding between the Alaska Department of Natural Resources (DNR), and the Alaska Department of Transportation and Public Facilities (DOTPF, and Bureau of Land Management (BLM), September 28, 1984, promulgated by the interior regional offices of these three agencies; and

WHEREAS, a coordinating committee comprising a representative of each agency (John Martin, DOTPF; Joseph Sullivan, DNR; Dwight Hempel, BLM) has been established; and

WHEREAS, the historical research, documentation and mapping required for the routes already inventoried and identification of trails not previously inventoried will require a significant effort and John Martin, DOTPF, and Joseph Sullivan, DNR, are investigating the manpower and funding requirements to accomplish this effort.

NOW THEREFORE, be it resolved by the Greater Fairbanks Chamber of Commerce that the implementation of RS 2477 Memorandum of Understanding dated September 28, 1984, AK-023-MU5-002, be strongly supported; and

BE IT FURTHER RESOLVED, that the State Legislature encourage this project by supporting adequate budget and/or priority assignment of personnel in DOTPF and DNR and similar support by given by the Federal Government to BLM; and

BE IT FURTHER RESOLVED, to encourage all organizations and individuals to develop and submit to DOTPF and DNR a list of priority routes known to them in Interior Alaska which will be of maximum benefit for mineral, agricultural, commercial and recreation and that routes which can support more than one of the above be given particular emphasis; and

BE IT FURTHER RESOLVED; that full consideration be given to the corridor concept, alternate established routes and to existing land rights of others, including private owners and the national interest lands, in identifying RS 2477 Rights-of-Ways; and

BE IT FURTHER RESOLVED, that copies of this Resolution be forwarded to:

DEPARTMENT OF NATURAL RESOURCES
JAN 31 1984
COMMISSIONER'S OFFICE

FAIRBANKS C OF C RESOLUTION

Governor of Alaska
Commissioner, Department of Natural Resources, Alaska
Commissioner, Department of Transportation and Public Facilities, Alaska
President of the Senate, Alaska Legislature
Resources and Transportation Committees of the House, Alaska Legislature
Senator Ted Stevens
Senator Frank Murkowski
Congressman Don Young
Secretary of the Interior
Director, Bureau of Land Management, Washington D.C.
Alaska State Director, Bureau of Land Management, Anchorage, Alaska
Director, Northern Region, Bureau of Land Management, Fairbanks, Alaska

DATED THIS 14TH DAY OF JANUARY, 1985.

GREATER FAIRBANKS CHAMBER OF COMMERCE BOARD OF DIRECTORS

By _____

Title President and Chief Executive Officer

Attachments: Memorandum 00-2528, April 8, 1974
Memorandum AK-023-MU5-002, September 28, 1984

Citizens' Advisory Commission on Federal Areas

515 Seventh Avenue
Suite 310
Fairbanks, Alaska 99701
(907) 456-2012

February 26, 1985

Honorable Bill Sheffield
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: RS 2477 Rights-of-Way

Dear Governor Sheffield:

You will recall that the Citizens' Advisory Commission on Federal Areas in September proposed formation of a task force sanctioned by the Alaska Land Use Council (ALUC) which would establish a procedure for confirming the State of Alaska's claims to RS 2477 rights-of-way. Our specific proposal was withdrawn when Bureau of Land Management (BLM) State Director Mike Penfold revealed that the Department of Natural Resources (DNR), the Department of Transportation and Public Facilities (DOTPF) and the BLM were negotiating a Memorandum of Understanding (MOU) for the implementation of a procedure similar to the one we were proposing. The MOU was signed September 28, 1984.

Our proposal advised that a necessary element in the success of such an undertaking would be the cooperation of the member agencies of the ALUC in the implementation of any procedure developed. Such cooperation would include adequate funding and manpower for the research needed. At this time we must advise you that it is necessary that adequate funds be allocated to permit the State agencies involved, DNR and DOTPF, to meet their objective of identifying and confirming RS 2477 rights-of-way.

Management authority for RS 2477 rights-of-way which cross non-State lands is vested with the Alaska DOTPF. We recognize that there are legitimate management concerns espoused by Federal land managers, Native and other private landowners and environmental groups. Adequate opportunities for interested parties to plan for State management of these rights-of-way exist and can be expanded if necessary, but only if the State retains its present authority to do so.

You are no doubt aware of the rigorous permitting process that Title XI of ANILCA requires prior to construction of a Transportation and Utilities System (TUS) on or across a Conservation System Unit (CSU). Most knowledgeable people in and out of the State government regard this process as extremely difficult, if not completely unworkable. Because of the difficulties inherent

CITIZEN'S ADVISORY COMMISSION 2-26-85

in the Title XI process, it is critical that the management authority over, and State ownership of, RS 2477 rights-of-way be adequately recognized in the CSU planning efforts of federal agencies. Language recently adopted by the National Park Service (NPS) for inclusion in the General Management Plans that agency is preparing illustrates this:

> "The Park Service is aware the State might assert certain claims of rights-of-way under R.S. 2477. The Service intends to cooperate with the State (and any other claimant) in identifying these claims, the nature, extent and validity of which may vary depending on the circumstances under which they were acquired or asserted. Notwithstanding that certain R.S. 2477 rights-of-way may exist, it will still be necessary for users of any right-of-way to comply with applicable Park Service requirements." (emphasis added)

This is so despite the assurances of ANILCA Section 1109 which states:

> "Nothing in this title shall be construed to adversely affect any valid existing right of access."

We are painfully aware of the decline in State revenues and the necessity to minimize unessential expenditures. We are also aware that the economy of the State of Alaska is overly dependent upon the oil industry. The need to develop our resources in a rational manner to diversify our economy is more evident every day. The timber, mineral and tourist industries of the State must have access in order to expand. The rights-of-way granted the State through RS 2477 can play a vital role in this effort both as an alternative to Title XI and as leverage in securing more favorable decisions in Title XI and other resource management issues on federal lands.

We believe that it is of the utmost importance that the State of Alaska's ownership and management of these public rights-of-way be forcefully defended. By doing so, we can go a long way towards ensuring that debate over proposals to cross a CSU with a transportation system is managed here in Alaska rather than in Washington, D.C. As governor of our State, your support is necessary for the success of this endeavor.

Senate Joint Resolution #10 (SJR #10), sponsored by a bipartisan group of legislators, requests that DOTPF and DNR expedite the identification and establishment of rights-of-way for roads and trails on federal BLM plats which qualify under RS 2477. The Resolution also calls for the expansion of the current MOU, which presently applies only to the Interior region, into a statewide process. We endorse this resolution and urgently request that you give it your strongest support as well.

We also ask that you use the power of your office to insure that DOTPF and DNR receive adequate funding to implement an effective course of action pursuant to the objectives of SJR #10.

We reiterate our earlier acknowledgement that legitimate concerns by federal land managers, Native land owners and environmental groups exist. But these concerns over the management of RS 2477 rights-of-way are separate from the issue of ownership, and are more properly accommodated in the State transportation planning process. To allow management concerns to interfere with confirming ownership of the rights-of-way is to put the cart before the horse; it is analogous to requiring an "acceptable" land use plan to be in place before the State or the Native corporations can be issued a land conveyance.

We hope you will consider these points and see the interests of the State require positive action to preserve the full range of State prerogatives.

Sincerely,

Phil R. Holdsworth

Phil R. Holdsworth
Chairman

cc: E. Wunnicke
R. Knapp

Alaska Native Land Managers Association
[illegible] N Street
Anchorage, Alaska [illegible]
(907) 272-1254 277-[illegible]35

RESOLUTION ADDRESSING PROPOSED PLOTTING OF R.S. 2477 RIGHTS-OF-WAY TO PUBLIC LAND RECORDS

WHEREAS, the State of Alaska and the Bureau of Land Management have entered into a memorandum of understanding to identify and plot RS 2477 rights-of-way to the public land records; and

WHEREAS, the Alaska Native Claims Settlement Act corporations are major land holders which may be severely impacted by this action without an opportunity to participate in the decisions; and

WHEREAS, the notation of the public land records may provide the State of Alaska with added weight, in the case of litigation of an RS 2477 right-of-way, without a factual basis; and

WHEREAS, neither the State nor the Bureau of Land Management propose to adjudicate RS 2477 rights-of-way under the terms of the memorandum of understanding; and

NOW, THEREFORE, BE IT RESOLVED by the Alaska Native Land Managers Association that the Alaska Native Land Managers Association opposes the plotting of RS 2477 rights-of-way to the public land records.

WE FURTHER REQUEST that the following actions be taken:

1. Alaska Native Claims Settlement Act corporations are actively involved in the identification process, and

2. The Bureau of Land Management and the State of Alaska establish clear standards of construction and use against which all RS 2477 rights-of-way are to be considered, and

3. The issue of abandonment is clearly defined and addressed, and

4. Each RS 2477 right-of-way is adjudicated by the Bureau of Land Management, and

5. An accurate centerline description is provided to the Bureau of Land Management prior to plotting, and

6. A case file is established which sets out the history of each RS 2477 right-of-way together with complete documentation of the timing, duration type and amount of use and location.

BE IT FURTHER RESOLVED that this resolution be forwarded to the Alaska Federation of Natives, the Bureau of Land Management, the State Department of Natural Resources, the State Department of Transportation and Public Facilities, Alaska's Congressional Delegation, and to all State legislators.

Duly adopted this 30th day of January, 1985, in Anchorage, Alaska.

Frances E. Zimmerman

Frances E. Zimmerman, Secretary/Treasurer

LAND MANAGERS ASSOCIATION OPPOSITION

Tanana Chiefs Conference, Inc.

Doyon Building
201 First Avenue
Fairbanks, Alaska 99701
Phone (907) 452-8251

December 21, 1984

Mr. Mike Penfold
State Director
Bureau of Land Management
Box 13
701 "C" Street
Anchorage, Alaska 99513

Dear Mr. Penfold:

We recently received copies of a Memorandum of Understanding (MOU) between BLM's Fairbanks District, DNR's North Central District, and DOT/PF's Northern Region. The MOU states in its Purpose that federal, state and local officials need to know the locations of RS 2477 rights-of-way assertions in order to manage their respective lands. The MOU goes on to set procedures under which DOT and DNR will submit evidence supporting RS 2477 r/w assertions and BLM's Fairbanks District will plot these assertions on the Master Title Plats (MTP).

We believe this is a serious mistake on BLM's part and will only add more confusion to land management in Alaska. RS 2477 r/w carry much more uncertainty than just their location. There continues to be unanswered questions about their width, the allowed uses, degree of public use needed to establish a valid grant; abandonment, and maintenance. By recording the State's asserted claims on MTP's, BLM perpetuates these vagaries and even passes them on to the recipients of lands conveyed by BLM. It is BLM's responsibility to convey clear title to land and it is the State's right to seek legal remedies to whatever argument they have with such title. By placing such nebulous claims as RS 2477's on their records, BLM adds credence to unproved assertions and puts those who receive BLM conveyances in the position of having to defend their titles from the moment they receive them. A government title then becomes a sham since the basic rights of the owner aren't even defined by the agency conveying the title.

Prior to the MOU, DOT/PF prepared a briefing paper on RS 2477 r/w which states in part:

> "If the State documents its claims, other parties are put in the position of challenging the State's claim rather than vice versa. Presently, the State would have to prove 'valid existing rights' on conveyed land. If the trails

TANANA CHIEFS OPPOSITION

were already on the status plats, anyone who disagreed would be in the position of challenging the State's claim. Asserting an RS 2477 claim in this manner is only an administrative determination since BLM does not adjudicate RS 2477 claims. If someone were to challenge the State, the State's claim would still have to be proven in court; however, we certainly would be in a much better position to do this."

Clearly the State's strategy is to cultivate doubt about titles to lands crossed by their asserted rights-of-way and to place the burden of proof on the patentee. BLM is promoting this strategy in your own Instruction Memo, AK-85-72 of November 28, 1984 stating that "the BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporation)". Furthermore, that, "A Native Corporation is free to challenge the assertion, in court, after it acquires title".

The use of the word 'free' in this context is ludicrous. Native Corporations and individuals should be FREE from receiving clouded title to their lands after waiting 13 years, and FREE from having to defend their titles from assertions to nonspecific encumbrances.

By putting the State's assertions on MTP's, the BLM invites trespass by third parties such as miners, hunters and recreationalists. We believe that BLM, in effect, is creating the conditions whereby such trespass will certainly result. This would affect not only private lands but national parks, wildlife refuges, and wilderness areas, since the MOU covers "any land within the State of Alaska,...both state and non-state lands".

Section 4 of the MOU cites a State court decision contrary to BLM Manual 2801 B.1.a., which requires actual construction, rather than mere use to establish a valid grant. We would like to know which interpretation will apply to federal lands? Since the MOU only names the Fairbanks Distict, we would like to know what the statewide procedures are and what your bureauwide procedures are. We would also like to know what weight these assertions have on lands already patented or IC'd, and on Native Allotments; whether they are pending, approved or certificated. We would also like to know if landowners affected by these RS 2466 claims are being notified by BLM of these assertions and being given an opportunity to submit material for the case files.

These right-of-way assertions are going to cloud land titles all over the State and BLM's present course is only passing the problem on to those receiving BLM conveyances. It is BLM's responsibility to convey CLEAR title and to protect the integrity of selected lands under BLM's INTERIM management. To accomplish this BLM should seek a statute of limitations for asserting rights-of-way under RS 2477. There should be Federal regulations that clearly define the requirements to be met before a valid grant can issue, as well as the width of the right-of-way, the responsibility for maintenance, the allowed uses, seasonal use, cessation of use, notice and appeals. These rights-of-way will greatly affect the management and development of all our lands. Their requirements and rights granted must be no less clear than any other type of right-of-way and cannot be left to interpretation if a Federal land patent is to carry its weight as the beginning in the chain of title. Valid public access certainly needs to be protected, but in the present situation RS 2477 jeopardizes far more than it protects.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. "Spud" Williams
President

jv
✓ cc: Bill Horn

Northern Alaska Environmental Center

218 DRIVEWAY
FAIRBANKS, ALASKA 99701
(907) 452-5021

TO: Senate Resources Committee
Arliss Sturgulewski, Chair

FROM: Randy R. Rogers, Director, NAEC

SUBJ: SJR 10--R.S. 2477

Date: February 21, 1985

In September the Bureau of Land Management and the Alaska Departments of Transportation and Natural Resources signed a memorandum of understanding, the full implications of which those parties are most likely not even aware. This memorandum establishes a procedure for placing formal assertions of R.S. 2477 rights-of-way by the state on both state and federal master title plats, signifying the legitimization of a state right-of-way.

The process of developing this agreement took place with absolutely no public involvement and, in fact, BLM would not even allow representatives of the Northern Alaska Environmental Center to review copies of the memorandum while in its draft stages. In addition to the lack of public involvement, representatives of the National Park Service, Fish and Wildlife Service, and native corporations, whose lands may be substantially impacted by this agreement, were not included on the committee that drafted the memo.

Revised Statute 2477 was originally established by the U.S. Congress in the Act of July 26, 1866. The entire, original statute provided:

> "The right of way for the construction of highways over public lands not reserved for public uses is hereby granted."

This law was established at a time when automobiles and D-9 Cats did not exist and a "highway" referred to a wagon trail at most.

Because the law is so vague most of the parameters defining the actual use of R.S. 2477 have been established through case law. Yet, there have been very few cases in Alaska which define how the law applies within the state. Despite this lack of a conclusive definition, the memorandum of understanding uses what small body of law is available to establish criteria for the BLM to accept the assertions. This will result in placing the burden of legally challenging the application of the law on individual persons who disagree with the shaky BLM definition.

There are literally hundreds of historic trails in Alaska which could possibly be claimed under R.S. 2477. Many of these trails cross portions of conservation units and have the potential to severely compromise the purposes for which the units were established.

ENVIRONMENTAL CENTER ANALYSIS

An example of one such trail is the Bielenberg Trail where a miner was arrested this fall when he moved mining equipment across the Yukon-Charley National Preserve to his mining claims on Woodchopper Creek. The miner contends that, because the route he was using is a public highway established under the terms of R.S. 2477 (a claim which has not been legally proven), he does not need an access permit from the National Park Service.

This case of trespass on NPS lands is now in court. Meanwhile, the State of Alaska has filed a formal assertion of this right-of-way with BLM under the process defined in the new memorandum of understanding, an action which jeopardizes NPS' position in court because of the R.S. 2477 policy of BLM. BLM, it should be pointed out, is an agency of the Department of the Interior, as is NPS.

Another controversy with regard to R.S. 2477 which is extremely disturbing involves Gates of the Arctic National Park. In February, 1984, the Department of Natural Resources sent a letter to NPS stating that, because the route of the Coldfoot Classic Sleddog Race lies on state-claimed R.S. 2477 rights-of-way and on navigable waterways, the organization conducting the race need not obtain a special-use permit from the Park Service.

This action regarding a sleddog race may be viewed as an innocent action; however, under the current state policy, or lack of policy, once the right-of-way is established it could be used for unrestricted mining access or other purposes which would be devastating to the wilderness resources of the park. In this instance, NPS responded to the state that the route would not be considered a valid right-of-way until legally proven through the courts.

This example further demonstrates the widely differing interpretations of R.S. 2477 by NPS and BLM. Although the agreement between BLM and the state is not intended to apply to lands not under BLM management, validation of the rights-of-way on BLM lands could establish a precedent that would be detrimental to legal challenges of their validity on NPS, Fish and Wildlife Service, native, or private lands.

In developing its R.S. 2477 policy, BLM has obviously not considered its ramifications to other land managing agencies, nor has it thoroughly considered how it will affect land under its own jurisdiction.

At the November 15, 1984, meeting of the Fairbanks District BLM Advisory Council, a BLM representative indicated that, if the state asserted an R.S. 2477 claim into the primitive portion of the White Mountains National Recreation Area, (which is closed to all off-road vehicle use) and the assertion met the criteria spelled out in the memorandum of understanding thereby ending up on the BLM master title plats, a miner could drive a D-9 Cat through the primitive area with no BLM approval required.

Many potential R.S. 2477 routes are important for their recreational use, but their status as such is unclear because of the confusion surrounding R.S. 2477. Two primary examples are the Chena Hot Springs Winter Trail and the Circle-Fairbanks Historic Trail.

In July, 1982, the state acknowledged that the Chena Hot Springs Winter Trail has standing as an R.S. 2477 right-of-way yet refused to protect the trail's recreational properties because it is not a "main or significant arterial thoroughfare." When the Fairbanks North Star Borough discussed the establishment of the Circle-Fairbanks Trail as a recreational trail, the Department of Natural Resources indicated that, because the trail is identified as an R.S. 2477, they could do nothing to manage it for recreational purposes.

The importance of clearing up the R.S. 2477 issue is demonstrated by the fact that over 30 percent of recreational trails in the Fairbanks North Star Borough inventory are tentatively identified as R.S. 2477 rights-of-way by the Department of Transportation.

Equally disturbing as the recent developments with the R.S. 2477 issue is that, although the new agreement between the state and BLM defines a procedure for placing R.S. 2477 rights-of-way on land status plats, thereby legitimizing the claims, the involved state agencies are not certain who will be responsible for managing, maintaining or accepting liability for the roads. And questions such as what period of non-use constitutes abandonment of the rights-of-way, if the rights-of-way are restricted to historical types and seasons of use, and what width the rights-of-way are, remain to be answered.

The manner in which this major state and federal action has taken place is highly questionable. It is irresponsible land management on the part of both the BLM and the state to establish an agreement or take action to validate any of these possible rights-of-way before it is known what purpose they will serve, what effects they will have on management of surrounding lands, how they will be managed, and where the legal responsibilities lie. The need to delineate how R.S. 2477 will be dealt with in Alaska is clear, but a procedure to administratively approve the rights-of-way without public involvement, and prior to an adequate understanding of how they will be managed makes a travesty of safeguarding the public interest.

The state and BLM should abolish the existing memorandum of understanding, examine the basic legal, fiscal, and management responsibilities associated with the rights-of-way, and establish a new procedure for solving this dilemma which is accompanied with full public involvement and the participation of all affected land owners and managers.

Interior Village Association
IVA

CORPORATE DEVELOPMENT AND
TECHNICAL SERVICES FOR
VILLAGE BUSINESS CORPORATIONS

1274 MINNIE STREET
FAIRBANKS, ALASKA 99701
TELEPHONE: (907) 452-1601

October 23, 1984

Dan Alex, President
Alaska Native Land Managers Association
Pouch 6699
Anchorage, AK 99502

Dear Dan:

Enclosed are copies of a recent MOU between BLM, DNR and DOT/PF (in Fairbanks), and a DOT/PF briefing paper on RS2477 Rights-of-Way. I have serious objections to them from both a land title and a land management perspective.

To begin, RS2477 Rights-of-Way are rights-of-way which, if valid, are rights granted outside the statutory realm of ANCSA or FLPMA, i.e., 43 USC 932. Basically, if a right-of-way is to be determined valid, the land over which it crossed had to be vacant, unreserved, public lands at the time use began and there has to be a determination, (frequently in court if the landowner objected), that there was sufficient public use or expenditure of public funds, to qualify under the statute. If determined valid, the right-of-way width was usually ditch to ditch. The only entity with the authority to adjudicate these rights is a court of law, not the BLM.

What this means in practical terms is that these rights-of-way have never been identified in title documents granted to private landowners in this state or elsewhere in the lower 48 until the State of Alaska pressured BLM to insert these rights-of-ways in native conveyances. Since BLM cannot, by law, adjudicate these rights, they are considered assertions until they are proven.

If a trail or road crossed a private landowners property and the landowner questioned the public's right to use the trail, the owner may block the trail. If the user objects, he can take the landowner to court to protect his right of access, or vice versa.

The MOU, needless to say, was written without native imput. It establishes a de facto adjudication process which places these rights-of-way on BLM's land status documents and ultimately in Native Land conveyances. The Native landowner has no opportunity to protest. The State, on the other hand, has gained another leg up on the private landowner by having these assertions of rights placed on the public land records and Native land title without

INTERIOR VILLAGE ASSOCIATION

an opportunity for complete adjudication in the proper forum. (Please read their briefing paper closely.) If the RS2477 assertion ends up in the land conveyance, the Corporation receives a clouded title document and faces potentially significant management problems.

The management problems can be significant. First, most of these RS2477 assertions are made on cold winter trails. With modern technology many people want to use these trails in the summertime, a period when it is impractical to use the trail in its winter location, so they begin to move this way and that to avoid the pot holes and permafrost areas creating new trails and often serious surface damages. This creates surface damage problems for the landowner. There is also a question whether the public has the right to use a winter trail in the non-winter months.

Secondly, as the DOT/PF briefing paper points out, even if an RS2477 is determined to be valid, the state has reserved the right to decline to maintain the rights-of-way. This leaves the landowner with continued resource destruction and the public using a potentially unsafe public right-of-way. In simple terms, the state wants its cake and eat it, too. I say that if they want the rights of ownership, they should accept the obligation to manage and maintain them!

My recommendation to the Native Land Managers is to consider these points and, if they agree, develop a strategy involving our congressional delegation and state legislators to remove these assertions from the public land records until proven valid in the proper forum and seek legislation that would require the state to accept management responsibility when they assert title.

Sincerely,

Paul C. Costello
President

PCC/bap

Interior Village Association
IVA

CORPORATE DEVELOPMENT AND
TECHNICAL SERVICES FOR
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1274 MINNIE STREET
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DEPARTMENT OF NATURAL RESOURCES
JAN 21 1984
COMMISSIONER'S OFFICE
JUNEAU

November 1, 1984

Lavelle Black
Dept. of Interior
Alaska Program Staff (311)
18th and "C" Streets, N.W.
Washington, D.C. 20240

Dear Lavelle:

Here is the letter and enclosures we discussed today. As I indicated, they create problems in three related areas.

1). To begin, if I were a native landowner, I would be offended that BLM drafted such a document without any visible effort to involve the native community. As my lawyer friends would say, "It flies in the face of ANCSA."

2). Next, the MOU establishes a de facto adjudication of less than fee interests when BLM does not have the authority to adjudicate RS 2477 interests. The only forum to properly adjudicate them is with the landowner, or if that proves to be unsuccessful, in court. The only Federal land title to be prejudiced with these questionable assertions are native lands. In my experience I have never found a Federal patent in the Lower 48 which purported to adjudicate an RS 2477.

3). It represents land management philsophy at its least, i.e., the State would like title any way they can get it, but want "the right to refuse service" (maintenance) to anyone. This creates a conflict between the unsuspecting user and the landowner when a user attempts to use a damaged trail and finds that he cannot because of permafrost degradation, for example. He makes the choice of not going or just moving the trail over a bit to avoid the impassable section. Hence, he infuriates the landowner by destroying surface resources and trespassing. The user then faces an irate landowner, possible criminal charges and the State who chooses to do nothing. The Seventy Mile Trail in Eagle is a good example.

My solution is simple. Revoke the MOU and let the landowners and the State decide in the manner most practical which right is valid and who is responsible for that right. If a right is valid because there is a continuing public use and need, then let the State seek the funds to maintain the right-of-way on a case by case basis. BLM is helping neither themselves

nor the Native community nor, in the run, the taxpayers of this state, in trying to decide what is best for a situation that they have no legal obligation to be involved in.

I hope that this finds you well and enjoying the fall season in Washington. Give my regards to Bob.

Sincerely,

Paul C. Costello
President

Enc: Letter to Dann Alex
Briefing Paper
MOU

PCC/bap

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SJR 10

Title: RS 2477 Identification

Sponsor: Uehill; et al

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: DNR, DOT/PF

Program Category Affected: Management of Land & Water Resource

BRU, Program or Subprogram(s) Affected: ; Land & Water Public Use

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		92.0	92.0	92.0	92.0	92.0
200 TRAVEL		4.0	4.0	4.0	4.0	4.0
300 CONTRACTUAL		34.0	34.0	34.0	34.0	34.0
400 SUPPLIES		1.0	1.0	1.0	1.0	1.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		131.0	131.0	131.0	131.0	131.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		131.0	131.0	131.0	131.0	131.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2.0				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Provides for two full-time positions (Natural Resource Officer II) to identify and compile information necessary to assert in court those roads and trails which quali: as RS 2477's. Includes funding for agency and public input, printing of maps and road/trail atlas, copying, public notice and advertisements. Also travel in suppor of research and to conduct public/agency meeting.

Prepared By: Garv Gustafson Phone: 265-4347

Division: Land & Water Management Date:

Approved by Commissioner: Date: 2/21/85

Agency:

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

DNR FISCAL NOTE

7/1/84

BRIEFING PAPER

Alaska Department of Transportation and Public Facilities

Northern Region

Division of Planning

LAND MANAGEMENT
JL 23 10 21 AM '84

REVISED STATUTE 2477 RIGHTS-OF-WAY

Legal Basis for RS 2477

Congress by the Act of July 26, 1866 granted rights-of-way for highways over unreserved public lands, and by doing so, established an extensive network of public rights-of-way in Alaska. This Act, now codified as 43 U.S.C. 932, Revised Statute (RS) 2477, states in full:

> "The right-of-way for the construction of highways over public lands not reserved for public uses is hereby granted."

Although RS 2477 was repealed October 21, 1976 by Public Law 94-579, section 706 (90 stat. 2793), those rights-of-way previously established remain valid.

Geographic and Historical Development

In Alaska, RS 2477 rights-of-way are concentrated mainly in the Interior, Western and Southwestern regions of the state and in the Copper River basin. In Southeastern and along the Southcentral gulf coast, RS 2477 was not as important to transportation because of the accessibility via water.

RS 2477 highways have provided much of the access to areas of Alaska in the past and continue to do so. Historically, these roads were used for trade routes and access to mining areas. Today, they serve as access for mineral development , forestry, recreation, agriculture, hunting, fishing, inter-village travel, and access to homesteads, homesites, and other land disposals. Most of the well established, frequently traveled trails appearing on U.S.G.S. topographic maps are RS 2477 highways.

Since the RS 2477 statute was written in such a brief and nonspecific manner, it does not establish criteria for determining the location or width of the rights-of-way nor does it define what constitutes a "highway." What was considered a "highway" 118 years ago when the law was passed differs greatly from the modern concept. Further, a procedure for identifying and claiming rights-of-way was not established.

At this time, there is confusion and differences of opinion regarding the location, validity and extent of RS 2477 highways in Alaska. Although RS 2477 highways exist in several states, this issue has taken on special significance in Alaska because of the remoteness and inaccessibility of much of the state.

Additionally, the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and the Alaska National Interests Lands Conservation Act (ANILCA) all initiated major changes in land ownership in Alaska. As land is transferred from the Public Domain to the State, Native corporations, private individuals, and other Federal agencies, there is a diversity of views regarding access and land management policies. Some landowners wish to regulate use by type of vehicle, weight, time of year, etc. Some favor preserving

DOT/PF HISTORICAL ANALYSIS

access for local residents. Others prefer no access at all. Furthermore, as land is conveyed, the validity of RS 2477's is being questioned. Currently, in land conveyance documents, RS 2477 rights-of-way are protected only with the clause, "valid existing rights," with no visible evidence of them on the Federal or State land status plats. The existing Trail Inventory File, which catalogs many RS 2477 roads, is at a scale of 1:250,000 (standard U.S.G.S quad map) and does not show the the location of RS 2477's in sufficient detail to allow them to be entered on the land status plats.

Need for Procedures

Confusion among State and Federal agencies and private landowners as to the implementation of RS 2477 continues to hinder management and use of these highways. It has become apparent that the public requires assistance in identifying RS 2477 roads. State, Federal and local governments, Native corporations, and other property owners need to know the location and authorized uses of RS 2477 roads in order to reasonably manage their lands.

For rights-of-way, land selection, land claims and other land transfer actions, land status plats serve as part of offical records of land ownership for both the Federal government (through BLM) and the State government (through DNR). It is in the State's and the public's interest to establish these RS 2477 claims on both State and Federal land status plats, thereby asserting the RS 2477 claim and identifying its location. Placing the roads on the status plats would give more credibility to the State's claims and would establish, for the record, both a file and a geographic document asserting the claims. Thus, when land is conveyed, the State and public RS 2477 claims would be much more viable than simply a "valid existing rights" clause in a conveyance document. The location of each trail would be generally established, therefore it would be obvious to anyone researching land status that a right-of-way claim exists across a particular parcel.

If the State documents its claims, other parties are put in the position of challenging the State's claim rather than vice versa. Presently, the State would have to prove "valid existing rights," on conveyed land. If the trails were already on the status plats, anyone who disareed would be in the position of challenging the State's claim. Asserting an RS 2477 claim in this manner is only an administrative determination since BLM does not adjudicate RS 2477 claims. If someone were to challenge the State, the State's claim would still have to be proven in court; however, we certainly would be in a much better position to do this.

Other Findings

Discussions with DNR personnel in Anchorage who had been investigating regulations and court decisions relating to RS 2477's revealed the following points:

1) It appears that the definition of what constitutes a "highway" (which is the term used in the statute), is a matter for each state to determine. In Alaska, AS 19.45.001(8) defines a highway as that which "...includes a highway (whether in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure an other similar or related structure or facility, and right-of-way thereof..."

2) DOT&PF has management authority on RS 2477 where they occur on non-state land. Where RS 2477's occur on state land, DOT&PF has concurrent authority with the state agency having management authority over the land (usually DNR).

3) The courts have held that acceptance of an RS 2477 does not "impose on the public authority the duty to maintain." Therefore, a perfectly valid management decision might be to provide little maintenance or not to maintain a particular trail at all. Additionally, lack of maintenance over the years does not imply abandonment.

4) There are contradicting legal opinions regarding use restrictions, right-of-way vacations, and the role of a local government (ie. boroughs) in the management of RS 2477's.

Task Force on RS 2477

This issue was discussed at the Annual Meeting between the Bureau of Land and Regional Management (BLM) Fairbanks District Office and DOT&PF Northern Region on April 27, 1984. At that meeting it was decided to form a regional "task force" to discuss the situation. The Alaska Department of Natural Resources (DNR) was invited to join.

The Task Force on RS 2477 rights-of-way held its first meeting June 15, 1984. BLM, DNR and DOT&PF were present. The meeting established guidelines and procedures for asserting RS 2477 claims and having them established on the land status plats. The procedure is as follows:

1) A claim can be asserted by the State or any private individual.
2) A cover letter asserting a claim or accepting an RS 2477 grant must be submitted along with documentation suporting the date claimed. The date should preferably be based on expenditure of funds (public or private) or the earliest known date of public use. (An individual's time in constructing a road could be "translated" into funds).
3) A map at a scale no smaller than 1:63,360 depicting the route must be submitted with the supporting documentation and cover letter.
4) The trail number and quad number from the existing Trail Inventory File should be noted (if applicable) for clarification and cross-reference.
5) BLM will review each claim to verify that the land was "unreserved public land" as of the date claimed.
6) BLM will issue a serial number and establish a case file for each claim, as will DNR and DOT&PF. All correspondence should reference these numbers.
7) BLM will plot each trail claimed on their Master Title Plats and DNR will plot each one on the State's land status plats.
8) In order to prevent confusion, either DNR or DOT&PF will have the responsibility of submitting all necessary information to BLM.
9) All files, including maps, supporting data, etc., established by one agency should be duplicated and forwarded to the other agencies.

RS 2477 Coordination Committee for Northern Alaska

To provide a orderly manner for claiming RS 2477's and to avoid duplication of effort, the Task Force has suggested establishing an "RS 2477 Coordination Committee for Northern Alaska." This committee would consist of representatives from BLM, DNR and DOT&PF. Its purpose would be to coordinate and

prioritize efforts on asserting RS 2477 claims, to discuss any areas of disagreement and to keep each agency informed on the other agencies' efforts.

RS 2477 Management Review Board for Northern Alaska

Regarding the management of these roads, the Task Force has recommended establishing an "RS 2477 Management Review Board for Northern Alaska." This board would provide a forum to discuss differences relating to the management of RS 2477's. Problems which have come up in the past such as use restrictions, requests to vacate, and alignment, will continue. With contradicting legal opinions, an inter-agency forum for handling these issues would benefit all concerned and provide a multi-agency response to problems. Discussions could lead to possible solutions. Recommendation passed by this board would show a concerted effort by all agencies involved to provide thoughtful management actions. This would also provide one agency with the means to seek additional support in making a management decision. Additionally, any decision would be the result of the actions of several agencies rather than the decision of just one. DOT&PF as manager or co-manager of these roads would have veto power over any board recommendation.

Composition of this board would consist of two members from BLM, DNR and DOT&PF, with one member from the Citizens' Advisory Commission on Federal Areas and one invited member from a related professional organization (i.e., an officer of the International Right-of-Way Association). Temporary membership could be extended to governmental land managing agencies affected by matters under discussion and to private land owners affected. The board would meet as needed at the request of any board members.

Memorandum of Agreement

To implement the Task Force recommendations, a preliminary Memorandum of Understanding (MOU) between BLM, DNR and DOT&PF has been drafted. At this time, the MOU would exist only between BLM's Fairbanks District Office, DNR's Northcentral District, and DOT&PF's Northern Region. Northern and Interior Alaska is most affected by RS 2477 roads. Since the Fairbanks offices of these agencies have begun efforts, and established a precedent with the Bulenberg Trail, it was felt that an MOU at the District/Regional level would serve as a "testing area" for this procedure. Also, the archives of the University of Alaska-Fairbanks are the largest in the state, making Fairbanks better suited for the historcial research. Should this procedure succeed (as we are confident it will) then this MOU, or one similar, could be extended to other regions. A copy of the draft MOU is attached.

The participating agencies are in agreement that an effort such as this seems long overdue. It has the enthusiastic support of the BLM Fairbanks District Manager, Carl Johnson, who will be presenting this issue and the MOU concept to the BLM Advisory Council meeting on August 15, 1984 and to the Haul Road Meeting on August 23, 1984. It also has the support of the DNR Northcentral District Manager, Division of Land and Water Management, Jerry Brossia.

Program Needs

In order to complete this project, a commitment by DOT&PF and the other agencies is necessary. The prioritization and assertion of RS 2477 roads would be an ongoing process over several years (estimated 5 years for 100-150 trails). Historical research, personal interviews and preparation of maps are the

specific tasks needed for asserting the claims and having them plotted on land status plats. A rough estimate indicates that this effort would require approximately $100,000 per year which would provide for the research of 20 - 25 trails per year. This estimate is based on the time and effort actually spent for the Bulenberg Trail acquisition.

In order to accomplish this, there are a number of alternatives for DOT&PF to consider.

1) Funding Sources

a) A current source of capital money is in the Bulenberg Trail Aquisition project which has $95,000 remaining. This money was appropriated by the State Legislature for the purpose of aquiring the right-of-way of the Bulenberg Trail. DNR researched historical data and interviewed several people and asserted an RS 2477 claim. Since the right-of-way was secured in this manner (by DNR) most of the existing DOT&PF funds remains unspent. However, legislative action would be necessary to enable us to use the money on other trail acquisitions.

b) An item could be included in the FY 86 CIP Submittal which would change the existing Bulenberg Trail legislation and appropriate additional funds.

c) The RS 2477 activities could be included in the FY 86 DOT&PF operating budget as contractual and/or personal services.

2) Organization/Staffing

a) Should in-house staff be used, this project could be handled by either Planning, Right-of-Way or Special Projects. The decision of which group(s) to use would depend upon the manpower available and the funding levels of each section.

b) An alternative is to contract this project out to an independent firm which would prepare maps and research historical data for our use. This would require project management within DOT&PF.

c) Another alternative is a cooperative agreement with the University of Alaska-Fairbanks, using a Reimbursable Services Agreement (RSA). A university student could research historical data and provide the map(s) for the trails. This alternative has the advantage that DOT&PF would have more direct control over the person(s) doing the work. In addition this would probably be the least expensive alternative. Since this work is not so much difficult as it is time consuming, this project would be ideal for a student.

Recommendations

The MOU between BLM, DNR and DOT&PF should be reviewed and signed so this project may begin in a timely manner. First it must be decided whether

DNR or DOT&PF shall have the responsiblity to submit the supporting documentation to BLM.

We recommend that DOT&PF seek a revisied program change from the interim legislative committees to use the Bulenberg Trail appropriation for RS 2477 right-of-way acquisition. This amount could be used for the first year's work, beginning in FY 85.

Further, we recommend that an agreement with the University of Alaska-Fairbanks be entered into to establish a cooperative arrangement with a graduate level student(s) to research the historcial data for the trails and possibly to provide the maps needed.

The Coordination Committee should be appointed and meet promptly to establish the "first priority" trails so that the first efforts will begin with interagency cooperation.

Adequate funds should be budgeted in the FY 86 Capital and Operating Budgets to continue this activity.

DP:dp

TO: Thomas E. Meacham
Assistant Attorney General

DATE: August 31, 1977

FROM: Ruth Malman
University of Denver Extern

RE: [redacted]

INTRODUCTION

The "Federal Land Policy and Management Act of 1976", Pub. L. 94-579, 90 Stat. 2493, Oct. 21, 1976 (herein also cited as the 1976 BLM Organic Act) provides a comprehensive plan for the management of the public lands of the United States. Title V of that Act contains provisions for obtaining rights of way "over, upon, under or through" the public lands and national forest system. Title VII of the Act recites the effect on existing rights and lists those statutes which were repealed upon the October 21, 1977 effective date of the Act. One such statute repealed in its entirety was R.S. §2477. That statute provided that: "the right of way for the construction of highways over public lands, not reserved for public uses, is granted". 43 U.S.C. §932, Act of July 26, 1866, ch. 262, § 8, 14 Stat. 253. The statute has been construed as an offer by the Federal government for a right of way for public highways across public lands, said offer being effective upon acceptance by the State or by public use. The case law interpreting the effect of this statute was concerned with such issues as:

a. What constitutes "acceptance" of the grant;

b. What effect acceptance had on mining homstead and other claims;

c. The date used in determining what constitutes "public lands, not reserved for public use" and;

d. The width of the public highway.

These issues will necessarily be important to the issue which is the subject of this memorandum. That issue is

whether or not the repeal of R.S. §2477, effective upon the enactment of the 1976 Federal Land Policy and Management Act, has any effect upon the rights granted and accepted before the repeal. Title VII of the 1976 Act provides that: "Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act". Sec. 701(a), Title VII, 90 Stat. 2793. Moreover, Section 509(a) of the 1976 Act states that "nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title." [emphasis added.] The main issue of this memorandum can therefore only be resolved through an examination of the character and extent of the rights which were granted and existed under R.S. § 2477 prior to its repeal in 1976.

I.

AN OVERVIEW OF THE NATURE OF THE OFFER AND THE ACCEPTANCE OF THE R.S. § 2477 HIGHWAY GRANT

A. Nature of the Grant

R.S. §2477 was an offer to dedicate any unreserved public lands for the construction of highways. The offer has been generally recognized as a present grant of an easement over public lands for highways. E.G. Wallowa County v. Wade, 72 P. 793 (Ore. 1903). It is also generally held that the grant becomes effective upon the date of acceptance. That a grant does not become effective until accepted by the grantee was said to be "almost elementary" by the Court in Ramstad v. Carr, 154 N.W. 195 (N.D. 1915). Similarly, the Court in Lovelace v. Hightower, 168 P.2d 864 (N.M. 1946), recognized that an offer to dedicate land must be accepted to become effective. Before looking at what

constitutes acceptance and the effect of such acceptance on the grant, it is important to inquire into the nature of the grant itself. This will be the scope of the following section.

1. R.S. § 2477 WAS A PRESENT, ABSOLUTE GRANT OF A RIGHT-OF-WAY OVER THE PUBLIC LANDS.

In reviewing plaintiff's claim for damages for the appropriation of his property lying along section lines for use as a public highway, the Court in Wells v. Pennington County, 48 N.W. 305 (S.D. 1891) construed the R.S. § 2477 grant as follows:

> Its words . . . import an immediate transfer of interests, not a promise of a transfer in the future . . . The object of the grant was to enable the citizens and residents of the states and territories where public land belonging to the United States were situated to build and construct such highways across the public domain as the exigencies of their localities might require, without making themselves liable as trespassers. And when the location of the highway and roads was made by competent authority or by public use, the dedication took effect by relation as of the date of the Act; the Act having the same operation upon the lines of the road as if specifically described in it.

48 N.W. at 306. [emphasis added.] The Court further recited the opinion of Justice Field in his decision in Railroad Co. v. Baldwin, 103 U.S. 426 (1880) which concerned a right-of-way grant to the railroad company in a similar type of congressional grant R.S. §2477. Quoting Justice Field, the Court in Wells stated:

> The language of the Act here, and of nearly all congressional acts granting lands, is in terms of a grant in praesenti. The Act is a present grant. 'There is hereby granted' are the

words used, and they import an immediate transfer of interests, so that, when a route is definitely fixed, the title attached from the date of the Act. The grant of the right-of-way . . . is a present absolute grant, subject to no conditions except those necessarily implied, -- such as that the road shall be constructed and used for the purposes designated. Nor is there anything in the policy of the government with respect to the public lands which would call for any qualification of the terms. Those lands would not be the less valuable for settlement by a road running through them. On the contrary, their value would be greatly enhanced thereby . . . we see no reason, therefore, for not giving to the words of present grant, with respect to the right-of-way, the same construction . . . [as] to the grant of lands . . . (emphasis added.)

The Court then addressed the contention that the grant was not an absolute grant but only a general offer effective when accepted under the theory that a grant "like any other contract" must have a grantor and grantee and an offer not accepted is not a contract. In the words of the Court, it was held that:

> It may, however, be admitted that the right acquired by the territory or the public was necessarily imperfect until the land accepted for highways was surveyed, and capable of identification; but when the land was surveyed, and the various section lines were designating it to be public highways as far as practicable, the right of the territory attached to them for that purpose, and took effect as of the date of the territorial law . . . The Act of Congress giving the right-of-way for the construction of highways over public lands, and the territorial law declaring all such lines, as far as practicable, to be public highways, and designating such highways to be 66 feet

wide, are noticed to all persons filing on public lands subsequent to the passage of these laws that they take them subject to the right-of-way for highway purposes . . . The territorial law located the highways upon all public lands upon the section lines, and this public grant or dedication was so accepted, and became valid as against the government, and therefore valid as against its subsequent grantee . . .

[48 N.W. at 307-308.] (emphasis added:)

It can thus be concluded that, according to this opinion of the South Dakota Supreme Court, the R.S. §2477 was an absolute, present grant effective upon acceptance, acceptance in that case being the territorial law declaring all section lines to be rights-of-way.

The courts have generally followed the opinion of the Wells Court. Thus, the Nebraska Court in Streeter v. Stalnaker 85 N.W. 47 (Neb. 1901), stated that R.S. §2477 "was a standing offer of a free right-of-way over the public domain, and as soon as it was accepted in an appropriate manner by the agents of the public, or the public itself, the highway was established". 85 N.W. at 48. Accord, Tholl v. Koles, 70 P. 881 (Kan. 1902). See also, McRose v. Bottyer, 22 P. 393 (Cal. 1889). In Town of Rolling v. Emrich, 99 N.W. 464 (Wis. 1904), the Court said that R.S. § 2477 "is doubtless a present grant of a right-of-way over public lands, but it does not become effective until accepted by the public". 99 N.W. at 465. Accord, Hillsboro Nat. Bank v. Ackerman, 189 N.W. 647 (N.D. 1922). Moreover, the Court in Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973), cert. den. 411 U.S. 917, concerned with the rights-of-way and special land-use permits for the trans-Alaska oil pipeline, stated that R.S. §2477 "acts as a present grant which takes effect as soon as it is accepted by the State". 479 F.2d at 882.

2. THE MEANING OF "PUBLIC LANDS NOT RESERVED FOR PUBLIC USE" UNDER R.S. §2477.

The above-cited cases stand for the principle that the highway grant was a present, absolute grant for rights-of-way across any public lands not reserved for public use which were owned by the United States at the time of the grant. The effect of the grant being a "present" one is that upon acceptance, the acceptance will relate back and become effective from the date of the grant. Faxon v. Lallie Civil Tp., 36 N.D. 634, 163, N.W. 531 (1917), citing, Township v. Skauge, 6 N.D. 388, 71 N.W. 544; Wells v. Pennington Township, to S.D. 6, 48 N.W. 305, 39 Am. St. Rep. 758; Railway Co. v. United States, 92 U.S. 733, 23 L.Ed. 634; Railway Co. v. Baldwin, 103 U.S. 426, 26 L.Ed. 578; Wright v. Roseberry, 121 U.S. 506, 7 S.Ct. 985, 30 L.Ed. 1042; French v. Fyan, 93 U.S. 169, 23 L.Ed. 8812; Northern Pac. Ry, Co. v. Barlow, 26 N.D. 159, 143 N.W. 903. That is to say that if the lands granted belonged to the United States at the time of the grant in 1866, or upon subsequent acquisition of lands by the United States, the 1866 Highway Act was made to apply to those lands. The acceptance, as long as the lands remain unreserved public lands at the date of acceptance, would relate back to the date of the grant. This is important in determining whether or not lands subject to a right-of-way were "public lands not reserved for public use" at the time of the grant and the acceptance of the grant. "The Federal Government's Section 932-type [R.S. §2477] offer to dedicate unreserved lands for highway purposes clearly does not become ripe until the government assumes ownership." Hayes v. Government of Virgin Islands, 392 F.Supp. 48 (D.Ct. Virgin Islands 1975). In that case the Court concluded that R.S. §2477 was made applicable to the Virgin Islands with the enactment of R.S. §1891, 48 U.S.C. §1490. enacted in 1875. R.S. §1891, repealed in 1933, related to the application of the United States Constitution and laws to all organized territories and to every territory subsequently organized

reasoned that the repeal of that statute before the acquisition of the Virgin Islands by the United States in 1935 did not affect the applicability of the laws of the United States, including R.S. §2477, to the territory, having found no intention by the Congress to indicate a contrary conclusion. Rather, the Court found that the objective of the repeal statute was a wholesale repeal of many statutes determined to be "obsolete" and noted that newer laws had replaced the statutes at least for the territories of Alaska and Hawaii. Moreover, Section 3 of the 1933 repeal statute provided that no rights or liabilities already existing before the appeal would be affected. Thus, upon acquisition of the lands by the United States in 1935, the highway grant was "ripe" for acceptance. The Court in United States v. Rogge, 10 Ak. 130 (D.Ct., 4th Div. Fairbanks, 1931), reached a similar result in finding that R. S. § 1981, effective when Alaska became an organized territory in 1884, allowed for the operation of R. S. §2477 to be ripe for acceptance in Alaska. Therefore, upon acquisition for public lands by the United States, the highway grant could be accepted as to those lands. However, the acceptance could only be effective, by the terms of the grant, as to "public lands, not reserved for public use".

In Paxon v. Lallie Civil To., 36 N.D. 634, 163, N. W. 531 (1917), writ of error dism. 250 U.S. 634 (1919), the plaintiff contended that the R. S. §2477 grant could not be accepted as to lands which have been part of an Indian reservation, reasoning that once the reservation was set aside for the Indians, the land was no longer public lands and the prior grant was therefore forever repealed by the congressional action. The Court disagreed. It held that the highway rights were vested rights where, prior to the establishment of the Indian reservation, the Highway Act had been in effect

for eight years and had been accepted by the territory for three years through enactment of a law declaring all section lines to be public highways. Act of Jan. 12, 1871, ch. 33 of Session Laws of Territory of Dakota of 1870-71. The Court stated that:

> It is also clear that the right granted to the State was not in the nature of a license, revocable at the pleasure of the grantor, but that highways once established over the public domain under and by virtue of the act became vested in the public, who had an absolute right to the use thereof which could not be revoked by the general government and whoever thereafter took the title from the general government took it burdened with the highways so established.

[163 N.W. at 533.] The Court believed that even though an Indian reservation was created that there was no intention by Congress in establishing the reservation to divest the public of highways rights already accepted. In 1915, the township had declared, as highways, four miles of section lines over these lands which were once reserved as an Indian reservation. In holding that the township need not compensate the owners for the 33-foot strip on either side of the section line, the Court reasoned that, since the highway rights were vested rights upon the opening of the reservation for settlement in 1904, the rights for the highways reverted to the original grantee, that being the State. The Court was of the opinion that if the public lands, after acceptance of the statutory grant, are then reserved for public use, once the use is abandoned the rights in the lands revert back to the grantee just as the right-of-way of a railroad company would revert to the property owners or the State if the railroad use discontinued. Thus, while the lands had not been surveyed until after the reservation was established, the Court held that the right of the Territory attached as soon as the section lines were identified as far as practicable for public highways and took effect as of the date of the territorial law. Therefore the plaintiff had no rights in the dedicated land upon his settlement of the lands in 1904.

The Court in Faxon v. Lallie, supra, held that the grant to the State under the Highway Act had vested prior to the establishment of the Indian reservation, so that subsequent grantees of the land could not claim the lands were not subject to the Act. The Court stated that the determinative time of deciding whether the lands are "public lands" is whether or not at the time of the grant and the subsequent acceptance, the lands belonged to the United States. The Court in Bird Bear v. McLean Cty., 513 F.2d 190 (8th Cir. 1975) agreed with the Faxon holding. In Bird Bear, the Indian trust-patentees brought an action for trespass and unlawful diminishment of their allotment. The issue was whether the Highway Act of 1866, 43 U.S.C. §932 (1970) granted an easement for section line roads over their property even though that property was held pursuant to a trust patent issued by the United States. The two roads in question were constructed along section lines in accordance with the N.D. Code, [C.C. §24-07-03 (1970), derived from ch. 330 of SL of Territory of the Dakota, 1870-71], said statute being an acceptance of the right-of-way grant of 43 U.S.C. §932. The Court in Bird Bear distinguished Bennett Cty., S.D. v. United States, 394 F.2d (8th Cir. 1968). In that case, it was held that the county could not maintain a road within the Pine Ridge Reservation without permission from the United States government for condemnation proceedings because the Treaty of 1851 was a recognition of Indian title. Thus, even though the Treaty had not spoken of the "reservation", land was in fact reserved for the use of the tribes and so these lands were not public lands upon the passage of the 1866 Highway Act. In Bird Bear, the Court held that the allotment of the Indian patentees was not part of the Reservation until 1880, so that in 1866, when the grant of the right-of-way initially attached, the land was still public land. Upon acceptance of the grant in 1871 by the Territory of Dakota, the grant became effective

as to these lands. In concluding that a right-of-way of individually-allotted land was not inconsistent with the congressional Indian policy, the Court affirmed the decision that the land allotted was subject to the prior statutory grant of right-of-ways to the State.

Other cases have dealt with public lands being subject to individual claims, so as to effectively withdraw the public lands from the terms of the R.S. § 2477 grant. If land was patented to an individual by the United States before acceptance of the grant, the public would have no right to assert over such lands. Ball v. Stephens, 158 P.2d 207 (Calif. 1945). Thus, if lands have been reserved, withdrawn, or subject to individual entry or patent prior to acceptance of the highway grant, the grant is ineffective as to these lands because the grant is only for "public lands not reserved for public uses." However, if these lands again become part of the unreserved public domain lands, according to Faxon, supra, they were again subject to acceptance as public lands under the R.S. § 2477 grant.

3. Summary

The R.S. § 2477 grant was a present transfer of interest in the public lands of the United States for highway purposes. Wells v. Pennington County, 2 S. D. 1, 48 N. W. 305 (1891); Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973), cert. den. 411 U.S. 917 (1973). Upon acceptance, a highway right-of-way was established. Streeter v. Stalnaker, 61 Neb. 205, 85 N.W. 47 (1901). The grant was ripe for acceptance at any time the government acquired ownership of the lands. Hayes v. Government of Virgin Islands, 392 F. Supp. 48 (D.Ct. Virgin Is. 1975). As long as the grant was accepted while the lands were public lands, the acceptance was effective against the federal government

and its subsequent grantees. Ball v. Stephens, 158 P.2d 207 (Calif. 1945). Moreover, the rights of the public, upon acceptance, became vested rights. Faxon v. Lallie Civil Tp., 26 N.D. 634, 163 N.W. 531 (1970). In light of these foregoing premises, it can then be concluded that the repeal of R.S. §2477 can have no effect as to properly accepted right-of-ways for highway purposes. Since the grant was a present transfer, it is necessary to inquire if the lands were unreserved public lands as of the date of acceptance of the grant. In Alaska, the grant has been held to be ripe for acceptance in 1884 when Alaska became an organized territory, the United States having acquired the territory in 1867. United States v. Rogge, 10 Ak. 130 (D.Ct. Ak. 1941). If it can be shown that the lands were public lands not reserved for public uses and were therefore ripe for acceptance, the grant will vest the highway rights in the public upon appropriate acceptance.

B. Nature of Acceptance.

1. ACCEPTANCE OF THE FEDERAL GRANT UNDER R.S. § 2477 CONSISTS OF ACTION BY THE PUBLIC OR THE PUBLIC AUTHORITIES SUFFICIENT TO MANIFEST THE INTENTION TO ACCEPT.

It has been held that R.S. §2477 created a standing offer of a free right-of-way over public lands and that as soon as it is accepted in an appropriate manner by the agents of the public or by the public itself, a highway is then established. Streeter v. Stalnaker, 61 Neb. 205, 85 N.W. 47 (1901). In that case, the Supreme Court of Nebraska held that there was sufficient evidence of a general and long continuous user as well as proof that the public authorities had exercised control over the road to establish an acceptance of the dedication of a public highway across plaintiff's lands. The claim was not based on adverse possession, but rather that the road became a public highway by dedication and acceptance

by the public use. Since the public authorities had not followed the "appropriate manner" in establishing a road under the general road laws, the Court relied more heavily on the evidence establishing continuous use by the public of the road since 1877. This rather concise opinion points out the various problems in proving that an acceptance of the offer of R.S. §2477 has been made. Acceptance made "in the appropriate manner" by public authorities means according to state or local laws and regulations. Thus, if the acceptance is to be so made, there must be inquiry into the laws of the State governing the establishment of roads within the state. For instance, the Board of County Commissioners is often given the jurisdiction over the roads within its jurisdiction and, to constitute a valid acceptance, the Board must have acted within its regulations as well as any applicable state law. Acceptance can also be found where the public has claimed to accept the federal grant. Proof of such acceptance is shown by evidence of continued use of the land as a "public highway". The cases diverge as to how long the use must continue in order to claim the right-of-way. Some courts have relied on the easement by prescription time period, while others, like Streeter, recognize that the use need only be enough to show the intent to accept, and need not be for a period of time sufficient to ripen the use into a right by prescription, there being no adverse claim but rather a claim to unreserved public land dedicated to the public by the federal government.

Under the laws of the Territory of Dakota, enforced since 1884, public highways could be established in one of three ways:

(1) Section lines, whether traveled or not, were already highways by virtue of legislative declaration and might be traveled and subjected to such use as far as practicab Sec. 1, ch. 29, Pol. Code. 1877;

(2) Roads, other than on section or quarter lines, established by the Board of County Commissioners on the petition of twelve freeholders; and

(3) by user for 20 years.

Koloen v. Pilot Mound Tp., 33 N.D. 529, 157 N.W. 672 (1916). In that case, the highway ran across the plaintiff's quarter-section of land. The Court first noted that the 1871 legislative enactment involving highways established on section lines was an acceptance by the territory of the federal grant and had remained in force in the territory and state ever since. It was the public act by the public authorities necessary to constitute acceptance. Here, however, the Court was not concerned with a section line highway. Therefore, the Court looked at whether there had been appropriate action by the Board or sufficient user to constitute acceptance. It was found that the county officials never exercised control over the alleged highways and that the highways surveyed by the county had been abandoned. Moreover, the public use had been obstructed so that the use could not be found to be continuous for the statutory 20 years. No highway was then found to be established in accordance with the State law.

As discussed previously, the Court in Faxon v. Lallie Civil Tp., supra, also held that the section line legislation of the Territory of Dakota constituted acceptance of the R.S. §2477 grant. There the court found that the 1881 acceptance was sufficient to deny plaintiff's claims for compensation on lands which had once been part of an Indian reservation. The Court held that, when the public use was abandoned, the right to maintain a highway on section lines revested in the public. While the legislative enactment of the Act of 1871 declaring that "all section lines in this territory shall be and are hereby declared public highways as far as practicable" was the necessary action to manifest the intention to accept the grant, a survey was necessary to perfect the right-of-way into a highway. However, the court found that

the effective date of the survey would relate back to the date of the original acceptance of the right-of-way.

In the case of Walcott Tp. v. Skaupe, 6 N.D. 382, 71 N.W. 544 (1894), cited with approval in Faxon, supra, the township brought suit to enjoin the defendant from obstructing an alleged highway. The highway was claimed as such by virtue of continuous user for 20 years. The defendant claimed that the lands were part of the public domain and could not therefore be subject to adverse user which is ineffective as against the government. The Court pointed out that highways by user are based either upon legal establishment or dedication, the continuous user for a period of 20 years being regarded only as conclusive evidence of either an original legal establishment or of a dedication. The other major argument of the defendant concerned the fact that the site in issue was upon an even-numbered section within the limits of the grant of odd-numbered sections to the Northern Pacific Railroad Company made in 1864. The Court held that if the Railroad Grant removed the odd-numbered sections from the operation of the highway grant, the highway grant could still be effective as to the even-numbered sections. A highway by prescription could certainly be established over the privately-owned railroad lands and thus the highway by prescription could run over the entire length of the road.

In the subsequent North Dakota case of Hillsboro National Bank v. Ackerman, 48 N.D. 1179, 189 N.W. 657 (1922), the Court reaffirmed the principles stated above. It was further noted by the court that the statutory right of establishing a highway by prescription had been repealed in 1897, and that since that time a highway by prescription could only be established by virtue of the common law. Later cases

then apply the common law to conclusively find that a highway grant had been accepted by the public. The court in Hillsboro National Bank further observed that section lines are public roads in accordance with the North Dakota statutes, and they may be open for use upon compliance with the relevant laws relating thereto by persons having the jurisdiction to do so. This could be done "without any survey being had", except where necessary by variations caused by natural obstacles." 189 N.W. at 659.

The plaintiff in Ball v. Stephens, 158 P.2d 207 (Calif. 1945), sought declaration of the existence of the public road across defendant's land which was necessary to the plaintiff for access to his mine. The Court first addressed the ways in which highways might be established under the federal highway grant in R.S. §2477. The Court noted that Congress had not specified or limited the methods to be followed and that it was then only necessary that a highway be established in accordance with the state in which it is located. The method of selection of a route and establishment as a public highway by public authorities was not involved in the case. The alternative method of public use was found to be the method whereby a public road had been established over the defendant's land. The Court stated that "dedication could also be effected without action by the state or county, by the laying out of a road and its use by the public sufficient and long to constitute an acceptance by the public of an offer of dedication. Evidence of user was properly received for the purpose of determining whether there had been sufficient use to prove acceptance . . . " 158 P.2d 208. The Court held that the defendant took its patent in 1928 subject to the right-of-way if the evidence substantiated that the road had been used by the public before patent had issued. The evidence noted by the Court included use of the road over the mountainous terrain as a trail, then for horse-drawn vehicles and later as one suitable for automobiles and

trucks. It was found that in about 1905 mining claims were located in the area and oil companies had moved in. The evidence, however, was unclear as to whether the road used by these people went as far down as the defendant's present land. But the Court was convinced that from 1910 the road was used for travel and that by 1918, when another oil development was undertaken, automobiles were driven over the road. The court concluded that while the travel over the road prior to patent in 1928 was irregular due to the terrain, and that only a limited number of people had occasion to go that route, the use of the road by hunters, vacationers, miners, and oil operators was sufficient to constitute acceptance of a federal grant for public use. The Court then held that if the road existed before patent, it was immaterial whether the route was used by the public after that time so long as it had not been legally abandoned. The Court held that the act of the defendant in constructing a gate across the road could not divest the right which the public had acquired before patent. It should be noted that the case did not turn on the length of time of use, but rather stands for the proposition that the existence of the dedication is a conclusion of fact to be made in each case based on sufficiency of evidence; that time is only one element involved in such evidence.

The time element for dedication by public use was also discussed in Lovelace v. Hightower, 168 P.2d 864 (N.M. 1946). Defendant claimed that the plaintiff had to show that the road was used for the 10 year statute of limitations time as applied to ways established by prescription. The New Mexico court held that the 10-year time period is not a factor in establishing highways by dedication. Rather, acceptance of the federal offer

to dedicate public lands for highways could be shown by general use for a long enough period to constitute acceptance. Therefore, each state may determine whether dedication is founded upon a prescriptive time period or merely by a factual continued use sufficient according to the trier of fact to constitute acceptance. Thus, in Brown v. Jolley, 387 P.2d 278 (Colo. 1963), the court found that a highway over public lands had been established over the defendant's land by use of the public for the statutory 20-year period. The fact that the roads had been removed from the county road system did not destroy the right of the public to use the road by virtue of their adverse continuous use.

The cases heretofore cited stand for well accepted principles relating to the acceptance of the highway grant under R.S. §2477. The grant constitutes an offer by the federal government to dedicate unreserved lands for highway purposes, said offer becoming effective upon acceptance by the public. Ball v. Stephens, supra; Lovelace v. Hightower, supra. Whether such offer is accepted is an issue to be determined under state law. Ball v. Stephens, supra. Acceptance can be made either by some positive act on the part of the public authorities authorized to establish or maintain highways or by public use sufficient to constitute acceptance. Streeter v. Stalnaker, supra; Koloen v. Pilot Mount Tp., supra; Ball v. Stephens, supra. It has been held that a legislative enactment to the effect that all section lines are declared public highways is sufficient to constitute acceptance by the public authorities. Faxon v. Lallie Civil Tp., supra; Koloen v. Pilot Mound Tp.; Hillsboro National Bank v. Ackerman, 48 N.E. 1179, 189 N.W. 657 (1922). The sufficiency of use by the public to constitute a highway by dedication has been held to be a factual determination made on a case-by-case basis, e.g., Lovelace v. Hightower, supra; based on a statutory prescriptive time period, e.g., Brown v. Jolley, supra;

or by the prescriptive period based on the common law, e.g., Hillsboro National Bank v. Ackerman, supra. These general principles from other jurisdictions as to what constitutes acceptance of the federal highway grant have been followed in Alaska.

2. IN ALASKA, THERE MUST BE SOME "POSITIVE ACT" BY THE PUBLIC AUTHORITIES CLEARLY MANIFESTING AN INTENTION TO ACCEPT THE GRANT, OR PUBLIC USER UNDER CONDITIONS SUFFICIENT TO PROVE ACCEPTANCE OF THE GRANT.

Clark v. Taylor, 9 Ak. 298 (D.Ct. 4th Div. 1938), involved an action to restrain the employees of the Alaska Road Commission from completing a bridge and constructing approaches to connect to the old road on plaintiff's placer mining claim. The Alaska Road Commission claimed that it had a right to maintain a road and bridge across the placer mining claim by virtue of the act of May 14, 1906, 34 Stat. 119, 48 U.S.C.A. §322, which authorized construction and maintenance of wagon roads and pack trails between mining or industrial camps to further the mining industry. It also claimed, under R.S. §2477, a right-of-way for the construction of highways over public lands. However, the Court held that no such right existed in 1917 because the locators of the mining claim had been granted by the Congress the exclusive right of possession and enjoyment, and thus R.S. §2477 was ineffective as against the plaintiff. While a road could be maintained it could only be the road already established by public use. The court discussed acceptance by the public of the R.S. §2477 dedication by adverse user, citing Bishop v. Hawley, 33 Wyo. 271, 238 P.274, Marchand v. Town of Maple Grove, 48 Minn. 271, 51 N.W. 606, Montgomery v. Sommers, 50 Or. 259, 90 P.274 as authority for acceptance of the R.S. §2477 dedication by public user. The Court stated

that since the original bridge had been used for 20 years by the public, under conditions creating a prescriptive right, the right became vested in the public. The court declined to decide whether the length of time required in Alaska for prescriptive rights-of-way is 20 years (as recognized by other courts in determining the creation of highways by adverse user) or 10 years (the local statute fixing the time for bringing an action for land). The remainder of the case dealt with the width of the right-of-way. Since the right-of-way was established by public user, the court held that the extent of the servitude is to be determined by the character and the extent of the user, and that the Commission had no right to extend the road beyond the width so established.

In Berger v. Ohlson, 911 Ak. 389 (D.Ct. 3rd Div. 1938), plaintiff alleged that the Alaska Railroad, through the defendant, had obstructed the public roadway leading to the City Dock. The railroad filed a demurrer, which was overruled, claiming that the railroad had been given the right-of-way to maintain a railroad over the road. The Court merely noted in this proceeding that the allegations of the plaintiff that the road existed before the railroad was established, must be taken as true and thus two mutual right-of-way easements existed. The court cited Hatch Bros. Cos. Co. v. Black, 25 Wyo. 109, 165 P. 578 as authority for the acceptance of the R.S. §2477 highway grant by the public without acceptance by public authorities, through continued use of the road under circumstances clearly indicating their intention to accept. The court held that the railroad, coming in after the highway had been established under the grant, took the right-of-way subject to the public use.

The court in United States v. Rogge, 10 Ak. 130 (D.Ct. 4th Div. 1941), discussed the right-of-way provisions of R.S. §2477 in great detail. The action was brought by the United States to establish its rights to

collect tolls on freight transported over the Richardson Highway pursuant to the regulations set out by the Secretary of the Interior. Defendant, as a ferry owner affected by the tolls, claimed that the highway had been used by the public from 1903 through 1906, before the government took charge of the maintenance of said highway, and that therefore, a right-of-way for a free highway was vested in the public under the grant. The government claimed that R.S. §2477 did not apply in the Territory of Alaska until 1912. R.S. §1891 provided that all the laws of the United States which were not general land laws but were locally applicable would be made applicable to the Territory of Alaska. The government claimed that since R.S. §1891 was not included in the 1900 Act, providing for various provisions for the territorial civil government, but was included in the 1912 Act, R.S. §1891 would not have applied to Alaska between 1900 and 1912. The court held that the 1900 Act did not purport to be a comprehensive codification of all the laws of Alaska and that the statute did not impliedly repeal R.S. §1891. The court concluded that the laws of the United States which were not locally inapplicable and were not general land laws were thus in effect in Alaska from 1903 and thereafter. The court then looked at whether R.S. §2477 was a general land law. It stated: "Clearly, a right-of-way is not the land itself, though it is classified as incorporeal hereditament. Section 2477 seems not to have been a general land law, but more of a law incident to the land laws." 10 Ak. at 149. The court found that owners of the mining claim and homesteaders had a right under R.S. §2477 for a right-of-way incident to their claims. The court stated:

> That Congress considered §2477, R.S.U.S. in effect is shown in the act approved May 14, 1898, wherein it mentioned that public highways now located should not be lost where railroads took rights-of-way under said act. Again, in the same act, it mentioned that the toll roads provided for in the act to be constructed by private individuals or corporations should not injuriously affect the public in its use of a road or trail in common use. If section 2477 was not in force, there was no possible way for there to have been public highways or roads in common use in Alaska at the time the act approved March 14, 1898 was enacted.

10 Ak. at 150. The court decided that R.S. §2477 was not a general land law because the right-of-way could be obtained without any public record and without procedures for filing applications and maps as required under the general land laws. The court further cited Nicholas v. Grassle, 83 Colo. 536, 267, P.196, and Leach v. Manhart, 1020 Colo. 129, 77 P.2d 652, as authority that R.S. §2477 was an express dedication of a highway and that acceptance was accomplished by use by those for whom it was necessary or convenient. The court upheld the defendant's contention that the right-of-way for a highway by public use between 1903 and 1906 was vested in the public but that the Congress was still free to impose toll regulations in the public interest.

Hamerly v. Denton, 359 P.2d 121 (Alaska 1961) involved an action to enjoin the obstruction of a road. The road crossed Hamerly's property and gave access beyond to Denton's homestead. Denton claimed that the road was a public highway. The court, in discussing R.S. §2477, 43 U.S.C.§ 932, stated:

> The operation of the statute in Alaska has been recognized. [Berger v. Oilson, D.C.D. Ak., 1938, 9 Ak. 389, Clark v. Taylor, D.C.D. Ak. 1938, 9 Ak. 298, U.S. v. Rogge, D.C.D. Ak. 1941, 10 Ak. 130] The territorial district court and the highest courts of several states have construed the act as constituting a congressional grant of right-of-way for public highways across public lands. But before a highway may be created, there must be either some positive act on the part of the appropriate public authorities of the state, clearly manifesting an intention

to accept a grant, or there must be public uses for such a period of time and under such conditions as to prove that the grant has been accepted. [See Berger v. Olson and Clark v. Taylor, supra; Kirk v. Schultz, 1941, 63 Idaho 278, 119 P.2d 266; Leach v. Manhart, 1938, 102 Colo. 128, 77 P.2d 652; Lovelace v. Hightower, 1946, 50 N.M. 50, 168 P.2d 864; Hatch Bros. Co. v. Black, 1917, 25 Wyo. 107, 165 P.518; State ex rel. Dansie v. Nolan, 1920, 58 Mont. 167, 191 P.150; Montgomery v. Somers, 1907, 50 Cr. 259, 90 P.674] 359 P.2d at 123.

Since there was no claim of establishment of the highway by public authority, the court held that the defendant then had the burden of proving that the road was "over public lands" and that the character of the use was sufficient to constitute acceptance. The court stated that "public lands" did not include lands which are subject to valid and existing homestead claims. During the period when the land in question was not so subjected to the homesteaders' claims, the court found that its use was infrequent, sporadic, and not necessary or convenient for public use. The court concluded that no public highway existed, for there had been no showing of dedication by the homesteaders to the public, nor an acceptance by public user.

The width of a proposed highway along the existing Farmers' Loop Road near Fairbanks was in issue in State v. Fowler, 1 A. L. J. No. 4, 7, Superior Ct., 4th dist, Civil Action No. 61-320, Sept. 26, 1962. The opinion by the Honorable Judge (now Justice) Rabinowitz cited Hamerly, supra for the proposition that the State had the burden of proving that the Farmers Loop Road was located over the public lands and that the character of the use constituted acceptance by the public under the 43 U.S.C. §932 grant. The extent of the user was held to be the applicable measure by which to determine the allowable width the State could claim rather than reliance on local laws and customs applicable to highways established by the public authorities.

Mercer v. Yukon Construction Co., 420 P.2d 323 (Ak. 1966), was primarily concerned with the Access Roads Act, AS 19.30.010-19.30.100, by which the State could contract for low standard, low-cost roads in areas rich in natural resources in order to promote development. The appellant contended that his grazing permit precluded a right-of-way road for public access. The court disagreed, holding that the lands under lease were public lands and that the State's contract with the Yukon Construction Co. to build a road under the Access Roads Act was a valid acceptance of the grant under 43 U.S.C. §932. Hamerly was held to be inapplicable here because in that case the homesteaders' rights would ripen into title, whereas the plaintiff in Mercer had only leasing rights. Moreover, Section 4(f) of the appellant's grazing lease stated that "nothing herein shall restrict the acquisition granting, or use of permits or rights-ofways under applicable law." The grazing rights were thus subordinated to the right-of-way.

The section line legislation in Alaska, under the provisions of AS 19.10.010, came under attack in Gibbs v. Campbell, No. 72-462, Superior Ct. 3d Jud. Dist., Jan. 8, 1973. The plaintiffs sought compensation for the State's taking of property through the construction of a pioneer access road along the section line of plaintiff's property pursuant to a petition of the local landowners. The State claimed it had title under color and claim of title for more than seven years in accordance with AS 09.25.050, that the action was barred because it had not been brought within 10 years after the cause of action accrued, and that the right for a 33-foot easement over plaintiff's property became vested in the State under 19.10.010. Plaintiff urged that the language of AS 19.10.010 did not meet the test of "clearly manifesting an intention to accept a grant" as required by the Alaska Supreme Court in Hamerly, supra. The court found

three separate reasons, "any of which is sufficient", to defeat plaintiff's claims. First, the court held that the plaintiff took his patent subject to the right of the State to construct a roadway along the section lines. The court, relying on the 1969 Opinion of the Attorney General No. 7 (December 18, 1969), held that the Territory of Alaska had accepted the R.S. §2477 highway grant by enactment of Ch. 19, S.L.A. 1923, and that such acceptance was being continually effective from 1923 until 1949 when the acceptance was repealed. The court then found that the federal grant was again accepted by Ch. 35, SLA 1953. Since the plaintiff had not entered the property until 1955, and only received patent in 1961, he took his land subject to the right of the State to construct a public highway along the section line without compensation therefor. The court also stated that the plaintiff was estopped to claim compensation because of his involvement in trying to get the road constructed, and further concluded that the action was barred by the statute of limitations.

While Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973), cert. den., 411 U.S. 917, involved many issues relating to the granting of right-of-ways and special land use permits for the Trans-Alaska oil pipeline, those will not be discussed herein except insofar as the opinion was concerned with the operation of the highway grant under 43 U.S.C. §932. The environmental groups challenged the Secretary's authority to issue a right-of-way to the State for a State highway. Alyeska Pipeline Service Company was to build the highway primarily for pipeline purposes but ultimately for use by the public. The Honorable Judge J. Skelly Wright held that the State only needed to manifest its intention to accept the highway grant by some positive act. Such intention had been so manifested by the passage of AS 19.40.010(a) declaring a need for a public highway from the Yukon River to the Arctic Ocean. 43 U.S.C. §932 was found to act "as a present grant

which takes affect as soon as it is accepted by the State". 479 F.2d at 882. In the footnote to this holding, the court recognized that, since R. S. § 2477 acts as a present grant, it is not generally necessary for the builder of the highway to apply for a right-of-way; however, the lands involved here were lands reserved for public use. Thus the section was not applicable and it was necessary for the State to request revocation or modification of the reservation in order to build the highway. The court concluded that an intention to build is all that is needed to accept the highway grant. Since the proposed highway was found to be needed by the public, according to State officials, the issuance of the right-of-way was properly within the authority of the Secretary, necessary only because of the prior public reservation of the lands in question.

The most recent Alaska Court opinion on the applicability of 43 U.S.C. §932 is Cirves v. Kenai Peninsula Borough, 536 P.2d 1221 (Ak. 1975). In that action, the appellant contested the right and power of the borough to construct a road on homesteaded property without any compensation to her. Appellant received a "notice of allowance" from the Department of Interior in 1958 to the property, and in 1961, received patent. The northern boundary of her property was the section line. Subsequent to 1961, the borough had constructed a junior high school adjoining the land on the northern boundary. Redoubt Drive, which ran along the section line prior to the school's construction, terminated one-quarter mile east of the boundary line between the boundary and the school site. That road was extended by the City of Soldotna in 1967 to provide access to the school. The borough subsequently extended Redoubt Drive by constructing a "pad" which rested partly on Cirves' property, and as a result of which she

brought this trespass action. The court held that the Kenai Peninsula Borough implicitly possessed the power to establish access to the school site through its powers to "establish, maintain and operate schools". Moreover, although no express reservation of the easement was included in Girves' patent, the court held that this did not preclude the borough from showing that a right-of-way had been established before Girves entered onto the property. The court accepted the borough's argument that Ch. 35, SLA 1953 constituted an acceptance of the 43 U.S.C. §932 highway grant, the enactment of Ch. 35 being the "positive act" needed under Hamerly v. Denton, 359 P.2d 121 (Ak. 1961) to manifest an intention to accept. The 1953 dedication of section lines as public highways was said to have been an implied acceptance of the highway grant, for the legislature could not dedicate something to which it had no right.

These Alaska cases reiterate the general legal principles concerning acceptance of R.S. §2477, the federal highway grant. The public may accept the grant by continued use, although it is not clear from the cases whether a specific time period of use be proved, or whether mere use manifesting an intention to accept is sufficient. Compare Clark v. Taylor, 9 Ak. 298 (D.C. D. Alas. 1938) and United States v. Rogge, 10 Ak. 130 (D.C.D. Alas. 1941). The State may accept the grant through legislation, which would constitute the necessary "positive act" indicating the intention to accept the grant. It has been held that the State accepted the grant through the legislation concerning access roads, Mercer v. Yukon Construction Co., 420 P.2d 323 (Ak. 1966), and with the enactment of Ch. 19 SLA 1923 and Ch. 35 SLA 1953 concerning highways along section lines, Gibbs v. Campbell, No. 72-462, Superior Court, Third Judicial District, January 8, 1973 and Girves v. Kenai Peninsula Borough, 536 P.2d 1221 (Ak. 1975).

3. SUMMARY

R.S. §2477 was a dedication by the United States of unreserved public lands for the establishment of highways. A showing of acceptance of the highway grant is all that is necessary in order to establish a highway under the grant. The acceptance can be shown by legislative acts or by continued public user. Once there has been an acceptance, the dedication is affective as of the date of acceptance. Koloen v. Pilot Mound Township, 33 N.D. 529, 157 N.W. 672 (1916), Lovelace v. Hightower, 168 P.2d 864 (N.M. 1946), Hamerly v. Denton, 359 P.2d 121 (Ak. 1961). This is true even if no survey has as yet been made, for the right takes effect on the date of acceptance. Faxon v. Lallie Civil Tp., N.D. 634, 163 N.W. 531 (1917). If acceptance of the grant is made before patent, the owner takes the land subject to the right-of-way. Ball v. Stephens, 158 P.2d, 207 (Ca. 1945). The width and extent of the right-of-way is determined according to State law. State v. Crawford, 441 P.2d 586 (Ariz. App. 1968). Thus when acceptance is made by public use, the easement is no greater than that which was reasonably necessary for the public use. Clark v. Taylor, 9 Ak. 298 (D.C.D. Alas. 1938), State v. Fowler, 1 ALJ No. 4, 7 Superior Ct. 4th Jud. Dis., C.A. No. 61320, September 26, 1962. If the right-of-way was established by the legislature, the applicable laws would apply in determining the extent of the right-of-way. State v. Crawford, supra. Moreover, upon acceptance, the rights of the public become vested rights for use of the designated public lands under the grant for highway purposes. Faxton v. Lallie Civil Tp., supra.

II

THE EFFECT OF THE REPEAL OF THE R.S. §2477

R.S. §2477 was a present, absolute grant of right-of-way for construction of highways over public lands not reserved for public uses. Wells v. Pennington County, 2 S.D. 1 48 N.W. 305 (1891); Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973), cert den. 411 U.S. 917 (1973); 1976 U.S.C.C.A.N. 6175, 6204. The grant became effective upon acceptance as long as the acceptance related to lands which were public lands of the United States and thus subject to acceptance. Faxon v. Lallie Civil Tp., 36 N. D. 634, 163 N.W. 531 (1917); Bird Bear v. McLean County, 513 F.2d 190 (8th Cir. 1975). Acceptance of the grant could be evidenced by some positive act on the part of the appropriate public officials. The declaration by the legislature that all section lines are public highways has been held to fulfill the requirement that public officials must demonstrate an intention to accept the highway grant. Wells, supra; Cirves v. Kenai Peninsula Borough, 536 P.2d 1221 (Ak. 1975). Acceptance could also be made by public use, the character and extent of which could prove that the grant is accepted. Hamerly v. Denton , 359 P.2d 121 (Ak. 1961).

According to the 1976 Federal Land Policy and Management Act, all rights-of-way granted under statutes superceded or repealed by the provisions of the Act are protected. 1976 Federal Land Policy and Management Act, Pub. L. 94-579, 90 Stat. 2793, Oct. 21, 1976; 1976 U.S.C.C.A.N. 6175, 6197. An acceptance by the public authorities, or by the public, of the highway grant under R.S. §2477 should therefore be protected as an existing right-of-way for highway purposes, and would be uneffected by the repeal. This is in accordance with the general principle that the dedication of land for public use can be withdrawn prior to acceptance, or may be rejected by revocation, or may be abandoned, by the grantee. See 23 Am. Jur. 2d Dedication, cited in 1969 Op. of the Attorney General

Dec. 18, 1969). Thus, after a proper acceptance of the offer, the withdrawal of the grant is immaterial.

In Alaska, the legislature accepted the R.S. §2477 grant first in 1923 and again in 1953. In 1923, the territorial government enacted ch. 19 SLA 1923 which read as follows:

> Section 1. A tract of four rods wide between each section of land in the Territory of Alaska is hereby dedicated for use public highways, the section line being the center of said highway. But if such highway shall be vacated by any competent authority the title to the respective strip shall inure to the owner of the tract of which it formed a part of the original survey. Approved April 6, 1923.

Therefore, all lands acquired from either the United States or the Territory after April 6, 1923, the effective date of the statute, was burdened with a 66-foot (one rod equals 16 1/2 feet) section line right-of-way. The law was codified in the 1933 Compiled Laws of Alaska, Section 1721. When the territorial laws were again compiled in 1949, the table of statutes indicated that Section 1721 was "invalid". No reason has been found for this apparent misconception. It has ready been seen that an organized territory could accept the highway grant. United States v. Rogge, supra; Hayes v. Government of Virgin Is., 392 F.Supp. 48 (D.Ct. V.I. 1975). However, the declaration of "invalidity" seems to have worked a repeal of the statute and therefore lands acquired on or after January 18, 1949 were not burdened with the highway easement until a reacceptance was made. It should be noted, however, that the repeal of the statute is not a repeal of the rights-of-way; therefore all land acquired in Alaska between April 6, 1923 and January 18, 1949 is subject to a territorial 66-foot section line right-of-way for highway purposes.

In 1951, the Territory of Alaska enacted the following provision in chapter 123, SLA 1951:

Section 1. A tract 100 feet wide between each section of land owed by the Territory of Alaska, or acquired from the Territory is hereby dedicated for use as public highways, the section line being the center of said highway . . . Approved March 23, 1951.

Thus the legislature limited the acceptance of lands owned by the territory. Thus would appear to bolster the argument that the 1949 declaration of invalidity of the 1923 statute was truly a repeal of the section line right-of-way acceptance across public lands of the United States. In 1953, the statute was amended to include "a tract four rods wide between all other sections in the territory". Ch. 35 SLA 1953. The 1953 statute is currently codified as AS 19.10.010. Thus, since 1953, land owned by either the Territory or the United States government is subject to this section line easement. The 1953 statute, effective continuously since March 21, 1953, constitutes the acceptance of the highway offer to dedicate public land for highway purposes which is necessary to complete the grant. The repeal of the grant by the 1976 BLM Organic Act would, therefore, have no effect on lands acquired since 1953; that is, lands would be burdened with the appropriate easement as long as the statute remains unrepealed in Alaska.

The history of acceptance of the highway grant in Alaska has necessarily presented many questions as to what lands are burdened by the section line the easement. These questions, however, may be answered through an analysis of the nature of the grant and acceptance as reviewed in the first section of this memorandum. It should initially be remembered that the repealing statute in the 1976 BLM Act provides that all existing rights of way are to be preserved. Federal Land Policy and Management Act, 1976, Title VII, Sec. 701(a), 90 Stat. 2793. In determining that there is an existing right of way over every section line in the State of Alaska, it need only be shown that the land was public land on

Unreserved

the United States [or land owned or acquired by the territory or state] at the time of the acceptance of the grant; specifically, that the land was public land between April 6, 1923 and January 17, 1949 or since March 21, 1953.

~~The opposite would be true if the land was not public between April 6, 1923 and January 17, 1949 or since March 21, 1953. The land would be forever subject to the right-of-way easement unless the highway is subsequently vacated by competent authority. This is true even if the section lines had not been surveyed for once the acceptance has been made, the right attaches as of that date and subsequent survey will only serve to protect the~~ right: Wells v. Pennington County, supra. Thus, in the 1969 Opinion of the Attorney General, No. 7, Dec. 18, 1969, Mr. Norman states at p. 6 that:

> Like the standing federal offer, the Alaska statutes are continuous in their operation, and they apply to "each" section of land in the state as it becomes eligible for the section line dedication. Public lands which come open through cancellation of an existing withdrawal, reservation, or entry, and subsequently acquired by the territory (or state), are all subject to the right-of-way.

As long as AS 19.10.010 is law in the State of Alaska, this statement of the law should hold true regardless of the fact that the federal offer has been withdrawn. Again, this is true because the offer has been accepted as to all of the section lines of the State as they become eligible for dedication, and an offer once accepted is not subject to withdrawal. Rather, the section line easement falls into the category of the "right-of-way heretofore granted" under Section 509 of the BLM Organic Act and is thus unaffected by that Act.

In conclusion, the repeal of R.S. §2477 should have no effect on those rights of way for highway purposes which were accepted prior to the repeal. The acceptance can be proved on a case-by-case basis if the acceptance is by public use. The territory and state authorities have accepted the grant as to all section lines in the State through the enactment of Ch. 19, SLA 1923 and Ch. 35, SLA 1953. Such declarations are all that is needed to constitute the "positive act" necessary to show the intention to accept as required in Hamerly. Upon survey, the section line highway may be established and the effective date of the right-of-way will be the date of the legislative acceptance. Thus, whether or not land is burdened with a highway easement will depend on the status of the land when the grant was accepted. That the grant is no longer operative has no affect on the prior acceptance or on the status of the land when accepted.

IN REPLY REFER TO
2800 (932)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

RECEIVED
DEC 27 1984

November 28, 1984

Instruction Memorandum No. AK-85-72
Expires 9/30/ 85

To: DM's and DSD's

From: State Director, Alaska

Subject: Notation of R.S. 2477 Right-of-Way Assertions on the Public Land Records

This memorandum is intended to supplement manual guidance on notation of R.S. 2477 right-of-way assertions. The BLM manual policy on notation of claimed R.S. 2477 is intended to facilitate BLM management of those lands it administers. BLM needs a sound transportation plan in order to effectively manage those public lands it administers; therefore, it is necessary to identify existing access routes on the Bureau's official records.

Notation of any particular R.S. 2477 assertion of right to these records is discretionary. The manual merely provides BLM a procedure of noting R.S. 2477 claims on its records, if BLM agrees that the assertions have at least potential validity. The manual procedure is not intended to force BLM to note assertions it believes to be questionable or invalid.

It should, however, be remembered that an R.S. 2477 grant is created by taking. The rights acquired thereunder attached immediately when the facility was first appropriated or constructed under the statute. Once a right-of-way is established under R.S. 2477, it may be abandoned only under procedures established by State law.

The BLM should work with the State of Alaska to identify those existing access roads and trails which may be potentially valid R.S. 2477 assertions. When BLM agrees that a right may exist (i.e. the assertion may be valid) under the statute, it should note the assertion on its official land status records. If BLM does not agree that the right may exist, the assertion should not be noted to the records. BLM's notation of a potential right does not validate an invalid assertion and its failure to note a valid assertion does not void such assertion. The actual validity or nullity of an R.S. 2477 assertion can only be determined by a court of competent jurisdiction.

If an R.S. 2477 is asserted on a road or trail historically used only as a winter trail and use begins to occur during the other seasons which causes environmental damage, BLM's recourse is to try to get the State to maintain the trail or for BLM to sue for damages on Federal lands. Seasonality of use should

BLM NOTATION MEMO

be defined by the type of use which existed at the time the trail or road was established or appropriated. The background and history of the trail may need to be checked to determine if use has been seasonal.

BLM will note potentially valid R.S. 2477 assertions only across lands which it administers. Notations will not be made on lands withdrawn for other agency use, unless BLM has an MOU regarding notation with that agency having jurisdiction over the land. Assertions of rights will not be noted on land which have been Interim Conveyed or Patented to a Native Corporation or Tentatively Approved or patented to the State of Alaska.

The BLM does not need comment or concurrence from Native Corporations to note assertions on lands that it manages (including lands that are merely selected by such corporations.) BLM is only acknowledging a claim of a valid existing right to such lands. Such an acknowledgment does not change the validity or invalidity of the right. The existence of such a potential right will not be cited in any conveyance document as an encumbrance. A Native Corporation is free to challenge the assertion, in court, after it acquires title.

BLM will not specifically reference an R.S. 2477 claim, assertion or notation in the deeds or patents it issues for any claim or entry made under the public land laws, unless the inclusion of a reference to such claim has been agreed to, in writing by all affected parties.

There may be situations where the State of Alaska may find it advantageous to acquire a right-of-way under Title V of the Federal Land Policy and Management Act in lieu of an R.S. 2477 notation. Patents for entries made after granting of a Title V right-of-way are made subject to the right-of-way.

It should also be noted that the BLM cannot impose restrictions or stipulations restricting the use of an R.S. 2477 road or trail for those purposes authorized by statute. Only the State can impose restrictions on such uses. However, R.S. 2477 did not authorize the construction of non- access facilities such as powerlines, pipelines, etc. Such facilities, if not covered by a granted right-of-way constitute unauthorized use.

In deciding whether to note an assertion on the BLM records, BLM may perform a field examination and/or prepare a report to substantitate its decision as to disposition of the assertion. However, such action is not required.

Fred Wolf
Fred Wolf
State Director
Acting

Distribution:
D-DSC (D-558A)

United States Department of the Interior
OFFICE OF THE SOLICITOR
ANCHORAGE REGION
510 L Street, Suite 408
Anchorage, Alaska 99501

IN REPLY REFER TO

May 21 1980

MEMORANDUM

To: Acting Area Director
Bureau of Indian Affairs
Juneau

From: David S. Case
Attorney/Advisor

Subject: Rights of Way on Allotments --
R.S. 2477 and Other Access Questions

I. INTRODUCTION

A. Your Requests

Over the last twelve months you have directed three opinion requests to this office regarding access to and across Native allotments. Your first request (dated May 22, 1979) asked about the effect of Native occupancy on the establishment of section line road easements under R.S. 2477.[1] Your second request (dated July 6, 1979) was for general guidance about the method for assuring access to landlocked Native allotments you had advertised for sale. You also asked if you have to disclose any access problems in your sale advertisement. With respect to R.S. 2477 easements, you asked whether a section line easement for public access would suffice for private access to an otherwise landlocked

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[1] The request was entitled "Effect of Statutory Reservations on Native Allotments" and was answered in a memorandum by Dennis Hopewell of this office, dated September 4, 1979. The section line easement question was specifically excluded from that response pending this reply.

Exhibit III

B.I.A. MEMO

allotment. Your final request (dated April 4, 1980) reduced to its essentials, asked whether the Indian right of way laws and regulations apply when the right of way on or through a certified allotment coincides with a surveyed section line easement arguably granted under R.S. 2477.

B. R.S. 2477 in Brief

R.S. 2477 is an 1866 Act "granting" highway rights of way over public lands in the following deceptively simple terms:

> The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted. Act of July 26, 1866, c. 262, sec. 8, 14 Stat. 253.

This act was initially codified as Revised Statute (R.S.) 2477 and later as 43 U.S.C. 932. It was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, PL 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq.

Your questions focus on the section line easements appropriated by the Territory and State of Alaska under this federal authorizing legislation. The State statute appropriating the section line easements is codified as Alaska Statute (AS) 19.10.010. However, the the R.S. 2477 grant includes other kinds of rights of way other than those appropriated under this statute. On the other hand, you should note that the R.S. 2477 grant is specifically limited to rights of way over "public lands." The latter point is significant, because it is our opinion that Alaska Native use and occupancy sufficient to qualify for a certificate of allotment is also sufficient to withdraw the land occupied from "public land" status.

Finally, the State's acceptance of the R.S. 2477 grant along section lines has had an on-again, off-again history that must be taken into account when determining whether the easements granted under R.S. 2477 have ever been accepted by the State. Thus, the answers to your questions require some background in the meaning of the term "public lands" and in the history of the application of R.S. 2477 in Alaska. In order to give some direction to that discussion, however, we have provided short answers to each of the questions posed in your opinion requests.

II. SHORT ANSWERS

A. May 22, 1979 Request

We agree with the conclusion expressed at page 2 of your opinion request about the effect of Native use and occupancy on the establishment of a section line easement. However, we would state your conclusion more definitely: If use and occupancy were initiated after survey of the section line, then the section line easement is superior to the allottee's rights and a right-of-way across the allotment does not require the consent of the allottee or a grant from the United States. If use and occupancy began any time before the survey, then the easement can only be granted with the consent of the allottee and according to the applicable Indian right of way laws.

B. July 6, 1979 Request

We know of no principle requiring you to disclose whether or not there is access to advertised parcels; furthermore, otherwise valid section line easements can be used to provide private access, but they are also open to the public. Under some circumstances, however, easements by necessity can be implied across otherwise unencumbered lands to afford private access to landlocked parcels.

C. April 4, 1980 Request

Whether the Indian right of way laws apply to a Native allotment depends on whether the allottee commenced use and occupancy before or after a section line right of way was appropriated by survey.

III. DISCUSSION

A. R.S. 2477

1. History and Purpose of R.S. 2477

U.S. Supreme Court and Ninth Circuit cases have cast some doubt on whether R.S. 2477 applies in Alaska. A narrow reading of the U.S. Supreme Court's opinion in Central Pacific Railway Co. v. Alameda County, 284 U.S. 463 (1932), and the Ninth Circuit's later decision in U.S. v. Dunn, 478 F.2d 433, 445 (9th Cir. 1973) would indicate that R.S. 2477

was only a recognition of pre-existing rights rather than a grant of new rights. Strictly construed, this interpretation could mean that R.S. 2477 was never applicable to Alaska, since it was enacted in 1866, one year prior to the purchase of the Territory.

The Territorial and State cases, on the other hand, consistently characterize R.S. 2477 as "in effect, a standing offer from the federal government" for the grant of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d 1221, 1226 (Alaska 1975). Under this interpretation, the right of way has been held to come into existence upon the "acceptance" of the standing offer. See Berger v. Ohlson, 9 Alaska 389 (D. Alaska 1938); Clark v. Taylor, 9 Alaska 298 (D. Alaska 1938); United States v. Rogge, 10 Alaska 130 (D. Alaska 1941); State v. Fowler, 1 Alas. L.J. 7 (April 1963); Hammerly v. Denton, 359 P.2d 121 (Alas. 1961). Given the weight of authority in this jurisdiction and the historical reliance placed upon R.S. 2477 in Alaska as a source of rights of way across the public domain, we are unwilling to conclude that the statute has no applicability to Alaska. We suspect that if the question were squarely presented to the Ninth Circuit Court of Appeals it would agree.

It has been held that R.S. 2477 first became applicable in Alaska by the Organic Act of May 17, 1884, 23 Stat. 24, whereby Alaska first became an organized territory. Section 9 of that Act, among other things, provided that the laws of the United States be extended to the Territory of Alaska, U.S. v. Rogge, 10 Alaska, supra at 147. As noted previously, R.S. 2477 is construed as a standing offer from the federal government for the creation of a right of way, Girves v. Kenai Peninsula Borough, 536 P.2d, supra at 1226. Under this construction, it has been held that the offer can be accepted (and the right of way created) either (1) by a positive act of the state or territory clearly manifesting an intent to accept the offer, Hammerly v. Denton, 359 P.2d, supra at 123.[2/]

[2/] Accord: Wilderness Society v. Morton, 479 F.2d 842, 882 (D.C. Cir. 1973), cert. den'd. 411 U.S. 917.

or (2) by public use of the right of way for such a period of time and under such conditions as to prove that the offer has been accepted, id.

Statutory acceptance of the grant, formal expression on the part of public officials of an intention to construct a highway or actual public construction of a highway may all constitute acceptance of the R.S. 2477 grant by the "positive act" of the appropriate public authorities. Thus, in Girves, supra, the Alaska Supreme Court held that AS 19.10.010 (establishing a highway easement along all section lines in the State) was sufficient to establish a right of way along the boundary of plaintiff's homestead coinciding with a surveyed section line. In Wilderness Society v. Morton, 479 F.2d 842 (D.C. Cir. 1973), it was held that the State's application to the Bureau of Land Management to construct a "public highway" from the Yukon River to Prudhoe Bay, along with enabling State legislation, was sufficient to establish an acceptance of the federal grant. In addition, the actual construction or public maintenance of a highway may constitute acceptance. See Moulton v. Irish, 218 P.2d 1053 (Montana 1923), construction of highways; Streeter v. Stalnaker, 85 NW 47 (Nebraska 1901), public maintenance and improvement of highways.

Public use (sometimes called "public user") may also constitute acceptance of the grant in the absence of any positive official act. Whether any claimed use constitutes acceptance of the grant, however, is a question of fact to be decided by the court. It appears that continued and consistent use of a right of way across the public lands by even one person with an interest in the lands to which the road gives access may be sufficient to establish public user, State v. Fowler, 1 Alas. L.J., supra at 8 (April 1963). See also Hamerly v. Denton, supra at 125. However, the Alaska Supreme Court has held that mere desultory or occasional use of a road or trail does not create a public highway, id.3/

3/ Of course, it is no longer possible to accept the R.S. 2477 grant by any of these methods, because R.S. 2477 was repealed by FLPMA, supra, in 1976.

2. Allotments As "Public Lands"

By its terms, R.S. 2477 is only an offer for a right of way across "public lands." In discussing this term in the context of R.S. 2477, the Alaska Supreme Court has noted:

> The term "public lands" means lands which are open to settlement or other disposition under the land laws of the United States. It does not encompass lands in which the rights of the public have passed and which have become subject to individual rights of a settler. Hammerly v. Denton, supra at 123.

Beginning with the 1884 Organic Act, previously discussed, Congress has specifically provided for the protection of lands used or occupied by Alaska Natives. Section 8 of the Organic Act provided in part:

> That the Indians or other persons in [Alaska] shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress. 4/

Federal decisions have long recognized the statutory protection afforded Alaska Native use and occupancy. See, e.g., U.S. v. Berrigan, 2 Alaska 442 (D. Alas. 1904); U.S. v. Cadzow, 5 Alaska 125 (D. Alas. 1914). Departmental regulations and policy reinforce the statutes. See, e.g., 43 CFR §§ 2091.1(e), 2091.2-1, 2091.5, 2091.6-3; see also Government Appropriation of Rights-of-Way in Alaska, Opinion of the Associate Solicitor, Public Lands (M-36595, March 15, 1960, copy attached).

In analogous circumstances, the U.S. Supreme Court has consistently recognized that railroad land grants are not to be construed in derogation of Native use and occupancy

4/ Similar provisions appear in the following acts: Act of March 3, 1891, c. 561, 26 Stat. 1095, § 14; Homestead Act of May 14, 1898, c. 299, 30 Stat. 412, § 7; Act of June 6, 1900, c. 786, 31 Stat. 330, § 27.

rights. That is particularly true where those rights have been protected by treaty, Leavenworth L & GR Co. v. United States, 92 U.S. 733 (1875), or specific statutory exceptions, Buttz v. Northern Pacific Railway Co., 119 U.S. 55 (1886). See generally, Bardon v. Northern Pacific Railway Co., 145 U.S. 535, 540-543 (1892). Most significantly, the U.S. Supreme Court has specifically protected rights of individual Native occupancy against competing federal grants even in the absence of any statutory or treaty protections where those rights flow "from a settled government policy." Cramer v. United States, 261 U.S. 219, 229 (1923). Whether from the statutory protection afforded in the 1884 Organic Act and the other legislation specifically noted or from the settled government policy of protecting Alaska Native use and occupancy, we think it is clear that lands used and occupied by individual Alaska Natives are not "public lands" within the meaning of R.S. 2477 and that the R.S. 2477 grant cannot attach during any period of such occupancy.

3. Acts Accepting the R.S. 2477 Grant

(A) Section Line Easements. You have noted that AS 19.10.010 establishes rights of way of varying widths along the section lines in the State. As noted earlier, the Alaska Supreme Court has concluded this statute is a positive official act constituting acceptance of the R.S. 2477 grant, Girves, supra. The Territorial statute accepting the grant was originally enacted on April 6, 1923 (19 SLA 1923), but was subsequently repealed (perhaps inadvertently) on January 18, 1949. Op. Ak. Atty. Gen. No. 7 at 3 (December 18, 1969). The statute was subsequently reenacted in substantially its present form by the 1953 Territorial legislature (Act of March 21, 1953, 35 SLA 1953). Id. Thus, whether a section line easement has attached to Native occupied land must be viewed against the backdrop of the dates of Native occupancy and the dates during which Alaska's acceptance of the grant was in effect. The section line easements could only attach to lands not occupied by Natives between the dates of April 6, 1923, and January 18, 1949, and from March 21, 1953, forward.

Additionally, by the terms of the State statute, the acceptance is dependent on the existence of a "section line." In the Opinion previously noted, the State Attorney General also concluded that for the R.S. 2477 grant to attach under the statute, the "public lands must be surveyed and section lines ascertained," id. at 7. We agree with this conclusion; therefore, you must also determine whether

the lands in question were subject to individual Native use and occupancy on the date the section line was actually surveyed.[5]

(B) Other Official Acts of Acceptance. As noted earlier, other official actions (i.e., construction, repair, dedications, etc.) can constitute official acceptance of the R.S. 2477 grant. Whether such official action has created an R.S. 2477 right of way will have to be determined on a case-by-case basis.

(C) Public User. Rights of way claimed to have been created by public use must also be determined on a case-by-case basis. On the one extreme, an obvious public road established prior to Native use and occupancy would certainly be sufficient to constitute acceptance of the R.S. 2477 grant; see State v. Fowler, 1 Alas. L.J. 7, supra. On the other extreme, it is equally clear that desultory or occasional use of a road or trail by individuals having no interest in the land to which they obtain access is not sufficient to create an R.S. 2477 right of way, Hamerly v. Denton, supra. Whether a given use is sufficient to constitute acceptance of the R.S. 2477 grant, may have to be determined judicially in all but the most obvious cases.

4. Widths

By State statute, section line easements on "public lands" are four rods (66 feet) wide with the section line as a center of the dedicated right of way.[6] Other official

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[5] The Attorney General also concluded that the R.S. 2477 grant attaches on the date the "protracted surveys" were published in the Federal Register. We do not agree with this position; as a practical matter, the protraction diagrams are not a reliable means of ascertaining the correct position of the surveyed section line.

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[6] A right of way 100 feet wide is granted between sections of land owned by or acquired from the State. Since Native occupied lands could not fall within this category, section line easements on Native allotments will be confined to the 66 foot width.

acts could conceivably establish larger rights of way. Rights of way established by public user appear to be confined to the width actually used, State v. Fowler, supra.

B. Other Access Questions

1. Obligations To Provide Access

We do not believe either the allottee or the United States is obligated to provide a warranty of access to the purchaser of an allotment. By statute (AS 34.15.030) Alaska has incorporated the common law covenants for title into any deed which by its terms "conveys and warrants" real property to another. Thus, a deed substantially in the statutory form includes implied warranties that at the time of the conveyance the grantor: (1) is lawfully seized of the estate in fee simple and has the right and power to convey the premises; (2) that the premises are free from encumbrances and (3) that he warrants quiet enjoyment of the premises and to defend the title against all persons claiming the premises.

You have advised that you use a special warranty deed to convey restricted Indian lands. As you know, a special warranty deed limits the grantor's obligation to defend only against claims arising through him. It does not require the grantor to defend against claims arising through other persons, 21 CJS "Covenants" § 49. Except as so limited, we believe the deed form you used includes all of the statutory covenants implied by AS 34.15.030. None of these, however, include a covenant of access to the land granted. See generally, Powell on Real Property, ¶ 904, et seq. (1968 edition). Furthermore, AS 34.15.030 specifically provides: "No covenant is implied in a conveyance of real estate, whether the conveyance contains special covenants or not." We interpret this to mean that unless there is a specific covenant of access, the grantor is not obligated to provide it.

2. Easements By Conveyance Or Covenant

In spite of the protection this doctrine affords both the United States and the allottee, we recommend that as a prudent land manager you advise the allottee to provide whatever access it is within his power to provide incident to the sale of an allotment. That is especially true if, as in one case you described to us, the allottee is selling a

portion of the allotment which would be landlocked by the remaining lands of the allottee or others. In these circumstances, we advise you to insure that appropriate access is guaranteed through the allottee's other lands either by convenant or specific grant of easement. See generally, Powell on Real Property, ¶ 407 and 408. See also, 28 CJS Easements, § 23, et seq. Conversely, if the allottee's other lands will be landlocked by conveyance of a portion of the allotment to a third party, the allottee should insure that he is reserved an easement in the lands granted. See 28 CJS Easements, § 29. Under these circumstances, failure to provide or obtain access at the time of conveyance could result in later litigation to establish an easement by necessity.

3. Easements By Necessity

Easements by necessity are implied easements across otherwise unencumbered tracts where necessary to afford access to an otherwise landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410. This doctrine comes into play only where there is a unity of ownership between the dominant and servient parcels at the time the landlocked (i.e., dominant) parcel was severed from the rest of the estate. The doctrine would apply to both examples discussed above where the grantor conveys a portion of the allotment thereby isolating either the land conveyed or the grantor's retained lands. In these circumstances, the courts have construed the intention of the parties to create an easement of necessity across the servient estate to provide access to the landlocked (i.e., dominant) estate.

As applied in this jurisdiction, the doctrine only requires proof of reasonable (as opposed to absolute) necessity in order to imply an easement. U.S. v. Dunn, 478 F.2d 443, 446 (9th Cir. 1973). Although the easement must be something more than a mere "convenience," it is not necessary to show that it is the only means of access to the property. In any event, the determination of whether the easement is a "reasonable necessity" is a fact question which involves considerations of public policy as well as the intent of the parties and the reasonable utilization to be made of the landlocked parcel. See generally, Powell on Real Property, supra, ¶ 410.

The doctrine has also been applied to Indian lands in this jurisdiction, cf. Superior Oil Co. v. United States, 353 F.2d 34 (9th Cir. 1965). The oil company in this case

sought to obtain an easement to move heavy oil drilling equipment across Indian reservation lands in order to drill on lands owned by a mission society and leased to the oil company. The mission society had previously been granted the land by the United States under a statute permitting such grants to religious organizations engaged in mission or school work on Indian reservations. The court concluded that although the mission society had an easement by necessity for mission purposes, the scope of that easement could not be expanded to accommodate the purposes of the oil company. We know of no principle which would preclude an easement of necessity from attaching to lands merely because they are Indian trust or restricted lands where the easement of necessity doctrine is otherwise applicable. See also, U.S. v. Clarke, 529 F.2d 984 (9th Cir. 1976), aff'd _____U.S._____, (No. 78-1693, March 18, 1980).

IV. SUMMARY

This, of necessity, has been a rather wide-ranging opinion dealing with the several general concerns you raised regarding easements across Indian allotments. We will summarize some of our conclusions below for ease of reference.

A. R.S. 2477 Easements

R.S. 2477 easements can be created either by the positive acts of authorized authorities or public user of a right of way across the "public lands." Native used and occupied lands, however, are not "public lands." Therefore, a right of way under R.S. 2477 can only be obtained if, at the time the R.S. 2477 grant is accepted, the lands were not subject to the individual use and occupancy rights of an Alaska Native who has applied for an allotment.

B. Section Line Easements

Whether a section line easement supersedes Native use and occupancy depends on whether the Native use and occupancy preceded either the statutory acceptance or actual survey of the section line easement. If Native use and occupancy began prior to April 6, 1923, or between January 18, 1949, and March 21, 1953, then the easement could not be imposed on those lands by subsequent survey of a section line. If unoccupied lands were surveyed either between April 6, 1923,

and January 18, 1949, or after March 21, 1953, then the section line easement supersedes Native occupancy rights.

C. Guarantees of Access

Although there is no legal requirement to guarantee access to otherwise landlocked allotments, you would be well advised to counsel the allottees to provide access if it is within their power to do so. It is especially important to provide access where there is an initial unity of title in the allottee. Under these circumstances an easement of necessity can be imposed to benefit a landlocked parcel. Providing access at the time of the grant will avoid later confusion and possible litigation.

D. Public or Private Access

You should also be aware that any R.S. 2477 right of access (whether by section line easement or otherwise) predating Native use and occupancy is a right of public access. While it may also permit private individuals to have access to otherwise landlocked parcels, it also permits the public at large to use the right of way. Of course, that does not permit the public to trespass on the allottee's or anybody else's private property.

David S. Case
Attorney/Advisor

Enclosure

cc: Scott Keep, Div. of Indian Affairs, Washington, D.C.
Area Realty Officer, Bureau of Indian Affairs, Juneau

IN REPLY REFER TO

2800 (932)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

September 7, 1984

Memorandum

To: Member of ALUC

From: State Director, Alaska

Subject: R.S. 2477 Issue Paper

Transmitted herewith is an issue paper which sets forth BLM's policy on R.S. 2477 rights-of-way. The policy has been altered enough in recent years to allow us to note these claims on our records provided the State takes the initiative and files an application for notation which meets the criteria set out in the issue paper.

In the absence of the State formally asserting its rights under the Statute, BLM has no choice but to consider the lands involved to be vacant public lands without established public access. BLM has had numerous discussions with the State concerning R.S. 2477 and the State is well aware of our policy and procedures.

Enclosed is a draft MOU between our Fairbanks District Office and the State of Alaska which is intended to facilitate the policy set out in the issue paper. Also enclosed is a copy of our BLM Manual section on R.S. 2477 and a copy of a Regional Solicitor's Office memorandum to the Bureau of Indian Affairs dated May 21, 1980.

The Fairbanks District Office and the State of Alaska, Department of Transportation and Public Facilities, Northern Region have been working on this Draft MOU for sometime now and have established a good working document which fits well within the constraints of our regulations.

Our first preference would be to have the cooperative State Federal work on R.S. 2477 started in Fairbanks proceed. However, we would not object to the Council taking this matter under its wing if this is what the State wishes. Under any circumstance, the State must clearly take the leadership role.

Michael J. Penfold
State Director

Enclosure (1) w/Exhibits I, II, and III

BLM POSITION

Issue Paper - R.S. 2477 Roads and Trails

Under DOI existing authority and policy, it is the responsibility of the State of Alaska to officially assert its claimed rights by filing applications for notation of such rights-of-way on our records. Such applications in addition to providing the information required to show the highway meets the four criteria set out below must provide a plottable description of the facility so that BLM's records can be properly noted.

The Act of July 26, 1866, R.S. 2477 (43 U.S.C. 932) provided:

> "The right-of-way for the construction of highways over public lands not reserved for public uses, is hereby granted."

This statute, which was repealed by the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, 90 stat. 2743, has been interpreted as granting a right-of-way for public use over public land without limiting the method of establishment of that right-of-way. The grant becomes fixed when a public highway is definitely established in one of the ways authorized by the laws of the State where the land is located.

The Act (R.S. 2477) did not specify the extent of the grant, the width of the right-of-way, or the nature of the right conveyed. Since the Department does not grant such rights-of-way, it has consistently held that it has no authority to adjudicate claims made under this Act. Therefore, acknowledgements of such claims have not been inserted in Federal Land Patents. The courts have held that reservation of an R.S. 2477 right in our patents is not necessary to validate or protect rights-of-way created under the statute.

In order to facilitate proper management of the public land, the Department has to have sound transportation plans. It is, therefore, necessary to identify all public roads in a given area. To facilitate such identification the Bureau of Land Management has recently been given authority to note claimed R.S. 2477 highways (roads, trails, etc.) on its official status plats, provided that requests for notation meet the following criteria:

1. In order for a valid right-of-way to exist, there must have been actual construction of a highway. Mere use, planning, or survey is not considered construction. However, construction of the highway need not have occured all at once. Road maintenance often equals improvement and even construction. When the history of a road is questionable, it's existence in a condition adequate for public use may constitute evidence that construction has taken place.

2. The highway is free and open to the public at large.

3. The construction of the highway on unreserved public land must have occurred prior to repeal of R.S. 2477 on October 21, 1976.

4. The State must have a procedure to confirm the R.S. 2477 public highway right-of-way grant.

Once the State application is received, BLM has the responsibility to assure that the lands covered by the claimed right-of-way were, on the date of establishment of the highway, unreserved public lands. If the information submitted by the State meets the four criteria above, BLM assumes (it does not adjudicate the claim) that the road is a bona fide R.S. 2477 highway. The BLM then acknowledges the State's claim and plots the right-of-way on its records.

Any uses other than for highway purposes within the boundaries of an R.S. 2477 right-of-way must be permitted by BLM by a separate right-of-way grant. It should also be noted that the R.S. 2477 grant extends only to the right-of-way itself, it does not include ancillary facilities such as material sources and stockpile areas.

The Fairbanks District of BLM is currently working on a Memorandum of Understanding with the State of Alaska, Department of Transportation and Public Facilities. This MOU is intended to facilitate notation of the State's claimed R.S. 2477 rights on BLM's official records.

BLM has no objection to elevating this MOU to State level if the Council so desires. However, even if the MOU is elevated to State level, BLM cannot by law or regulation note the State's R.S. 2477 claims to its records until the State DOT/PF files a formal request for notation accompanied by a plottable description and a date of appropriation. The initiative to begin the record notation process rests with the State.

Further, until the State officially identifies its claimed R.S. 2477 rights, so they can be noted on the records, Federal agencies have no recourse but to treat the lands involved as if they were free and clear of encumbrances. As an example, numerous contacts were made with the State of Alaska during the planning process on the Steese NCA and the White Mountains NRA. At no time has the State of Alaska identified any R.S. 2477 claims within these planning areas.

COPY

MEMORANDUM OF UNDERSTANDING
BETWEEN ALASKA DEPARTMENT OF NATURAL RESOURCES AND
ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
AND
BUREAU OF LAND MANAGEMENT

PURPOSE

1. The purpose of this agreement is to establish the procedures for the assertion of RS 2477 rights-of-way by the Alaska Department of Natural Resources (DNR) and the Alaska Department of Transportation and Public Facilities (DOT&PF) to the Bureau of Land Management (BLM). Federal, state, and local officials need to know locations of RS 2477 public right-of-way assertions in order to assist such officials in their land and resource management decisions. The public needs to know the location of RS 2477 public right of way assertions to avoid unauthorized uses on private lands. This Memorandum of Understanding (MOU) will establish procedures that will enable RS 2477 rights-of-way assertions to be placed on land status plats.

BACKGROUND

2. RS 2477, formally codified as 43 U.S.C 932 (repealed by P.L. 94-579, Federal Land Policy and Management Act of October 21, 1976), provides:

> The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

3. By regulation found in 43 C.F.R. 2802.5 (b), the Bureau of Land Management has provided:

> In order to facilitate management of the public lands, any person or state or local government which has constructed public highways under the authority of RS 2477 (43 U.S.C. 932, repealed October 21, 1976) may file a map showing the location of such public highways with the authorized officer.

4. In Hamerly v. Denton, 359 P. 2d 121, 123 (Alaska 1961), the Alaska Supreme Court stated that the general rule regarding acceptance of the RS 2477 federal grant:

> Before a highway may be created, there must be either positive act on the part of appropriate public authorities of the state, clearly manifesting an intention to accept the grant, or there must be public use for such a period of time and under such conditions as to prove that the grant has been accepted.

DOT-DNR/BLM M.O.U.

5. The United States Department of the Interior, Office of the Solicitor, stated in a memorandum dated July 7, 1983:

> "[(T)he Department of the] Interior has long recognized that State law controls what constitutes a (R.S. 2477) highway within each state;" and

6. Alaska Statute 19.45.001(8) states:

> "Highways includes a highway (whether included in the primary or secondary systems), road, street, trail, walk, bridge, tunnel, drainage structure and other similar or related structure or facility, and right-of-way thereof, and further includes a ferry system, whether operated solely inside the state or to connect with a Canadian highway, and any such related facility;" and

7. WHEREAS by statute, AS 19 SLA 1923; 123 SLA 1951; 35 SLA 1953; AS 19.10.010, the State of Alaska has accepted the RS 2477 grant.

8. The RS 2477 grant has also been accepted in many cases by actual public use or expenditure of public monies on unreserved public lands for highway purposes.

POLICIES AND PROCEDURES

9. DOT&PF shall have responsiblity for asserting and for identifying and submitting maps to BLM of all RS 2477 rights-of-way established before October 21, 1976, identified on the list of state maintained highways. DOT&PF's responsibility under this paragraph includes both state and non state lands.

10. DNR or DOT&PF may identify, assert, and submit maps and evidence of use to BLM for all other RS 2477 rights-of-way established before October 21, 1976, situated upon any land within the State of Alaska.

11. DNR or DOT&PF shall accept evidence of use on any right-of-way established before October 21, 1976, from other state agencies, local governments, and members of the public. For all claims of RS 2477 rights-of-way which involve state land or provide access to state land or public water an ADL/LAS case file will be established.

12. DNR or DOT&PF may maintain duplicate sets of all files regarding RS 2477 rights-of-way. All newly created RS 2477 files, or any documents to be added to an existing file, will be duplicated and forwarded from one agency to the other.

13. All maps showing the location of RS 2477 rights-of-way established before October 21, 1976, submitted to BLM shall be the best maps possible but not of lesser detail than standard USGS maps at a scale 1:63,360. Maps and supporting documentation shall be submitted by both agencies concurrently. The submission of such maps showing the location of RS 2477 rights-of-way on public lands shall not be conclusive evidence as to their existence. Similarly, a failure to show the location of RS 2477 rights-of-way on any map shall not preclude a later finding as to their existence.

14. There shall be established an RS 2477 coordinating committee in the Northern Region of Alaska composed of DNR, DOT&PF and BLM. The purposes for this committee are as follows:

(a) coordination of agency priorities for identifying, locating, and asserting RS 2477 rights-of-way;

(b) coordination of RS 2477 processing procedures for identifying, locating, establishing case files, making assertions, and platting claims on both federal and state land status plats; and

(c) coordination of requests made to and by the agencies.

15. Each assertion of the existence of an RS 2477 right-of-way made pursuant to this agreement and the submissions to BLM will be reviewed by BLM to ensure the land was unreserved public land as of the date claimed and was established prior to the repeal of the law on October 21, 1976. BLM will not adjudicate the validity of RS 2477 assertions.

16. BLM, DNR, and DOT&PF shall each issue a serial number and establish a case file for each claim made pursuant to this agreement. All correspondence shall reference all agencies' file numbers.

17. BLM shall plot each RS 2477 right-of-way asserted on their Master Title Plats when the following criteria are met (BLM Manual 2801.24 B.1, Rel. 2-152, 9/10/82):

1. Criteria for identification of R.S. 2477 Public Highways, include four elements:

a. In order for a valid right-of-way to come into existence, there must have been the actual building (construction) of a highway. Mere use, planning, or surveying, does not equal construction. However, construction may not have occurred all at once. Road maintenance often equals improvement, or even construction.

Increments of maintenance over several years may equal construction. When public funds have been spent on the road it may be a public road. When the history of a road is unknown or questionable, its mere existence in a condition adequate for public use may be evidence that construction has taken place.

b. A highway is freely open to everyone. Roads that have had access restricted to the public by locked gates or other means may not be public highways.

c. The construction of a public highway on unreserved public land must have occurred prior to October 21, 1976.

d. A State has to have a procedure to confirm the R.S. 2477 public highway right-of-way permit.

18. This MOU establishes the state's procedure to confirm the RS 2477 and thereby fulfills item d in paragraph 17 above.

19. DNR shall plot each RS 2477 right-of-way asserted on their land status plats.

20. Nothing in this Memorandum of Understanding shall obligate any party in the expenditure of funds, or for future payments of money, in excess of appropriations authorized by law.

21. Each party agrees that it will be responsible for its own acts and the results thereof and each party shall not be responsible for the acts of the other parties; and each party agrees it will assume to itself risk and liability resulting in any manner under this agreement.

22. Nothing in this MOU is intended to limit agency or individual rights to normal administrative or judicial appeal processes.

23. Nothing herein is intended to conflict with Federal, State or local laws or regulations. If there are conflicts, this agreement will be amended as soon as practical to bring it into conformance with conflicting laws or regulations.

24. It is understood by all parties that individual citizens may be entitled to assert rights-of-way under RS 2477 notwithstanding this agreement. Nothing in this Agreement shall affect the right of private citizens to assert rights-of-way under RS 2477 in conformance with applicable law.

25. The effective date of this agreement shall be from the date of final signature. The agreement shall remain in effect until the parties jointly agree otherwise.

Jerry L. Brossia Date 9-28, 1984
Jerry L. Brossia, District Manager,
Northcentral District Office, Alaska Department of Natural Resources

Carl S Johnson Date 9/28, 1984
Carl Johnson, District Manager,
Fairbanks District Office, Bureau of Land Management

H Glenzer Date 28 Sept, 1984
H. Glenzer, Deputy Commissioner,
Northern Region, Alaska Department of Transportation & Public Facilities

SJR

11

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

M E M O R A N D U M

TO: REPRESENTATIVE CATO

FROM: SENATOR COGHILL

DATE: MAY 3, 1985

RE: CS FOR SJR 11

Our transportation committee substitute for Senate Joint Resolution 11, urging the repeal of certain portions of the Merchant Marine Act of 1920, is currently in your committee.

As detrimental to Alaskan commerce as some parts of this Act are, I feel their repeal is clearly in the best interest of Alaskans and the nation. It is our duty to let the United States know where we stand on this issue.

I would urge you to schedule CSSJR 11 for a hearing in the House Transportation Committee as soon as possible before the session ends. Thank you.

IDENTIFICATION

BILL NAME
"Urging the repeal of the Merchant Marine Act of 1920."

BILL NUMBER
SJR 11

DATE INTRODUCED
2/6/85

RELATED BILLS PENDING
None

SPONSOR(S)
Coghill

REFERRALS
Finance

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

LEGAL DIVISION SUMMARY
None

DEPT OF LAW SUMMARY
None

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes

FISCAL NOTE
Yes - Revenue

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED
Yes - Terry Martin

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
See Minutes 2-27-85 3-8-85

HEARING PREPARATION

CHAIRMAN BRIEFED

DATE & PLACE SET
2-27-85 / 3-8-85

STAFF MEMO TO COMMITTEE

TELECONFERENCE
None

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE
Non

LIST OF WITNESSES
Greg O'Clony - AFL-CIO
Terry Martin - Ak Legislature
Phil Holdsworth

SUGGESTED AMENDMENTS/CS DRAFTED
CS Adopted By Committee 3-8-85

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
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Senate Committee on Transportation

MEMORANDUM

To: Committee members
From: Committee staff
Date: Wednesday, February 27, 1985
Re: Subject of meeting

Attached are background materials relevant to SJR 11, which urges the repeal of the federal Jones Act, and which is the subject of this afternoon's committee meeting.

Included in the packet along with SJR 11 are:

- The Merchant Marine Act of 1920 (the Jones Act)
- The final report of the Alaska Statehood Commission, issued January, 1983, and recommending repeal of the Jones Act
- The executive summary of a report on the effect of the Jones Act prepared for the Statehood Commission
- The position of the Governor, dated June, 1983, supporting repeal of the Jones Act
- Text of the ATC initiative, which becomes effective on February 28 (tomorrow) and which includes a provision regarding repeal of the Jones Act
- A news clipping from the Seattle P-I, indicating local interest in the Jones Act

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
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Senate Committee on Transportation

TO: COMMITTEE MEMBERS
FROM: COMMITTEE STAFF
DATE: FEBRUARY 26, 1985
RE: SJR 11 REPEAL OF THE JONES ACT

BACKGROUND

The term 'Jones Act' refers to Section 27 of the Merchant Marine Act of 1920, which states;

> "No merchandise shall be transported by water, or by land and water,... between points in the U.S.... either directly or via a foreign port or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the U.S. and owned by persons who are citizens of the U.S."

The purpose of the Merchant Marine Act of 1920 is:

> "That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States..."

JONES ACT EFFECT ON ALASKA

The Jones Act Cost Penalty.

The Jones Act restricts the "coastwise" waterborne transportation of the United States, including transportation between Alaska and Lower-48 ports and transportation within Alaska, to vessels that are US-built, US-owned, US-registered, and manned by US nationals. Detached from the other states on the extreme Northwest corner of North America, Alaska depends disproportionately on ocean transportation for its economic

links with the rest of the nation. The Jones Act has long been a point of contention between Alaskans and other Americans --- it was one of the grievances that motivated Alaska's struggle against "colonialism" and the desire to become a State; 24 years after Statehood some Alaskans still regard the law as a symbol of their state's second-class membership in the American union.

Whatever transportation-cost penalty the Jones Act carries is imposed disproportionately on the Alaska economy. In general, the relatively small size of Alaska's economy makes it a "price-taker" in national and international markets. That is, both the prices of goods exported from Alaska and those of goods imported into the state tend to be set in larger markets outside its borders. Higher transportation costs are thus added to the cost of Alaska's imports, and subtracted from the market prices of her exports. Thus, the prices of most consumer goods in Anchorage are composed of a price determined in some outside market, plus the transportation cost from that market to Anchorage. This does not include local distribution markups.

Alaska's position as a price-taker means that its economy tends to suffer a double penalty from any adverse transport-cost differential. In general, the state's exports to Lower-48 markets will have lower prices at their point of origin than would otherwise have been the case. The most obvious impact of this kind is on the state government's natural resource royalties and severence taxes, which are keyed to netback prices.

The biggest cost impacts of the Jones Act will be on crude oil, Alaska's chief export commodity. The estimated reduction in the value of Alaska crude resulting from the Jones Act is $225 million per year.

Alaska North Slope Crude must be shipped pursuant to Jones Act regulations, which provide an exclusive monopoly to U.S. flag ships for all domestic intercity shipborne freight. The transportation of ANS crude accounts for more than half the business conducted by the Jones Act tanker fleet. It is contended that the majority of Jones Act tankers, however, are aging, inefficient, and uncompetitive with foreign flag vessels. The inefficiency stems from; very high labor costs; direct tax subsidies for construction and operating costs; indirect tax subsidies from wellhead-price manipulation by vertically integrated oil-and-tanker companies, allowing greater shipping costs to be offset against reduced wellhead netbacks.

Below is a comparison of transportation differentials between markets:

Valdez to Japan	$0.50
Persian Gulf to Japan	1.00
	$0.50
Valdez to Gulf Coast	$4.00*
Persian Gulf to Gulf Coast	2.00
	$2.00

*With Trans Panama Pipeline ($5.00 without)

As shown from these equations, there is an efficiency loss equaling $2.50 per barrel. Consumers everywhere lose because economic efficiency has been sacrificed resulting in higher delivered costs to both markets. While Valdez to Gulf Coast is just twice the distance from Valdez to Japan, transportation costs are 10 times as high. The bulk of this expense is directly attributable to Jones Act tanker costs, which do not compete with foreign-owned tankers in the U.S. trades.

SUMMARY OF FINDINGS ON THE JONES ACT FOR THE ALASKA STATEHOOD COMMISSION

The Alaska Statehood Commission prepared a report in January of 1982. In this report was the commissions conclusions on the Jones Act. Listed below are some of those conclusions:

> The costs of industry subsidies are not evenly distributed nationwide, but are borne by heavy users of Jones Act protected shipping.
>
> Many Alaskans have called the Jones Act a gross form of discrimination against Alaska.
>
> We (AK Statehood Commission) believe that if national security requires a protected merchant fleet, all the nation - not just the states heavily dependent on shipping - should support the cost.
>
> Transportation is Alaska's lifeline, and Alaska's growth needs may be severely restricted by the Jones Act because of its inflexibility and the unwillingness of interests that benefit from the act to allow even small changes.
>
> We find from our preliminary studies of the Jones Act... (that it) discriminates blatantly against Alaskans, helps drive up the cost of living here, and stifles economic development.

NOT JUST ALASKA

The Jones Act repeal is not just an Alaskan issue. Other states are adversely impacted as well. A recent article in the Seattle Post Intelligencer, (2-22-85) mentions that the Jones Act has failed in many respects:

> The U.S. fleet has diminished over several decades from 1,300 to 400 vessels. Commercial shipbuilding in the country has come to a virtual standstill.

These laws "keep Seattle from becoming a premier destination for cruise ships. Foreign-flag ships, unable to transport passengers between U.S. ports, dock instead in Vancouver, B.C., when cruising to and from Alaska." "A cruise ship exemption could inject millions of dollars into the local economy from passenger traffic through Seattle."

CONCLUSION

The largest adverse effects of the Jones Act for Alaska are likely to be in the future, as transportation costs for crude oil and other minerals can be an important factor determining the economic feasibility of developing specific deposits.

* Information for this committee report was taken from:
  More Perfect Union; A Final Report by the Alaska Statehood Commission. January 24, 1983.
  The Jones Act And Its Impact On The State Of Alaska; Volume I: Executive Summary and Volume II: Final Report. July, 1982.
  Alaska's Economy and The Merchant Marine Act of 1920; September, 1982.
  The Alaska Oil Export Ban; A briefing paper by the Legislative Budget and Audit Committee, April 23, 1983.

Seattle P.I., Fri. Feb. 22

Jones Act is debated here

By Scott Maier
P-I Reporter

The economic trade-offs of protectionism for the U.S. maritime fleet have created powerful cross-winds over Puget Sound.

Laws that restrict coastal trade to domestic ships give U.S. shipyards their last hope of reviving the building ofcommercial ships. Local shipyards envision the Pacific Northwest as becoming the nation's center for cruise ship construction.

These same protectionist laws, however, keep Seattle from becoming a premier destination for cruise ships. Foreign-flag ships, unable to transport passengers between U.S. ports, dock instead in Vancouver, B.C., when cruising to and from Alaska.

These competing interests were highlighted yesterday at a Chamber of Commerce forum held on the Jones Act, a 1920 law intended to ensure the United States maintains a viable maritime industry.

Some forum participants, however, noted that the Jones Act has failed in many respects.

The U.S. fleet has diminished over several decades from 1,300 to 400 vessels. Commercial shipbuilding in the country has come to a virtual standstill. The nation uses jets instead of ships to mobilize its troops in warfare.

"We are looking at a dinosaur 65 years old," noted Richard Smith, forum moderator.

Ken Fox, senior vice president of Tacoma Boatbuilding Co., said not to give up yet on domestic ship construction. Fox said his company plans to invest $1.5 million for facilities to build an 800-passenger ship on order.

If financing for the cruise ship comes through, construction will keep 60 engineers and 200 craftsmen busy for several years, Fox said. About $30 million of materials will be bought locally to build the ship.

This boost to the Puget Sound economy would be dashed if an exemption to the Jones Act was provided for cruise ships, Fox said.

But a cruise ship exemption could inject millions of dollars into the local economy from passenger traffic through Seattle, said Barbara Goen, marketing director for the Rembold Corp., which is building a $53 million cruise ship terminal at Pier 66.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SJR No. 11

Title: Urging the repeal of the Merchant Marine Act of 1920

Sponsor: Coghill

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected:

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	86,000	86,000	86,000	86,000	86,000	86,000

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Bill would recommend action that would increase the value of Alaska's crude oil production by reducing transportation costs to lower 48 markets. As a result tax and royalty collections would increase by an estimated $86 million per year.

Prepared By: Charles Logsdon Phone: 276-1363

Division: Petroleum Revenue Date: ~~March 7, 1985~~

Approved by Commissioner: Date: 3/11/85

Agency: Revenue

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

THE JONES ACT AND ITS IMPACT ON THE STATE OF ALASKA

VOLUME I: EXECUTIVE SUMMARY

Prepared for the

ALASKA STATEHOOD COMMISSION

by

SIMAT, HELLIESEN & EICHNER, INC.

July 1982

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BACKGROUND

The purpose of the study is to provide "an expert and objective analysis of the economic effects of the Merchant Marine Act of 1920 (The Jones Act) on the economy of Alaska," considering:

- The costs which the Act adds to the ultimate price of important classes of freight coming to and leaving Alaska;
- The effect of the Act on the cost and standard of living in Alaska;
- The effect the Act has upon further development and expansion of shipping-dependent industries;
- The composition of the U.S.-flag Jones Act fleet;
- The effects higher shipping costs have on state revenues;
- Other important effects the Act may have upon Alaska's economy, resources, and future development.

The Jones Act

The term "Jones Act" refers to Section 27 of the Merchant Marine Act of 1920, which states:

> No merchandise shall be transported by water, or by land and water,....between points in the U.S.....either directly or via a foreign port or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the U.S. and owned by persons who are citizens of the U.S.....

Because Section 27 restricts U.S. domestic waterborne trade to vessels of U.S. construction, U.S. registration, and U.S. ownership, the Jones Act has come to be referred to as the U.S. cabotage law. Cabotage refers to the reservation of a nation's domestic cargo to ships of that nation's fleet. It could be described as a form of protectionism applied to transportation services. In fact, the purpose of the Merchant Marine Act of 1920 is stated clearly in the preamble of the Act:

> That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States....

Factors Leading Up to Passage of the Act

To understand why the Merchant Marine Act of 1920 was enacted, it is first necessary to review the U.S. experience in World War I.

At the beginning of World War I in 1914, the British maintained the world's largest merchant fleet with over 8,500 vessels. The remaining protagonists, together with Britain, accounted for over 14,000 vessels or nearly 60 percent of the world fleet and over 65 percent of the world's tonnage.

As the warring nations recalled their merchant fleets to military service or lost them in action on the high seas, the U.S. began to experience a crippling scarcity of vessels for its on-going commerce. Commodities and goods were left literally rotting on the piers. A major shipbuilding program to provide the country with the ships necessary to carry men and materials to Europe for an extended war was undertaken. However, only a few vessels were delivered before the armistice ending World War I was declared in November of 1918.

The experience of World War I indicated to U.S. lawmakers the dangers of relying on foreign-flag fleets. In the summer of 1919, the Senate Commerce Committee chaired by Wesley L. Jones, Republican from the State of Washington (1909 to 1932), began working on a revision of the national maritime laws. Under Jones' direction the Merchant Marine Act of 1920 was passed into law.

EXCEPTIONS TO THE ACT

A variety of circumstances and conditions have resulted in differing exceptions to the Jones Act for some territories and states. The third and fourth proviso exceptions to Section 27 of the Merchant Marine Act of 1920 are examples of exceptions that apply to Alaska. For practical purposes, the third proviso allows the use of foreign owned, registered, and built ships for carrying cargoes between Alaska and the lower 48 states via Canadian ports so long as rail movement is involved, while the fourth proviso applies to movements on the Yukon River.

There are other exceptions. For instance, trade with the U.S. island possessions of Guam, Tutuila (American Samoa), Wake, Midway and Kingman Reef may be carried on foreign built U.S.-flag vessels.

Of direct interest to Alaska are the conditions that govern trade to the Virgin Islands. For historical reasons, the Virgin Islands are exempt from the Jones Act. As a result, Alaskan crude oil can be shipped out of Alaska on foreign-flag vessels to a refinery in the Virgin Islands. The product can then be shipped foreign-flag to the U.S. mainland. Data compiled by the Maritime Administration indicate that this route accounts for about 5 percent to 15 percent of Alaskan oil shipments.

THE JONES ACT FLEET

The Jones Act fleet consists of those vessels eligible to engage in the coastwise trade. Generally, that includes any vessels built in the U.S., under

U.S. ownership, registered under the laws of the U.S., and not restricted because of subsidy status. Vessels that have received Construction. Differential Subsidy (CDS) or are receiving Operating Differential Subsidy (ODS) from the Maritime Administration cannot serve the cabotage or coastwise trade without special waivers.

Currently, the Jones Act fleet accounts for 60.7 percent of U.S.-flag tonnage. Most of these vessels are tankers; in that category, 86.8 percent of all vessels are eligible for coastwise trading. Data appear in Table 1.

The Alaska trade fleet of six[1/] dry cargo freighters and 88 tankers constitutes 28.8 percent of the Jones Act fleet and 16 percent of the active U.S.-flag privately owned fleet.

Alaska trade freighters constitute only 8.6 percent of the total Jones Act eligible freighters. The containerships are smaller than those generally found in the Jones Act fleet and the Ro/Ro ships are larger. Among tankers, the Alaska trade fleet is made up of 34.4 percent of the total Jones Act fleet, but has 54 percent of the carrying capacity. This is because tankers in Alaska service are larger than the fleet average. Data appear in Table 2.

ALASKA WATERBORNE TRADE

Alaska's waterborne commerce is dominated by crude oil shipments from Valdez which accounted for 89.5 percent of Alaska's total port activity in 1979. When crude oil shipments are subtracted from the total, remaining waterborne commerce is 34.5 percent foreign imports and exports, 47.5 percent coastwise receipts and shipments, and 18 percent internal receipts and shipments. Data illustrating the relationship of total foreign, coastwise, and internal movement of the top ten Alaska ports is shown in Figure 1. Excluding crude oil shipments, the activity of the top ten Alaska ports includes approximately 60 percent of the state's total waterborne commerce.

Coastwise dry cargo shipments out of Alaska move primarily to the Pacific Northwest (Seattle and Tacoma). Of the total, 51.2 percent move to the Pacific Northwest, California receives 15.9 percent, and internal shipments within Alaska account for the remaining 32.9 percent.

Tanker movements from Alaska are destined primarily for refineries in California. Panama, the Pacific Northwest, and Hawaii also receive varying amounts of Alaska crude, based on the 1979 data.

Coastwise dry cargo shipments to Alaska originate to a large degree in the Pacific Northwest (77.3 percent). A very high proportion of the cargo moving to and from Alaska's smaller ports is transshipped via the major ports.

1/ Includes Sea-Land and TOTE; excludes barge services.

TABLE 1

PROPORTION OF JONES ACT VESSELS
TO TOTAL U.S.-FLAG VESSELS

		Number of Vessels			DWT (000)		
		Jones Act	Total	%	Jones Act	Total	%
A.	DRY CARGO	70	280	25.0	1,119.0	5,123.7	21.8
B.	TANKERS	256	295	86.8	11,950.3	16,409.2	72.8
C.	TOTAL	326	575	56.7	13,069.3	21,532.9	60.7

TABLE 2

U.S.-FLAG PRIVATELY-OWNED, SELF-PROPELLED VESSELS
OF 1,000 GROSS TONS OR MORE
January 1, 1982

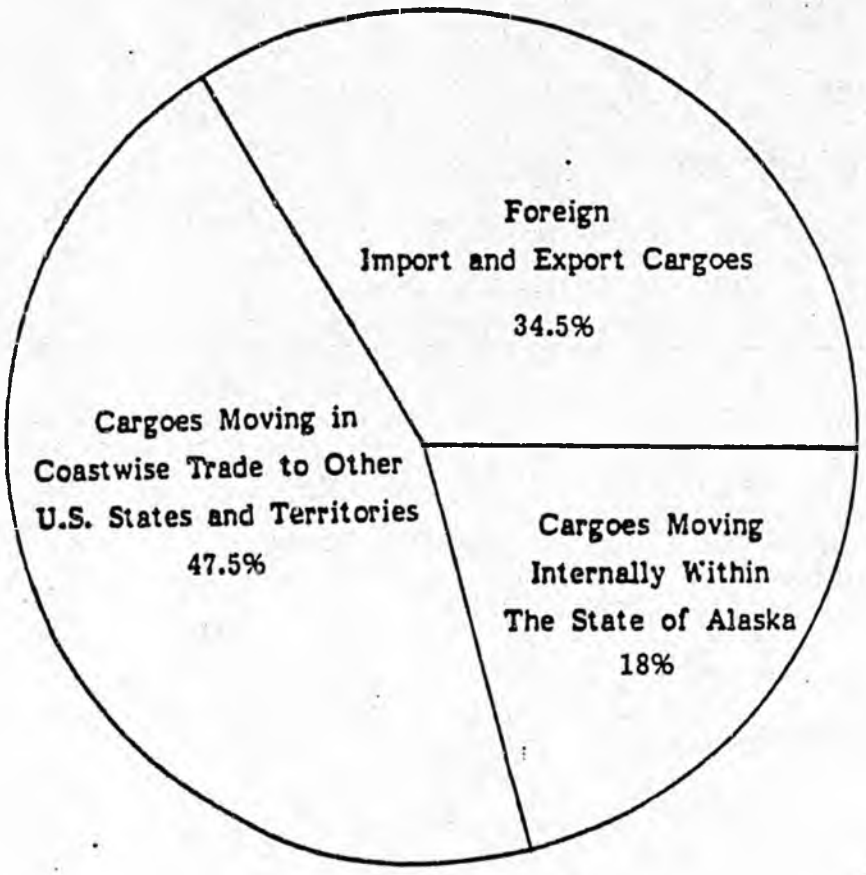
		Serving Alaska	Total Jones Act	% Serving Alaska	Serving Alaska	Total Jones Act	% Serving Alaska
A.	FREIGHTERS	6	70	8.6	64.7	1,119.0	5.8
B.	TANKERS	88	256	34.4	6,513.8	11,950.3	54.5
C.	TOTAL JONES ACT FLEET	94	326	28.8	6,578.5	13,069.3	50.3

1/ Privately-owned, self-propelled vessels of 1,000 gross tons or more - January 1, 1982

Source: U.S. Maritime Administration

FIGURE 1

CARGO ACTIVITY OF CORPS OF ENGINEERS TOP 10 ALASKA PORTS
(EXCLUDING CRUDE OIL AT VALDEZ)
BASED ON TONS OF CARGO SHIPPED AND RECEIVED
1979



Tanker cargo being received in Alaska, consisting of petroleum products for consumption in the state, flows almost exclusively f.om California; a high percentage is redistributed from larger to smaller Alaska ports.

Anchorage is the primary receiving port for consumer products, building materials, and food. Whittier also serves the Anchorage market with the same categories of cargo. Most of the high volume cargoes (commodities registering annual volumes of 10,000 tons or more) moving into Alaskan ports other than Anchorage and Whittier, consist of petroleum products.

ALASKAN SHIPPING COSTS

The Impact of Costs on Rates

The cost of shipping in the Alaska trade, and the cost premium caused by the Jones Act, were estimated by comparing the cost of present vessel services with the probable cost of those services were they operated with foreign-flag ships. Although it is true that the observed impact on customers is conveyed through shipping rates, not underlying shipping costs, and that competition and value of service, or "what the traffic will bear," establish freight rates for each commodity in the short run, costs set the limits for freight rates in the long term. In other words, although cost and rate may not be the same or even similar for any given commodity at any given time, in the long run (and/or over a mixture of commodities carried in the same service), rates are, in fact, cost determined. Hence, the cost-based method is a valid approach for determining the relative impact of differing governmental policies which affect the long term character of a shipping market.

Shipping Costs

Ocean shipping costs can generally be divided into the following categories:

Capital
Manning and Subsistence
Fuel
Maintenance and Repair (M&R)
Supplies and Equipment
Insurance
Cargo Handling
Other Port Costs
Agency, brokerage, and Commission
Waterway Tolls and Pilot Fees
Corporate Overhead

There are exceptions, however. For example, tanker movements seldom involve meaningful cargo handling costs, because this function is provided by shipboard pumps, the cost of which is already part of other cost categories. Other types of shipping have other costs—e.g., container ownership in the case of container systems.

U.S.-flag Cost Disadvantages

Among the categories listed, not all are areas in which there are cost differences between U.S.- and foreign-flag vessels. The major areas in which U.S.-flag vessels are at a disadvantage are:

- Crew wages — Generally, U.S. manning costs are higher, due in part to higher rates of compensation and in many cases, higher manning levels.

- Insurance — Insurance is usually higher because of higher U.S. vessel repair costs and typically higher levels of medical care, workmen's compensation, etc.

- Vessel acquisition — Vessel acquisition costs are higher because of higher U.S. construction costs. In addition, delivery schedules in the U.S. are said to be much slower, introducing a cost of delay. The requirement for U.S. subsidized operators to purchase U.S.-built vessels has been temporarily waived, allowing U.S.-flag carriers to buy vessels overseas at cheaper prices. This does not apply in the domestic trades, however.

- Vessel Maintenance and Repair — Vessel M&R is higher due to the necessity for making repairs in the U.S.

- Overhead — Overhead is sometimes higher due to higher general levels of salary for U.S. headquarters office staffs, to the extra staff required for government compliance activity, and the fact that foreign lines use agents in the U.S.

- Fuel Costs — In most cases U.S. fuel costs are higher because steam turbine vessels are employed which have higher fuel consumption rates than foreign-flag vessels that traditionally use slow speed diesel engines.

U.S.- vs. Foreign-flag Shipping Comparisons

The SH&E Required Freight Rate model was used to calculate costs of U.S. and hypothetical foreign-flag vessels in a representative sample of Alaskan service, focusing on cost differences in the categories set out above. Summary results from four runs appear in Tables 3-6, as follows:

Table 3	-	Container vessel: Seattle-Anchorage
Table 4	-	Roll on/Roll off vessel; Tacoma-Anchorage
Table 5	-	Crude Oil Tanker; Valdez-Los Angeles
Table 6	-	Petroleum Products Tanker; California to various Alaskan ports.

TABLE 3

SUMMARY OF U.S.- AND FOREIGN-FLAG COSTS FOR CONTAINERSHIP OPERATIONS ANCHORAGE/SEATTLE

U.S.-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TEU
MANNING AND SUBSISTENCE	70,837.14	75.95
FUEL	63,448.54	68.22
M+R	10,285.71	11.06
SUPPLIES AND EQUIPMENT	1,182.86	1.27
INSURANCE	8,485.71	9.12
CAPITAL COSTS	30,857.14	33.18
STEVEDORING COSTS	87,750.00	94.35
TERMINAL COSTS	241,800.00	260.00
PORT COSTS	60,000.00	64.52
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CONTAINER COSTS	76,371.43	82.12
POSITIONING COSTS	143,000.00	153.76
FEEDER TRANSPORTATION COSTS	0.00	0.00
AGENCY, BROKERAGE, AND COMMISSION	18,600.00	20.00
CORPORATE OVERHEAD	169,356.13	182.10
TOTAL	981,774.66	1,055.67

FOREIGN-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TEU
MANNING AND SUBSISTENCE	41,040.00	44.13
FUEL	45,215.96	48.62
M+R	9,000.00	9.68
SUPPLIES AND EQUIPMENT	1,182.86	1.27
INSURANCE	4,937.14	5.31
CAPITAL COSTS	15,428.57	16.59
STEVEDORING COSTS	87,750.00	94.35
TERMINAL COSTS	241,800.00	260.00
PORT COSTS	60,000.00	64.52
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CONTAINER COSTS	76,371.43	82.12
POSITIONING COSTS	143,000.00	153.76
FEEDER TRANSPORTATION COSTS	0.00	0.00
AGENCY, BROKERAGE, AND COMMISSION	18,600.00	20.00
CORPORATE OVERHEAD	106,332.28	114.34
TOTAL	850,858.24	914.69

TABLE 4

SUMMARY OF U.S.- AND FOREIGN-FLAG COSTS FOR RO/RO SHIP OPERATIONS ANCHORAGE/SEATTLE

U.S.-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TEU
MANNING AND SUBSISTENCE	54,940.00	49.50
FUEL	80,303.27	72.35
M+R	5,000.00	4.50
SUPPLIES AND EQUIPMENT	900.00	0.81
INSURANCE	11,600.00	10.45
CAPITAL COSTS	72,000.00	64.86
STEVEDORING COSTS	76,500.00	68.92
TERMINAL COSTS	288,600.00	260.00
PORT COSTS	44,000.00	39.64
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CONTAINER COSTS	36,382.50	32.78
POSITIONING COSTS	176,000.00	158.56
FEEDER TRANSPORTATION COSTS	0.00	0.00
AGENCY, BROKERAGE, AND COMMISSION	24,200.00	21.80
CORPORATE OVERHEAD	153,604.55	138.38
TOTAL	1,024,030.32	922.55

FOREIGN-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TEU
MANNING AND SUBSISTENCE	31,920.00	28.76
FUEL	57,906.61	52.17
M+R	4,000.00	3.60
SUPPLIES AND EQUIPMENT	900.00	0.81
INSURANCE	6,240.00	5.62
CAPITAL COSTS	36,000.00	32.43
STEVEDORING COSTS	76,500.00	68.92
TERMINAL COSTS	288,600.00	260.00
PORT COSTS	44,000.00	39.64
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CONTAINER COSTS	36,382.50	32.78
POSITIONING COSTS	176,000.00	158.56
FEEDER TRANSPORTATION COSTS	0.00	0.00
AGENCY, BROKERAGE, AND COMMISSION	24,200.00	21.80
CORPORATE OVERHEAD	106,724.88	96.15
TOTAL	889,373.98	801.24

TABLE 5

SUMMARY OF U.S.- AND FOREIGN-FLAG COSTS
FOR VLCC OPERATIONS
VALDEZ/LOS ANGELES

U.S.-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TON
CAPITAL COSTS	224,588.74	1.87
MANNING AND SUBSISTENCE	86,990.71	0.72
FUEL	227,090.91	1.89
M+R	11,223.44	0.09
SUPPLIES AND EQUIPMENT	3,743.15	0.03
INSURANCE	23,956.13	0.20
CARGO HANDLING	0.00	0.00
OTHER PORT COSTS	140,000.00	1.17
AGENCY, BROKERAGE, AND COMMISSION	0.00	0.00
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CORPORATE OVERHEAD	0.00	0.00
TOTAL	717,599.08	5.98

FOREIGN-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TON
CAPITAL COSTS	112,294.37	0.94
MANNING AND SUBSISTENCE	46,714.46	0.39
FUEL	227,090.91	1.89
M+R	7,486.29	0.06
SUPPLIES AND EQUIPMENT	3,743.15	0.03
INSURANCE	13,924.50	0.12
CARGO HANDLING	0.00	0.00
OTHER PORT COSTS	140,000.00	1.17
AGENCY, BROKERAGE, AND COMMISSION	0.00	0.00
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CORPORATE OVERHEAD	0.00	0.00
TOTAL	551,253.68	4.59

TABLE 6

SUMMARY OF U.S.- AND FOREIGN-FLAG COSTS
FOR PRODUCT TANKER OPERATIONS
LOS ANGELES/ANCHORAGE

U.S.-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TON
CAPITAL COSTS	102,285.71	2.92
MANNING AND SUBSISTENCE	131,266.67	3.75
FUEL	154,833.33	4.42
M+R	4,546.03	0.13
SUPPLIES AND EQUIPMENT	11,365.08	0.32
INSURANCE	22,730.16	0.65
CARGO HANDLING	0.00	0.00
OTHER PORT COSTS	21,600.00	0.62
AGENCY, BROKERAGE, AND COMMISSION	0.00	0.00
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CORPORATE OVERHEAD	0.00	0.00
TOTAL	448,626.98	12.82

FOREIGN-FLAG

EXPENSE CATEGORY	COST PER VOYAGE	COST PER TON
CAPITAL COSTS	51,142.86	1.46
MANNING AND SUBSISTENCE	66,826.67	1.91
FUEL	98,250.00	2.81
M+R	3,977.78	0.11
SUPPLIES AND EQUIPMENT	11,365.08	0.32
INSURANCE	13,979.05	0.40
CARGO HANDLING	0.00	0.00
OTHER PORT COSTS	12,000.00	0.34
AGENCY, BROKERAGE, AND COMMISSION	0.00	0.00
WATERWAY TOLLS AND PILOT FEES	0.00	0.00
CORPORATE OVERHEAD	0.00	0.00
TOTAL	257,541.43	7.36

These summary runs indicate that the relative impact of the Jones Act on Alaskan commerce varies with specific circumstances. For example, in liner trades[1/] (represented by container and Ro/Ro vessels) a significant part of the total cost relates to containers, cargo handling, and other cargo-related functions. These are not affected by the Jones Act. Hence, the relative cost difference between U.S.- and foreign-flag vessel service is less than, say, the tanker trades, where Jones Act-affected cost categories make up a much larger share of the total cost.

THE IMPACT OF SHIPPING COSTS DUE TO THE JONES ACT

Open Questions About the Jones Act

There are a number of unanswered questions relating to changing or eliminating the Jones Act. They include:

- Is it preferable to remove all provisions of the Act or a selected subset?
- What is the likely response by foreign shipping interests to a relaxation of the coastwise laws? On what terms would foreign owners and operators be interested in providing service?
- What immigration problems, if any, would result from employing foreign seamen in the Alaska coastwise trade?
- If foreign-flag operations can be introduced at great savings, what has impeded foreign-flag vessels from being used more extensively to carry coastwise cargoes via Canadian ports?
- What will be the U.S. labor reaction to the introduction of foreign ships and foreign crews and what secondary effect might this have on Alaska?

The Impact of The Act on Liner Services

The total U.S.-flag premium cost for liner services in the Alaskan trade (i.e., services which transport package cargo such as consumer goods, automobiles, machinery, etc.) is about $41 million per year, as follows:

	Container	Ro/Ro	Tug Barges
Cost per trip - U.S.-flag	$981,774	$1,024,030	$195,217
Cost per trip - foreign-flag	850,658	889,373	158,023
Net	$131,116	$134,657	$37,188
Voyages per year	X 155	X 100	X 200
	$20,322,980	$13,403,700	$7,437,600
		GRAND TOTAL	$41,226,280

1/ "Liner trades" refers to all ocean freighter services which handle packaged and piece goods, in contrast to "bulk trades" which handle petroleum, grain, ore, and other bulk commodities.

The cost penalty applies to commodities as a group. How it may be distributed to any specific commodity or group of commodities is uncertain; if any one item is judged to pay less premium, then something else must automatically be said to pay more, and the net result to the people of Alaska is essentially the same.

With regard to the relative impact of the Act on inbound versus outbound commodities, the analysis indicates it is northbound liner commodities which are most likely absorbing the cost premium, meaning the direct (or initial) impact of the Jones Act is falling more heavily on Alaskan receivers and consumers rather than on Alaskan businesses shipping their products southbound.

The Impact of the Act on the Crude Oil Trades

With regard to crude oil, the RFR analyses indicated the differential between U.S.- and foreign-flag tanker operations in the Valdez to Los Angeles service is $1.39 per long ton. For shipments from Valdez, transshipped at the Panama Canal and sent onward to the U.S. Gulf Coast, the differential would be $5.67.

Assuming an average annual U.S.-flag shipment rate of 80 million tons per year, with two-thirds moving to California and one-third to the Gulf Coast via Panama, the annual cost penalty ultimately being borne by Alaska through the netback mechanism is $225 million. Clearly, the Jones Act's major impact on Alaska is in the sphere of crude oil shipments.

MAJOR CONCLUSIONS

The Jones Act and Alaska's Liner Service

- Commerce of the State of Alaska moving in liner services, mostly consumer goods and business supplies, is absorbing an aggregate annual cost of approximately $41 million because of the restrictions imposed by the Merchant Marine Act of 1920.

- Due to the inherent directional imbalance of Alaska cargoes, the incidence of higher costs and rates is having the greatest impact on northbound cargoes.

- In the high-volume Anchorage-Pacific Northwest trade, the state may have a potential for reducing rates by stimulating backhaul cargoes. The extra cost of transportation for such cargoes would be low.

- In modern containerized-type operations, the bulk of the costs are not flag related. Consequently, the scope for cost and rate reductions as a result of introduction of foreign-flag services is not as great proportionately as in other sectors of the merchant marine.

The Jones Act and Alaska's Crude Oil Transportation Service

- Alaska's net return from its oil sales is being reduced due to the additional costs imposed by the Jones Act, which, based on current conditions, are approximately $225 million per year.

Current Use of Exemptions from the Act

- The State of Alaska has some relief available from the Merchant Marine Act of 1920. This relief is currently not being exploited. Non-use of this loophole does indicate that the cost savings ultimately available from use of foreign-flag vessels may not be as great as has sometimes been supposed.

Changes in U.S. Maritime Policy

- In view of the Administration's apparent position to uphold the Jones Act, efforts to have it rescinded in toto will be difficult in the immediate future.

- Given the recent lifting of prohibitions on overseas-built vessels for U.S. subsidized trades, the State of Alaska may wish to consider an effort to obtain a waiver of the requirement to use vessels built in the U.S. and place less emphasis on changing the remainder of the Jones Act.

- The State of Alaska should develop a coordinated, thoroughly-considered Jones Act strategy that seeks reasonable and politically attainable concessions in areas where the cost impacts are most meaningful. This approach has the potential for success, and can be instrumental in reducing the impact of the Jones Act on the State's economy.

Identical letters hand delivered to Senator Stevens and Senator Murkowski on February 22, 1985.

February 21, 1985

The Honorable Don Young
U.S. House of Representatives
2331 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Congressman Young:

As you know, on November 6, 1984 Alaska voters approved a ballot measure (Initiative No. 83-02) which directed me to "seek repeal of federal statutes (the Jones Act) which require the use of United States vessels to ship goods between United States ports." I am writing to ask for your assistance in seeking this result.

The application of the Jones Act to Alaska has both increased the costs of all domestic freight shipped to and from Alaska and prevented the utilization of the most efficient available transportation options. By imposing higher transportation costs on domestic commerce, the Jones Act also discourages the development of new petroleum and mineral deposits in Alaska.

According to the Alaska Statehood Commission, the federal government loses from $100-400 million dollars per year in oil revenues as a result of the higher transportation charges the Jones Act imposes on the movement of Alaska crude oil. The revenue loss occurs because transportation charges are deducted from the value of Alaska oil prior to the calculation of taxes. By reducing this value, the higher transportation charges also impede the development of marginal oil fields on Alaska's high cost North Slope.

Another serious problem with the application of the Jones Act to Alaska arises from the fact that it results in the strict separation of domestic and foreign waterborne commerce. Alaska could be economically served by vessels travelling from the U.S. Pacific Coast to the Orient. Western Alaska communities, with their severe employment

problems, would particularly benefit from the ability to combine their domestic trade with this foreign service. However, the vessels currently providing international service are prohibited from stopping in Alaska by the Jones Act. Promising fishing ventures have been hampered by these restrictions.

Studies of the cost of the Jones Act to Alaska consumers have determined that approximately $40 million dollars a year are added to the building materials, business supplies, and consumer goods shipped to Alaska. Given the existing high costs of living and working in Alaska, this additional burden is especially difficult for Alaskans to endure.

We understand the importance of the United States' cabotage laws and the necessity for a strong domestic merchant marine industry. However, Alaska is unfairly shouldering this goal by supporting about one-third of the entire Jones Act fleet, with the attendant effects of reduced resource development and higher costs. Nor has the Jones Act proved effective in stemming the decline of the U.S. merchant marine industry, which by relying on protectionism has lost business to other transportation modes and more efficient foreign ships and operators.

We realize that in the past Congress has shown no inclination to repeal the Jones Act. While recognizing the current situation, we would like to work closely with you in pursuing the objectives of the initiative. Toward this end, I will be in Washington, D.C. in late February and would like to discuss possible strategies with you at that time.

Thank you for your consideration of this important matter.

Sincerely,

Bill Sheffield
Governor

bcc: Attorney General Norman Gorsuch, Dept. of Law
Commissioner Loren Lounsbury, DCED
Commissioner Richard Knapp, DOTPF

MERCHANT MARINE MISCELLANEOUS—PART 1

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

MARAD AUTHORIZATION, FISCAL YEAR 1984, AND OVERSIGHT (H.R. 2114)
MARCH 2, 1983

LIBERTY SHIP "JOHN W. BROWN" TRANSFER (H.R. 1556)
MARCH 11, 1983—NEW YORK, N.Y.

REPEAL OF THE THIRD PROVISO (H.R. 1076)
MARCH 18, 1983

Serial No. 98-7

Printed for the use of the
Committee on Merchant Marine and Fisheries

strong American merchant marine fleet, and tugboat capacity, barge capacity, and the cargo ships themselves. It is the only way we can develop the State of Alaska with the dependable source of transportation that we need.

That is the reason I am a cosponsor of the bill. I want to congratulate you. This is a regional problem, a regional challenge, and hopefully through these hearings we will be able to solve that challenge and protect the great State of Alaska and the great State of Washington.

Thank you, Mr. Chairman.

Mr. BONKER. Thank you.

Mr. Bateman, do you have any opening comments?

Mr. BATEMAN. Thank you, Mr. Chairman.

I don't have a statement, I don't feel compelled to make one now. I congratulate those of you on your statements in support of a strong merchant marine and to enhance that.

Mr. BONKER. Thank you.

I would like to place in the record the comments from the ICC, a statement by Mr. Thomas Garside, a letter and accompanying fact sheets from Simon Palmer, Marine Charter Co., and the general manager for Navigation, Inc., and a memorandum from Totem Ocean Trailer Express, Inc.

[The ICC comments, Garside statement, Palmer letter, and Totem memorandum follow:]

PREPARED S[illegible]TEMENT OF THE INTERSTATE COMMERCE COMMISSION ON H.R. 1076

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to comment on H.R. 1076, a bill "To strengthen the domestic water borne commerce of the United States." This bill would amend Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883) by deleting the third proviso thereof.

In general, Section 27 requires that no merchandise may be transported by water, or by land and water between points in the United States, either directly or via a foreign port, in any vessel other than in a vessel built in the United States and owned by U.S. citizens. However, under the third proviso, Section 27 does not apply to merchandise transported between points in the continental U.S., including Alaska, over through routes recognized by the ICC, for which rate tariffs have been filed with the Commission, when such routes are in part over Canadian rail lines and their own or other connecting water facilities.

Thus, under existing law, if a rail carrier has a through route from a U.S. point over Canadian rail lines to a Canadian port and then to a U.S. point, and a tariff on file with the ICC for that route, a non-U.S. owned vessel could be used for the water segment.

During recent years, little use has been made of the third proviso. Formerly, the provision was used in connection with rail-car barges, a service no longer extensively utilized. In a cursory check of tariffs on file with the Commission,[1] the only third proviso filing located related to a movement from Texas to Alaska via Hill & Hill Truck Lines, Inc., Canadian Pacific, and Northern Transportation Co., Ltd., a Canadian water carrier. A copy of that filing is attached for information.

Under the implementing rules promulgated by the Department of the Treasury the ocean transportation portion of the service may not be performed by a foreign flag or otherwise non-coastwise-qualified vessel under the third proviso of 46 U.S.C § 883, absent an appropriate ICC tariff.

Deletion of the third proviso, it would appear, could have beneficial and detrimental effects. On the one hand, its deletion would presumably assure U.S. jobs and revenues for U.S. owned water carriers. On the other hand, its retention and utilization could conceivably increase competition and ultimately result in better service and or lower prices to the shipping public. The latter approach would appear to be consistent with the policy thrust of the major reform legislation affecting the jurisdiction of the Commission. However, we recognize that special considerations may be involved with regard to U.S. flag service. Accordingly, we believe that this is a policy decision which should be determined by the Congress, and thus take no position on the merits of H.R. 1076.

[1] It should be noted that our tariffs are not maintained in a manner which segregated third proviso filings.

Marine Chartering Co., Inc.

February 28, 1983

We believe the attached shows:

- Present coastal shipping capacity is only just adequate for Alaska's trade.

- The forecast doubling of Alaska's trade requires 3 million tons additional annual shipping capacity by 1990.

- Alaska Navigation's proposed service will meet some of this demand without depriving present operators of tonnage or causing any loss of jobs.

This letter and attachments has been sent to local, trade, State and Federal leaders whose support is earnestly requested. With a steady increase in trade volumes, Alaska Navigation's modest plans can harm no one but will only benefit Alaska, its trade and people who depend so much on efficient, competitively priced transportation.

As Managers of Alaska Navigation, Inc, we shall promptly respond to questions or requests for further information on the proposed service.

Very Truly Yours,

S.N.I. Palmer
General Managers for
Alaska Navigation, Inc.

for info.

SUMMARY

ALASKA NAVIGATION, INC. - PROPOSED SERVICE -

TRADE (Total Alaska)

Excluding bulk petroleum, grains, lumber, chemicals, etc.

Official Statistics:

1974	1.55 million tons annually	
1982	3.08 million tons annually	+ 109%
1990	6.45 million tons annually	

Therefore:

- A.N.I. will carry maximum 5.6% of present trade.
- Ships/barges now full will remain full.
- All present labour will remain fully employed.
- A shortage of capacity of 3 million tons annually by 1990 if more ships are not put into the trade.

SEWARD

A.N.I. service will promote port development.

Full time employment for about 23 men plus ancillary services (17% unemployment in the city).

ALASKA RAILROAD

$10 - 12 million additional gross revenue.

No capital expenditure required.

Will use existing rolling stock and manpower.

CONCLUSION

3.08 million tons 1982 to 6.45 million tons 1990 is officially forecast:

- Present shipping capacity will be insufficient.
- All operators/work forces now involved will remain fully employed.
- Alaska will need maximum shipping options.
- A.N.I. service should be actively supported by all who are concerned for Alaska's future.

ALASKA NAVIGATION, INC. - PROPOSED SERVICE

PREAMBLE

The following summary of present and forecast trade with Alaska from Canada and the contiguous United States, current shipping operators' service/capacity and Alaska Navigation's planned service, etc., etc. is presented to rectify some of the gross exaggerations and misinterpretations of the above operation put about by the incumbent carriers and other self interest groups.

Examination of our competitors' comments shows minimal reference to fact and no appreciation of the advantages to the people of Alaska (who ultimately pay the bill) of Alaska Navigation's proposed service.

INTRODUCTION

Alaska Navigation, Inc. (A.N.I.) with its registered, main office at Room 204, 1813 East First Avenue, Anchorage, Alaska 99501 was incorporated privately on September 3, 1982 expressely to operate shipping services into/out of the State of Alaska.

The incorporation was the result of many months' research which showed a present severe lack of peak season shipping capacity, a year-round general lack of ship (as opposed to barge) space and a critical lack of shipping capacity in future should trade continue to increase as projected.

In short there is an urgent demand for another ship operator.

The following are the facts of the situation

1.0. The Trade

1.1. Volume

Statistics and forecasts of the U.S. Maritime Commission, U.S. Army Corps of Engineers and Williams - Kuebelbeck and Associates (attached Addendum A) show the following:

In short tons the annual trade with Alaska as

	(a) Total	(b) Containerizable
1974	23.47 m.	1.55 m.
1978	56.42 m.	1.98 m.
1982	90.00 m.	3.08 m.
1990 (forecast)	112.00 m.	6.45 m.

(a) The Total includes (b) plus logs, woodchips, pulp, minerals, chemicals, crude petroleum, etc.

(b) Includes farm products, refrigerated goods, groceries, building products, machinery, transport equipment, commodities N.E.C.

NOTE: An actual doubling of annual tonnage in the containerizable category was experienced 1974 - 1982 and is projected to increase 1982 - 1990 by 109% or from 3.08 to 6.45 million tons.

This is a most significant statistic which proves that:

- Present shipping capacity will be insufficient in future.
- Present carriers will remain full therefore
- No decline in cargo volumes means no loss of jobs due to A.N.I. service.

The fact is that a doubling of cargo volumes in the next eight years cannot be accommodated by present carriers who will consequently sail with full ships and total employment will thus be assured for those handling this tonnage at present.

1.2. Anchorage/Whittier Shipments only in 1982

Sealand/Tote by ship	1,155,220.7 S/Tons	(47.8%)
Anchorage barge traffic	524,998.0 S/Tons	(21.7%)
Whittier railcar barge traffic	736,380.0 S/Tons	(30.5%)
	2,416,598.7 S/Tons	

(Note - These are approximate figures)

Two related important facts should be noted

(a) The proliferation of barge operations (52% of cargo) confirms the inadequacy of fast-transit ship capacity. Admittedly some low value cargo happily moves via slow railcar - barge services, but nowhere else in the world is ship capacity so inadequate as to compel general cargo shippers to transport valuable merchandise by barge 1,200 plus miles in such frequently adverse weather conditions.

(b) A.N.I.'s projected maximum weekly tonnage movement is about 3,300 short tons or a mere 5.6% of total tonnage currently moving and only 2.7% of the projected total in 1990.

1.3. Trade Summary

Minding there are some distortions due to seasonal cargo and shipping capacity fluctuations, it is self-evident that over the next eight years shipping services to Alaska will offer increasingly inadequate capacity for the projected volume of trade. By 1990 current shipping capacity will fall short of the trade demand by about 3 million short tons. This should be of concern to those working for the best interests of Alaska. Though Alaska Navigation's 172,000 tons annual movement is a minimal contribution to the projected demand for space, the service should nonetheless be encouraged for the sake of Alaska's trade.

2.0. Alaska Navigation's Service

Primarily because there are no suitable, economic U.S. built flag, etc. ships available, the company decided to operate, at least initially, with time-chartered foreign ships, thus necessitating use of the third proviso of the Jones Act (46 U.S.C. paragraph 883) as indeed does the Canadian National Railroad's Aquatrain service out of Prince Rupert.

2.1. Tariff

A.N.I. requested the Alaska Railroad to provide transportation within Alaska and from/to the port of discharge. A.R.R. decided to publish the necessary tariff (as they currently do for Alaska Hydrotrain and Aquatrain) which was subsequently withdrawn under instructions from (then) Secretary of Transportation Drew Lewis. The I.C.C. had accepted the tariff for Special Authority permitting its early validity.

A.N.I. plans to participate in further filings acceptable to the I.C.C.

A.N.I. is also aware of Bill S. 3000 introduced by Senator Slade Gorton of the State of Washington shortly after the incorporation of Alaska Navigation. This bill is indeed directed specifically against A.N.I.'s service as it proposes "grandfathering" all services in existence prior to September 1, 1982.

In view of the evident current and critical future requirement for additional shipping capacity on the Alaskan trade, it is to be hoped that those concerned with Alaska's future will ensure that Alaska's shipping options remain open and that the trade is not diverted totally into the hands of the major incumbent operators.

Once a tariff becomes effective A.N.I. will resume negotiations for the ships which it regrettably had to return to the Owners when the A.R.R. tariff was withdrawn.

Addendum B evidences the conclusion of these negotiations and thereby disproves allegations that A.N.I. sought to mislead I.C.C. by its request for Special Tariff Authority. Fortunately in the currently depressed shipping market suitable ships are available.

2.2. The Alaska Railroad

A.N.I. will utilize A.R.R. transportation services into/out of Seward. The A.R.R. provides both tariff and transportation services to Alaska Hydrotrain and Aquatrain at Whittier, Alaska at present.

A.N.I. projects gross revenues to A.R.R. from its Seward service of $10 - 12 m. annually with no capital expenditure being necessary.

(Opponents of A.N.I.'s service have argued that this additional revenue (much of it net as existing rolling stock only will be utilized) will in some way make A.R.R. a more expensive acquisition by the State of Alaska under the proposed transfer from Federal ownership!)

2.3. Seward

Currently the city has a 17% unemployment rate.

A.N.I. service will provide approximately 36,000 man/hours work annually for 23 men or full-time employment at 1,565 man/hours per man/year.

In view of the job protection afforded longshoremen and related services in Anchorage, Seattle, etc., by the officially projected increase in trade over the next eight years, the additional employment in Seward should be regarded as a plus for Alaska.

2.4. Shipper Support

A.N.I. is a small, privately owned company and it therefore would not have progressed thus far without fair assurance of shipper support.

A.N.I. holds the names of 40 such shippers who have agreed to be identified with the A.N.I. service and have stated their requirement for additional shipping capacity. For obvious reasons these names should remain confidential.

A.N.I. is in the process of obtaining further named support for the proposed service.

2.5. Labour

The question of the use of Union Labour is most sensitive and A.N.I. thus states categorically that all longshoremen, railway workers, seamen, truckers, etc., connected with its service will be members of internationally recognized, affiliated Unions.

3.0. Summary

Current U.S. law allows A.N.I. to operate a foreign flag ship Fraser Surrey, B.C. to Seward lifting U.S. cargo to/from the lower 48 States (with delivery to/from Fraser Surrey, B.C. by rail) once a through tariff has been accepted by the I.C.C.

Such a tariff should be accepted by the I.C.C. and A.N.I.'s through service actively supported by all involved in the trade and the future of Alaska because:

a. The use of barges by traders demonstrates a present shortage of suitable shipping capacity particularly in peak months.

b. By 1990 if nothing is done, this shipping capacity shortage will be about 3 million tons annually..

c. No operator or work force currently involved in the trade will lose business because trade volumes will double over the next eight years.

d. A.N.I. has shipper support.

e. Alaska relies totally on shipping to provide its economic lifeline. Administrators, legislators and lobbyists should be promoting ways of increasing Alaska's shipping options and not seeking to restrict them. Alaskan business needs more and competitive shipping services.

ALASKA FOREIGN AND DOMESTIC WATERBORNE COMMERCE

Short Tons

1974 TO 2000

- STATE OF ALASKA -

INBOUND AND OUTBOUND - HIGH FORECAST

	ACTUAL					FORECAST				
COMMODITY GROUP	1974	1975	1976	1977	1978	1982	1985	1990	1995	
FARM/MILL PRODUCTS	11,738	13,498	18,021	9,279	15,996	17,300	28,882	422,934	427,297	431
MANUFACTURED FOODS	27,194	31,972	31,929	31,130	63,444	69,662	79,673	91,161	100,502	12.
FROZEN SEAFOOD	222,171	150,960	266,144	59,416	81,527	914,998	923,271	941,088	965,816	978
GROCERIES	317,132	488,886	483,252	461,063	551,043	686,904	679,268	767,323	897,689	1,0
LOGS AND CHIPS	4,756,986	2,930,843	3,333,733	2,633,727	2,929,285	5,184,184	6,273,169	7,277,487	9,145,190	10,43
LUMBER CHIPS	303,343	209,170	464,798	674,241	683,154	1,818,288	1,318,887	1,318,131	1,911,023	2,17
FURNITURE PRODUCTS	886,949	600,381	564,417	688,828	640,971	792,301	873,838	948,116	1,866,954	1,13
PULP	258,448	264,857	367,329	356,128	284,374	433,818	491,102	612,991	769,216	96
MINERALS	1,417,460	1,815,598	704,188	737,241	618,913	817,128	1,812,538	1,387,338	1,864,451	2,48
MINERAL PRODUCTS	288,597	299,264	261,778	243,355	1188,926	272,733	339,834	448,451	559,733	69
MISC BLDG PRODUCTS	8,248	18,192	7,137	12,948	13,324	14,878	17,944	1,218,525	634,706	18
DRY CHEMICALS	182,557	176,446	124,317	163,869	841,355	916,681	1,818,468	1,266,619	1,472,817	1,68
COAL AND COKE	59,309	78,738	57,885	57,184	54,812	75,313	98,511	1,181,373	10,373,242	10,61
LIQUID CHEMICALS	274,938	206,337	266,524	276,263	594,685	689,888	764,308	981,638	1,889,342	1,11
CRUDE PETROLEUM	7,261,771	7,416,329	7,443,297	15,388,234	41,488,385	69,476,817	69,839,896	78,247,863	143,862,955	164,17
PETROLEUM PRODUCTS	5,833,239	6,833,343	6,264,771	6,861,888	6,221,693	7,812,868	7,683,747	19,543,263	21,263,668	23,23
METAL PRODUCTS	161,393	339,838	222,982	164,857	168,183	238,887	273,394	318,758	378,737	42
MACHINERY	154,313	193,416	198,695	118,388	155,755	218,348	249,121	282,178	334,139	36
TRANSPORT EQUIPMEN	72,483	81,689	57,451	81,816	73,136	94,228	118,838	124,282	148,319	16
MISC AND UNKNO	7,481	11,348	7,689	28,463	41,158	51,351	56,124	62,772	78,737	7
COMMODITIES N.E.C.	788,131	613,749	828,682	833,748	903,342	1,898,872	1,258,323	2,352,584	2,326,818	2,33
ALL COMMODITIES	23,468,581	22,434,826	23,863,672	28,881,918	36,471,923	98,889,287	93,469,489	112,888,928	201,613,848	226,83

SOURCE: U.S. MARITIME COMMISSION; U.S. ARMY CORPS OF ENGINEERS; WILLIAMS-KUESELBECK AND ASSOCIATES, INC.

ADDENDUM A

Rcvd 02IM/1.00144 Line: 1

1008 EST

MAN CHRTG SFO

NACHART B422557 FEB 11 1983

ATTN MR SIMON PALMER

HVE SENT FLWG TO OWNERS QUOTE

RE ALASKA NAVIGATION

WE THANK OWNERS FOR THE EXTENSION ON BOARD APPROVAL AND ICC TARIFF APPROVAL. HOWEVER, CHRS ARE REQUIRED TO FILE ANOTHER TARIFF WITH ICC WHICH WILL BE DONE BY MIDDLE OF NEXT WEEK. APPROVAL BY ICC IS NOT EXPECTED BEFORE MARCH 16TH. PLS ADV IF OWNERS WILLING TO STAND BEHIND CHARTERER UNTIL THAT DATE BASIS "SUBJECT OPEN" ON TERMS SO FAR NEGOTIATED. IF/WHEN CHARTERERS CAN LIFT BOTH SUBJECTS BY MARCH 16TH, THEY LIKE TO COMMENCE THE SERVICE SOONEST THEREAFTER. FLS ADVISE WHAT LAYDAYS/CANCELLING OWNERS CAN GIVE.

REGARDS

END QUOTE

REGARDS

NACC NYK/T GROSS

NACHART B422557

MAN CHRTG SFO

NACHART B422557

Time: 07:11 02/11/83 PST
Connect Time: 152 seconds

ADDENDUM B

STATEMENTS OF HON. DONALD CRIPPS, MAYOR, CITY OF SEWARD, ALASKA; SIMON N. PALMER, VICE-PRESIDENT AND GENERAL MANAGER, ALASKA NAVIGATION, INC.; AND IRVIN P. COOK, JR., VICE-PRESIDENT, ALASKA INDUSTRIAL TRAFFIC SERVICE, INC.

STATEMENT OF DONALD CRIPPS

Mr. CRIPPS. Thank you, sir.

Mr. BONKER. Now that we know all about the city of Seward, you may proceed, sir.

Mr. CRIPPS. Mr. Chairman, Mr. Young, my presence at this hearing is not to portray myself as an expert in matters relating to the Merchant Marine Act of 1920. Rather I appear before you as the mayor of a small Alaska coastal community which has an underutilized port capable of handling world-class vessels and which currently—today—has 23-percent unemployment. We are a community of 1,828 souls situated at the head of a fjord—Resurrection Bay. This is a deep, year-round icefree body of water which, prior to the 1964 earthquake, served the bulk of the shipping needs of the State of Alaska. The earthquake devastated the port by severely damaging or completely wiping out the port structures in place at that time. We are now attempting to recover from this tragedy by carefully pursuing a construction program which will result in our having the capability to handle bulk cargo on a par with any facility. It will be several years until this effort will be completed. Meanwhile, we are attempting to market our port as it is now constituted. The southern terminus of the Alaska Railroad is in Seward, so that bulk and containerized cargo can move through the Port of Seward efficiently and with attendant economies.

A shipping firm has come to Seward with the request that they be permitted to move containerized cargo through our port destined for points throughout Alaska. Currently the Port of Anchorage and, to some extent, the Port of Whittier move the majority of products coming into the State. The addition of another carrier, we believe, would provide some competition to the carriers now serving Alaska's needs, and we view this as a healthy move. More importantly from our parochial perspective, it would provide some number of year-around jobs for Seward and would materially assist in reducing our current 23-percent unemployment. In the ongoing affairs of a metropolitan area, the creation or elimination of a dozen jobs would make precious little impact on the economy of the area. In a community of 1,800 people, a dozen jobs is very significant. This can mean that a dozen families can sustain themselves without reliance upon governmental assistance. It is to this end that we address our comments to you.

An application for tariffs made by Alaska Navigation is critical to the efforts just outlined. If the Jones Act is modified to exclude foreign-bottom vessels from engaging in coastwise trade between Canada and Alaska, the hopes we have for an improved local economy will fall far short of realization. The third provision of the Jones Act which allows a foreign-bottom ship to travel from a foreign port to an American port has been in existence for a long time. The concept of operations for the company now proposing to come into Seward would include Canadian freight as well as other cargo which would be consolidated at various vanning stations located in the Midwest and Northwestern States and shipped through a Canadian port. Present forecasted growth in Alaska shipping estimates a threefold growth factor by 1990. Much containerized cargo is now being moved into Alaska by barges. With the vagaries of the weather in the Gulf of Alaska, this is a tenuous mode of shipping. Power vessels are much to be desired over barges in conditions of heavy seas. The company proposing to come into Seward would operate power vessels.

I have included in the testimony two resolutions passed by the State legislature. I include them in an effort to portray the sense of the legislature in viewing this matter. I will not read them here. They are in the record of the statement.

As I stated at the beginning of my comments, I do not attempt to present myself as an expert in marine navigation or international trade. Rather I come to you as one who is attempting to do the very best I can to improve the status of the community which I serve. There is historic precedence for permitting foreign vessels to engage in coastwise trade between Canada and the ports in Alaska. We ask that this be continued.

Thank you, sir.

Mr. BONKER. Thank you, Mr. Mayor.

[The resolutions mentioned follows:]

STATE OF ALASKA RESOLUTIONS

The State Legislature in House Resolution No. 4 dated 2 February, 1983 stated: Whereas the Jones Act (Merchant Marine Act of 1920) was intended to protect our nation's merchant marine fleet; and

Whereas the Jones Act requires that vessels engaged in coastal trade between United States ports be built in the United States, be owned by United States citizens, and be operated by United States citizens, and

Whereas those requirements protect United States businesses engaged in coastal trade from unfair competition by foreign ships; and

Whereas the Alaska Statehood Commission, in its final report of January 1983, recommends that Alaska seek an amendment to the Jones Act which would allow foreign built vessels to be use in coastal trade between United States ports, and further recommends seeking ultimate repeal of the Jones Act in its entirety; and

Whereas the immediate and future economic, environmental and political impact of those recommendations should be weighed carefully before they are acted on; Be it

Resolved, That the Alaska House of Representatives respectfully requests the Governor to direct the Department of Labor to work with the House Labor and Commerce Committee and the House Judiciary Committee to prepare a critique of the Alaska Statehood Commission's Final Report regarding the Jones Act."

The State Senate in Senate Joint Resolution No. 13 dated 26, January, 1983 stated: Whereas the Merchant Marine Act of 1920, commonly know as the Jones Act, requires that vessels carrying goods between United States ports be built and registered in the United States and owned and crewed by United States nationals; and

Whereas the Act gives vessels protection from free market competition by foreign ships that have much lower construction and crew costs; and

Whereas as is typical of protected markets, higher freight rates follow in the United States coastwise trade; and

Whereas the Act was originally passed to build a sheltered environment for United States vessels to create domestic prosperity and wartime security, yet the United States merchant fleet has dropped by half since World War II while the tonnage has gone up sixfold; and

Whereas Alaska, Hawaii, and the noncontiguous territories of the United States pay higher freight rates imposed by the Act; and

Whereas the Alaska trade now supports nearly one-third of the entire Jones Act fleet; and

Whereas the effect of the Act is to reduce Alaska's state oil revenue, to raise the cost of all domestic freight coming to Alaska, and to discourage the development of new oil fields and mineral deposits in Alaska; and

Whereas the direct cost to Alaska's treasury due to the Act is $63-$176 million yearly and the direct cost to the federal treasury is $135-$378 million yearly; Be it

Resolved by the Alaska State Legislature, That the United States Congress is urged in the national interest to repeal the Merchant Marine Act of 1920; and be it further

Resolved, That until the Act is repealed, the United States Congress is urged to allow foreign-built ships into the Jones Act trade if they meet American safety standards, are registered in the United States, and are owned and crewed by United States nationals.

Mr. BONKER. Mr. Palmer.

STATEMENT OF SIMON N. PALMER

Mr. PALMER. Mr. Chairman, I am Simon Palmer, vice-president and general manager of Alaska Navigation. I have prepared testimony and I would like to have it entered into the record.

I have, which I shall comment on later, some telexes and messages from Alaskan shippers supporting the service that we propose and, therefore, opposing the bill which is under debate here.

In recent months my company has been planning a shipping service to Alaska which would operate under the law known as the Third Proviso of the Jones Act. Simply stated this is an exemption under the act which allows foreign-flag ships to carry cargo between U.S. points provided a tariff is filed with the ICC and provided a significant portion of the route covered by that tariff is over Canadian rail lines. Today that exemption effectively applies to Alaska alone, and therefore any debate on the subject should focus primarily on what is best for the State of Alaska.

It is relevant to this hearing to point out that Alaska Navigation was incorporated in Alaska on September 3, 1982, following some 6 months of investigation into the market demand for such a service, the optimum method of cargo transportation, competitors' services, size and activities and so on. We are a small, privately owned company and would not have proceeded even with our incorporation had we not been very certain of the demand for our operation in Alaska. Naturally our research became known to our competitors and on September 30, 1982, 27 days after our incorporation, bill S. 3000 was introduced in the Senate by Senator Gorton proposing elimination of the Third Proviso for 3 years but grandfathering operations in existence on September 1, 1982. That bill was never debated but has now been followed by the chairman's, Congressman Bonker's, bill which also proposes elimination of the Third Proviso exemption. Both Senator Gorton and Congressman Bonker represent the State of Washington, as we all know, the operational home of our competitor shipping services to Alaska.

As a businessman I naturally wish the Third Proviso exemption and my company's planned service under that law to be maintained. However, I also wish it to be maintained for the sake of Alaska, and that is the consideration which I feel must predominate when determining the fate of the Third Proviso. Whilst it would be discriminatory and immoral to pass into law a bill allowing others to operate under the Third Proviso, whilst preventing

my company from so doing, the effective limitation of Alaskan shipping services to those currently in existence would have a more serious and far-reaching effect on Alaska, its trade, industries, and consumers.

I respectfully urge that the law known as the Third Proviso of the Jones Act be left alone and not otherwise suspended, abolished, or tampered with. As I shall illustrate, Alaska is a unique State requiring maximum transportation options and opportunities, and the selfish interests and pressures behind proposals to eliminate the Third Proviso should therefore be secondary to what is determined as best for the people of Alaska.

The first point I would like to make is a brief background on Alaska's trade which is a significant element here.

It is a statistical fact that shipments in and out of Alaska totaled 1.5 million tons in 1974, 1.88 million in 1976, 1.98 million in 1978, and 3.3 million in 1982. Trade doubled in the 8 years 1974-1982. These figures do not include bulk cargo.

An admittedly high forecast calls for a further doubling of trade to 6.45 million tons annually by 1990 or in the next 8 years. In a recent newspaper report this figure was reportedly considered by one shipping company on the trade to be too high by more than half. However, even 40 percent of the forecast increase (if the official forecasts are wrong and that shipping company is correct) would be 1.26 million tons annually or the equivalent of an additional 8 ships a week each carrying 200 containers. My company proposed lifting the equivalent of one such ship a week.

The Third Proviso opportunity for additional shipping services into Alaska should not be denied that State, because present shipping operations are currently inadequate and, given even the low forecast cargo increase figures, they will evidently become increasingly unsatisfactory in the future.

No. 1, in support of this argument, Mr. Chairman, let me say that 1.46 million tons of domestic general cargo was handled through the Port of Anchorage in 1982. Of this, 79 percent was moved by ship by Sea-Land and TOTE, leaving over 20 percent to be moved by barge. Additionally, two other barge operators provide approximately weekly sailings into Whittier.

Now barge services are ideal for project cargo moving into undeveloped ports, but in this instance they can only be the result of inadequate shipping capacity.

No Alaskan importer would risk the weather damage and delays of barge shipment if he could move his merchandise by ship.

If the Third Proviso is eliminated, the only way of shipping the increased volume of traffic in future will be by barge and, according to the Alaskans I have spoken to, further barge service is not what they want.

No. 2, Whilst the ships of Sea-Land and TOTE are not full to capacity every voyage because of seasonal trade fluctuations, it is a fact, borne out by the experiences of most traders, that cargo is regularly shortshipped or turned away by those carriers during the April to October period of the year. I have letters and messages from 40 or more companies complaining about shipping space shortages and stating their need for additional shipping services

I did not attach them to my testimony, but just to tell you quickly, Mr. Chairman, Mr. Nerland for Nerland Home Furnishings, one of Alaska's leading shippers, writes, "As substantial shippers of freight to Alaska, we wish to be on record as in favor of continuing the Jones Act exemption, which allows competitive water carrier service to Alaska."

A second telex I have, from David Kilbourn of Northland Hubb, this is a related company, Mr. Chairman, to one of the largest grocery retail outlets in Alaska, he says, "Northland Hubb as a related shipper of products to Alaska has a major interest in seeing the Alaska shipping trade stay as competitive as possible."

One of the major roadblocks to the long-term development of our State has been the high cost of surface transportation. For this reason we strongly support the application of the Alaska Navigation and are against repeal of the Third Proviso of the Jones Act.

I have here the names of 40 further shippers who say: "We, the undersigned, understand that Alaska Navigation is in jeopardy due to political pressures from the Seattle, Wash., area.

"We desperately need additional service to Alaska because of space shortages that we have encountered in the past. We are in full support of Alaska Navigation providing a new service to Alaska."

Mr. BONKER. Are you submitting those letters for the record, Mr. Palmer?

Mr. PALMER. Yes, sir.

Mr. BONKER. I would ask unanimous consent that the letters and other supporting documents submitted by Mr. Palmer be included in the official record.

[The information follows:]

FROM MR. Simon N. Palmer
Vice President and General Manager
Alaska Navigation, Inc.
1813 East First Avenue (#204)
Anchorage, Alaska 99501

(1) Telegram from Anchorage, Alaska dated January 28, 1983

(2) Telegram from David C. Kilbour· , General Manager, Northland Hubb, Inc.

(3) Telegram from Charles A. Barr, Alaska Agencies, Inc.

Western Union telegram

WFA004(0138)(1-220695A028)PD 01/28/83 2135

1983 JAN 28 AM 2 12

ICS IPMWGVC WSH
03381 01-28 0130A EST
ICS IPMWFZP
1-223874A027 21/28/83
ICS IPMAFUA ANG
25355 A ANCHORAGE ALASKA 378 01-27 0515P AST
PMS F.Y. MOESH ROOM 1074
HYATT REGENCY HOTEL
WASHDC

WE, THE UNDERSIGNED, UNDERSTAND THAT ALASKA NAVIGATION, INC., IS IN JEOPARDY DUE TO POLITICAL PRESSURES FROM SEATTLE, WASHINGTON AREA. WE DESPERATELY NEED ADDITIONAL SERVICE TO ALASKA BECAUSE OF SPACE SHORTAGES, THAT WE HAVE ENCOUNTERED IN THE PAST. WE ARE IN FULL SUPPORT OF ALASKA NAVIGATION, INC., PROVIDING A NEW SERVICE TO ALASKA.

WU 1201 (FMS-R)

SINCERELY,

PEL WILSON, MANAGER	LEE MCDANIEL
PAY N SAVE CORP	MCI STEEL PRODUCTS
UNIVERSITY CENTER	WASILLA AK
ANCHORAGE AK	
BRUCE GREEN, MANAGER	CAROL PAREY, OWNER
SERVICEMASTER	VALUE LIQUOR
ANCHORAGE AK	ANCHORAGE AK
JAMES AVEY, OWNER	FRONTIER PAPER
ALASKA FLOORWALL	GREG WILCOX, OWNER
ANCHORAGE AK	ANCHORAGE AK

WU 1201 (FMS-R)

22-262 1254

Western Union telegram

STAN MILLER, MANAGER	DAVE KOLESKY, OWNER
ATCO STRUCTURES	BOB HUTCHINS, OWNER
ANCHORAGE AK	ROBERTS PRODUCE
	ANCHORAGE AK
KARL HOENACK, WHSE OPNS MGR	MARVIN HANSON, OWNER
BUILDING PRODUCTS SUPPLY	KOVAKOVICH AND SONS
ANCHORAGE AK	ANCHORAGE AK
GARY BOGART, SALES MANAGER	DON ROSEN, OWNER
ARMTEC-ALASKA	DONNYBROOK LUMBER CO
ANCHORAGE AK	FAIRBANKS AK

WU 1201 (FMS-R)

Western Union telegram

JIM ETHINGTON, OPERATIONS MGR	JIM SONG, MANAGER
SUNRISE BAKERY	BUDGET BUILDING SUPPLY
ANCHORAGE AK	ANCHORAGE AK
MURPHY TUPSE	CORKY MATHEWS
PACIFIC FRUIT AND PRODUCE	GALOO BUILDERS SUPPLY
ANCHORAGE AK	ANCHORAGE AK
RUSS MILLER, OWNER	GRVILLE PROCTOR, OWNER
SIMPSON SAUSAGE CIRCLE K MEATS	PROCTORS GROCERY
ANCHORAGE AK	ANCHORAGE AK
CORT DYKE, OWNER	ALASKA HOUSEWARES
JERRY UELING, OWNER	RICHARD EVERY, OWNER

WU 1201 (FMS-R)

NORTHERN YEAT
ANCHORAGE AK

1150 DOWLING RD
ANCHORAGE AK 99522

VOLNEY GRACE, PRESIDENT
V.F. GRACE CO
ANCHORAGE AK

ALCAN DISTRIBUTORS
PAUL WINEGART, MGR
609 EAST WAREHOUSE AVE
ANCHORAGE AK

STEVE KARAKASH, PRESIDENT
YUKON OFFICE SUPPLY
ANCHORAGE AK

PIONEER AUTOMOTIVE
SANDY STOTTS, OWNER
1130 EAST DOWLING RD
ANCHORAGE AK 99502

PAUL SEMENTI, VICE PRESIDENT

ALASKA STEEL/FORMERLY STACK

ARCTIC CIRCLE ENTERPRISES, INC
ANCHORAGE AK

STEEL FLETCHERS, MANAGER
1200 WEST DOWLING
ANCHORAGE AK

BOB LUNDSFORD, OWNER
SUPERIOR MILLWORK
ANCHORAGE AK

GRAYLOR ELECTRIC CO, INC
PAUL PLASKA, QUOTATION REP
5501 A ST
ANCHORAGE AK 99503

[illegible] OWNER
NAVAJO OF ALASKA, INC
ANCHORAGE AK

MOBILE SUPPLY INC.
RITCH PHILLIPS, DIVISION MGR
3264 RAMPART DR
ANCHORAGE AK

PANASONIC WEST INC
PAT GALLEGER, SALES MGR
4436 BUSINESS PARK BLVD
ANCHORAGE AK 99503

MIKE PRITCHETT
CRAIG TAYLOR EQUIPMENT
ANCHORAGE AK

ALASKA TORO DISTRIBUTORS
RICK LOHMAN, GENERAL MGR
5730 B ST
ANCHORAGE AK 99503

PETER OLEITSMANN
REPLACEMENT CLASS CO
ANCHORAGE AK

TOY SUPPLIERS
JACK GREEN, OWNER
3134 WEST NORTHERN LIGHTS

PHIL COHEN, OWNER
SALES CORP OF ALASKA
ANCHORAGE AK

ANCHORAGE AK 99503

3126 EST

2356 EST•
440650 CARL UI•
440650 CARL UI•
440650 CARL UI
WHAT ABOUT AREA CODE TO DIAL FROM ALASKA
•
440650 CARL UI94
AK NAV INC AHG
40650•

SHERATON CARLTON HOTEL

ATTN: SIMON PALMER, ROOM 408
FROM: CHARLES A. BARR, ALASKA AGENCIES, INC

THE FOLLOWING MESSAGE WAS MAILED FROM THE FAIRBANKS OFFICE OF NORTHLAND HUBB, INC. ON MONDAY, MARCH 14, 1983 TO YOUR SAN FRAN. OFFICE

•NORTHLAND HUBB, INC., AS A RELATED SHIPPER OF GROCERY PRODUCTS AND MERCHANDISE TO ALASKA HAS A MAJOR INTEREST IN SEEING THE ALASKA SHIPPING TRADE STAY AS COMPETITIVE AS POSSIBLE.
ONE OF THE MAJOR ROAD-BLOCKS TO THE LONG TERM DEVELOPMENT OF OUR STATE HAS BEEN HIGH COST OF SURFACE TRANSPORTATION. FOR THIS REASON WE STRONGLY SUPPORT THE APPLICATION OF ALASKA NAVIGATION AND ARE AGAINST REPEAL OF THE 3RD PROVISO OF THE JONES ACT.

DAVID C. KILBOURN, GEN. MGR.
NORTHLAND HUBB, INC.•

SHERATON CARLTON HOTEL

ATTN: SIMON PALMER, RM. 408
FROM: CHARLES A. BARR, ALASKA AGENCIES, INC.

THE FOLLOWING IS A COPY OF A SIGNED MESSAGE ON FILE IN OUR OFFICE:

•AS SUBSTANTIAL SHIPPERS OF FREIGHT TO ALASKA WE WISH TO BE ON RECORD IN FAVOR OF CONTINUING THE JONES ACT EXEMPTION WHICH WOULD ALLOW COMPETITIVE WATER CARRIER SERVICE TO ALASKA.

NERLAND'S HOME FURNISHINGS
S. G. NERLAND•

)))))

REPLY VIA ITT

Mr. PALMER. The third point that I would like to make is the question of cost. In spite of recording massive profits every year, $103 million in 1981 and $157 million in 1982, Sea-Land still operates 35-year-old ships on the trade to Alaska when worldwide the shipping industry accepts that the economic life of a ship is a maximum of 20 to 25 years.

But of course Alaska pays the bill and has to accept the regular increases in freight rates because the present ship operators have a stranglehold on the trade. If the Third Proviso is eliminated, the only hope under current law for an alternative ship service for Alaskans will also be eliminated.

I emphasize ship service as opposed to further barge services.

I maintain that the Third Proviso should be kept because it encourages competition which would lower the cost of transportation as a result.

Those interests encouraging elimination of the Third Proviso argue that more carriers on the trade would result in reduced revenues for some operators whose unit costs and therefore rates would increase.

This is obvious nonsense and contrary to experiences in every other sector of the transportation industry worldwide.

What competition would do is eliminate the inefficient carrier, put a lid on freight-rate increases, and insure that Alaskans have a choice of carrier.

If the Third Proviso is abolished, Alaska, with its trade predicted to increase anywhere from 40 to 100 percent over the next 8 years, will have no shipping options other than TOTE's expensive RO-RO ships; Sea-Land's three, sometimes four, 35-year-old antiques; and a bunch of barges.

Who opposes the Third Proviso and why:

Predictably, those who wish to eliminate the Third Proviso are those who stand to gain most from the resulting elimination of potential competition. It is no mere coincidence that Senator Gorton's bill, S. 3000, should have been introduced as soon as it became apparent that my company's plans to operate a service were serious and had sufficient cargo support to make it viable.

So also with this bill. Although introduced for apparently the best of reasons, these would, on closer examination, be no more than a smokescreen for the removal of competition on a trade dominated by carriers operating out of the State of Washington.

My company's service, which is the immediate target of the proposal to eliminate the Third Proviso, would, if quotations of those seeking this change in the law are correct, cause the loss of thousands of jobs and millions of dollars investment in the State of Washington, dislocate a major segment of the Puget Sound economic infrastructure, and so forth.

I submit respectfully that this is nonsense. My company's plan is to lift approximately 200 containers on average per week or about 5.6 percent of the present trade requiring 25 men to load the ships.

Hardly a significant volume of cargo or loss of jobs particularly in view of even the low forecast increase in the Alaskan trade.

Again I urge that what is best for Alaska should be paramount when considering the Third Proviso situation. The exaggerated rhetoric of the self-interest groups in the State of Washington

should be considered in perspective; they are the desperate claims of shipping companies who have and wish to perpetuate a monopolistic grip on the Alaskan trade irrespective of the interests of the people of that State.

Arguments for Third Proviso elimination and answers. Proponents of the bill eliminating the Third Proviso will argue that a foreign-flag operator will lower freight rates, drive out U.S.-flag operators and, having established a monopoly, will then increase rates again.

Answers: The added rail cost of third-proviso shipping makes costs comparable to those of direct shipping operations.

Shipping monopolies are established by protectionist legislation such as this and not by competitive, open-market conditions.

The additional rail cost of third-proviso shipping is $490 for a 20-foot container, $680 for a 40-foot container, as against a total through cost to my company of just over $1,200 for a 20-foot container and $1,900 for a 40-foot container.

So you can see that the cost of shipping under the Third Proviso which necessitates rail carriage over Canadian lines adds a significant cost to our operation.

They also say that the domestic trade must be exclusive to U.S.-built flag shipping. The answer is no U.S. ships exist today which could lift the projected increase in Alaska's trade.

It is a matter of record that no order for U.S. merchant ships has been placed in U.S. yards for the year 1985.

In this situation, therefore, the Jones Act forces Alaskan consumers to subsidize inefficient overage shipping.

Some Third Proviso shipping is necessary to restrain U.S.-flag operators' rate increases.

The final argument often made is that U.S.-flag shipping is strategically vital. The answer is that eliminating the Third Proviso only harms Alaska; it does not promote U.S.-flag shipping.

Only the number of tugs and barges will increase.

A thought that strikes me is that if elimination of the Third Proviso were concurrent with allowing foreign-built U.S.-flag ships to operate on the Alaskan trade, that would be good for Alaska and U.S.-flag shipping.

In summary, may I say that trade with Alaska is irrefutably increasing; present ships are overfull most of the year even now; Alaska needs and should not be denied increased shipping options.

Elimination of the Third Proviso would be protectionist of the interests of the present shipping operators, discriminatory in the first place against my company and prejudicial to the interests of the people of Alaska.

There has been undue haste to eliminate the Third Proviso which makes one suspect that special interests and not Alaska's interests have been considered.

It is time Alaska and its particular requirement for maximum shipping opportunities was considered. The Third Proviso should not be suspended or eliminated.

Thank you, Mr. Chairman.

Mr. BONKER. Thank you, Mr. Palmer.

Mr. PALMER. Excuse me for making it so long.

Mr. BONKER. We believe in equal time. Mr. Cook.

STATEMENT OF IRVIN P. COOK, JR.

Mr. COOK. Thank you, I appreciate the opportunity to testify here today. My name is Irvin P. Cook, vice president and part owner of Alaska Industrial Traffic Service. We are a consulting company that aids shippers. Before I go further, I would like to define the word "shipper" as a person who tenders freight to the carrier. I know often the term shipper is used as a water carrier, but in this case we tender freight to a carrier, water, rail, whatever.

We provide consulting service to shippers and 80 clients who ship and carry goods to, from, and within the State of Alaska.

During this involvement in the Alaska transportation industry, we have become familiar with the needs of those moving freight to Alaska from the viewpoint of the purchaser of transportation. AITS recognizes the concepts that 46 U.S. Code, section 883, was established to encourage and preserve a strong merchant marine industry, and it supports that piece of legislation to that extent.

AITS recognizes that 46 U.S.C. 883 was not established for the purpose of stifling commerce; however, it is apparent that 46 U.S.C. 883 does in fact stifle trade to Alaska. In partial recognition of this, Alaska was incorporated into the Third Proviso.

AITS has, over the past 2 years, sought to augment the existing service to Alaska by use of one or two small ships. We were completely frustrated in our efforts. Suitable domestic bottom ships were unavailable. The only ships that were available were foreign built. The Third Proviso would have permitted the use of these ships out of Prince Rupert, or Vancouver, Canada, to Alaska.

Over the past 2 years various clients of ours have experienced delays in shipping due to demand exceeding the capacity of the two major ocean carriers to Alaska—Sea-Land Service, Inc., and Totem Ocean Trailer Express, Inc.—and every year more and more barge lines have come into the Alaska trade to handle the excess trade. A number of our clients have used barge service in lieu of operationally faster and operationally more reliable service of ships, because there has been inadequate shipping capacity.

One of our clients has already been notified by one of the major ocean carriers that in spite of the fact that he has been shipping an average of 12 vans per week, through the winter, his bookings will be cut back to 7 vans per week, during the coming summer months, and this is during his busiest period.

There is a firm by the name of Alaska Navigation, Inc., that proposes to enter into the Alaska trade. As near as I have been able to determine, Alaska Navigation, Inc., has been unable to find domestic-built ships suitable for this trade. Consequently, they had to resort to a foreign-built ship in an attempt to enter the Alaska trade.

The existence of 46 U.S.C. 883 has not fostered the building of the required ships. However, the Third Proviso has made it possible for additional carriage capacity to Alaska.

The question to be answered when reviewing the issue of whether the Third Proviso should be eliminated is, will the elimination of the Third Proviso really encourage and preserve a strong merchant

marine fleet? That is doubtful. What will happen is that the elimination of the Third Proviso will impede commerce to Alaska.

Currently, Knappton Corp. is operating railcar barges from Prince Rupert, Canada, to Alaska. In the past, Crowley Maritime Corp. operated a railcar ship from Vancouver, Canada, to Alaska. Both services are and were necessary for the economic growth of Alaska, and both services are and were performed with foreign bottoms, transporting goods originating and destined in the United States. Crowley Maritime has taken the *Trainship Alaska* out of service. Knappton Corp. is inaugurating its Korean-built bottom railcar barge *Aqua Train* April 20, 1983.

The existence of the Third Proviso allows carriers more flexibility in responding to the needs of the general shipping public.

Even if it is determined that there is currently adequate freight movement capacity to Alaska, that should not be considered. The Third Proviso allows carriers to be better able to respond to the demand for transportation. To eliminate the Third Proviso eliminates future possible responses to insufficient capacity that can hurt commerce in Alaska and that can hurt my clients.

Several of our clients have written letters of support of retaining the Third Proviso, and several have written in support of Alaska Navigation. Copies are attached.

Up to the middle of the last year, the current water carriers felt that they had to compete with certain commodity rates established by the rail-barge movement from Prince Rupert. When their ships became full this was no longer necessary, and their rates on those same commodities became higher. Without full competition these water carriers can and have allowed their prices to climb increasingly higher.

Alaska needs the Third Proviso.

I just obtained a telex to answer some of your questions on rates. If I may, in 1979, March 18, 1979, both TOTE and Sea-Land had a rate of $3.19 per hundredweight on iron or steel plate steel. Today, their rate, TOTE's rate, is $5.46, a 71-percent increase. Sea-Land has a rate of $5.03, representing a 58-percent increase.

As an aside, it should be noted that Sea-Land does charge an additional charge to pick up in the Seattle area on some freight.

What has happened here is that TOTE, in light of lack of excess capacity, has felt they were able and capable and prudent to increase their rates, and need not be competitive with Sea-Land.

The same has applied to foodstuffs, canned goods, et cetera. In March 1979, both TOTE and Sea-Land had a rate of $2.98. Today the rate for TOTE is $6.04, a rate increase of 102 percent. Sea-Land has a rate of $5.83. Again, there are possible additional pickup charges that apply on some freight in the case of Sea-Land.

Additionally, another client of ours, a department store, in 1973 said—said to us—that in 1973 transportation costs, as a percentage of total retail store sales, were 10 percent. Now it is 20 percent. For that reason, Alaska does need the Third Proviso. Thank you.

Mr. BONKER. Thank you, Mr. Cook.

I wish time permitted something of a rebuttal to all the points that you have raised either from committee members or from your competitors, many of whom are sitting back there shaking their heads as you have gone through the litany of charges and assumptions in your statements.

We don't have that much time. I am trying to conclude the hearings. I will raise just one question about your statement, Mr. Palmer, about competition.

You seem to imply that there is not much competition now in this trade route between the lower 48 and Alaska, at least on waterborne traffic.

The fact is you say that if the Third Proviso is abolished, Alaska with its trade predicted to increase anywhere from 40 to 100 percent over the next 8 years will have no shipping options other than TOTE's expensive RO-RO ships and Sea-Land's 35-year-old antiques and a bunch of barges.

Mr. PALMER. Yes.

Mr. BONKER. I hope you don't run against me sometime. That is an awful characterization of what I have always thought was one of the most efficient and modern carriers in the business. But anyway, with respect to this question of competition according to a recent article in the Journal of Commerce, March 8, 1982, it points out that in the Alaskan trade it is the most competitive of all of the domestic offshore trades involving 14 carriers who have filed financial reports and from that we know that no one of them accounts for more than 15 percent of the FMC-regulated traffic revenues.

I can't imagine having any more competition short of chaos than what we presently have in that trade route.

How can you claim it is not very competitive?

Mr. PALMER. Mr. Chairman, I think there are two points that you raised, the first is the Journal of Commerce statement that the Alaska trade is the most competitive of all domestic routes.

Mr. BONKER. That is according to the Journal of Commerce

Mr. PALMER. Right.

Mr. BONKER. They use as their information the filing of reports before the FMC.

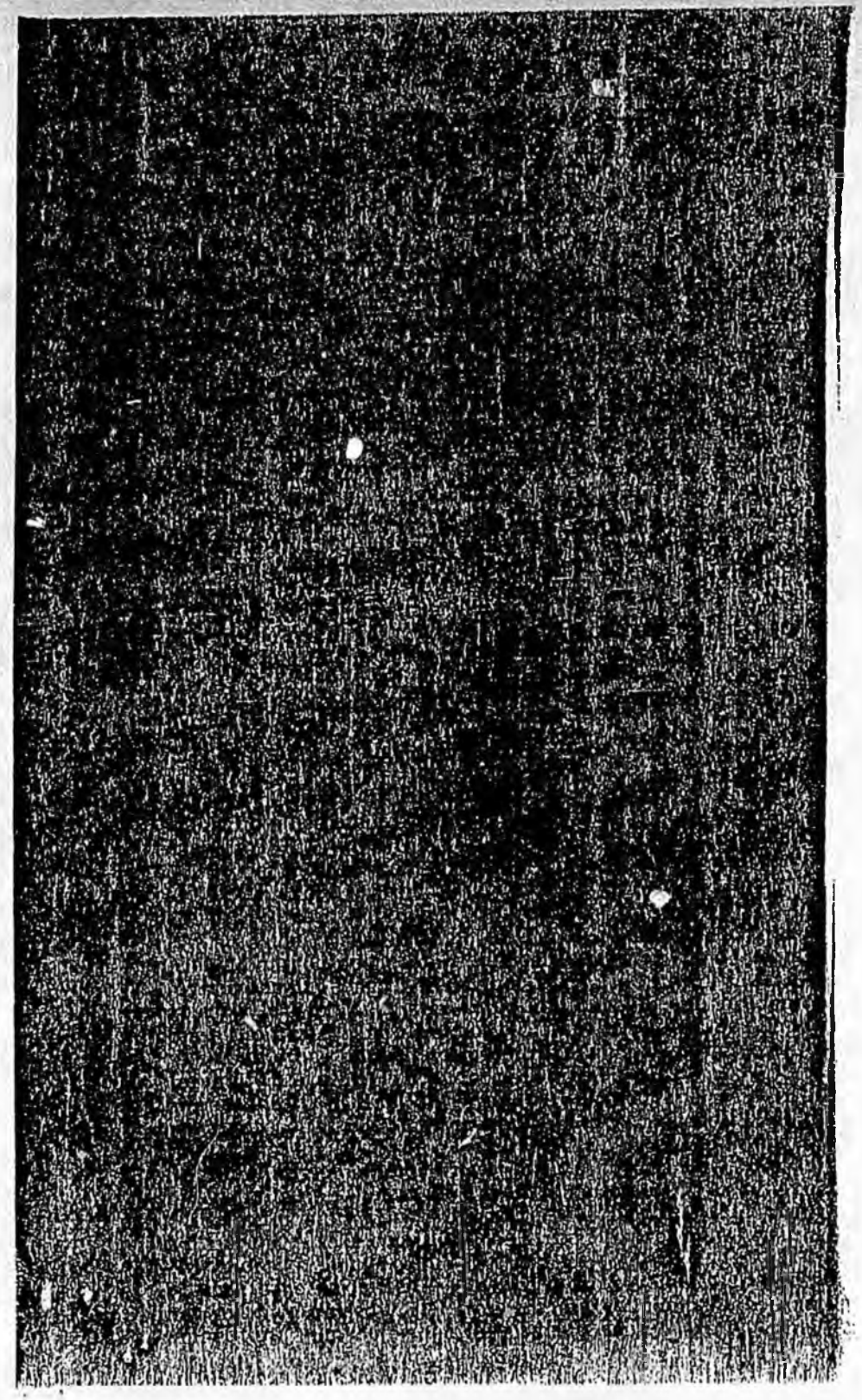
Mr. PALMER. My rebuttal or my comment on that statement is that competition is a very comparative thing. The transpacific trade has got 25 or 30, maybe more, operators, as Mr. Hiltzheimer knows.

The comparable domestic trades that the Journal of Commerce is talking about are trades from the east coast, for example, to Puerto Rico where there are two dominant carriers. The Navieras de Puerto Rico, and Sea-Land. The trade to Hawaii, yes, another comparable domestic trade, has one dominant carrier—Matson.

So actually, on their sort of statistics—four carriers on the Alaska trade would make it more competitive than any other domestic U.S. trade.

The second point you make of there surely being enough competition just looking at the Alaska trade. Certainly there are 14 or 15 carriers, but there are actually only three modes of transportation, one by Sea-Land and TOTE, fast, containerized, very efficient, very good, I am not——

Mr. BONKER. I am glad to see you acknowledge some of their merits.



Mr. PALMER. Right. The second is train barges, like Crowley, for example, and the third is other barges working break-bulk, and unitized cargo. It is a fact of doing business with Alaska as far as my understanding is concerned that cargo which moves on one carrier very definitely is of a type that would not move on another and would not either move on a third.

The barges take 10, 12, 14 days to Alaska, the ships take 3 days to get up to Alaska, and are not delayed by weather. You have a totally different segment of the trade going in each type of carrier. That is the reason for my saying Sea-Land and TOTE don't compete with each other effectively because for the major part of the year from April through October they are full.

The barge lines quote the same rates because they move a different type of cargo, same with the railcar barges.

Mr. BONKER. With respect to this question of increased trade and whether we have the capability to handle that trade, I thought Mr. Hiltzheimer made a valid point. They already have a substantial investment in this business and if the Third Proviso continues as the threat as do other foreign carriers undermining their investment, it will reduce their ability to handle that trade.

You can characterize them as people who are protecting their turf, as you have done in your statement, for example, but I imagine if you were in the same business, you would be saying the same things.

Mr. PALMER. Yes, Mr. Chairman. I probably would.

There is a point I would like to make here. Listening to the testimony before my own, the main point that seems to be coming out with some tremendous headline slogans involves statements about lost millions of dollars, and thousands of jobs and ruining economies of States and this sort of thing.

I should feel conceited that we have such tremendous ambitions. The fact of life, Mr. Chairman, is that we are planning to put on two ships, small ships, far smaller than anything operated by Sea-Land and TOTE and to lift a very small proportion of the cargo involving actually not Canadian rail companies, but Burlington Northern which I believe is a U.S. company.

If we were to raise rates after we had wiped everybody out of the trade, life dictates and the market conditions will dictate that further competition would come in and wipe us out. We are not so foolish as to want to monopolize the trade. With respect, sir, I would just like to state that I find the claims that we are about to monopolize the trade and deprive whole States of employment is grossly exaggerated and actually a hysterical accusation designed to create attention.

Mr. BONKER. Mr. Palmer, to be honest with ourselves, you may have modest intentions and we may find a loophole for you to put your one or two ships or barges through, but once that loophole is discovered, there are going to be a lot of other ships and more interest in it. We can see how greatly enlarged it could be and how it could jeopardize the status quo.

If we were only concerned about your involvement that wouldn't maybe be an imminent danger to anything economically speaking but once this loophole has been realized, once we have crossed the line with the ICC and we have seen a new dimension to the Third

FULL TEXT OF INITIATIVE
Initiative No. 83-02

For an Act entitled: "An Act terminating the Alaska Transportation Commission and repealing transportation laws administered by the commission; requiring persons who carry passengers or freight for hire to hold insurance or other security; and requiring the governor to lobby Congress for the repeal of the federal Jones Act."

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

* Section 1. **STATEMENT OF PURPOSE.** The people of Alaska recognize that

(1) because of Alaska's great size and distance from markets, Alaskans must have access to efficient low-cost transportation in order for people and goods to move safely inside and outside the state;

(2) a little-known but powerful state regulatory agency, the Alaska Transportation Commission (ATC), creates motor and air carrier monopolies by legalized price fixing and tariffs, which artificially raises shipping rates and makes consumer goods more expensive for all Alaskans;

(3) the primary purpose of the ATC is to fix rates, not promote safety, and other government agencies can insure safety standards while allowing persons to contract freely for services;

(4) abolishing the ATC and its anti-competitive practices will subject air carriers and trucking companies to free market competition, thereby reducing freight rates, improving service, and saving Alaskan consumers millions of dollars each year;

(5) a federal law, known as the Jones Act, requires that ships bound for Alaska from other American ports must be built and registered in the United States and staffed with American crews, thereby granting such ships an unfair monopoly and protecting them from free market competition, which costs Alaskan consumers millions of dollars each year;

(6) the Jones Act should be repealed, and the governor should use all appropriate means to persuade Congress to do so.

* Section 2. AS 29.48 is amended by adding a new section to read:

Sec. 29.48.036. **REGULATION OF TRANSPORTATION CARRIERS.**

Notwithstanding AS 29.48.035(a), a municipality may not regulate an activity regarding transportation of passengers or freight for hire if the regulation conflicts with the regulation of that activity by the Alaska Transportation Commission as the regulation existed on April 1, 1983 under former AS 02.05, AS 42.07, or AS 42.10.

* Section 3. AS 42.30 is amended by adding a new section to read:

ARTICLE 5. **RESPONSIBILITIES OF MOTOR AND AIR CARRIERS.**

Sec. 42.30.200. **FINANCIAL RESPONSIBILITY.**

(a) A person who carries passengers or freight for hire intrastate shall procure and maintain security in an amount determined by the Department of Public Safety as necessary for the reasonable protection of the public against damages or injury caused by the person.

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize enforcement officers to enforce this section.

* Section 4. AS 44.19 is amended by adding a new section to article 1 to read:

Sec. 44.19.035. **JONES ACT REPEAL.** The governor shall use best efforts and all appropriate means to persuade the United States Congress to repeal 46 U.S.C. secs. 861, et seq., known as the Jones Act. Until that Act is repealed, the governor shall publish an annual report documenting the harmful effects of the Act on Alaska commerce, and progress made towards its repeal. The report shall be submitted to the legislature no later than its convening each year.

* Section 5. If any provision of this Act is held invalid, the remaining provisions of this Act are severable and remain in effect.

* Section 6. AS 02.05.; AS 28.10.411(b); AS 39.25.120(c)(7); AS 39.50.200(b)(30); AS 42.07; AS 42.10; and AS 44.66.010(a)(2) are repealed.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

STATE OF ALASKA - POSITION ON JONES ACT

The Merchant Marine Act (Jones Act), which was adopted by Congress in 1920, prevents the transportation of goods between U.S. ports on foreign-built vessels unless there is an intermediary stop at a foreign port. The State of Alaska favors an amendment to the Jones Act which would allow foreign-built ships into the U.S. coast cargo and passenger trade, provided that they meet American safety standards, and are U.S. owned, registered, manned, and repaired.

The intent of the Jones Act was to protect American ship builders and operators from free market competition by foreign ships which have lower construction and operating costs. The concern was that otherwise the United States would not have a sufficient merchant marine fleet for wartime demands. If, however, under the State's proposal, foreign-built vessels were still U.S. registered and operated, then they would be available during wartime or other periods of national emergency.

As a result of the Jones Act protection, freight rates are very high in the U.S. coast trade. In fact, where competition exists from land-based transportation service (rail and truck), the Jones Act merchant marine fleet has declined dramatically in the past twenty years. Because Alaska, Hawaii, and the noncontiguous territories (except the Virgin Islands) have no significant alternative to the Jones Act fleet, they bear the penalty of higher freight rates. The Alaska trade alone supports nearly one-third of the entire Jones Act fleet.

The Jones Act penalizes the U.S. and Alaska in several ways:

1) It reduces federal and state oil revenues by effectively imposing higher tanker transportation charges which are tax deductible. (This will be ameliorated by proposed C.D.S. regulations by the Federal Department of Transportation).

2) It limits U.S. markets for Alaskan products (fish, coal, minerals and timber) by contributing to higher destination costs as compared with export to the Pacific Rim nations.

3) It raises the cost of all domestic freight coming into the State, thereby contributing to a higher cost of living and depressing economic development.

4) It depresses the tourism industry in the Pacific Northwest and Alaska by raising the cost of tourist passage from Seattle to Alaska and limiting the flexibility of cruise ship itineraries.

In the future, these penalties will become more severe. As U.S. ships are constructed to replace existing ships, the cost differential between U.S. and foreign ship construction will increase. In a subsidized environment, Alaska and the domestic purchasers of Alaska products will have no choice but to pay higher freight rates.

Our proposal would eliminate the most expensive and burdensome aspect of the Jones Act while ameliorating impacts on the maritime industry. We expect that a future increase in the construction of U.S. naval vessels will help offset business lost as a result of foreign competition for cargo vessel construction. Further, it is anticipated that lower marine freight rates will increase shipping business, thereby creating a need for more U.S. maritime and service-related employees.

It should be recognized that the high cost of American shipbuilding has in fact inhibited the growth and development of U.S. maritime commerce. Foreign-built cruise ships utilizing Canadian ports because of Jones Act restrictions still encounter significant limitations on their operations when they bring their passengers into Alaskan ports. Presently, the Alaska Marine Highway system must turn away thousands of tourist users and passengers because of lack of space. Yet foreign-built ferry vessels, which could be used to expand Alaska's ferry service for everyone's benefit, are available at lower cost.

June 30, 1983

June 5, 1920.
[H. R. 10378.]
[Public, No. 261.]

CHAP. 250.—An Act To provide for the promotion and maintenance of the American merchant marine, to repeal certain emergency legislation, and provide for the disposition, regulation, and use of property acquired thereunder, and for other purposes.

Merchant Marine Act, 1920.

Policy for development of an American merchant marine, etc., declared.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is hereby declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the United States Shipping Board shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

Shipping Board to execute provisions relating thereto.

Designated legislation repealed.

SEC. 2. (a) That the following Acts and parts of Acts are hereby repealed, subject to the limitations and exceptions hereinafter, in this Act, provided:

Emergency shipping fund provisions. Vol. 40, p. 182.

(1) The emergency shipping fund provisions of the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the Military and Naval Establishments on account of war expenses for the fiscal year ending June 30, 1917, and for other purposes," approved June 15, 1917, as amended by the Act entitled "An Act to amend the emergency shipping fund provisions of the Urgent Deficiency Appropriation Act, approved June 15, 1917, so as to empower the President and his designated agents to take over certain transportation systems for the transportation of shipyard and plant employees, and for other purposes," approved April 22, 1918, and as further amended by the Act entitled "An Act making appropriation to supply deficiencies in appropriations for the fiscal year ending June 30, 1919, and prior fiscal years, on account of war expenses, and for other purposes," approved November 4, 1918;

Transporting shipyard employees. Vol. 40, p. 535.

Acquiring shipbuilding plants, etc. Vol. 40, p. 1022.

Compensation for street railroads, etc. Vol. 40, p. 535.

(2) Section 3 of such Act of April 22 1918;

Appropriation for plants, etc. Vol. 40, p. 1022.

(3) The paragraphs numbered 2 and 3 under the heading "Emergency shipping fund" in such Act of November 4, 1918; and

Control of shipping charters. Vol. 40, p. 913.

(4) The Act entitled "An Act to confer on the President power to prescribe charter rates and freight rates and to requisition vessels, and for other purposes," approved July 18, 1918.

Construction, etc., by Shipping Board. Vol. 39, p. 730.

(5) Sections 5, 7, and 8, Shipping Act, 1916.

Limitations on repeals.

(b) The repeal of such Acts or parts of Acts is subject to the following limitations:

Existing contracts assumed.

(1) All contracts or agreements lawfully entered into before the passage of this Act under any such Act or part of Act shall be assumed and carried out by the United States Shipping Board, hereinafter called "the board."

Accruing rights, etc., declared valid.

(2) All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject

to the provisions of subdivision (c) of this section, as if this Act had not been passed.

Incurred penalties to be enforced.

(3) The repeal shall not have the effect of extinguishing any penalty incurred under such Acts or parts of Acts, but such Acts or parts of Acts shall remain in force for the purpose of sustaining a prosecution for enforcement of the penalty therein provided for the violation thereof.

Completion of construction work authorized.

(4) The board shall have full power and authority to complete or conclude any construction work begun in accordance with the provisions of such Acts or parts of Acts if, in the opinion of the board, the completion or conclusion thereof is for the best interests of the United States.

Early liquidation of pending matters, directed.

(c) As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

Board to determine compensation.

Proviso.
Suit if decision unsatisfactory.

Shipping Act, 1916.
Vol. 39, p. 729, amended.

SEC. 3. (a) That section 3 of the "Shipping Act, 1916," is amended to read as follows:

United States Shipping Board.
Creation, appointment, etc.

"SEC. 3. That a board is hereby created to be known as the United States Shipping Board and hereinafter referred to as the board. The board shall be composed of seven commissioners, to be appointed by the President, by and with the advice and consent of the Senate; and the President shall designate the member to act as chairman of the board, and the board may elect one of its members as vice chairman. Such commissioners shall be appointed as soon as practicable after the enactment of this Act and shall continue in office two for a term of one year, and the remaining five for terms of two, three, four, five, and six years, respectively, from the date of their appointment, the term of each to be designated by the President, but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he succeeds.

Tenure of office.

Qualifications, and geographical distribution of commissioners.

"The commissioners shall be appointed with due regard to their fitness for the efficient discharge of the duties imposed on them by this Act, and two shall be appointed from the States touching the Pacific Ocean, two from the States touching the Atlantic Ocean, one from the States touching the Gulf of Mexico, one from the States touching the Great Lakes and one from the interior, but not more than one shall be appointed from the same State. Not more than four of the commissioners shall be appointed from the same political party. A vacancy in the board shall be filled in the same manner as the original appointments. No commissioner shall take any part in the consideration or decision of any claim or particular controversy in which he has a pecuniary interest.

Political division.

Pecuniary prohibition.

Other employment, etc., forbidden.

"Each commissioner shall devote his time to the duties of his office, and shall not be in the employ of or hold any official relation to any common carrier or other person subject to this Act, nor while holding such office acquire any stock or bonds thereof or become pecuniarily interested in any such carrier.

Division of duties, etc.

"The duties of the board may be so divided that under its supervision the directorship of various activities may be assigned to one or more commissioners. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

Seal.

A vacancy in the board shall not impair the right of the remaining members of the board to exercise all its powers. The board shall have an official seal, which shall be judicially noticed.

Business procedure, legal assistance, etc.

"The board may adopt rules and regulations in regard to its procedure and the conduct of its business. The board may employ within the limits of appropriations made therefor by Congress such attorneys as it finds necessary for proper legal service to the board in the conduct of its work, or for proper representation of the public interest in investigations made by it or proceedings pending before it whether at the board's own instance or upon complaint, or to appear for or represent the board in any case in court or other tribunal.

Duties, etc., of existing board continued.

The board shall have such other rights and perform such other duties not inconsistent with the Merchant Marine Act, 1920, as are conferred by existing law upon the board in existence at the time this section as amended takes effect.

Temporary continuance of present commissioners.

"The commissioners in office at the time this section as amended takes effect shall hold office until all the commissioners provided for in this section as amended are appointed and qualify."

Vol. 39, p. 729, amended.

(b) The first sentence of section 4 of the "Shipping Act, 1916," is amended to read as follows:

Salary of members.

"SEC. 4. That each member of the board shall receive a salary of $12,000 per annum."

All Government acquired vessels, etc., transferred to Board.

SEC. 4. That all vessels and other property or interests of whatsoever kind, including vessels or property in course of construction or contracted for, acquired by the President through any agencies whatsoever in pursuance of authority conferred by the Acts or parts of Acts repealed by section 2 of this Act, or in pursuance of the joint resolution entitled "Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes," approved May 12, 1917,

Enemy vessels. Vol. 40, p. 75.

In Government use excepted.

with the exception of vessels and property the use of which is in the opinion of the President required by any other branch of the Government service of the United States, are hereby transferred to the board:

Proviso. Others under War or Navy Departments exempt herefrom.

Provided, That all vessels in the military and naval service of the United States, including the vessels assigned to river and harbor work, inland waterways, or vessels for such needs in the course of construction or under contract by the War Department, shall be exempt from the provisions of this Act.

Sales of acquired vessels to citizens directed.

SEC. 5. That in order to accomplish the declared purposes of this Act, and to carry out the policy declared in section 1 hereof, the board is authorized and directed to sell, as soon as practicable, consistent with good business methods and the objects and purposes to be attained by this Act, at public or private competitive sale after appraisement and due advertisement, to persons who are citizens of

Exception. *Post*, p. 991.

the United States except as provided in section 6 of this Act, all of

Terms, etc.

the vessels referred to in section 4 of this Act or otherwise acquired by the board. Such sale shall be made at such prices and on such terms and conditions as the board may prescribe, but the completion of the payment of the purchase price and interest shall not be deferred more than fifteen years after the making of the contract of sale.

Considerations entering into price fixing.

The board in fixing or accepting the sale price of such vessels shall take into consideration the prevailing domestic and foreign market price of, the available supply of, and the demand for vessels, existing freight rates and prospects of their maintenance, the cost of constructing vessels of similar types under prevailing conditions, as well as the cost of the construction or purchase price of the vessels to be sold, and any other facts or conditions that would influence a prudent, solvent business man in the sale of similar vessels or prop-

erty which he is not forced to sell. All sales made under the authority of this Act shall be subject to the limitations and restrictions of section 9 of the "Shipping Act, 1916," as amended.

Coastwise trade limitations.
Post, p. 994.

SEC. 6. That the board is authorized and empowered to sell to aliens, at such prices and on such terms and conditions as it may determine, not inconsistent with the provisions of section 5 (except that completion of the payment of the purchase price and interest shall not be deferred more than ten years after the making of the contract of sale), such vessels as it shall, after careful investigation, deem unnecessary to the promotion and maintenance of an efficient American merchant marine; but no such sale shall be made unless the board, after diligent effort, has been unable to sell, in accordance with the terms and conditions of section 5, such vessels to persons citizens of the United States, and has, upon an affirmative vote of not less than five of its members, spread upon the minutes of the board, determined to make such sale; and it shall make as a part of its records a full statement of its reasons for making such sale. Deferred payments of purchase price of vessels under this section shall bear interest at the rate of not less than 5½ per centum per annum, payable semiannually.

Permissive sales to aliens.

Condition, etc.

Interest on deferred payments.

SEC. 7. That the board is authorized and directed to investigate and determine as promptly as possible after the enactment of this Act and from time to time thereafter what steamship lines should be established and put in operation from ports in the United States or any Territory, District, or possession thereof to such world and domestic markets as in its judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be employed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The board is authorized to sell, and if a satisfactory sale can not be made, to charter such of the vessels referred to in section 4 of this Act or otherwise acquired by the board, as will meet these requirements to responsible persons who are citizens of the United States who agree to establish and maintain such lines upon such terms of payment and other conditions as the board may deem just and necessary to secure and maintain the service desired; and if any such steamship line is deemed desirable and necessary, and if no such citizen can be secured to supply such service by the purchase or charter of vessels on terms satisfactory to the board, the board shall operate vessels on such line until the business is developed so that such vessels may be sold on satisfactory terms and the service maintained, or unless it shall appear within a reasonable time that such line can not be made self-sustaining. The Postmaster General is authorized, notwithstanding the Act entitled "An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," approved March 3, 1891, to contract for the carrying of the mails over such lines at such price as may be agreed upon by the board and the Postmaster General: *Provided*, That preference in the sale or assignment of vessels for operation on such steamship lines shall be given to persons who are citizens of the United States who have the support, financial and otherwise, of the domestic communities primarily interested in such lines if the board is satisfied of the ability of such persons to maintain the service desired and proposed to be maintained, or to persons who are citizens of the United States who may then be maintaining a service from the port of the United States to or in the general direction of the world market port to which the board has determined that such service should be established: *Provided further*,

Investigation, etc., for establishing steamship lines to promote foreign and coastwise trade, etc.

Type, etc., of vessels.

Disposal of acquired vessels to citizens agreeing to operate such lines.

Temporary operation by Board, if none by citizens obtained.

Rates for ocean mail service, allowed.
Vol. 26, p. 832.

Provisos.
Preference in sales, etc., of vessels therefor.

Continuation of present service.

That where steamship lines and regular service have been established and are being maintained by ships of the board at the time of the enactment of this Act, such lines and service shall be maintained by the board until, in the opinion of the board, the maintenance thereof is unbusinesslike and against the public interests: *And provided further*, That whenever the board shall determine, as provided in this Act, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such Government service shall not be less than the cost thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

Rates for Government service not to be less than cost, if citizens are operating same service.

Investigation directed for developing water commerce transportation facilities, etc.

Extent of, designated.

SEC. 8. That it shall be the duty of the board, in cooperation with the Secretary of War, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which it has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable thereto; to investigate the subject of water terminals, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, with a view to devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through such ports: *Provided*, That if after such investigation the board shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Interstate Commerce Commission are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations, new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section the board may submit its findings to the Interstate Commerce Commission for such action as such commission may consider proper under existing law.

Proviso.

Findings as to detrimental rail rates, etc., to be submitted to Interstate Commerce Commission for action.

Insurance required on vessels sold on deferred payments.

SEC. 9. That if the terms and conditions of any sale of a vessel made under the provisions of this Act include deferred payments of the purchase price, the board shall require, as part of such terms and conditions, that the purchaser of the vessel shall keep the same insured (a) against loss or damage by fire, and against marine risks and disasters, and war and other risks if the board so specifies, with such insurance companies, associations or underwriters, and under such forms of policies, and to such an amount, as the board may prescribe or approve; and (b) by protection and indemnity insurance with such insurance companies, associations, or underwriters and under such forms of policies, and to such an amount as the board may prescribe or approve. The insurance required to be carried under this section shall be made payable to the board and/or to the parties as interest may appear. The board is authorized to enter into any agreement that it deems wise in respect to the payment and/or the guarantee of premiums of insurance.

Fire, marine, etc.

Protection and indemnity.

Payment of premiums.

Insurance fund authorized for Government vessels, plants, etc.

SEC. 10. That the board may create out of net revenue from operations and sales, and maintain and administer, a separate insurance fund, which it may use to insure in whole or in part,

against all hazards commonly covered by insurance policies in such cases, any interest of the United States (1) in any vessel, either constructed or in process of construction, and (2) in any plants or materials heretofore or hereafter acquired by the board or hereby transferred to the board.

Construction loan fund.
Creation of, from revenues of board.

SEC. 11. That during a period of five years from the enactment of this Act the board may annually set aside out of the revenues from sales and operations a sum not exceeding $25,000,000, to be known as its construction loan fund, to be used in aid of the construction of vessels of the best and most efficient type for the establishment and maintenance of service on steamship lines deemed desirable and necessary by the board, and such vessels shall be equipped with the most modern, the most efficient, and the most economical machinery and commercial appliances. The board shall use such fund to the extent required upon such terms as the board may prescribe to aid persons, citizens of the United States, in the construction by them in private shipyards in the United States of the foregoing class of vessels. No aid shall be for a greater sum than two-thirds of the cost of the vessel or vessels to be constructed, and the board shall require such security, including a first lien upon the entire interest in the vessel or vessels so constructed as it shall deem necessary to insure the repayment of such sum with interest thereon and the maintenance of the service for which such vessel or vessels are built.

Use specified.

In aid of construction at private shipyards.

Limit, lien, etc.

Care, etc., of vessels by Board until disposed of.

SEC. 12. That all vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the board or chartered or leased by it on such terms and conditions as the board shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act; and the United States Shipping Board Emergency Fleet Corporation shall continue in existence and have authority to operate vessels, unless otherwise directed by law, until all vessels are sold in accordance with the provisions of this Act, the provision in section 11 of the "Shipping Act, 1916," to the contrary notwithstanding.

Emergency Fleet Corporation continued to operate vessels, etc.

Vol. 39, p. 732.

Sales of property other than vessels.

SEC. 13. That the board is further authorized to sell all property other than vessels transferred to it under section 4 upon such terms and conditions as the board may determine and prescribe.

Net proceeds of activities, etc.
Disposition of, until July 1, 1921.

SEC. 14. That the net proceeds derived by the board prior to July 1, 1921, from any activities authorized by this Act, or by the "Shipping Act, 1916," or by the Acts specified in section 2 of this Act, except such an amount as the board shall deem necessary to withhold as operating capital, for the purposes of section 12 hereof, and for the insurance fund authorized in section 10 hereof, and for the construction loan fund authorized in section 11 hereof, shall be covered into the Treasury of the United States to the credit of the board and may be expended by it, within the limits of the amounts heretofore or hereafter authorized, for the construction, requisitioning, or purchasing of vessels. After July 1, 1921, such net proceeds, less such an amount as may be authorized annually by Congress to be withheld as operating capital, and less such sums as may be needed for such insurance and construction loan funds, shall be covered into the Treasury of the United States as miscellaneous receipts. The board shall, as rapidly as it deems advisable, withdraw investment of Government funds made during the emergency under the authority conferred by the Acts or parts of Acts repealed by section 2 of this Act and cover the net proceeds thereof into the Treasury of the United States as miscellaneous receipts.

After July 1, 1921.

Investments made during emergency to be withdrawn, etc.

No charter hire required of vessels used by War Department.

SEC. 15. That the board shall not require payment from the War Department for the charter hire of vessels owned by the United

States Government furnished by the board from July 1, 1918, to June 30, 1919, inclusive, for the use of such department.

Housing of shipyard employees.
Authorizations for, terminated.
Vol. 40, p. 438.

SEC. 16. That all authorization to purchase, build, requisition, lease, exchange, or otherwise acquire houses, buildings or land under the Act entitled "An Act to authorize and empower the United States Shipping Board Emergency Fleet Corporation to purchase, lease, requisition, or otherwise acquire, and to sell or otherwise dispose of improved or unimproved lands, houses, buildings, and for other purposes," approved March 1, 1918, is hereby terminated: *Provided, however*, That expenditures may be made under said Act for the repair of houses and buildings already constructed, and the completion of such houses or buildings as have heretofore been contracted for or are under construction, if considered advisable, and the board is authorized and directed to dispose of all such properties or the interest of the United States in all such properties at as early a date as practicable, consistent with good business and the best interests of the United States.

Proviso.
Expenses allowed.

Early disposal directed.

Docks, etc., on Hudson River, Hoboken, N. J.
Board to take over, control, etc.

Vol. 40, p. 459.

SEC. 17. That the board is authorized and directed to take over on January 1, 1921, the possession and control of, and to maintain and develop, all docks, piers, warehouses, wharves and terminal equipment and facilities, including all leasehold easements, rights of way, riparian rights and other rights, estates and interests therein or appurtenant thereto, acquired by the President by or under the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes," approved March 28, 1918.

Other docks, etc., acquired for Army or Navy, may be transferred to Board.

The possession and control of such other docks, piers, warehouses, wharves and terminal equipment and facilities or parts thereof, including all leasehold easements, rights of way, riparian rights and other rights, estates or interests therein or appurtenant thereto which were acquired by the War Department or the Navy Department for military or naval purposes during the war emergency may be transferred by the President to the board whenever the President deems such transfer to be for the best interests of the United States.

Temporary transfers to Army or Navy for needs thereof, permitted.

The President may at any time he deems it necessary, by order setting out the need therefor and fixing the period of such need, permit or transfer the possession and control of any part of the property taken over by or transferred to the board under this section to the War Department or the Navy Department for their needs, and when in the opinion of the President such need therefor ceases the possession and control of such property shall revert to the board. None of such property shall be sold except as may be hereafter provided by law.

Sales restricted.

Vol. 39, p. 730.
Vol. 40, p. 900, amended.

SEC. 18. That section 9 of the "Shipping Act, 1916," is amended to read as follows:

Vessels purchased from Board by citizens, allowed American registry, etc.

"SEC. 9. That any vessel purchased, chartered, or leased from the board, by persons who are citizens of the United States, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license under this Act, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered by the board to any person a citizen of the United States, as provided in this Act, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

Proviso.
Foreign built vessels, etc., permitted coastwise trade if owned, etc., by citizens.

Operation under such registry, etc.

"Every vessel purchased, chartered, or leased from the board shall, unless otherwise authorized by the board, be operated only under such registry or enrollment and license. Such vessels while employed

solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein. Merchant vessels, subject to laws, etc., thereof.

"It shall be unlawful to sell, transfer or mortgage, or, except under regulations prescribed by the board, to charter, any vessel purchased from the board or documented under the laws of the United States to any person not a citizen of the United States, or to put the same under a foreign registry or flag, without first obtaining the board's approval. Sales, etc., subject to approval of Board.

"Any vessel chartered, sold, transferred or mortgaged to a person not a citizen of the United States or placed under a foreign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than $5,000, or to imprisonment for not more than five years, or both." Forfeiture for violations. Punishment imposed.

SEC. 19. (1) The board is authorized and directed in aid of the accomplishment of the purposes of this Act Special authority of Board.

(a) To make all necessary rules and regulations to carry out the provisions of this Act; Make necessary rules, etc.

(b) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; and Rules to meet unfavorable trade laws, competitive practices, etc., of foreign countries.

(c) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the Steamboat Inspection Service. Request departments, etc., to modify, etc., established rules thereof. Exceptions.

(2) No rule or regulation shall hereafter be established by any department, board, bureau, or agency of the Government which affect shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the Steamboat Inspection Service, until such rule or regulation has been submitted to the board for its approval and final action has been taken thereon by the board or the President. Rules affecting foreign shipping trade subject to approval of Board. Exceptions.

(3) Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the board, as provided in subdivision (c) of paragraph (1) of this section, or objects to the decision of the board in respect to the approval of any rule or regulation, as provided in paragraph (2) of this section, either the board or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annul such rule or regulation. Disagreements as to rules, etc., to be submitted to the President. Action thereon.

(4) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States. No preferences to Government vessels over citizen owned.

Common carriers by water.
Vol. 39, p. 733, amended.

SEC. 20. (1) That section 14 of the Shipping Act, 1916, as amended, is amended to read as follows:

Specific restriction on transportation with foreign countries by.

"SEC. 14. That no common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property between a port of a State, Territory, District, or possession of the United States and any other such port or a port of a foreign country,—

Allowing deferred rebates.

"First. Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper.

Definition.

The term 'deferred rebate' in this Act means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

Using fighting ships.

"Second. Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise.

Definition.

The term 'fighting ship' in this Act means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing or reducing competition by driving another carrier out of said trade.

Retaliating, etc., against shippers.

"Third. Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

Making unfair discriminatory shipping contracts.

"Fourth. Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of

Details.

(a) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; (b) the loading and landing of freight in proper condition; or (c) the adjustment and settlement of claims.

Penalty for violations.

"Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $25,000 for each offense."

New section.

(2) The Shipping Act, 1916, as amended, is amended by inserting after section 14 a new section to read as follows:

Determination by Board as to acts of persons not citizens.

"SEC. 14a. The board upon its own initiative may, or upon complaint shall, after due notice to all parties in interest and hearing, determine whether any person, not a citizen of the United States and engaged in transportation by water of passengers or property—

Violations of above provisions.

"(1) Has violated any provision of section 14, or

Party to combinations, etc., against American carriers by water.

"(2) Is a party to any combination, agreement, or understanding, express or implied, that involves in respect to transportation of passengers or property between foreign ports, deferred rebates or any other unfair practice designated in section 14, and that excludes from admission upon equal terms with all other parties thereto, a common carrier by water which is a citizen of the United States and which has applied for such admission.

Certificate of violation, etc., to the Secretary of Commerce.

"If the board determines that any such person has violated any such provision or is a party to any such combination, agreement, or understanding, the board shall thereupon certify such fact to the

Vessel owned, etc., refused entry until violation cease.

Secretary of Commerce. The Secretary shall thereafter refuse such person the right of entry for any ship owned or operated by him or by any carrier directly or indirectly controlled by him, into any port of the United States, or any Territory, District, or possession thereof, until the board certifies that the violation has ceased or such combination, agreement, or understanding has been terminated."

Coastwise laws. Extended to island Territories and possessions after February 1, 1922.

Board to establish passenger, etc., service therewith.

SEC. 21. That from and after February 1, 1922, the coastwise laws of the United States shall extend to the island Territories and possessions of the United States not now covered thereby, and the board is directed prior to the expiration of such year to have established adequate steamship service at reasonable rates to accommodate the commerce and the passenger travel of said islands and to maintain and operate such service until it can be taken over and operated and maintained upon satisfactory terms by private capital and enterprise: *Provided*, That if adequate shipping service is not established by February 1, 1922, the President shall extend the period herein allowed for the establishment of such service in the case of any island Territory or possession for such time as may be necessary for the establishment of adequate shipping facilities therefor: *Provided further*, That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the Government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago: *And provided further*. That the foregoing provisions of this section shall not take effect with reference to the Philippine Islands until the President of the United States after a full investigation of the local needs and conditions shall, by proclamation, declare that an adequate shipping service has been established as herein provided and fix a date for the going into effect of the same.

Provisos. Extension of period.

Philippine Islands coastwise trade regulations.

Application to Philippine Islands deferred until adequate service established.

Coastwise trade. Admission of vessels of foreign registry to, repealed.

Vol. 40, p. 392, repealed.

SEC. 22. That the Act entitled "An Act giving the United States Shipping Board power to suspend present provisions of law and permit vessels of foreign registry and foreign-built vessels admitted to American registry under the Act of August 18, 1914, to engage in the coastwise trade during the present war and for a period of one hundred and twenty days thereafter, except the coastwise trade with Alaska," approved October 6, 1917, is hereby repealed: *Provided*, That all foreign-built vessels admitted to American registry, owned on February 1, 1920, by persons citizens of the United States, and all foreign-built vessels owned by the United States at the time of the enactment of this Act, when sold and owned by persons citizens of the United States, may engage in the coastwise trade so long as they continue in such ownership, subject to the rules and regulations of such trade: *Provided*, That the board is authorized to issue permits for the carrying of passengers in foreign ships if it deems it necessary so to do, operating between the Territory of Hawaii and the Pacific Coast up to February 1, 1922.

Provisos. Foreign built of American registry allowed in, if owned by citizens.

Hawaii passenger travel on foreign ships permitted to February 1, 1922.

Tax exemptions allowed owners of American ships in foreign trade.

Vol. 40, p. 1088.

Amount.

Provisos. Equivalent amount to be used for building approved vessels in American shipyards.

SEC. 23. That the owner of a vessel documented under the laws of the United States and operated in foreign trade shall, for each of the ten taxable years while so operated, beginning with the first taxable year ending after the enactment of this Act, be allowed as a deduction for the purpose of ascertaining his net income subject to the war-profits and excess-profits taxes imposed by Title III of the Revenue Act of 1918 an amount equivalent to the net earnings of such vessel during such taxable year, determined in accordance with rules and regulations to be made by the board: *Provided*, That such owner shall not be entitled to such deduction unless during such taxable year he invested, or set aside under rules and regulations to be made by the board in a trust fund for investment, in the building in shipyards in the United States of new vessels of a type and kind approved by the board, an amount, to be determined by the Secretary of the Treasury and certified by him to the board, equivalent to the war-profits and excess-profits taxes that would have been payable by such owner on account of the net earnings of such vessels but for the deduction allowed under the provisions of this section:

Part of construction required from ordinary funds.

Provided further, That at least two-thirds of the cost of any vessel constructed under this paragraph shall be paid for out of the ordinary funds or capital of the person having such vessel constructed.

Income tax exemption on sales by citizens of American ships built prior to January 1, 1914.

That during the period of ten years from the enactment of this Act any person a citizen of the United States who may sell a vessel documented under the laws of the United States and built prior to January 1, 1914, shall be exempt from all income taxes that would be payable upon any of the proceeds of such sale under Title I, Title II, and Title III of the Revenue Act of 1918 if the entire proceeds thereof shall be invested in the building of new ships in American shipyards, such ships to be documented under the laws of the United States and to be of a type approved by the board.

Vol. 40, pp. 1057-1096.

New American ships to be built from proceeds.

Mails to be shipped on American vessels.

Contract assignments forbidden, etc.

SEC. 24. That all mails of the United States shipped or carried on vessels shall, if practicable, be shipped or carried on American-built vessels documented under the laws of the United States. No contract hereafter made with the Postmaster General for carrying mails on vessels so built and documented shall be assigned or sublet, and no mails covered by such contract shall be carried on any vessel not so built and documented. No money shall be paid out of the Treasury of the United States on or in relation to any such contract for carrying mails on vessels so built and documented when such contract has been assigned or sublet or when mails covered by such contract are in violation of the terms thereof carried on any vessel not so built and documented. The board and the Postmaster General, in aid of the development of a merchant marine adequate to provide for the maintenance and expansion of the foreign or coastwise trade of the United States and of a satisfactory postal service in connection therewith, shall from time to time determine the just and reasonable rate of compensation to be paid for such service, and the Postmaster General is hereby authorized to enter into contracts within the limits of appropriations made therefor by Congress to pay for the carrying of such mails in such vessels at such rate. Nothing herein shall be affected by the Act entitled "An Act to provide for ocean mail service between the United States and foreign ports, and to promote commerce," approved March 3, 1891.

Determination of rates, etc.

Prior Act not applicable.

Vol. 26, p. 830.

American Bureau of Shipping.

Classification of vessels by, recognized.

SEC. 25. That for the classification of vessels owned by the United States, and for such other purposes in connection therewith as are the proper functions of a classification bureau, all departments, boards, bureaus, and commissions of the Government are hereby directed to recognize the American Bureau of Shipping as their agency so long as the American Bureau of Shipping continues to be maintained as an organization which has no capital stock and pays no dividends: *Provided*, That the Secretary of Commerce and the chairman of the board shall each appoint one representative who shall represent the Government upon the executive committee of the American Bureau of Shipping, and the bureau shall agree that these representatives shall be accepted by them as active members of such committee. Such representatives of the Government shall serve without any compensation, except necessary traveling expenses: *Provided further*, That the official list of merchant vessels published by the Government shall hereafter contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

Provisos.

Government representative to be on committee.

Notation of, on official list of merchant vessels.

Cargo vessels.

Passengers carried on, limited.

SEC. 26. That cargo vessels documented under the laws of the United States may carry not to exceed sixteen persons in addition to the crew between any ports or places in the United States or its Districts, Territories, or possessions, or between any such port or place and any foreign port, or from any foreign port to another foreign port, and such vessels shall not be held to be "passenger vessels" or "vessels carrying passengers" within the meaning of the inspection laws and the rules and regulations thereunder: *Provided*, That nothing herein shall be taken to exempt such vessels from the laws, rules, and

Provisos.

Life saving equipment required.

regulations respecting life-saving equipment: *Provided further*, That when any such vessel carries persons other than the crew as herein provided for, the owner, agent, or master of the vessel shall first notify such persons of the presence on board of any dangerous articles, as defined by law, or of any other condition or circumstance which would constitute a risk of safety for passenger or crew.

Notice of risk, etc. to be given.

The privilege bestowed by this section on vessels of the United States shall be extended insofar as the foreign trade is concerned to the cargo vessels of any nation which allows the like privilege to cargo vessels of the United States in trades not restricted to vessels under its own flag.

Reciprocal allowance to foreign cargo vessels.

Failure on the part of the owner, agent, or master of the vessel to give such notice shall subject the vessel to a penalty of $500, which may be mitigated or remitted by the Secretary of Commerce upon a proper representation of the facts.

Penalty for failure to give notice of risk.

SEC. 27. That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: *Provided*, That this section shall not apply to merchandise transported between points within the continental United States, excluding Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further*, That this section shall not become effective upon the Yukon river until the Alaska Railroad shall be completed and the Shipping Board shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic.

Merchandise transported in coastwise trade, etc., in other than American vessels to be forfeited.

Provisos. Exception.

Application to Yukon River delayed.

SEC. 28. That no common carrier shall charge, collect, or receive, for transportation subject to the Interstate Commerce Act of persons or property, under any joint rate, fare, or charge, or under any export, import, or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the board is of the opinion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented, it shall certify this fact to the Interstate Commerce Commission, and the commission may, by order, suspend the operation of the provisions of this section with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from, or to be transported, to such ports, for such length of time and under such terms and conditions as it may prescribe in such order, or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the commission whenever the board is of the

Restriction on lower rail charges for transportation from foreign countries, etc., by water carriers.

By American vessels excepted.

Suspension if no adequate facilities afforded by American vessels.

Termination when facilities afforded.

opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to the commission.

Definitions.

"Association."

SEC. 29. (a) That whenever used in this section—

(1) The term "association" means any association, exchange, pool, combination, or other arrangement for concerted action; and

"Marine insurance companies."

(2) The term "marine insurance companies" means any persons, companies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

Marine insurance associations.

Not illegal under antitrust laws.

Vol. 38, p. 730.

(b) Nothing contained in the "antitrust laws" as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

Apportionment of risks, etc.

Ship Mortgage Act, 1920.

SEC. 30. Subsection A. That this section may be cited as the "Ship Mortgage Act, 1920."

Definitions.

DEFINITIONS.

Subsection B. When used in this section—

"Document."

(1) The term "document" includes registry and enrollment and license;

"Documented."

(2) The term "documented" means registered or enrolled or licensed under the laws of the United States, whether permanently or temporarily;

"Port of documentation."

(3) The term "port of documentation" means the port at which the vessel is documented, in accordance with law;

"Vessel of the United States."

(4) The term "vessel of the United States" means any vessel documented under the laws of the United States and such vessel shall be held to continue to be so documented until its documents are surrendered with the approval of the board; and

"Mortgagee."

(5) The term "mortgagee," in the case of a mortgage involving a trust deed and a bond issue thereunder, means the trustee designated in such deed.

Recording of sales, conveyances, and mortgages of vessels of the United States.

RECORDING OF SALES, CONVEYANCES, AND MORTGAGES OF VESSELS OF THE UNITED STATES.

Collector of customs to record bill of sale, etc.

Subsection C. (a) No sale, conveyance, or mortgage which, at the time such sale, conveyance, or mortgage is made, includes a vessel of the United States, or any portion thereof, as the whole or any part of the property sold, conveyed, or mortgaged shall be valid, in respect to such vessel, against any person other than the grantor or mortgagor, his heir or devisee, and a person having actual notice thereof, until such bill of sale, conveyance, or mortgage is recorded in the office of the collector of customs of the port of documentation of such vessel, as provided in subdivision (b) of this subsection.

Record book.

Contents.

(b) Such collector of customs shall record bills of sale, conveyances, and mortgages, delivered to him, in the order of their reception, in books to be kept for that purpose and indexed to show—

(1) The name of the vessel;

(2) The names of the parties to the sale, conveyance, or mortgage;

(3) The time and date of reception of the instrument;

(4) The interest in the vessel so sold, conveyed, or mortgaged; and

(5) The amount and date of maturity of the mortgage.

Mortgages of vessels. Requirements to give preferred status, when sold, etc.

Subsection D. (a) A valid mortgage which, at the time it is made includes the whole of any vessel of the United States of 200 gross tons and upwards, shall in addition have, in respect to such vessel and as

of the date of the compliance with all the provisions of this subdivision, the preferred status given by the provisions of subsection M, if—

(1) The mortgage is indorsed upon the vessel's documents in accordance with the provisions of this section;

(2) The mortgage is recorded as provided in subsection C, together with the time and date when the mortgage is so indorsed;

(3) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel;

(4) The mortgage does not stipulate that the mortgagee waives the preferred status thereof; and

(5) The mortgagee is a citizen of the United States.

Preferred mortgages.

(b) Any mortgage which complies in respect to any vessel with the conditions enumerated in this subsection is hereafter in this section called a "preferred mortgage" as to such vessel.

Indorsements, required on documents of vessel.

(c) There shall be indorsed upon the documents of a vessel covered by a preferred mortgage—

(1) The names of the mortgagor and mortgagee;

(2) The time and date the indorsement is made;

(3) The amount and date of maturity of the mortgage; and

(4) Any amount required to be indorsed by the provisions of subdivision (e) or (f) of this subsection.

Indorsement by collector, etc.

(d) Such indorsement shall be made (1) by the collector of customs of the port of documentation of the mortgaged vessel, or (2) by the collector of customs of any port in which the vessel is found, if such collector is directed to make the indorsement by the collector of customs of the port of documentation; and no clearance shall be issued to the vessel until such indorsement is made. The collector of customs of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such indorsement shall be transferred to and indorsed upon the new document by the collector of customs.

Transfers to new documents.

Mortgages including other property.

(e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be indorsed upon the documents of the vessel.

Preferred mortgages, including more than one vessel.

Action of court on sale.

(f) If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of the mortgage indebtedness, the amount of such portion of such payment shall be indorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the United States in a suit in rem in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of the vessel bears to the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage.

Copies of record to mortgagor.

Subsection E. The collector of customs upon the recording of a preferred mortgage shall deliver two certified copies thereof to the mortgagor who shall place, and use due diligence to retain, one copy on board the mortgaged vessel and cause such copy and the documents of the vessel to be exhibited by the master to any person having business with the vessel, which may give rise to a maritime lien upon the vessel or to the sale, conveyance, or mortgage thereof.

Exhibition on vessel, etc.

The master of the vessel shall, upon the request of any such person, exhibit to him the documents of the vessel and the copy of any preferred mortgage of the vessel placed on board thereof.

Written notice of prior liabilities to be given by mortgagor to mortgagee.

Subsection F. The mortgagor (1) shall, upon request of the mortgagee, disclose in writing to him prior to the execution of any preferred mortgage, the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged, that is known to the mortgagor, and (2), without the consent of the mortgagee, shall not incur, after the execution of such mortgage and before the mortgagee has had a reasonable time in which to record the mortgage and have indorsements in respect thereto made upon the documents of the vessel, any contractual obligation creating a lien upon the vessel other than a lien for wages of stevedores when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, or for salvage, including contract salvage, in respect to the vessel.

Restriction for subsequent obligations creating a lien.

Claims upon vessel covered by a preferred mortgage.

Notice, etc.

Subsection G. (a) The collector of customs of the port of documentation shall, upon the request of any person, record notice of his claim of a lien upon a vessel covered by a preferred mortgage, together with the nature, date of creation, and amount of the lien, and the name and address of the person. Any person who has caused notice of his claim of lien to be so recorded shall, upon a discharge in whole or in part of the indebtedness, forthwith file with the collector of customs a certificate of such discharge. The collector of customs shall thereupon record the certificate.

Discharge, etc., of mortgages.

(b) The mortgagor, upon a discharge in whole or in part of the mortgage indebtedness, shall forthwith file with the collector of customs for the port of documentation of the vessel, a certificate of such discharge. Such collector of customs shall thereupon record the certificate. In case of a vessel covered by a preferred mortgage, the collector of customs at the port of documentation shall (1) indorse upon the documents of the vessel, or direct the collector of customs at any port in which the vessel is found, to so indorse, the fact of such discharge, and (2) shall deny clearance to the vessel until such indorsement is made.

Preferred mortgage.

Bills of sale, etc. Record requirements.

Subsection H. (a) No bill of sale, conveyance, or mortgage shall be recorded unless it states the interest of the grantor or mortgagor in the vessel, and the interest so sold, conveyed, or mortgaged.

Acknowledgments.

(b) No bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge thereof, shall be recorded unless previously acknowledged before a notary public or other officer authorized by a law of the United States, or of a State, Territory, District, or possession thereof, to take acknowledgment of deeds.

Record, etc., at new port of documentation.

(c) In case of a change in the port of documentation of a vessel of the United States, no bill of sale, conveyance, or mortgage shall be recorded at the new port of documentation unless there is furnished to the collector of customs of such port, together with the copy of the bill of sale, conveyance, or mortgage to be recorded, a certified copy of the record of the vessel at the former port of documentation furnished by the collector of such port. The collector of customs at the new port of documentation is authorized and directed to record such certified copy.

Interest on preferred mortgages.

(d) A preferred mortgage may bear such rate of interest as is agreed by the parties thereto.

Inspection of records permitted.

Subsection I. Each collector of customs shall permit records made under the provisions of this section to be inspected during office hours, under such reasonable regulations as the collector may establish.

Certified copies to be furnished.

Upon the request of any person the collector of customs shall furnish him from the records of the collector's office (1) a certificate

setting forth the names of the owners of any vessel, the interest held by each owner, and the material facts as to any bill of sale or conveyance of, any mortgage covering, or any lien or other incumbrance upon, a specified vessel, (2) a certified copy of any bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge in respect to such vessel, or (3) a certified copy as required by subdivision (c) of subsection H. The collector of customs shall collect a fee for any bill of sale, conveyance, or mortgage recorded, or any certificate or certified copy furnished, by him, in the amount of 20 cents a folio with a minimum charge of $1.00. All such fees shall be covered into the Treasury of the United States as miscellaneous receipts.

Fees for recording, copies, etc.

PENALTIES.

Penalties.

Subsection J. (a) If the master of the vessel willfully fails to exhibit the documents of the vessel or the copy of any preferred mortgage thereof, as required by subsection E, the board of local inspectors of vessels having jurisdiction of the license of the master, may suspend or cancel such license, subject to the provisions of "An Act to provide for appeals from decision of boards of local inspectors of vessels and for other purposes," approved June 15, 1918.

License of master to be canceled on failure to exhibit documents, etc.

Vol. 40, p. 602.

(b) A mortgagor who, with intent to defraud, violates any provision of subsection F, and if the mortgagor is a corporation or association, the president or other principal executive officer of the corporation or association, shall upon conviction thereof be held guilty of a misdemeanor and shall be fined not more than $1,000 or imprisoned not more than 2 years, or both. The mortgaged indebtedness shall thereupon become immediately due and payable at the election of the mortgagee.

Punishment for withholding notice of prior debts, etc., by mortgagor.

(c) If any person enters into any contract secured by, or upon the credit of, a vessel of the United States covered by a preferred mortgage, and suffers pecuniary loss by reason of the failure of the collector of customs, or any officer, employee, or agent thereof, properly to perform any duty required of the collector under the provisions of this section, the collector of customs shall be liable to such person for damages in the amount of such loss. If any such person is caused any such loss by reason of the failure of the mortgagor, or master of the mortgaged vessel, or any officer, employee, or agent thereof, to comply with any provision of subsection E or F or to file an affidavit as required by subdivision (a) of subsection D, correct in each particular thereof, the mortgagor shall be liable to such person for damages in the amount of such loss. The district courts of the United States are given jurisdiction (but not to the exclusion of the courts of the several States, Territories, Districts, or possessions) of suits for the recovery of such damages, irrespective of the amount involved in the suit or the citizenship of the parties thereto. Such suit shall be begun by personal service upon the defendant within the limits of the district. Upon judgment for the plaintiff in any such suit, the court shall include in the judgment an additional amount for costs of the action and a reasonable counsel's fee, to be fixed by the court.

On preferred mortgages.

Collector, for failure of duty, causing loss on contract covered by.

Failure of mortgagor, etc., to comply with requirements.

Jurisdiction of courts.

Service, etc.

FORECLOSURE OF PREFERRED MORTGAGES.

Foreclosure of preferred mortgages.

Subsection K. A preferred mortgage shall constitute a lien upon the mortgaged vessel in the amount of the outstanding mortage indebtedness secured by such vessel. Upon the default of any term or condition of the mortgage, such lien may be enforced by the mortgagee by suit in rem in admiralty. Original jurisdiction of all such suits is granted to the district courts of the United States exclusively. In

Enforcement of lien.

Exclusive jurisdiction of Federal court.

Notices to be given.

addition to any notice by publication, actual notice of the commencement of any such suit shall be given by the libellant, in such manner as the court shall direct, to (1) the master, other ranking officer, or caretaker of the vessel, and (2) any person who has recorded a notice of claim of an undischarged lien upon the vessel, as provided in subsection G, unless after search by the libellant satisfactory to the court, such mortgagor, master, other ranking officer, caretaker, or claimant is not found within the United States. Failure to give notice to any such person, as required by this subsection, shall not constitute a jurisdictional defect; but the libellant shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit. It in personam for the recovery of such damages may be brought in accordance with the provisions of subdivision (c) of subsection J.

Effect of failure.

Recovery of damages.

Operation of vessel by receiver.

Subsection L. In any suit in rem in admiralty for the enforcement of the preferred mortgage lien, the court may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. The marshal may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of any person claiming a possessory common-law lien.

Possession by marshal.

"Preferred maritime lien." Meaning of.

Subsection M. (a) When used hereinafter in this section, the term "preferred maritime lien" means (1) a lien arising prior in time to the recording and indorsement of a preferred mortgage in accordance with the provisions of this section; or (2) a lien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, and for salvage, including contract salvage.

Termination of liens upon sale by court.

(b) Upon the sale of any mortgaged vessel by order of a district court of the United States in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon, all preëxisting claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of subsection L shall be held terminated and shall thereafter attach, in like amount and in accordance with their respective priorities, to the proceeds of the sale; except that the preferred mortgage lien shall have priority over all claims against the vessel, except (1) preferred maritime liens, and (2) expenses and fees allowed and costs taxed, by the court.

Attach thereafter to proceeds. Priorities.

Suit in personam in addition.

Subsection N. (a) Upon the default of any term or condition of a preferred mortgage upon a vessel, the mortgagee may, in addition to all other remedies granted by this section, bring suit in personam in admiralty in a district court of the United States, against the mortgagor for the amount of the outstanding mortgage indebtedness secured by such vessel or any deficiency in the full payment thereof.

Not applicable to realty, etc., covered by mortgage.

(b) This section shall not be construed, in the case of a mortgage covering, in addition to vessels, realty or personalty other than vessels, or both, to authorize the enforcement by suit in rem in admiralty of the rights of the mortgagee in respect to such realty or personalty other than vessels.

Transfers of mortgaged vessels and assignment of vessel mortgages.

TRANSFERS OF MORTGAGED VESSELS AND ASSIGNMENT OF VESSEL MORTGAGES.

Approval of Board necessary.

Subsection O. (a) The documents of a vessel of the United States covered by a preferred mortgage may not be surrendered (except in the case of the forfeiture of the vessel or its sale by the order of any court of the United States or any foreign country) without the approval of the board. The board shall refuse such approval unless the mortgagee consents to such surrender.

Interest of mortgagee if vessel forfeited for violation of law.

(b) The interest of the mortgagee in a vessel of the United States covered by a mortgage, shall not be terminated by the forfeiture of the vessel for a violation of any law of the United States, unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation.

Effect of sale by order of court.

(c) Upon the sale of any vessel of the United States covered by a preferred mortgage, by order of a district court of the United States in any suit in rem in admiralty for the enforcement of a maritime lien other than a preferred maritime lien, the vessel shall be sold free from all preexisting claims thereon; but the court shall, upon the request of the mortgagee, the libellant, or any intervenor, require the purchaser at such sale to give and the mortgagor to accept a new mortgage of the vessel for the balance of the term of the original mortgage. The conditions of such new mortgage shall be the same, so far as practicable, as those of the original mortgage and shall be subject to the approval of the court. If such new mortgage is given, the mortgagee shall not be paid from the proceeds of the sale and the amount payable as the purchase price shall be held diminished in the amount of the new mortgage indebtedness.

New mortgage, etc., by purchaser.

Effect on price.

Approval, etc., of assignments by Board.

(d) No rights under a mortgage of a vessel of the United States shall be assigned to any person not a citizen of the United States without the approval of the board. Any assignment in violation of any provision of this section shall be void.

Sales only to citizens.

(e) No vessel of the United States shall be sold by order of a district court of the United States in any suit in rem in admiralty to any person not a citizen of the United States.

Maritime liens for necessaries.

MARITIME LIENS FOR NECESSARIES

Persons entitled to. Vol. 36, p. 604.

Subsection P. Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

Enforcement.

Authority to procure repairs, etc., presumed.

Subsection Q. The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of dry dock or marine railway, and other necessaries for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is intrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

Chartered vessels, etc.

Subsection R. The officers and agents of a vessel specified in subsection Q shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this section shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessaries was without authority to bind the vessel therefor.

Restriction.

Waiving of liens by agreement.

Subsection S. Nothing in this section shall be construed to prevent the furnisher of repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, or the mortgagee, from waiving his right to a lien, or in the case of a preferred mortgage lien, to the preferred status of such lien, at any time, by agreement or otherwise; and this section shall not be construed to affect the rules of law now existing in regard to (1) the right to proceed against the vessel for advances, (2) laches in the enforcement of liens upon vessels, (3) the right to proceed in personam, (4) the rank of preferred maritime liens among

Rights not affected.

themselves, or (5) priorities between maritime liens and mortgages, other than preferred mortgages, upon vessels of the United States.

Statutes of States superseded.

Subsection T. This section shall supersede the provisions of all State statutes conferring liens on vessels, in so far as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies, towage, use of dry dock or marine railway, and other necessaries.

Miscellaneous provisions.

MISCELLANEOUS PROVISIONS.

Existing mortgages not affected.

Subsection U. This section shall not apply (1) to any existing mortgage, or (2) to any mortgage hereafter placed on any vessel now under an existing mortgage, so long as such existing mortgage remains undischarged.

Books, certificates, etc., to be furnished collectors.

Subsection V. The Secretary of Commerce is authorized and directed to furnish collectors of customs with all necessary books and records, and with certificates of registry and of enrollment and license in such form as provides for the making of all indorsements thereon required by this section.

Executory regulations to be prescribed.

Subsection W. The Secretary of Commerce is authorized to make such regulations in respect to the recording and indorsing of mortgages covering vessels of the United States, as he deems necessary to the efficient execution of the provisions of this section.

Laws repealed.
R. S., secs. 4192–4196, pp. 808, 809, repealed.
Vol. 36, p. 604, repealed.

Subsection X. Sections 4192 to 4196, inclusive, of the Revised Statutes of the United States, as amended, and the Act entitled "An Act relating to liens on vessels for repairs, supplies, or other necessaries," approved June 23, 1910, are repealed. This section, however, so far as not inconsistent with any of the provisions of law so repealed, shall be held a reenactment of such repealed law, and any right or obligation based upon any provision of such law and accruing prior to such repeal, may be prosecuted in the same manner and to the same effect as if this Act had not been passed.

R. S., sec. 4530, p. 876, amended.

SEC. 31. That section 4530 of the Revised Statutes of the United States is amended to read as follows:

Merchant seamen.
Payments while in port.
Vol. 36, p. 1165, amended.

"SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in section 4529 of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section 4552 of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Provisos.
Limitations extended.

In full at end of voyage.

Vol. 38, p. 1165.

Setting aside of release.
R. S., sec. 4552, p. 880.

Applicable to foreign seamen in American ports.

Wages of seamen.
Vol. 38, p. 1168, amended.

SEC. 32. That paragraph (a) of section 10 of the Act entitled "An Act to remove certain burdens on the American merchant marine and encourage the American foreign-carrying trade, and for other purposes," approved June 26, 1884, as amended, is hereby amended to read as follows:

"SEC. 10. (a) That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

Payment in advance, etc., unlawful.

Punishment for violations.

Liability whether paid within or without United States territory.

Punishment for receiving pay from seamen for employment.

SEC. 33. That section 20 of such Act of March 4, 1915, be, and is, amended to read as follows:

Vol. 38, p. 1185, amended.

"SEC. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

Injuries to seamen in service.

Actions for damages allowed.

Resulting in death.

Jurisdiction of courts.

SEC. 34. That in the judgment of Congress, articles or provisions in treaties or conventions to which the United States is a party, which restrict the right of the United States to impose discriminating customs duties on imports entering the United States in foreign vessels and in vessels of the United States, and which also restrict the right of the United States to impose discriminatory tonnage dues on foreign vessels and on vessels of the United States entering the United States should be terminated, and the President is hereby authorized and directed within ninety days after this Act becomes law to give notice to the several Governments, respectively, parties to such treaties or conventions, that so much thereof as imposes any such restriction on the United States will terminate on the expiration of such periods as may be required for the giving of such notice by the provisions of such treaties or conventions.

Treaty restrictions on discriminatory customs and tonnage duties to be terminated.

Notice to be given foreign Governments.

SEC. 35. That the power and authority vested in the board by this Act, except as herein otherwise specifically provided, may be exercised directly by the board, or by it through the United States Shipping Board Emergency Fleet Corporation.

Delegation of powers to Emergency Fleet Corporation.

SEC. 36. That if any provision of this Act is declared unconstitutional or the application of any provision to certain circumstances be held invalid, the remainder of the Act and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

Invalidity of any provision not to affect remainder of Act.

General meaning of terms used in this Act.

SEC. 37. That when used in this Act, unless the context otherwise requires, the terms "person," "vessel," "documented under the laws of the United States," and "citizen of the United States" shall have the meaning assigned to them by sections 1 and 2 of the "Shipping Act, 1916," as amended by this Act; the term "board" means the United States Shipping Board; and the term "alien" means any person not a citizen of the United States.

Vol. 39, pp. 728, 729.

Vol. 39, p. 729, amended.

SEC. 38. That section 2 of the Shipping Act, 1916, is amended to read as follows:

Controlling interest of corporations, etc., to be owned by citizens.

"SEC. 2. (a) That within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president and managing directors are citizens of the United States and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

Coastwise trade.

Controlling interest not deemed owned by citizens.
Interests specified.

"(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

Seventy-five per cent interests not deemed owned by citizens.
Interests specified.

"(c) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

Receivers and trustees included.

"(d) The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons."

Title.

SEC. 39. That this Act may be cited as the Merchant Marine Act, 1920.

Approved, June 5, 1920.

June 5, 1920.
[H. R. 11214.]
[Public, No. 262.]

CHAP. 251.—An Act To amend the Act entitled "An Act to exclude and expel from the United States aliens who are members of the anarchistic and similar classes," approved October 16, 1918.

Immigration.
Exclusion of alien anarchists, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act entitled "An Act to exclude and expel from the United States aliens

SJR

26

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

May 1, 1985

MEMORANDUM

To: Committee members

From: Committee staff

Re: SJR 26 Background information

This afternoon, the committee is scheduled to take up SJR 26, which represents the next logical step in the process begun by SB 141. As the members will recall, SB 141 would require the State to relinquish its right to certain highway rights-of-way created by the federal government through a series of public land orders (PLOs) in the late 40s and 50s.

After two hearings in this committee, it became apparent that the administration was totally opposed to the concept of relinquishment, partly because the Federal Highway Administration (FHWA) had indicated that it would not participate in funding to repurchase the rights-of-way. SJR 26 asks that Congress direct the Department of Transportation through FHWA to participate in this funding.

When the committee last heard SB 141, FHWA presented a comparison of the differences they saw between PLO rights-of-way, and those created by the Act of 1947 (later extinquished). Their interpretation - that the PLO rights-of-way are not precipitated on the 1947 Act - is also that of the State Supreme Court and of DOT/PF, but it is substantially different from that of the proponents of SB 141. They contend that the PLOs were issued by the Interior Department to clarify and define the rights-of-way reserved under the 1947 Act. The Supreme Court disagreed with this interpretation, maintaining that the PLO's were authorized by an Act of 1932, which gave the Interior Department general road-building and maintenance powers in Alaska.

The attached material contains correspondence researched after the court decision, which generally supports the contention that the Alaska Road Commission did not have adequate right-of-way reservation powers, based upon the 1932 Act, and therefore needed the 1947 Act and its consequent PLOs.

For further background on this issue, the members are asked to refer to their files on SB 141.

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Joint Resolution No. 26

TITLE: Relating to the payment of just compensation to landowners for certain rights-of-way across land in Alaska

APPROVED: R. J. Knapp
Commissioner

DATE: 5-1-85

The Department of Transportation and Public Facilities has objected and will continue to object to the concept of the State purchasing rights-of-way which were granted to the State of Alaska by the Federal government for highway purposes.

The Department has no objection, however, to the intent of S.J.R. No. 26 providing that funds made available for this purpose do not come out of the annual apportionments for Federal-aid highways in Alaska.

For further information call Susan Fleischhauer at 465-3900.

UNITED STATES

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON

IN REPLY PLEASE REFER TO

☞ 1751330 "F"

JAN 20 1939

The Director,

Division of Territories and Island Possessions.

My dear Dr. Gruening:

Referring to your memorandum under date of December 17, 1938, relative to proposed reservations for the construction of roads, bridges, and trails in the Territory of Alaska, I will be glad to confer with you or your representatives at any time you may so desire.

There is apparently no authority for the issuance of an Executive order for the purpose of imposing a road reservation upon any land in the Territory which may hereafter pass into private ownership, and I am not certain that it would be necessary or advisable to recommend the enactment of legislation for such purpose.

Section 2477, U. S. R. S., provides: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." No action on the part of the Government is deemed necessary to the operation of this statute. This grant becomes effective upon the construction or establishing of the highway in accordance with the State or Territorial laws. No reservation for rights-of-way so acquired is included in the patent when issued for the lands affected. (26 L. D. 446).

The acts of January 27, 1905 (33 Stat. 616), and May 14, 1906 (34 Stat. 192), incorporated in sections 321 to 337 inclusive, of Title 48 U. S. C., provides for the construction and maintenance of roads, trails, and bridges, by the board of road commissioners. A reservation for rights-of-way for roads constructed in pursuance of the provisions of these statutes, may be inserted in patents for the

Rec'd for files
after 1-14-1939

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lands affected, upon the filing of profile maps showing the location of the road in accordance with instructions of the Department of July 8, 1930.

Section 17 of the act of November 9, 1921 (42 Stat. 212), provides for the granting of public lands or reserved lands of the United States for Federal Aid Highways. Grants under this statute may be acquired by the filing of maps in accordance with the regulation thereunder and the approval of such maps by the Secretary of the Interior. A reservation for rights-of-way acquired under this statute is incorporated in the patent issued for the lands affected.

The width of the rights-of-way which may be acquired under the above-mentioned statutes is not specified. The width of rights-of-way established under section 2477 is governed by the laws of the States or Territories (22 L. D. 145). The width of rights-of-way for roads or highways established or constructed under the provisions of the acts of January 27, 1905, and May 14, 1906, or acquired under section 17 of the Federal Aid Highway Act of November 9, 1921, would seem to be a matter of discretion as to what is deemed reasonably necessary for the construction and proper maintenance of the particular road or highway and governed by the width as surveyed and shown on the profile maps, the maps being evidence of the right-of-way and the basis for insertion of the reservation in any subsequent patent for the lands affected.

With respect to the illustrations given in the correspondence accompanying your letter, it appears quite certain that neither an Executive order nor legislation could afford any relief. In other words, a right-of-way over an area which is embraced in an entry, legally initiated and maintained according to law, is either by agreement with the party having the entry or through condemnation proceedings.

The correspondence accompanying your letter indicates that you are familiar with the instructions issued by the Department on July 8, 1930, in regard to the inclusion of reservations for roads constructed by the Government in all cases where rights of persons seeking to acquire title to any of such lands were initiated subsequent to the construction of the road. In order to put into effect those regulations, this Office must be furnished with maps and field notes of all constructed roads as well as those hereafter completed, so prepared as to make it possible to have proper notes placed on the tract books and adequate reservations inserted in patents. As is

also indicated by your correspondence, this matter was called to the attention of the Secretary of War by the Department on September 3, 1930, but up to this time no maps or field notes pertaining to constructed roads or roads hereafter to be constructed have been received in this office.

We shall be glad to go into these matters more fully in the conference that you have proposed.

The enclosure accompanying your letter is returned herewith.

Very truly yours,

Commissioner.

Enclosure.

The President of the Senate,

United States Senate,

a/12-10, 1940

Sir:

I enclose a draft of a bill "To amend an act entitled 'An Act providing for the transfer of the duties authorized and authority conferred by law upon the board of road commissioners in the Territory of Alaska to the Department of the Interior, and for other purposes', approved June 30, 1932".

The purpose of the proposed legislation is to protect the interests of the United States in constructing roads in the Territory of Alaska by providing a right-of-way on lands, now public domain, to which patents may in the future be issued.

The Alaska Road Commission, operating under the Department of the Interior by virtue of the Act approved June 30, 1932 (47 Stat. 446), and financed by Federal appropriations, is engaged in the construction and maintenance of roads, roadways, highways, tramways, trails, bridges, and other similar works in that portion of Alaska outside the national forests. The greater part of the area on which the operations of the Alaska Road Commission are conducted is public domain, and the location of rights-of-way on such lands presents no problem growing out of private ownership. For the proper location of the road and in the interest of public service it is necessary in some cases, however, to cross lands to which title has passed from the United States. These instances are becoming more numerous as the population of the Territory increases. Obtaining rights-of-way across privately owned lands has in a number of cases presented difficulties calling for court action and requiring the expenditure of Federal funds.

It is proposed, therefore, that in all patents for lands hereafter taken up in the Territory there shall be inserted a provision reserving to the Government a right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant works or structures constructed or to be constructed by the authority of the United States. A provision accomplishing this may, it is thought, be inserted as an amendment to Section 2 of the Act approved June 30, 1932, supra., and the draft of the bill which I transmit has been written

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accordingly. The proposed amendment is similar to the provision of the Act of August 30, 1890 (26 Stat. 391), which reserved rights-of-way for canals on lands west of the one hundredth meridian and is also similar to the provisions of the Act of March 12, 1914 (38 Stat. 305), in which rights-of-way for railroads were reserved to the United States in all patents for lands thereafter taken up in the Territory of Alaska.

The Director of the Bureau of the Budget has informed me that there is no objection to the presentation of the proposed legislation to the Congress.

Very truly yours,

(Sgd.) Harold L. Ickes

Secretary of the Interior.

PWG:abc.

Enclosure 1446881.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
DIVISION OF TERRITORIES AND ISLAND POSSESSIONS
WASHINGTON

February 4, 1943.

MEMORANDUM for Mr. Thoron:

The following is an outline of the background in this matter:

The purpose of the proposed legislation is to protect the interests of the United States in constructing roads in the Territory of Alaska by reserving a right-of-way on lands, now public domain, to which patents may in the future be issued.

The Alaska Road Commission, operating under the Department of the Interior by virtue of the Act approved June 30, 1932 (47 Stat. 446), and financed by Federal appropriations, is engaged in the construction and maintenance of roads, roadways, highways, tramways, trails, bridges, and other similar works in that portion of Alaska outside the national forests. The greater part of the area on which the operations of the Alaska Road Commission are conducted is public domain, and the location of rights-of-way on such lands presents no problem growing out of private ownership. For the proper location of the road, and in the interest of public service, it is necessary in some cases, however, to cross lands to which title has passed from the United States. These instances are becoming more numerous as the population of the Territory increases. Obtaining rights-of-way across privately-owned lands has in a number of cases presented difficulties, calling for court action and requiring the expenditure of Federal funds.

A case of this kind occurred two or three years ago in connection with the construction of a bridge across a stream adjoining a certain privately-owned mining claim. The owner of the land claimed that his property was very valuable because of a placer gold mine, and asked an exorbitant price for the right-of-way necessary in connection with the construction of the bridge. This resulted in considerable delay and expense. As a consequence of this and other like instances, the Alaska Road Commission, the Governor of Alaska, and Mr. Parks, the Cadastral Engineer of the Land Office, became convinced that legislation to reserve rights-of-way in future patents of land taken from the public domain, is desirable.

In response to a request from the Road Commission, the proposed legislation was drafted in this Division and submitted to the Department for consideration. It was discussed at a meeting of the Department Legislative Committee, which did not approve favorable action on the bill, presumably because of questions raised in the meeting as to whether legislation of this kind would not have a tendency to retard settlement in Alaska. Suggestion was also made that the bill should provide for payment of damages to crops and improvements on rights-of-way when

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utilized by the United States. Such a provision is included in the most recent draft of the bill. As stated in Mr. Page's memorandum of September 18, apparently it was the opinion of the Legislative Committee that the bill was not of sufficient importance to justify its submission to Congress at that time, as such action might have resulted in deferring more urgent Alaska legislation which the Department proposed to submit.

In view of the foregoing, the bill was not submitted to the last session of Congress, and apparently it is again up for consideration in connection with the legislative program of the Department for the present session.

Ruth Hampton,
Assistant Director.

Noted
Bill Wilson

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

SEP 21 1949
Alaska Road Commission
Juneau, Alaska

September 19, 1949

Col. N
AFG
WHD

Colonel John Noyes
Commissioner of Roads
Alaska Road Commission
Juneau, Alaska

Dear Colonel Noyes:

Reference is made to the letter from Mr. Ike P. Taylor, Chief Engineer, Alaska Road Commission, dated July 28, 1948, in which he states in reference to our memorandum of July 25, that:

> "One print each of the plans of all the new roads we have located in the past few years have been forwarded to your Office. Please advise if it is now necessary for the Alaska Road Commission to submit three additional prints of these maps to the District Land Offices concerned with the written application, as outlined in your memorandum.
>
> "For your information, the plan maps of our road locations are on a scale of 400 feet to the inch and one print to cover a road location such as that, for instance, from the Forest Boundary to Homer on the Kenai Peninsula, 129 miles, would require approximately 320 square feet of blueprinting. The three sets required in your memorandum would total approximately 1,000 square feet."

An examination has been made of the more recent maps of highways filed by the Alaska Road Commission, namely, those of the Fairbanks-Chena Hot Springs, Paxson-McKinley Park, and the Forty Mile roads. These maps are excellent for general information, but they do not show the width or the lateral limits of the right-of-way with relation to the legal subdivisions of the public lands where surveyed. The maps are therefore incomplete for the purpose of notation of the tract book records under departmental instructions of January 13, 1916 (44 L.D. 513), as contemplated by our memorandum of July 25, 1949. Unless the lateral limits are shown, where the lands are surveyed, it cannot be definitely determined, for the purpose of posting, what subdivisions are affected.

As stated by Mr. Taylor, the maps in question are prepared on a scale of 400 feet to the inch. For your purposes these are excellent work scale maps, but for use in district land offices they pose a difficult problem of filing and handling, and the general scale as provided in the Department's rights-of-way

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PUCKETT 1949

regulations (43 CFR, Parts 244 and 245) is 1000 and 2000 feet to the inch. If this scale is adopted by the Alaska Road Commission, it would reduce the length and size of the maps and effect a considerable saving in filing space.

We greatly appreciate your sending some of your work maps which have been used in connection with land classification work. These, we believe, are not in the form that can be efficiently used for filing in the District Land Offices.

In connection herewith, attention is called to the act of June 30, 1932 (47 Stat. 446, 48 U.S.C. Sec. 321a, seq.), under which the Alaska Road Commission is authorized to construct roads and highways over public lands in Alaska. This act contemplates that maps of definite location of roads so constructed shall be filed with the Bureau of Land Management. Obviously, the authority to construct roads as provided by the act, necessarily, by implication if not otherwise, authorizes the right to appropriate the rights-of-way for such roads. It is therefore believed that if the maps of the rights-of-way for the roads and highways constructed or established under authority of the 1932 act, showing the width of the rights-of-way appropriated, were filed and recorded in the District Land Office, in accordance with instructions of January 13, 1916 (44 L.D. 513), that the Government's rights in and to the roads and rights-of-way would be amply protected under the act as well as R.S. 2477 (43 U.S.C. Sec. 932), without the necessity of any withdrawals.

Very truly yours,

Lowell M. Puckett

Lowell M. Puckett
Regional Administrator

AB/fp

UNITED STATES
DEPARTMENT OF THE INTERIOR
ALASKA ROAD COMMISSION
JUNEAU, ALASKA

December 1, 1949

Mr. James P. Davis, Director
Division of Territories and Island Possessions
Department of the Interior
Washington 25, D. C.

My dear Mr. Davis:

At a recent meeting with Mr. Lowell Puckett, Regional Administrator, Bureau of Land Management, the method of handling withdrawals or reservations for roads rights-of-way was fully discussed.

The immediate problem is our deficiency in accurate maps of old roads which are required by the District Land Offices in connection with locating entrymen and in issuance of patents.

It was brought out by Mr. Puckett that because of the language of Public Land Order 601, all entries in surveyed areas affected by a road must be limited to one side only of the existing road. This is because the order used the word "withdrawn" and the Bureau of Land Management has ruled that no new entry can be made covering noncontiguous areas. One solution of the problem has been proposed by Mr. Puckett to his Washington office. Under Land Decisions Volume 43, page 551, it was held that a right-of-way withdrawal did not render the tracts lying on opposite sides of the withdrawn strip non-contiguous, and an entry embracing both sides of such strip should be allowed. I desire to strongly support Mr. Puckett's request and urge favorable consideration. Application of this decision would avoid much present confusion. By the time entrymen apply for patents in future, it is planned to have available in the District Land Offices accurate maps of our roads.

We believe the best solution of this problem would be a revision of Public Land Order 601 to change the language to read "are hereby reserved from all forms of appropriation". This language would be in accordance with the act of July 24, 1947 (Pub. Law 229, 80th Cong., 1st Session, 48 U.S.C., 1946 Ed., Supp. 1, 321D). It is our contention that this law was intended to avoid the difficulty of determining for each entry or patent the exact location of the road. The act provides in part:

"In all patents for lands hereafter taken up, entered, or located in the Territory of Alaska, and in all deeds by the United States hereafter conveying any lands to which it may have

NOYES 1949

reacquired title in said Territory not included within the limits of any organized municipality, there shall be expressed that there is reserved, from the lands described in said patent or deed, a right-of-way thereon for roads, roadways, highways, tramways, trails, bridges and appurtenant structures constructed or to be constructed by or under the authority of the United States or of any State created out of the Territory of Alaska."

It will be noted the act provides for a blanket reservation for rights-of-way for roads constructed or to be constructed. It is our contention that determination of the exact location of a road now existing through an entry made after the date of approval of the act is not necessary. The history of the bill indicates this was one of the specific difficulties to be corrected. The other was to avoid the necessity of obtaining easements for future roads which obviously could not be described in the patent.

The actual width of right-of-way to be reserved is determined by the class of road. It is believed Public Land Order 601 was primarily intended to establish these widths. With this information in the District Land Offices, entrymen or applicants for patent can be informed of the width of right-of-way in each case. It is probable certain roads will be reclassified in the future, in which case the right-of-way width would be changed. It is recommended favorable consideration be given to a revision of Public Land Order 601 to permit the Alaska Road Commission full latitude of operation under Public Law 229.

Sincerely yours,

John R. Noyes
Commissioner of
Roads for Alaska

cc: Mr. Puckett

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Anchorage, Alaska

April 3, 1952

Mr. Ivander C. Smith
Box 2068
Anchorage, Alaska

Dear Mr. Smith:

By letter of March 29, you asked me to define the maximum legal right-of-way to which the Alaska Road Commission is entitled in those instances where entry was made and residence established prior to the construction of the road, and where subsequent patent contains no provision for road right-of-way.

We are unable to determine that there was a definition of the widths of rights-of-way by regulation or statute prior to Public Land Order 601 of August 10, 1949. Any legal settlement upon the land or filing made upon the land prior to August 10, 1949, on which legal occupancy and filing was carried through to consummation, rendered Public Land Order 601 inoperative, and no claim to a width of right-of-way as defined in Public Land Order 601 can be valid, in our opinion.

The act of July 24, 1947, 61 Stat. 418, 48 U.S.C., Sec. 321d, provided for the reservation of right-of-way for roads in patents and deeds on lands, the rights to which were inaugurated after the effective date of the act. This act did not, however, specify the widths of the rights-of-way.

It would appear that the acquiring of road rights-of-way before July 24, 1947, had been done by amicable agreement or condemnation.

Chapter 19, Session Laws of Alaska 1923, Section 1721, reserved a strip between sections 4 rods wide for public highways with the section line being the center of such highway. However, the 1923 law is listed as invalid in the new Alaska Code and we have been advised by the Attorney General that it is considered that this act is in fact invalid. I know of no test case that has been brought to test the validity of the law.

PUCKETT 1952

I understand that the legislature, at its last session, passed a law designating certain section lines on lands owned by the Territory as highway rights-of-way. Perhaps you are more familiar with this act than I.

I am uncertain as to the origin of the adoption of 66 feet as the standard width of right-of-way in Alaska prior to the promulgation of Public Land Order 601. Public Land Order 601, which together with Order No. 2665, enclosed, have established widths of rights-of-way for highways in Alaska.

Very truly yours,

Lowell M. Puckett

Lowell M. Puckett
Regional Administrator

Copy to Commissioner
Alaska Road Commission

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF HIGHWAYS

OFFICE OF THE COMMISSIONER / P. O. BOX 1467 — JUNEAU 99801

July 27, 1971

Re: 1947 Act Lands
00-302

Mr. Francis C. Turner
Federal Highway Administrator
Federal Highway Administration
Nassif Building
400 7th Street, S.W.
Washington, D.C. 20591

THROUGH: Mr. H. G. Tipton
Division Engineer

Dear Mr. Turner:

Reference is made to Mr. Tipton's memorandum of February 12, 1971, concerning participation of federal funds in the 1947 Act lands acquired prior to December 31, 1970. Mr. Tipton's memorandum is in response to our appeal of January 23, 1968, appealing your previous decision of June 30, 1967.

Perhaps a brief history of the 1947 Act reservation and how the reservation was exercised by the State of Alaska would help put our position into perspective.

Prior to the years of World War II, the Territory of Alaska experienced little road construction work. Much of the activity of the Alaska Road Commission and its predecessors was conducted across the public domain and required minimal right of way acquisition. A marked increase in population in the years following the war and a related increase in activities designated to reduce public lands to private ownership increased the frequency with which right of way was necessitated over lands to which title had passed from the United States.

In recognition of this trend and in an attept to reduce the expenditure of governmental funds, Congress passed the 1947 Act effective July 24, 1947.

The effect of this Act was to reserve to the United States or to any State created out of the Territory of Alaska a right of way across lands subsequently passing into private ownership and to thus avoid the necessity of re-acquiring lands for future road construction.

CAMPBELL 1971

The 1947 Act was repealed by Congress effective July 1, 1959. Thus, lands entered or patented after that date are not subject to the act. Title of lands entered or patented from July 24, 1947, to July 1, 1959, continued to remain clouded with the prospect of future road construction causing arbitrary transfers of unspecified portions of said land to the government, without due process or compensation, until April 14, 1966.

It is our position that the 1947 Act did in fact entitle the State of Alaska to utilize the right of way reserved by the act. Specific conveyance to the State at the time of statehood was not necessary because Congress specifically prescribed in the act that the reservation was to be extended to the newly created State of Alaska. The rights of the Federal Government in the 1947 Act rights of way passed to the State at the time of statehood.

The fourth session of the Alaska State Legislature, recognizing the inequalities of the 1947 Act, passed legislation effective April 14, 1966, commonly called the Alaska Right of Way Act of 1966, providing that no agency of the State may take privately owned property by the exercise of the 1947 Act reservation. The legislature's stated purpose was as follows, and I quote:

> "This Act is intended to alleviate the economic hardship and physical and mental distress occasioned by the taking of land, by the State of Alaska, for which no compensation is paid to the person holding title to the land. This practice has resulted in financial difficulties and the deprivation of peace of mind regarding the security of one's possessions to many citizens of the State of Alaska, and which, if not curtailed by law, will continue to adversely affect citizens of this state. Those persons who hold title to land under a deed or patent which contains a reservation to the state by virtue of the Act of June 30, 1932, ch 320, sec. 5, as added July 24, 1947, ch. 313, 61 Stat. 418, are subject to the hazard of having the State of Alaska take their property without compensation because all patents or deeds containing the reservation required by that federal act reserve to the United States, or the state created out of the Territory of Alaska, a right of way for roads, roadways, tramways, trails, bridges, and appurtenant structures either constructed or to be constructed. Except for this reservation the State of Alaska, under the Alaska constitution and the constitution of the United Sta :, would be required to pay just compensation for any land taken for a right of way. It is declared to be the purpose of this act to place persons with land so encumbered on a basis of equality with all other property holders in the State of Alaska, thereby preventing the taking of property without payment of just compensation as provided by law, and in the manner provided by law."

Subsequent to the enactment of the Alaska Right of Way Act of 1966 the Bureau of Public Roads advised us "that there can be no federal reimbursement for funds expended by the State of Alaska for the acquisition of right of way from land subject to the reservation contained in the 1947 Act." They also stated it would take federal legislation to effectively repeal the reservation.

In response to that statement the late Senator E. L. Bartlett introduced, (for himself and Senator Gruening) Senate Bill 2483 on September 28, 1967. Senator Bartlett's introductory remarks outlined the position of Alaskans affected by the 1947 Act and I quote his remarks from the Congressional Record of the Senate for September 28, 1967:

> "In 1947 Congress enacted a law -- 48, United States Code 321d -- which reserved an undefined highway right of way in all patents for federal public lands in Alaska. This law, commonly referred to as the 1947 Act, has become notorious in Alaska. While seemingly innocuous, the 1947 Act has worked inequities beyond belief as homesteads and other patented lands fall in the paths of urban development and highway improvement projects.
>
> Although the 1947 act was repealed in 1959, all of those persons who received patent to federal lands between 1947 and 1959 still live under the threat that a portion of their land might be taken for highway right of way purposes at any time without compensation. As a matter of fact, a substantial number of rights of way have already been acquired under the 1947 act without compensation to the landowners and many rights of way over such lands will undoubtedly be acquired in the foreseeable future.
>
> The State of Alaska has found a way to compensate patentees for takings under the right of way provision but the Federal Highway Administration refuses on legal grounds to pay the federal share of such compensation.
>
> Mr. President, it is my firm belief that no one could have foreseen the inequities inherent in passage of the 1947 Act. It is also my belief that corrective action is overdue. Therefore, I introduce today for appropriate reference a bill which would vacate and relinquish the reservation of rights of way authorized by the 1947 Act."

Hearings scheduled on Senator Bartlett's bill were cancelled first because of the assassination of Dr. Martin Luther King, Jr., and second because of the assassination of Senator Robert F. Kennedy.

Senator Bartlett's untimely death and Senator Gruening's unsuccessful bid for re-election made it necessary to reintroduce S. 2483. Senator Stevens graciously did this on February 7, 1969.

Alaska's Right of Way Act of 1966 voided the State's rights to utilize right of way over lands subject to the 1947 Act; Section 138(b) of the Federal-Aid Highway Act of 1970 vacated and relinquished reserved rights of way not utilized and provided that the reservation merged with the fee and was forever extinguished. We believe it was the intent of Congress to "clear the federal books" by the "housekeeping" Section 138(b) of the Federal Aid Highway Act of 1970 with their full realization that the State of Alaska had extinguished the 1947 Act reservation on April 14, 1966, as it had every right to do.

Unforeseen tragedies delayed Federal action several years causing State expenditures to climb past a million dollars. It was clearly Senator Bartlett's intent in introducing S. 2483 to allow Federal participation in the acquisition of "47 Act" right of way from the April 14, 1966, date.

Acquisition of right of way by the State of Alaska over lands subject to the 1947 Act subsequent to April 14, 1966, was made in accordance with all of the policies and procedures of the Bureau of Public Roads and subsequently the Federal Highway Administration. The rights of way so acquired were incorporated in federal-aid highway projects and therefore should be eligible for federal participation in their acquisition costs.

We respectfully request your further review of your June 30, 1967, and February 12, 1971, decisions and reversal of those decisions to allow federal participation in the acquisition costs of the lands in question.

Very truly yours,

for B. A. Campbell
Commissioner of Highways

cc: Governor William A. Egan
John Havelock, Attorney General
Senator Ted Stevens
Senator Mike Gravel
Representative Nick Begich

LAW OFFICES OF
GROH, EGGERS & PRICE
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
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ANCHORAGE, ALASKA 99501

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(907) 272-6474
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CLIFFORD J. GROH
KENNETH P. EGGERS
MICHAEL W. PRICE
LANCE E. GIDCUMB
SALLY KUCKO

MICHAEL P. CONDON
SEMA E. LEDERMAN
ROBERT T. PRICE
ROBERT P. OWENS

July 24, 1984

Congressman Don Young
House of Representatives
2331 Rayburn Building
Washington, D.C. 20515

Re: Federal Highway Rights-of-Way

Dear Don:

Enclosed you will find copies of correspondence which I have sent to Senators Stevens and Murkowski concerning an extremely serious problem in Alaska. I believe the informational letter to Senator Murkowski and its attachments are self-explanatory.

Once you have had an opportunity to review this, I will be contacting you to ask your support in stopping the State from harming not only our clients, the title insurance industry, but the thousands of Alaskans Statewide who do not have title insurance, many of whom are the original patentees.

Sincerely,

GROH, EGGERS & PRICE

Clifford J. Groh

Michael W. Price

:hf

Encl.

GROH & PRICE 1984

LAW OFFICES OF
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SEMA E. LEDERMAN
ROBERT T. PRICE
ROBERT P. OWENS

July 24, 1984

Via DHL

Senator Frank Murkowski
United States Senate
Washington, D.C. 20510

Attention: John Moseman

Re: Federal Highway Easements in Alaska

Dear John:

Thank you for meeting with us during your visit last week in Alaska. It was a pleasure having the opportunity to meet you and we look forward to our future contact. As we discussed, we are presently embroiled in an extremely serious controversy for which we are seeking the aid of the Alaska Congressional Delegation. This letter and its enclosures will assist you in your preliminary investigation into this matter. At your earliest convenience, we would like to discuss the possibility of the introduction and passage of our proposed federal legislation with you, and the other members of the Alaska Congressional Delegation.

As you may recall from our meeting, the difficulty lies in the interpretation of a series of public land orders (PLOs) and department orders (DOs) which were issued by the Department of Interior in the late 1940's and early 1950's. Up through 1947 there existed two methods by which the Federal Government could create highway rights-of-way in Alaska. The first was a 1932 Act which was codified at 48 U.S.C. §321a through §322.1/ Pursuant to that Act the Department of Interior had the right to build and construct roadways in Alaska. Additionally, under 44 L.D. 513 the Department of Interior determined that the Federal Government had the right to establish a roadway by appropriation. That is,

---

1/ A copy of this legislation is attached and identified as Exhibit A. Also attached are the other relevant materials identified as discussed in this letter.

a combination of identifying a potential highway plus the allocation of specific funds from Congress was sufficient to reserve the right in the Federal Government to build the road.

In 1947, Congress, at the urging of the Department of Interior passed an amendment to the 1932 Act which was codified at 48 U.S.C. §321d. (Exhibit B.) Under 48 U.S.C. §321d the Department of Interior was required to place in every patent for land in Alaska taken up thereafter a reservation for a road right-of-way for the Federal Government. It is our opinion that the amendment in 1947 was designed to protect the Federal Government's interest in maintaining the right to build roads into those portions of Alaska which were being taken up by homesteaders and which were not yet subject to a 43 U.S.C. §932 section line dedication or a roadway established by appropriation under 44 L.D. 513. It also served the function of consolidating the power of the Department of Interior under the Act of 1932 by specifically requiring that the reservation be put in the patent so that settlers would be on notice.

In August of 1949, the Department of Interior under PLO 601 withdrew from all forms of appropriation certain rights-of-way for highways in Alaska. (Exhibit C.) Under PLO 601 highway widths of varying amounts were established for through, feeder and local roads. The "local" roads were never identified by name which causes particular problems.

Considerable controversy arose over the fact that PLO 601 was a withdrawal rather than the establishment of an easement or right-of-way. Consequently the Department of Interior published modifications of PLO 601 which culminated in the publication of DO 2665. (Exhibit D.) DO 2665 established easements in lieu of rights-of-way.

In the introductory language of DO 2665 the Secretary of the Interior indicated that he was publishing the order pursuant to 48 U.S.C. §321a. It is our belief that the authority cited by the Secretary deals with only the construction powers under the 1932 Act and must be viewed in the light of the 1947 Amendment which required that such easements and rights-of-way be reserved in the patents. However, it is this one "authority section" which has allowed the Alaska Supreme Court to circumvent both the Alaska and Congressional bills designed to eliminate these easements.

None of the withdrawals and easements created by PLO 601 and its successors including DO 2665 were noted in the patents of homesteaders in Alaska, although, all of the patents which were issued for lands taken up after 1947 contain the reservation required by the 1947 Act and 48 U.S.C. §321d. (Exhibit E, for example.) Further, at least in regard to local roads, there was no identification of the roads or of any record by which a homesteader or other interested individual could determine if his property was effected by such a right-of-way.

In 1959 the United States government quitclaimed its interest in the roads in Alaska to the State. The quitclaim deed does not specifically address the question of whether the Federal Government intended to pass its rights-of-way and reservations under the PLOs and DO 2665. The State of Alaska did not record its quitclaim deed until 1969 and it is impossible by referencing the quitclaim deed to determine whether any given parcel of land in Alaska was affected by the withdrawals or easements for roads.

In the mid 1960's concern over the possibility of the State taking land under the federal easements and rights-of-way surfaced and the State Legislature passed the Right-of-Way Act of 1966 (Exhibit F.) The 1966 Act states that "no agency of the state may take privately-owned property by the election or exercise of a reservation to the state acquired under the Act of June 30, 1932, ch. 320 §5, as added July 24, 1947, ch. 313, 61 Stat 418, and taking of property after the effective date of this Act by the election or exercise of a reservation to the state under that federal act is void."

The Federal Government also attempted to alleviate the unfairness of the federal reservations and easements for rights-of-way in patents issued to Alaskans between 1947 (the date of the Amendment of the 1932 Act) and 1959 (Alaska Statehood). Section 138(b) of the Federal-Aid Highway Act of 1970 states:

> Any right-of-way for roads, roadways, highways, tramways, trails, bridges and appurtenant structures reserved by section 321(d) of Title 48, United States Code (61 Stat. 418, 1949), not utilized by the United States or by the State or Territory of Alaska prior to the date of enactment hereof, shall be and hereby is vacated and relinquished by the United States to the end and intent that such reser-

> vation shall merge with the fee and be forever extinguished.

Unlike the State Right-of-Way Act, the federal legislation does not specifically indicate that it includes all reservations and easements created under the 1932 Act as Amended by the 1947 Act. However, we believe that that proposition is clear, that the 1947 Act was an Amendment to the 1932 Act which created an obligation on the part of the Federal Government to place in the patent a reservation for highway purposes. We have enclosed testimony by both Senator Stevens and State officials which clearly indicate that the State would not be taking the rights-of-way in the future. (Exhibit G.)

The State of Alaska however decided that since the PLOs state they were promulgated under the general authority of the Secretary of Interior and the DO 2665 was "apparently" promulgated under 48 U.S.C. §321a (the 1932 Act) they would attempt to take property despite both the State and Federal Acts designed to end the uncertainty and unfairness which had resulted from the creation of such easements and rights-of-way.

In a case which ultimately reached the Alaska Supreme Court entitled State v. Alaska Land Title Association, 667 P.2d 714 (Alaska 1983) (Exhibit H), the Alaska Supreme Court determined that the original withdrawals by PLO 601 culminated in the rights-of-way described in DO 2665. The Court further found that DO 2665 was published pursuant to 48 U.S.C. §321a. The Court determined that 48 U.S.C. §321a was a separate source of power for the Secretary of Interior to create easements from that identified in 48 U.S.C. §321d. That is, the court refused to recognize that the 1947 Act's purpose was to amend the 1932 Act to require that any easement created by the Secretary of Interior under the 1932 Act be placed on the patent.

The court went further to find that the Right-of-Way Act of 1966 passed by the Alaska Legislature applied only to the 1947 Act. This is in contradiction to the clear language of the 1966 Act. As noted earlier the Federal-Aid Highway Act of 1970 §138(b) can be on its face interpreted as applying only to the 1947 Act. Therefore, since the Alaska Supreme Court had already interpreted the 1947 Act as being separate from the 1932 Act the Federal-Aid Highway Legislation was ineffective.

It is interesting to note that the court did allow the one homeowner who is not protected by title insurance to prevail. In

that instance the court found that if the homesteader had entered the property prior to the date of the promulgation of PLO 601 (August 10, 1949) then PLO 601 would not be effective against him. The State has challenged this proposition and believes that a homesteader would not prevail against PLO 601 until the date he received his final certificate, usually significantly later in time from entry. There are currently two cases pending before the Alaska Supreme Court which will address this issue.

The State of Alaska has taken the position that it inherited the Federal Government's rights to the easements and rights-of-way under the PLOs pursuant to the quitclaim deed of 1959. They are further taking the position that even if a road had not been constructed at the time of the PLOs or had been subsequently moved, the State has the right to take the property without payment. The greatest difficulty with defending against this form of arbitrary action is that the PLOs and DOs do not specifically identify where a road is located on an entryman's property.

Additionally, the average landowner has no warning of the existence of a road. Since a significant number of individual homeowners do not have title insurance on their property, they are completely unprotected against the actions of the State. The State has further shown itself to be callous to the rights of such landowners by simply taking their land even in cases where their property would not be subject to the PLO due to entry prior to the effective date of PLO 601. Also, because the State does this on an as needed basis, there is no opportunity for homeowners to be appraised of the problem in advance. Only at the time the State finally determines that it will expand the highway does the homeowner learn that his property is to be taken and even then the only outcry is among a few owners along the proposed road expansion. Thus, the problem goes on without the property owners in Alaska having an opportunity to face the issue all at once.

The problem also extends to title insurance companies. Although contrary to prior decisions in other jurisdictions and the language of Alaska statutes, the Alaska Supreme Court has determined that publication of PLOs in the Federal Register, although not recorded in the recording district, and not describing specific parcels of land are to be considered "public records" for the purposes of determining the meaning of such language in title insurance policies. Title insurance companies have suddenly found themselves to be exposed to a tremendous liability without having initially included such risks in the setting of their premiums.

All sides of the issue agree that potential liability for the cost of all the property which could be seized under the PLOs is in excess of one billion dollars over a long period of time. This is a staggering amount for title insurance companies to incur without having already built the risk factor into their rate setting. Thus, there is a potential threat to the viability of the title insurance industry in Alaska to provide homeowners, businesses and banks with title insurance on an on-going basis.

It is our opinion that federal legislation can be proposed which will provide for adequate protection for Alaskan landowners. We have enclosed a working draft of language for such federal legislation based upon Congress declaring that the utilization of such easements without compensation is a violation of due process under the Fifth Amendment as applied to the State by the Fourteenth Amendment. Our research indicates such an approach would withstand judicial scrutiny. See Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); Katzenbach v. Morgan, 384 U.S. 641 (1965); Ramirez v. Puerto Rico Fire Service, 715 F.2d 694 (1st Cir. 1983) Equal Employment Opportunity Commission v. Elrod, 674 F.2d 601 (7th Cir. 1982).

I want to thank you very much for your assistance in this matter and, as we noted in our meeting, it is not a problem which apparently is going to go away. Hopefully, after your office has had the chance to review the documentary materials you, Senator Stevens and Congressman Young will assist us in this endeavor. Mr. Greg Chapados is working on the problem in Senator Steven's office and I am transmitting a copy of this letter to Congressman Young.

Please let me know if you have any questions and we look forward to hearing from you in the near future.

Sincerely,

GROH, EGGERS & PRICE

Michael W. Price

Clifford J. Groh

:hf

cc: Congressman Don Young
Greg Chapados

DRAFT

May 1, 1985

MEMORANDUM

To: Committee members

From: Committee staff

Re: SJR 26 Background information

This afternoon, the committee is scheduled to take up SJR 26, which represents the next logical step in the process begun by SB 141. As the members will recall, SB 141 would require the State to relinquish its right to certain highway rights-of-way created by the federal government through a series of public land orders (PLOs) in the late 40s and 50s.

After two hearings in this committee, it became apparent that the administration was totally opposed to the concept of relinquishment, partly because the Federal Highway Administration (FHWA) had indicated that it would not participate in funding to repurchase the rights-of-way. SJR 26 asks that Congress direct the Department of Transportation through FHWA to participate in this funding.

When the committee last heard SB 141, FHWA presented a comparison of the differences they saw between PLO rights-of-way, and those created by the Act of 1947 (later extinquished). Their interpretation - that the PLO rights-of-way are not precipitated on the 1947 Act - is also that of the State Supreme Court and of DOT/PF, but it is substantially different from that of the proponents of SB 141. They contend that the PLOs were issued by the Interior Department to clarify and define the rights-of-way reserved under the 1947 Act. The Supreme Court disagreed with this interpretation, maintaining that the PLO's were authorized by an Act of 1932, which gave the Interior Department general road-building and maintenance powers in Alaska.

The attached material contains correspondence researched after the court decision, which generally supports the contention that the Alaska Road Commission did not have adequate right-of-way reservation powers, based upon the 1932 Act, and therefore needed the 1947 Act and its consequent PLOs.

For further background on this issue, the members are asked to refer to their files on SB 141.

SJR

2-9

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

MEMORANDUM

TO: Committee Members

FROM: Committee Staff BC

DATE: 1-17-85

RE: Analysis, SJR 29

Senate Joint Resolution 29 is self explanatory and stems from the desire of the cities mentioned in its title to maintain jet service through the essential air service.

Included in your packet is a copy of the resolution, and correspondence between the City of Wrangell and the U.S. Department of Transportation regarding Wrangell's reasons for requesting that the proposal to allow Convair 880 aircraft (a propeller driven aircraft) be rejected.

IDENTIFICATION

SJR 29

Relating To maintenance of essential air service to Cordova, Yakutat, Petersburg, Wrangell, and Gustafus, Alaska

DATE INTRODUCED
1/13/86

RELATED BILLS PENDING
None known

REFERRALS

SPONSOR(S)
Ziegler, Elason, Ray

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

LEGAL DIVISION SUMMARY
N/A

DEPT OF LAW SUMMARY
N/A

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes

FISCAL NOTE
None

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED
Taylor, Elason Ray

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES
SJR 16

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
Federal Highway Administration
& Ak Congressional delbgation

HEARING PREPARATION

CHAIRMAN BRIEFED

DATE & PLACE SET

STAFF MEMO TO COMMITTEE
Yes

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES
Sen. Ziegler

SUGGESTED AMENDMENTS/CS DRAFTED

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

WASHINGTON OFFICE
2331 RAYBURN BUILDING
TELEPHONE 202/225-5765

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
MERCHANT MARINE AND FISHERIES
POST OFFICE AND CIVIL SERVICE

Congress of the United States
House of Representatives
Washington, D.C. 20515

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BOX 10, 101 12TH AVENUE
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501 FEDERAL BUILDING
KETCHIKAN, ALASKA 99902
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RT. 1, BOX 1805
KENAI, ALASKA 99611

BOX 177
KODIAK, ALASKA 99615

P.O. BOX 1860
NOME, ALASKA 99762

January 24, 1986

The Honorable Jack Coghill
Chairman
Senate Transportation Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Jack:

I am writing with regard to State Senate Joint Resolution 29, which requests the U.S. Department of Transportation to continue to require jet service to the communities of Cordova, Yakutat, Petersburg, Wrangell, and Gustavus, Alaska.

In the past, Senator Stevens, Senator Murkowski and I have been successful in maintaining subsidized jet service to Southeast Alaska. However, due to the tremendous fiscal pressures caused by Grahamm-Rudman the chances for maintaining this program beyond December 31, 1986, appear doubtful.

In the meantime, I will continue to consult with the Department of Transportation regarding the future of this program. Additionally, I will be available to discuss the subject with you in more detail when I travel to Juneau in February.

With best regards,

Sincerely,

DON YOUNG
Congressman for All Alaska

P.S. Jack Hope to see you in Juneau soon!

ADOPTED AUGUST 1972

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

July 5, 1985

Mr. John V. Coleman, Director
Office of Essential Air Service
U.S. Department of Transportation
400 Seventh Street South West
Washington, D.C. 20590

Dear Mr. Coleman:

As an addendum to the enclosed Civic Part Questionnaire, the following letter will explain in more explicit detail the importance of continued commercial jet service to the City of Wrangell.

Wrangell is a city of 2,376 people located on the northern tip of Wrangell Island in Central Southeast Alaska. There are no roads to Wrangell. It is accessible only by air or water. The entire economy of Wrangell is dependent on these two modes of transportation, relying heavily on commercial jet service, our only high speed access to the major markets of Anchorage, Juneau, and the lower 48 states. Most of the people coming to Wrangell, as a destination point, for business or pleasure, travel by commercial jet.

The majority of our fly-in tourist trade would be unable or unwilling to come here if the only means available was by light aircraft, either scheduled or charter, for a variety of reasons. Limited vacation time, cumbersome scheduling, inadequate seating and luggage space, high cost, or just plain fear of flying in a light aircraft. The loss of scheduled jet service would be devastating to the Visitor Industry of Wrangell.

The Fishing Industry relies heavily on scheduled jet service to transport their product to markets in the lower 48 states. Four of the five seafood processors located in Wrangell deal exclusively in fresh or frozen product that is shipped by air to select markets in the lower 48. Seafood is susceptible to rapid spoilage and rapid price fluctuation so it requires the speed, special handling, and reasonable freight rates that commercial jet service provides. Jet service enables our processors to ship their products and have them arrive on time, in edible condition, and at a feasible cost. Without this service, they would be severely handicapped in servicing their markets properly. They would face the distinct possibilities of customer dissatisfaction, loss of revenue, and plant closure. The resulting domino effect would cause a drastic decline in Wrangell's fishing fleet because many fishermen would be forced to move to other ports in order to sell their product and others who were unable to move could be forced out of business.

CITY OF WRANGELL, ALASKA

Timber, our major industry, is heavily reliant on commercial jet service for delivery of replacement parts, small equipment, executive travel, and outside technical help. A situation that would be considered a minor breakdown in the lower 48 where parts are readily accessible, could cause a shutdown at the Wrangell Mill for want of a small but essential part or the expertise of a specialist, if scheduled jet service was not available.

Wrangell's entire economy evolves around the ability to provide efficient transportation for the goods, services and people that are the life blood of our community. Therefore it is essential that the federal government continues their support of commercial jet operations into Wrangell to help assure the future economic survival of our City.

Sincerely,

William B. Privett, Major
City of Wrangell, Alaska

WP:fv

cc: Congressman Donald E. Young
Senator Ted Stevens
Senator Frank Murkowski
Governor Bill Sheffield
Commissioner Loren Lounsbury
Commissioner Richard Knapp

Enc.

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

November 14, 1985

Senator Robert Ziegler
307 Bawden
Ketchikan, Alaska 99901

Dear Senator Ziegler:

Enclosed is a copy of Mayor Privett's letter to Mr. William C. Boyd, with accompanying pertinent correspondence.

We ask your continued support in our efforts to maintain our present level of commercial jet service. We are just now getting back to square one after the 1982-83 mill and cannery closures. If we are denied this vital transportation link to our markets, it will cause irreparable damage to our two major employers and the consequent loss of jobs would severely impact our economic base.

Sincerely,

Jim Gove
Economic Development Director

JG:cd

Enclosure

U.S. Department of Transportation
Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

October 29, 1985

Honorable William Privette
Mayor
P. O. Box 531
Wrangell, Alaska 99929

Dear Mayor Privette:,

By Order 85-5-89, the Department of Transportation requested carriers interested in providing essential air service to Cordova, Yakutat, Petersburg, Wrangell and Gustavus, Alaska, to file service proposals, with subsidy requests if necessary. The Department's request was prompted by the impending end of Alaska Airlines' rate term for serving these communities on September 30, 1985.

Essential air service for each point, as established by Civil Aeronautics Board Order 80-1-167, requires seven round trips per week with large aircraft (over 60 seats). Off-peak season service at Gustavus requires only two round trips per week with small aircraft (up to 10 seats). The designated hubs for essential air service are as follows:

Eligible Point	Designated Hub
Cordova	Anchorage
Yakutat	Anchorage or Juneau
Petersburg	Juneau or Ketchikan
Wrangell	Juneau or Ketchikan
Gustavus	Juneau

Order 80-1-167 stated that although a certain size of aircraft was indicated in the essential air service determinations for points in Alaska, the Board would be willing to rely on operations with different size aircraft to meet the essential air service requirements provided that the number of frequencies were adjusted accordingly to provide sufficient capacity.

With respect to Cordova, Petersburg, Wrangell, Yakutat and Gustavus, however, Congress has directed us to rely only on large aircraft to meet the essential air service requirements unless the state agrees to service with smaller aircraft. This Congressional requirement is effective through December 31, 1986. In view of this requirement, we requested proposals for the period October 1, 1985, through December 31, 1986.

We are writing to the State and the civic officials of each of these communities to advise them of the status of the case at this time and to request their positions and comments on certain issues, as discussed below.

We received proposals to serve all five communities from Alaska Airlines and SEAIR Alaska Airlines. Alaska Airlines proposes to continue to provide its existing service pattern with B-737 and B-727 aircraft. SEAIR proposes to provide service with Convair 580 aircraft, which would require the agreement by the State in order for us to consider it. SEAIR filed two proposals. The first proposal involves one daily round trip operated over a linear route, Anchorage-Cordova-Yakutat-Juneau-Petersburg-Wrangell and return. The carrier requests an annual subsidy of $577,620 for this proposal. SEAIR's second proposal involves turnaround service between Anchorage and Cordova; Juneau and Yakutat and Juneau and Petersburg/Wrangell. SEAIR requests an annual subsidy of $437,902 for this proposal. SEAIR's proposals do not indicate specific schedules for Gustavus. However, the carrier has indicated that it intends to serve the point.

SEAIR has indicated that it does not want to hold a rate conference unless the State agrees to considering service with the Convair aircraft. As a first issue, therefore, we have requested the State's position on whether or not we should consider proposals with this equipment. If the State agrees to consider SEAIR's service proposal, we would hold a rate conference with the carrier.

We have concluded a rate conference with Alaska Airlines for its proposal, and the carrier has agreed to provide the service outlined in its proposal through December 31, 1986, for an annualized subsidy rate of $1,973,000.

In the event that the State does not agree to consider SEAIR's proposal, we would appreciate receiving your comments on Alaska Airlines' proposal and subsidy request for our consideration in making a decision in the case. Upon receipt of your comments, we plan to submit a recommendation to the Assistant Secretary on Alaska Airlines' proposal and subsidy request.

If the State agrees to considering SEAIR's proposal, we would hold a rate conference with SEAIR and afford Alaska Airlines an opportunity to amend its subsidy request. Following the completion of those procedures, we would advise you of the final service and subsidy requests and ask for your comments on the final proposals.

In order to complete this case as expeditiously as possible, we would appreciate receiving your response by November 15, 1985. An original and five copies of your response should be sent to William C. Boyd, Chief, Service Analysis Division I, S-63, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590. A copy of your comments should also be sent to each carrier. If you have any questions, please contact Bernard Calure of my staff at (202) 426-9813 or Dick Steinman of our Alaska field office at (907) 271-5146.

Sincerely,

William C. Boyd

William C. Boyd, Chief
Service Analysis Division I
Office of Essential Air Service

ADOPTED AUGUST 1972

CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

November 13, 1985

Mr. William C. Boyd, Chief
Service Analysis Division I, S-63
United States Department of Transportation
400 Seventh Street South West
Washington, D.C. 20590

Dear Mr. Boyd:

In response to yours of October 29, 1985, requesting our position regarding the proposal from SEAIR Alaska Airlines, I am enclosing a copy of my original letter to Mr. John V. Coleman of your office. The letter, dated July 5, 1985, clearly outlines our position on the essential air service issue. All of the parties listed as receiving copies of the original letter have gone on record as supporting our position.

In your current correspondence you indicate that SEAIR proposes service with Convair 580 aircraft for daily round trip service from Anchorage to Wrangell and points in between. SEAIR's proposal, as outlined in your letter, gives me cause for great concern for a number of reasons.

There is no mention of service south to Seattle via Ketchikan or to other points in the lower 48. The Convair 580 has marginal passenger capacity for our peak seasons and would be totally inadequate to meet the freight demands of Wrangell, let alone the additional demands of cities to our north. This past year we shipped 600,000 pounds of seafood to markets in the lower 48 states plus an additional 200,000 pounds of miscellaneous freight and mail for a total of 800,000 pounds. An increase of approximately 375,000 pounds in a two year period. Wrangell Forest Products, our major employer, is dependent on commercial jet service to and from the lower 48 for parts, technical personnel and Pacific Rim customers. Eight thousand passengers arrived from the south in 1985, the majority of which were tourists.

Our economic survival hinges on adequate air service. If we are unable to properly serve our timber, fishing, and tourism industries,

it will cause an economic catastrophe. Please consider these points carefully during your negotiations.

Sincerely,

William B. Privett
Mayor

WBP:fv

Enc.

cc: Congressman Donald E. Young
Senator Ted Stevens
Senator Frank Murkowski
Governor Bill Sheffield
Commissioner Loren Lounsbury
SEAIR Alaska Airlines
Alaska Airlines

SJR

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Executive Summary

The United States and the Republic of Korea have long enjoyed cordial aviation relations. These important allies have worked together to create a procompetitive air market in which carriers from both countries can operate profitably. However, progress in U.S.-Korea aviation relations has recently been stymied by the reluctance of the U.S. to ratify the 1980 Memorandum of Understanding (MOU) between the two nations.

The Republic of Korea strongly desires ratification of its 1980 aviation agreement with the United States. It believes that the obstacles to implementation of that agreement have been removed and that conditions now exist which will allow an end to the current deadlock.

A series of air transport agreements between the U.S. and Korea have conferred significant advantages on U.S. carriers:

-- The U.S. has designated 14 carriers to serve Korea while Korea has designated one carrier to serve the U.S.

-- Currently, U.S. airlines operate between Seoul and fourteen U.S. points. In contrast, the Korean carrier is only allowed to serve three points in the U.S.

-- U.S. carriers presently have unlimited rights to serve points beyond Korea and in fact serve five such points. Korean Air Lines (KAL) is not authorized to serve any beyond points.

In addition to favorable route rights, U.S. carriers serving Korea enjoy automatic fare approval, unrestricted charter rights, and the largest amount of cargo space allocated to foreign carriers at Kimpo International Airport. These factors, coupled with the large volume of U.S. Government business, have enabled the three U.S. carriers to compete effectively in the Korean market and to derive substantial profits from their services.

Although Korea has closely cooperated with the U.S. on aviation matters, and in fact, was one of the first countries in the world to accept a procompetitive bilateral agreement, its right to provide service to the U.S. is far more restricted than other nations offering transpacific service. Taiwan, Thailand, the Philippines and Japan all enjoy greater route rights to the U.S. than Korea. Moreover, Korea's conciliatory attitude on fares, designation, and capacity issues stands in stark contrast to the experience of U.S. carriers in many European and Latin American nations.

The rights granted to Korea by the 1980 Memorandum of Understanding represent a reasonable expansion of its present authority to serve the U.S. In return for additional benefits

conferred on U.S. carriers, KAL will receive full traffic rights at Anchorage, and the same rights with respect to Chicago and Oakland. For the first time, the 1980 agreement also provides for beyond rights to a single point in Europe. KAL's expanded route rights under the 1980 MOU are comparable to the rights presently enjoyed by other Asian nations and still leave U.S. carriers with a significant edge over their Korean counterpart.

Furthermore, the rights granted to KAL are matched by greater benefits for U.S. carriers serving Korea. The terms of the 1980 MOU permitted U.S. carriers to construct a new cargo terminal at Kimpo International Airport for their exclusive use. Flying Tiger, the U.S. all-cargo carrier, expressed its intention to construct the Kimpo cargo facility, but requested several concessions from the Korean Government before doing so. The Korean side made each one of these concessions, including:

-- an increase in the agreed-upon size of the facility; and

-- an increase in the amortization period for the facility from the ten-year period specified by Korean law to a twenty-year amortization period.

After obtaining these concessions, Flying Tiger advised the State Department that it no longer objected to the "immediate implementation of each of the rights granted to the Korean designated air carrier" as specified in the 1980 MOU.

Flying Tiger never began construction of the new cargo terminal because it lacked the necessary financial resources to complete it. Instead, the Korean Government pledged its commitment to build the cargo facility and in fact, has already commenced its construction. Completion is scheduled for early 1986. Once the facility is finished, U.S. carriers will have the capability to self-handle all cargo at Kimpo, fully implementing Korea's commitments under the 1980 agreement.

While the terms of the 1980 MOU will have been met by the Korean side, there is no sign that the U.S. is prepared to ratify the agreement and implement its provisions. Thus, KAL will be denied the benefits promised by the agreement while U.S. carriers continue to enjoy their already significant advantages while receiving additional rights on top of that. Because the commitment of the Korean Government to construct the cargo terminal at Kimpo has mooted U.S. objections to ratification, it seems grossly unfair to further delay implementation of the 1980 agreement.

By signing the 1980 Memorandum of Understanding, the U.S. undertook a commitment to seek its ratification and adhere to its provisions. The U.S. should now prove as good as its word by ratifying and implementing the 1980 agreement.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 16, 1985

Senator Jack Coghill
Senate Transportation Committee
Pouch V
Juneau, Alaska 99811

Re: Senate Joint Resolution 30 (Relating to passenger service by Korean Air Lines in Anchorage)

Dear Senator Coghill:

The above captioned bill is currently in your committee. Attached is backup material on the bill; therefore I would like to respectfully request that the bill be scheduled for a hearing at your earliest convenience.

If you or your staff have questions concerning this bill, do not hesitate to contact my office.

Thank you for your consideration in this matter.

Sincerely,

Bill Ray

Bill Ray
Senator
District C

ANCHORAGE TRAFFIC RIGHT FOR KOREAN AIR

1. Status of Traffic Right at Anchorage

a) Under the 1978 Memorandum of Understanding between R.O.K. and U.S.A., Korean Air has the right to operate to New York via Anchorage with stopover right at Anchorage.

b) Under the 1980 Memoradum of Understanding between the two countries, Korean Air was granted the right to operate to Anchorage. However, this Understanding has not been ratified so that the Anchorage right is not in force.

c) In 1983, Korean Air requested an exemption to provide air transportation between Korea and Anchorage. However, Korean Air's request was denied on the ground that the 1980 Memorandum of Understanding was pending.

2. Operating Status at Anchorage

a) Korean Air operates total 40 flights to New York and Los Angeles via Anchorage as a technical stop as follows ;

KE 018	Seoul - Anchorage - New York	6 flights per week
KE 017	New York - Anchorage - Seoul	6 flights per week
KE 015	Los Angeles - Anchorage - Seoul	4 flights per week
KE 098	Seoul - Anchorage - New York	6 flights per week
KE 097	New York - Anchorage - Seoul	6 flights per week
KE 084	Seoul - Anchorage - Los Angeles	5 flights per week
KE 083	Los Angeles - Anchorage - Seoul	5 flights per week
KE 082	Seoul - Tokyo - Anchorage - Los Angeles	1 flight per week
KE 081	Los Angeles - Anchorage - Tokyo - Seoul	1 flight per week

b) Korean Air also provides 3 round - trip passenger flights between Seoul and Europe via Anchorage as a technical stop with all flights.

... / 3. Needs

3. Needs of Direct Service between Korea and Anchorage

a) No direct passenger service of any kind is provided by any U.S. or foreign carriers between Korea and Anchorage. Passengers wishing to travel between Korea and Alaska must use connecting passenger service which is inconveient, time-consuming and infrequent. And existing all-cargo service is via intermediate points with limited frequencies.

b) In the face of this dearth of air transportation service in the Korea - Alaska market, there is a great demand and urgent need for such air service by passenger and shippers alike.

c) The pressing need for improved air transportation service between Korea and Alaska also has been reflected by numerous expressions by support for Korean Air's service in the market by citizens, shippers, civic organizations and government officials in Alaska.

KOREAN AIR

CABLE ADDRESS: "KOREANAIRLINES"
C.P.O. BOX 864 SEOUL, KOREA
TELEX: "KALHO K27526", TEL. 7517-114, 771-86

January 24, 1986

Alaska State Senate
Committee on Transportation
State Capitol Building
Pouch V
Juneau, Alaska 99811

ATTN: Ms. Elizabeth Ziegler

Dear Ms. Ziegler:

Pursuant to our telephone conversation of yesterday, I am enclosing the booklet entitled "U.S.-Korea Aviation Relations and Ratification of the U.S.-Korea 1980 Memorandum of Understanding." Also included is a two page "Executive Summary."

I trust that the information and statistics contained in these documents will prove adequate support for the resolution being considered by the Alaska State Senate.

As you may be aware, Korean Air has been exerting every effort for quite some time to obtain authority for full traffic rights at Anchorage.

We sincerely appreciate the efforts being made by the Alaska State Senate in this regard, and hope that the seed being planted through the resolution will soon bear fruit.

Sincerely yours,

Lee Steiner
Manager
Government Affairs
American Regional Office
KOREAN AIR

Enclosure

:ls

AMERICAN REGIONAL OFFICE 6101 WEST IMPERIAL HWY., LOS ANGELES, CA 90045
TEL: (213) 417-5200 RESV. (213) 484-1900

U.S.-KOREAN AVIATION RELATIONS AND RATIFICATION OF THE U.S.-KOREA 1980 MEMORANDUM OF UNDERSTANDING

I. INTRODUCTION

Since the inception of air transportation between the United States and the Republic of Korea, aviation relations between the two countries have been cordial and mutually beneficial. However, several differences of a minor nature have recently threatened to undermine this close and constructive relationship. These differences have caused the U.S. thus far to refuse to ratify and implement the provisions of an April 12, 1980 Memorandum of Understanding (MOU) with Korea concerning air transport services between the two countries. The reluctance of the U.S. to ratify the 1980 MOU has denied significant economic benefits to air carriers on both sides of the Pacific.

The Republic of Korea strongly desires ratification of its 1980 aviation agreement with the United States. It believes that the obstacles to implementation of that agreement have been removed and that conditions now exist which will allow an end to the current deadlock.

This paper will explore the present status of U.S.-Korea aviation relations, describe recent steps to resolve the outstanding issues, and suggest the advantages for both nations of an early and equitable resolution of their differences.

II. A BRIEF HISTORY OF U.S.-KOREAN AVIATION RELATIONS

Air services between the U.S. and Korea have been governed for almost thirty years by the 1957 U.S.-R.O.K. Air Transport Services Agreement. The air transport rights granted by the original agreement have been significantly expanded through several amendments to the basic document. The latest series of negotiations resulted in the 1978 and 1980 aviation agreements between the U.S. and Korea.

The 1978 U.S.-R.O.K. Memorandum of Understanding, signed ad referendum, significantly enhanced access and competition in the U.S.-Korea air market. The U.S. was given the right to designate an unlimited number of carriers to provide service to Korea. Moreover, the two countries agreed to a system of mutual disapproval of fares and rates, increasing the likelihood of fare reductions and fare discounts. In exchange, Korean Air Lines (KAL) was granted traffic rights to New York and passenger stopover rights at Anchorage. The 1978 MOU also raised for the first time the issue of self-handling of cargo by U.S. carriers at Kimpo International Airport (Seoul). At the request of the U.S. delegation, Korea agreed to special provisions for cargo handling by U.S. carriers.

Prior to ratification of the 1978 Memorandum of Understanding, the United States requested clarification of the provisions governing cargo self-handling at Kimpo. On March 14, 1979, the U.S. Ambassador in Seoul sent a letter to the Minister of Foreign Affairs specifying the handling rights to which U.S.

carriers would be entitled. In the same letter, the United States demanded that the Korean Government construct, or allow a U.S. carrier or U.S. carriers to construct, a new cargo terminal for the exclusive use of U.S. airlines. Even though the 1978 MOU was silent as to the construction of additional cargo facilities at Kimpo the Korean Government acceded to the United States' request. Following resolution of this issue, the United States and Korea exchanged diplomatic notes ratifying the 1978 Memorandum of Understanding.

One year after the 1978 agreement was ratified, representatives from the United States and Korea again met to discuss air transport relations between the two countries. During the talks, the Korean Government requested an expansion of the route schedule so that Korean Air Lines could offer service to additional points in the United States and points beyond. The delegations, in an April 12, 1980 Memorandum of Understanding, conferred on the Korean carrier traffic rights to Anchorage, Oakland and Chicago and beyond rights to one point in Europe. The new traffic rights, if implemented, would partially rectify the route imbalance which currently allows U.S. carriers to operate from <u>any</u> U.S. points via <u>any</u> intermediate points to <u>any</u> points in the R.O.K. and <u>any</u> points beyond while restricting the Korean carrier(s) to only three U.S. gateways without any beyond rights.

The 1980 MOU also provided that the Korean Government would give a U.S. carrier (Flying Tiger) the option to construct a new cargo terminal at Kimpo. If Flying Tiger chose not to exercise its option, the R.O.K. would construct the facility itself. The size of the facility would be no less than 2,688 square meters and would allow for both inbound and outbound cargo handling by U.S. carriers. Under the 1980 Memorandum of Understanding, the traffic rights granted to Korean Air Lines, except the traffic rights at Anchorage, were to be phased-in and tied to completion of the new cargo facility.

Although authorized to construct the Kimpo cargo facility and initially expressing interest in doing so, Flying Tiger decided not to proceed. It informed U.S. authorities in May 1983 that it did not have adequate financing to build the proposed facility. By choosing to forego construction, Flying Tiger delayed progress on the new terminal, preventing KAL from exercising its new traffic rights under the 1980 MOU.

The 1980 Memorandum of Understanding has not been ratified. Although Korea has repeatedly proposed its ratification to the U.S. Government, the United States has declined to ratify the MOU on the ground that the new cargo terminal at Kimpo must first be completed (notwithstanding the decision of Flying Tiger not to build the terminal as it originally stated it would). In order to resolve this issue and proceed with implementation of the 1980 agreement, the Korean Government has decided that it will construct the Kimpo cargo facility. Construction of the facility

is now under way and is expected to be completed by early February 1986. When completed, the new facility, which will exceed 4,032 square meters in size, will enable U.S. carriers to self-handle inbound, outbound and transit cargo at Kimpo. Thus, with construction of the new cargo facility, the major issue stalling implementation of the 1980 MOU has been resolved according to the terms of that agreement and in a manner which should be satisfactory to the United States.

III. BENEFITS UNDER THE U.S.-KOREA AVIATION AGREEMENTS

Despite the goodwill that has generally pervaded U.S.-Korea aviation relations, the 1980 Memorandum of Understanding is no closer to ratification today than it was five years ago. In large measure, the impasse over ratification results from the protracted controversy over the cargo facility at Kimpo, an issue which, as explained above, has now been resolved. However, also behind the failure to ratify the 1980 MOU is the view held by some in the U.S. aviation community that the agreement is "tilted" towards Korea. That is simply not the case. As the following analysis demonstrates, the economic rights enjoyed by U.S. carriers under the 1978 and 1980 agreements outweigh those enjoyed by KAL. Moreover, the benefits enjoyed by U.S. carriers serving Korea will only continue to grow as the Korean economy develops and trade and commerce between the two countries increases.

A. Structure Of The U.S.-Korea Air Market

The U.S.-Korea air market is presently served by one Korean carrier (Korean Air Lines) and three U.S. carriers (Pan American, Northwest and Flying Tiger). Pan Am, Northwest, and KAL conduct both passenger and cargo operations. Flying Tiger is strictly an all-cargo carrier.

Under the U.S.-Korea bilateral agreement as modified by the 1978 MOU, the route rights enjoyed by U.S. carriers are far greater than those allowed to KAL:

-- With the right to designate an unlimited number of carriers, the U.S. has designated 14 carriers to serve Korea while Korea has designated one carrier to serve the U.S. (Exhibit A, Table 4).

-- U.S. carriers may provide service between any points in Korea and any points in the U.S. Currently, U.S. airlines operate between Seoul and fourteen U.S. points. In contrast, the Korean carrier is only allowed to serve three points in the U.S. (Exhibit A, Table 5).

-- With respect to service beyond each country, U.S. carriers under the existing agreement have unlimited rights to serve points beyond Korea with full Fifth Freedom rights[1/] and in fact serve five such points and derive substantial economic benefits from such services. (Exhibit A, Tables 18, 19). KAL is not authorized to serve any beyond points.

The imbalance in route rights severely limits the competitive opportunities available to KAL. U.S. carriers can now operate, in both directions, from <u>any</u> U.S. points, via <u>any</u> intermediate points, to <u>any</u> points in Korea, and beyond Korea to

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1/ Fifth Freedom rights are rights granted carriers of one country to carry local traffic (i.e., passengers and cargo) between the other country and a third country.

any points other than certain Communist countries.2/ KAL, on the other hand, has been limited to the same route rights for approximately thirty years, with the single addition of traffic rights to New York and stopover rights at Anchorage.

In addition to favorable route rights, U.S. carriers serving Korea enjoy automatic fare approval, unrestricted charter rights, and the largest amount of cargo space allocated to foreign carriers at Kimpo International Airport. These factors, coupled with the large volume of U.S. Government business, have enabled the three U.S. carriers to compete effectively in the Korean market and to derive substantial profits from their services.

As the Korean economy continues to grow and as the 1988 Summer Olympics approach, U.S. carriers will have further opportunity to exploit their advantages under the existing air agreement between Korea and the United States.

B. Total Market Statistics

By any objective standard, the U.S.-Korea air market is large and rapidly growing. As of October 31, 1984, the number of passengers traveling between Seoul and various points in the U.S. reached an annual figure of 496,813, a 69.4% rise over 1979. The statistics for cargo traffic are similarly impressive: 141,157,000 pounds of cargo ferried between the U.S and Korea last year, a 93.2% rise over 1979. These figures establish the

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2/ In accordance with the 1980 Memorandum of Understanding, the Korean government consistently has advised the U.S. government that this restriction on beyond rights will be eliminated immediately upon ratification of the 1980 agreement.

U.S.-Korea air market as second largest of the transpacific passenger markets (Exhibit A, Table 2), and fourth largest of the transpacific markets for air cargo (Exhibit A, Table 3).

The U.S. participation in the market has been steadily rising over the past several years. Since 1978, the number of passengers enplaned at Seoul by U.S. carriers has grown at an average annual rate of 18.2% (Exhibit A, Table 10). Over the same period, freight enplaned by U.S. carriers at Seoul has increased each year by an average rate of 15.4%. (Exhibit A, Table 10). As the traffic carried by U.S. operators has risen, so has the number of flights between the U.S. and Korea. In May 1985, weekly flights by U.S. carriers serving the U.S.-Korea air market had risen by 31% over the prior year. The increase in the number of passenger flights by U.S. carriers has been particularly dramatic, nearly tripling in frequency over the past seven years. (Exhibit A, Table 10A). Most impressive of all, measured in terms of annual available seats, U.S. carriers will provide 60% of passenger capacity in this market in 1985 compared to the 40% share held by KAL. (Exhibit A, Table 8).

Translated into revenue, these figures mean significant earnings for U.S. airlines. Last year, U.S. carriers received an estimated $153 million from passenger operations in the U.S.-Korea market. (Exhibit A, Table 13). Cargo operations generated revenue of $68 million. (Exhibit A, Table 14). Total revenue has increased dramatically over the past six years, an upward trend which shows no signs of abating.

This analysis of the U.S.-Korea air market confirms the substantial benefits received by the U.S. under its aviation agreement with the Republic of Korea. Implementation of the 1978 MOU has dramatically increased revenue and traffic for U.S. carriers operating flights to Seoul. Ratification of the 1980 MOU would continue this record of growth by expanding the competitive opportunities available to U.S. carriers.

III. ARGUMENTS SUPPORTING RATIFICATION OF THE 1980 MEMORANDUM OF UNDERSTANDING

Over the years, the give-and-take of U.S.-R.O.K. negotiations has produced a series of agreements, which have somewhat improved the imbalance favoring the U.S. under the Air Transport Services Agreement between the two countries. The 1980 MOU is no exception to this pattern of continuing improvement. Its terms provide for an exchange of benefits intended to enhance competition in the U.S.-Korea air market. The following analysis summarizes the policy and economic justifications for ratification of the 1980 MOU, from both the U.S. and Korean perspective.

A. Korea Has Been Extremely Cooperative In Aviation Matters With The U.S.

The Republic of Korea has always been forthcoming in aviation relations with the U.S. As demonstrated by the discussion below, it has accommodated U.S. interests on several matters resulting in significant benefits for U.S. carriers. Ratification of the 1980 MOU would provide the basis for

continuing cooperation by the Koreans in aviation affairs and further cement the cordial ties between the U.S. and one of its most dependable allies.

1. The 1978 Memorandum of Understanding.

The 1978 U.S.-R.O.K. Memorandum of Understanding (MOU) was a precedent-setting agreement. At the time, the U.S. was aggressively pursuing an "open skies" policy in bilateral aviation agreements with foreign nations. "Open skies" meant greater competition in international air markets and was intended as the international corollary to deregulation at home. Although such agreements were uncommon at the time, Korea accepted a "liberal" bilateral treaty reflecting the procompetitive policies of the U.S. Government.

Korea was the first major country in the Far East and one of the first countries in the world to accept a procompetitive bilateral. While many foreign governments refused to sign such procompetitive agreements in order to protect their own carriers, Korea did not. Korea's acceptance of such an agreement was hailed by U.S. aviation officials as a major step in extending the "open skies" policy to Asia. In fact, shortly after the 1978 agreement was concluded, several other Asian nations (i.e., Singapore, Thailand and Taiwan) followed Korea's lead and agreed to procompetitive bilateral arrangements with the United States.

Under the "open skies" approach of the 1978 MOU, U.S. carriers serving Korea enjoy the unrestricted right to set fares, determine frequency of service, and select routes. This

contrasts sharply with the rights of U.S. carriers under other bilateral agreements regarding air transport services including those between the U.S. and some of its major trading partners and allies. Consider the following:

-- Many bilaterals restrict the number of carriers the U.S. can designate to provide international service. The agreements with Great Britain, Canada, Mexico, Italy, and the Philippines, to name a few, all impose firm limits on the number of designations.

-- Many of the same agreements also limit the routings over which U.S. carriers can operate.

-- Many bilaterals provide for unilateral disapproval of carrier fare initiatives. The agreements with Germany, Switzerland, and the United Kingdom permit prior governmental review of fares. Indeed, a spate of notices of rejection from the British government last fall precipitated a major crisis in U.S.-U.K. aviation relations.

-- Schedules frequently are subject to prior governmental review. Under the aviation agreement between the U.S. and Great Britain, carrier schedule increases must be negotiated every six months.

Significantly, these matters have never been the subject of a dispute between the U.S. and Korea. The 1978 MOU gave the U.S. the right of unlimited designation of carriers, with no restrictions on flight routes or schedules. Fares are reviewed according to a mutual disapproval system under which U.S. carriers are effectively able to set fares as they wish. On matters of capacity, as on most matters involving aviation, the U.S. and Korea see eye-to-eye.

2. Modification of the 1978 MOU.

When the U.S. sought additional rights for U.S. carriers, Korea once again acceded to its demands. The 1978 MOU was modified to allow U.S. cargo carriers greater self-handling rights at Kimpo International Airport. The U.S. refused to ratify the 1978 MOU until Korea specified the self-handling rights that U.S. carriers would enjoy. An additional concession, one which apparently is unique in the history of bilateral agreements, involved the commitment of the Korean Government to construct, or allow a U.S. carrier or U.S. carriers to construct, a new cargo terminal at Kimpo airport for the exclusive use of U.S. airlines.

3. Fifth Freedom rights.

Fifth Freedom rights, especially important for U.S. carriers, have been hotly contested in negotiations conducted by the U.S. with other nations. Often, the availability of Fifth Freedom rights determines the economic viability of a particular route. Out of a desire to protect their own carriers, most nations are extremely reluctant to allow U.S. carriers traffic rights to points in other countries. In fact, in the case of a number of countries such as Peru and Greece, the issue of Fifth Freedom rights led to the renunciation or near-renunciation of aviation agreements with the U.S.

Not so in the case of Korea. U.S. carriers serving Seoul have full Fifth Freedom rights to serve beyond points and presently provide such service to Hong Kong, Taipei, Manila,

Osaka, and Tokyo. Moreover, U.S. carriers may exercise Fifth Freedom rights beyond Seoul to points in the People's Republic of China if the 1980 MOU is ratified. Substantial traffic is generated by present Fifth Freedom markets. In 1982, the most recent year for which figures are available, U.S. carriers flew 197,179 passengers between Seoul and Tokyo, and 25,277 between Seoul and Taipei (Exhibit A, Table 18).

Korea's conciliatory attitude on Fifth Freedom rights is all the more remarkable given the fact that at present it has no similar rights in the U.S. Although the right to serve one beyond point in Europe was granted by the 1980 Memorandum of Understanding, that right has been held in abeyance by the failure of the U.S. to ratify the 1980 agreement.

4. Commencement of service by U.S. carriers.

Korea follows a laissez-faire approach with respect to start-up service by U.S. carriers. Both Braniff and Pan Am were able to initiate service to Seoul with a minimum of bother and delay. This is in stark contrast to the difficulties typically experienced in Latin America and Japan. Throughout Central and South America, the problems associated with start-up operations have been acute. Challenge Air Transport experienced particular difficulty in Guatemala and Peru, where its attempts to begin operations met delay after delay. Bureaucratic delays also stalled the commencement of service by United to Japan. The Japanese relented only after intense pressure from the U.S. including several retaliatory measures against Japan Air Lines.

U.S.-Korea aviation relations have never reached the nadir marked by United's application to serve Japan. U.S. carriers have been free to come and go from Seoul pretty much as they please.

As indicated by this review of U.S.-R.O.K. aviation relations, the Republic of Korea has been cooperative and flexible in negotiations with the United States. The cordial attitude of the Korean Government has led to pragmatic aviation agreements, emphasizing a balanced exchange of economic rights and opportunities. It is anomalous, to say the least, that the nation which has championed "open skies" should respond to the Korean approach of lowering constraints and promoting competition by refusing to ratify the 1980 Memorandum of Understanding. The present U.S. position not only penalizes a trusted American ally but undermines the basis for what has been up to now a very special relationship between the U.S. and Korea with respect to aviation affairs.

B. Ratification Of The 1980 MOU Will Guarantee U.S. Carriers Sufficient Space For Self-Handling Of Cargo At Kimpo International Airport.

The 1979 letter from the American Ambassador to the Korean Foreign Ministry secured for U.S. carriers the right to self-handle cargo at Kimpo airport. However, the size of the cargo area presently used by U.S. carriers prevents them from self-handling all freight.

The construction of a new cargo facility at Kimpo will provide a considerably larger space (in excess of 4,032 square meters) for the exclusive use of U.S. cargo carriers. The addition of this space will remove the physical constraints which currently prevent U.S. carriers from self-handling all their own cargo. Consequently, with the construction of the new facility, import, export, and transit cargo will be totally self-handled by U.S. carriers.

C. The Route Rights Granted To KAL Under The 1980 MOU Are A Reasonable Expansion Of Its Present Authority And Are Consistent With Similar Rights Granted To Other Nations.

In approaching the 1980 aviation negotiations, Korea sought an expansion of route rights for KAL. As previously noted, these route rights were severely limited and far less than the rights enjoyed by U.S. carriers serving Korea.

Prior to 1978, KAL was restricted to one U.S. route--from Seoul to Los Angeles, via Tokyo and with a mandatory stop in Honolulu. In the 1978 MOU, the U.S., in return for Korea's acceptance of a "liberal" bilateral agreement, granted to KAL the right to provide passenger and cargo service to New York, with passenger stopover rights (but not traffic rights) at Anchorage. The 1980 MOU allowed KAL full traffic (as opposed to stopover) rights at Anchorage, upon notification by the Korean Government that it had removed restrictions on service to Communist nations as part of the "beyond rights" of U.S. carriers serving Seoul. Under the same agreement, KAL was given rights to Oakland, upon completion of the new cargo facility at Kimpo International

Airport. One year after the cargo facility was completed, KAL was to receive rights to Chicago, and one year after that, beyond rights from one point in the U.S. to one point in Europe.

The new authority granted to KAL as part of the 1980 MOU was not given for "free" but resulted from negotiations between the U.S. and Korea. In each case, the new route rights were closely tied to additional benefits for U.S. carriers serving Seoul.

Moreover, the route rights granted to other countries under similar bilateral agreements are far more significant than those granted to Korea under the 1978 and 1980 agreements. Other Asian nations agreeing to procompetitive bilateral agreements received new route rights in return. Taiwan, for example, presently enjoys rights to Guam, Honolulu, Seattle, San Francisco, Los Angeles, Dallas, and New York, plus beyond rights to a point in Europe and a point in either Central or South America. Thailand enjoys rights to New York, Honolulu, Los Angeles, Guam, Seattle and one additional point, together with beyond rights to Canada and Europe. Even countries which have been restrictive in rights granted to U.S. carriers have enjoyed rights comparable to those conferred by the U.S.-Korea aviation agreements. The U.S.-Philippine agreement, for example, which contains strict capacity and designation limitations, grants Philippine carriers rights to Guam, Honolulu, San Francisco, Los Angeles and five points to be elected, together with beyond rights to three countries to be selected.

D. Implementation Of The 1980 MOU Will Mean Better Service For Chicago And San Francisco/Oakland.

The new route rights granted to KAL under the 1980 agreement will allow a boost in service to markets which at present are underdeveloped. Although Chicago and San Francisco/Oakland presently receive service from U.S. carriers flying to Korea, traffic and revenue generated by these points is far greater for other transpacific markets. For example, there are thirty-four weekly passenger flights to Tokyo from Chicago, non-stop and one-stop, with similar service from San Francisco 49 times a week. (Exhibit A, Table 20). Contrast this with the frequency of service to Seoul, which features only 16 weekly flights from Chicago and 12 flights from San Francisco. (Id.)

The figures for air cargo over these routes also indicate underdeveloped markets. Last year at Chicago, air cargo exports to and imports from Korea stood at 11.5% and 14.5%, respectively, compared to the same figures for trade with Japan (Exhibit A, Table 22). For San Francisco, the percentages are 8.5% and 13.8%. In other cities served by U.S. carriers, the air cargo figures for the U.S.-Korea and U.S.-Japan markets reflect a much narrower gap. (Id.). The addition of KAL service to Chicago and Oakland would spur competition between carriers, lower fares, and promote the development of those markets. However, this will only come about if the U.S. implements the 1980 Memorandum of Understanding.

IV. ACTIONS TAKEN BY KOREA CONCERNING THE 1980 MEMORANDUM OF UNDERSTANDING

The 1980 MOU stipulated several understandings. While the 1980 Agreement has not been ratified, the Korean Government has taken the necessary actions to implement most of the measures agreed upon. U.S. carriers have already been enjoying the benefits which these understandings provide for, such as the settlement of a storage facility problem and exemption of U.S. carrier ground handling equipment from the normally applicable customs duties.

The major issue which has prevented U.S. ratification and implementation of the 1980 Memorandum of Understanding concerns the construction of an additional cargo facility at Kimpo International Airport. The following account of the delays surrounding construction of the Kimpo cargo facility is intended to dispel any misconception that the Korean Government has disregarded its commitments under the 1980 agreement by impeding progress on the new cargo terminal.

The 1980 Memorandum of Understanding provided that the Korean Government would present to U.S. carriers a specific proposal for the construction of a new cargo facility and would provide the option for U.S. carriers to construct the building. The agreement further provided that, if the option was not exercised, the Korean Government would construct the facility on its own.

On May 8, 1980, less than four weeks after the agreement was signed, the Korean Government presented its specific proposal for construction of the new cargo facility to the U.S. carriers. The proposal, which was accompanied by preliminary design sketches, contemplated a facility of 2,688 square meters which would be erected immediately adjacent to the space then being allocated to the U.S. carriers. In a letter dated June 13, 1980, Flying Tiger notified the Korean Government that it was exercising its option to construct the facility and requested that the facility be expanded to comprise 4,032 square meters.

On November 17, 1980, the Korean authorities approved Flying Tiger's request, subject to the requirement that the facilities be constructed in conformity with applicable Korean laws and regulations and that, upon completion, title to the facility be transferred to the Korean Government as prescribed by the National Properties Act, a requirement which all companies in Korea must conform to.

In the months following the approval of its proposal, Flying Tiger did not submit construction plans or other information regarding the facility to the Korean authorities. Six months later, Flying Tiger submitted to Korean authorities a draft agreement to lease premises located at Kimpo in order to develop and construct a cargo facility consisting of 3,360 square meters. Because the draft agreement submitted by Flying Tiger contained terms inconsistent with relevant Korean laws, the Korean authorities advised Flying Tiger that its draft agreement did not

conform to Korean law and provided Flying Tiger with the appropriate forms and procedures to be followed in connection with construction of the facility. In June 1981, Korean officials advised the United States of the recent developments concerning the cargo facility at Kimpo.

On July 13, 1981, noting that Flying Tiger's delay was holding up implementation of the 1980 Memorandum of Understanding, the Korean Ministry of Transport sent a letter to Flying Tiger requesting it to commence construction "at the earliest possible date". Korean officials advised the U.S. State Department of the Ministry of Transport's letter to Flying Tiger. Flying Tiger did not respond to the letter.

Over the next thirteen months, Flying Tiger informally raised several objections, through the U.S. Embassy in Seoul, concerning existing Korean laws governing the construction of facilities at Kimpo Airport. The principal objection concerned the approximately ten year amortization period specified in Korean law -- a requirement which applied to all facilities constructed by Korean Air Lines or any other private company at Kimpo Airport. On June 15, 1982, the Korean authorities advised Flying Tiger that it would be allowed to amortize the new cargo facility over 20 years and requested "timely construction of the air cargo facility for early implementation of the Memorandum of Understanding". The U.S. Embassy in Seoul also was advised of this fact.

By letter dated April 28, 1983, Flying Tiger advised the Deputy Assistant Secretary of State that Flying Tiger was accepting the last proposal of the Korean Government for construction of the cargo terminal at Kimpo. In the same letter, Flying Tiger also stated that it was withdrawing "all objections to the immediate implementation of each of the rights granted to the Korean designated air carrier" as specified in the 1980 Memorandum of Understanding.

On May 10, 1983, Flying Tiger stated in a letter to the Deputy Assistant Secretary of State that it did not have the necessary financing resources to build the proposed facility at Kimpo:

> Under the Korean Government's proposal, no financial aid is available nor can the building itself be used as collateral for a construction loan. The lack of those advantages, combined with Flying Tiger's current financial condition, compel the carrier to forego at this time its option to build.

Flying Tiger has yet to advise the Korean Government as to its intentions with respect to the construction of the facility.

In order to resolve the issue and proceed with implementation of the 1980 Memorandum of Understanding, the Korean Government has undertaken the construction of the Kimpo cargo facility which has been delayed by Flying Tiger's inaction. The new facility will enable Flying Tiger and Northwest (and Pan American, should it so desire) to self-handle inbound, outbound and transit cargo at Kimpo. The U.S. carriers will have exclusive use of the facility on rental terms comparable to those

currently being enjoyed by the carriers. With the addition of the new building, U.S. carriers will have exclusive use of approximately one-third of the cargo area at Kimpo, with all other carriers - including Korean Air Lines - jointly sharing the remaining space.

When all of the facts surrounding construction of the new cargo facility at Kimpo are taken into account, the only possible conclusion must be that the Korean Government has demonstrated good faith - and considerable goodwill - in its efforts to implement not only this major issue but all issues of the 1980 Memorandum of Understanding. The 1980 agreement required the Korean authorities to present a proposal for the facility, and they did so. Flying Tiger exercised its option to construct the facility, and the Korean authorities urged the carrier to get on with the work. Flying Tiger requested an increase in the size of the facility by 50 percent, and the Korean authorities agreed. Flying Tiger requested relief from Korean regulations governing amortization, and the Korean authorities agreed. And, once Flying Tiger decided that it would not go forward with the facility due, in part, to its own financial condition, the Korean Government stepped forward to construct the multi-million dollar project. Such a record hardly supports the notion that the Republic of Korea has ignored its commitments under the 1980 Memorandum of Understanding.

V. CONCLUSION

For the past five years, the United States and Korea have been deadlocked over implementation of their 1980 air transport agreement. While Korea has on several occasions proposed formal ratification of the 1980 MOU, the United States has steadfastly refused, citing the lack of progress on a new cargo facility at Kimpo.

The commitment of the Korean Government to construct the cargo terminal at Kimpo has mooted U.S. objections to ratification. With construction already started, the interests of the U.S. are no longer served by a continued refusal to ratify the 1980 agreement. In fact, further delay in implementing the 1980 MOU will deny significant economic benefits and competitive opportunities in the U.S.-Korea air market.

By signing the 1980 Memorandum of Understanding, the U.S. undertook a commitment to seek its ratification and adhere to its provisions. The U.S. should now prove as good as its word and implement the 1980 agreement.

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TABLE 1

KOREA IS THE SECOND LARGEST TRANSPACIFIC PASSENGER MARKET

	1983 Passengers
Between USA and:	
Japan	3,670,090
Republic of Korea	458,999
Hong Kong	400,978
Taiwan	280,922
Singapore	112,727

Note: The source data (US Immigration & Naturalization Service reports) frequently understate traffic levels in certain transpacific markets because reporting carriers fail to report true on-flight origin-destination and instead report only the first foreign port of arrival or last foreign port en route to the U.S. Thus, a Seoul-bound passenger on Los Angeles-Tokyo-Seoul flight may be recorded as a U.S.-Japan passenger rather than US-Korea. Similarly, a Hong Kong boarding passenger on a Hong Kong-Tokyo-Los Angeles flight may be recorded as a Japan-US passenger.

Source: USDOT/I&NS.

KOREA IS THE SECOND LARGEST TRANSPACIFIC PASSENGER MARKET

PASSENGER STATISTICS BETWEEN
THE U.S. AND SELECTED ASIAN POINTS
1978 - 1984

Year	U.S.-Japan		U.S.-Singapore		U.S.-Hong Kong		U.S.-Taiwan		U.S. Korea	
	Number	Growth	Number	Growth	Number	Growth	Number	Growth	Number	Growth
1978	2,568,923	-	8,905	-	142,000	-	168,720	-	183,571 1/	-
1979	3,073,505	19.6%	35,458	298.2%	272,739	92.1%	179,956	6.7%	293,284	59.8%
1980	3,177,994	3.4	88,931	150.8	363,296	33.2	203,447	13.1	411,352	40.3
1981	3,352,066	5.5	115,612	30.0	342,605	(5.7)	235,880	15.9	406,717	(1.1)
1982	3,527,032	5.2	124,586	7.8	324,244	(5.4)	263,362	11.7	457,600	12.5
1983	3,670,090	4.1	112,727	(9.5)	400,978	23.7	280,922	6.7	458,999	0.3
YE 10/31/84	4,154,767	13.2	100,521	(10.8)	540,209	34.7	333,047	18.6	496,813	8.2
Average Growth 1978-1984		8.5%		77.8%		28.8%		12.1%		20.0%

1/ Northwest on strike 04/29/78 - 08/14/78.

Source: USDOT/I&NS.

TABLE 2

KOREA IS THE FOURTH LARGEST TRANSPACIFIC AIR CARGO MARKET

AIR CARGO EXPORTS/IMPORTS BETWEEN
THE U.S. AND SELECTED ASIAN POINTS
1979 - 1984

Year	U.S.-Japan		U.S.-Singapore		U.S.-Hong Kong		U.S.-Taiwan		U.S. Korea	
	1,000 Pounds	Growth	1,000 Pounds	Growth	1,000 Pounds	Growth	1,000 Pounds	Growth	1,000 Pounds	Growth
1979	312,083	-	44,065	-	127,672	-	91,410	-	73,068	-
1980	328,577	5.3%	45,809	4.0%	120,134	(5.9)%	89,952	(1.6)%	68,135	(6.8)%
1981	341,449	3.9	52,506	14.6	135,923	13.1	110,096	22.4	77,380	13.6
1982	327,849	(4.0)	58,072	10.6	136,151	0.2	118,977	8.1	91,662	18.5
1983	408,673	24.7	83,922	44.5	190,395	39.8	173,754	46.0	130,275	42.1
1984	586,158	43.4	109,215	30.1	256,139	34.5	217,217	25.0	141,157	8.4
Average Growth 1979-1984		14.7%		20.8%		16.3%		20.0%		15.2%

Source: US Department of Commerce, Bureau of the Census, FT-155, U.S. General Imports, 1979-1984, and FT-455, U.S. Exports, 1979-1984.

TABLE 3

TABLE 4

THE UNITED STATES HAS MADE EXTENSIVE USE
OF ITS MULTIPLE DESIGNATION RIGHTS

CARRIERS DESIGNATED TO SERVE U.S.-REPUBLIC OF KOREA MARKETS,
U.S. AND ROK FLAGS

Korea	United States
Korean Air Lines	Northwest Airlines
	Pan American World Airways
	The Flying Tiger Line
	Braniff Airlines
	World Airways
	Hawaiian Air Lines
	Trans Carib Air Inc.
	Trans International Airlines
	American Airlines
	Continental Airlines
	Trans World Airlines
	United Airlines
	United Air Carrier
	Jet Charter

TABLE 5

U.S. CARRIERS SERVE MORE U.S. POINTS
THAN THE SINGLE KOREAN CARRIER DOES

SINGLE PLANE SERVICE* PROVIDED
BETWEEN THE U.S. AND THE REPUBLIC OF KOREA
BY FLAG OF CARRIER
SPRING 1985

Points in the USA Linked to ROK and Served by:

- ROK Carrier	-USA Carriers
Honolulu	Chicago
Los Angeles	Dallas/Fort Worth
New York (JFK)	Detroit
	Honolulu
	Guam
	Houston
	Minneapolis/St. Paul
	New Orleans
	New York (JFK)
	Philadelphia
	San Francisco
	Seattle
	Washington
	Los Angeles (to start June 6)

* Includes flights with single flight numbers even though flight requires a change of gauge.

Source: Official Airline Guide, Worldwide Edition, February and April, 1985.

TABLE 6

U.S. CARRIERS OFFER MORE
SERVICE TO MORE POINTS THAN THE SINGLE
KOREAN CARRIER DOES

NUMBER OF PASSENGER FLIGHTS BETWEEN
REPUBLIC OF KOREA AND THE U.S. BY U.S. POINTS

(One way basis per week)
Spring, 1985

Between ROK and:	February, 1985		May, 1985	
	ROK Carriers	US Carriers	ROK Carriers	US Carriers
Chicago	0	10	0	13
Dallas/Fort Worth	0	0	0	2
Detroit	0	1	0	0
Guam	0	2	0	2
Honolulu	16	20	16	18
Houston	0	3	0	2
Los Angeles	22	0	24	2 1/
Minneapolis/St. Paul	0	1	0	0
New Orleans	0	3	0	2
New York	8	4	10	12
Philadelphia	0	1	0	0
San Francisco	0	17	0	16
Seattle	0	11	0	10
Washington	0	4	0	4

1/ Northwest Airlines service to start June 6.

Source: Official Airline Guide, Worldwide Edition, February and April, 1985.

TABLE 7

U.S. CARRIERS OFFER MORE
SERVICE TO MORE POINTS THAN THE SINGLE
KOREAN CARRIER DOES

ALL CARGO FLIGHTS BETWEEN
REPUBLIC OF KOREA AND THE U.S. BY FLAG OF CARRIER
(One way basis per week)
Spring 1985

Between ROK and:	Week Ending March 18, 1985		Week Ending May 5, 1985	
	ROK Carrier	US Carrier	ROK Carrier	US Carriers
Chicago	0	9	0	9
Los Angeles	12	7	12	7
New York	10	9	10	9
San Francisco	0	8	0	8
Seattle	0	1	0	2

Source: Official Airline Guide, World Wide Edition, March and April 1985.

TABLE 8

U.S. CARRIERS OFFER MORE CAPACITY THAN THE SINGLE KOREAN CARRIER DOES

ANNUAL AVAILABLE SEATS IN SCHEDULED SERVICE BETWEEN THE U.S. AND THE REPUBLIC OF KOREA 1978-1985

Year	Flag	To/From SEL	Beyond	Total	% of Total
1978	ROK	330,642	-	330,642	47%
	USA	368,784	-	368,784	53%
		699,426	-	699,426	100%
1979	ROK	482,911	-	482,911	52%
	USA	423,696	13,936	437,632	48%
		906,607	-	920,543	100%
1980	ROK	559,143	-	559,143	44%
	USA	555,490	161,096	716,586	56%
		1,114,633	161,096	1,275,729	100%
1981	ROK	540,579	-	540,579	50%
	USA	412,893	122,798	535,691	50%
		953,472	122,798	1,076,270	100%
1982	ROK	574,236	-	574,236	52%
	USA	373,906	153,660	527,566	48%
		948,142	153,660	1,101,802	100%
1983	ROK	682,851	-	682,851	51%
	USA	452,764	215,124	667,888	49%
		1,135,615	215,124	1,350,739	100%
1984	ROK	673,556	-	673,556	44%
	USA	631,579	220,246	851,825	56%
		1,305,135	220,246	1,525,381	100%
1985 (Projected)[1/]					
	ROK	780,390	-	780,390	40%
	USA	882,687	280,137	1,162,824	60%
		1,663,077	280,137	1,943,214	100%

1/ Based on February and May 1985 actual plus second half 1985 projected on relationship of second half 1982-1984 to first half of 1982-1984.

Source: Official Airline Guides, February, May, August and November of each year.

U.S. CARRIERS OFFER MORE CAPACITY
THAN THE SINGLE KOREAN CARRIER DOES

WEEKLY PASSENGER CAPACITY, U.S.-KOREA, BY FLAG OF CARRIER
1978-1985

Week Ending	Flag	Weekly Scheduled Seats in/out SEL to/from USA	beyond SEL	Total	Percent of Total
03/18/78	ROK	5,878	-	5,878	48.2
	USA	6,304	-	6,304	51.8
	Total	12,182	-	12,182	100.0
03/18/79	ROK	7,064	-	7,064	47.3
	USA	7,880	-	7,880	52.7
	Total	14,944	-	14,944	100.0
03/18/80	ROK	10,814	-	10,814	51.9
	USA	8,952	1,072	10,024	48.1
	Total	19,766	1,072	20,838	100.0
03/18/81	ROK	10,269	-	10,269	50.1
	USA	7,880	2,364	10,244	49.9
	Total	18,149	2,364	20,513	100.0
03/18/82	ROK	9,750	-	9,750	48.8
	USA	7,880	2,364	10,244	51.2
	Total	17,630	2,364	19,994	100.0
03/18/83	ROK	13,038	-	13,038	64.8
	USA	4,728	2,364	7,092	35.2
	Total	17,766	2,364	20,130	100.0
03/18/84	ROK	12,820	-	12,820	45.1
	USA	10,906	4,728	15,634	54.9
	Total	23,726	4,728	28,454	100.0
03/18/85	ROK	13,378	-	13,378	43.9
	USA	13,152	3,940	17,092	56.1
	Total	26,530	3,940	30,470	100.0
05/18/85	ROK	15,750	-	15,750	40.1
	USA	16,960 1/	6,592 1/	23,552	59.9
	Total	32,710	6,592	39,302	100.0

1/ Includes NW service LAX-SEL-MNL effective June 6, 1985.

Source: Official Airline Guides, Worldwide Edition March, 1978-1985

TABLE 9

TABLE 10

U.S. CARRIER ENPLANEMENTS AT SEOUL ARE LARGE AND ARE RAPIDLY GROWING

TRAFFIC ENPLANED AT SEOUL BY U.S. FLAG CARRIERS: 1978-1984

	Passengers Enplaned				Annual
	NWA	PAA	BNF	Total	Growth
1978	76,652	-	-	76,652	
1979	114,655	-	1,340	115,995	+51.3%
1980	108,677	-	10,204	118,881	+ 2.5%
1981	131,346	-	-	131,346	+10.5%
1982	148,302	-	-	148,302	+12.9%
1983	153,975	13,836	-	167,811	+13.2%
1984	153,151	46,114	-	199,265	+18.7%
Average Annual Growth					+18.2%

	Freight Enplaned (Tons)					Annual
	FTL	NWA	PAA	BNF	Total	Growth
1978	9,756	2,977	-	-	12,733	
1979	5,558	4,276	-	44	9,878	-22.4%
1980	7,624	5,972	-	51	13,647	+38.2%
1981	7,776	7,136	-	-	14,912	+ 9.3%
1982	10,194	6,378	-	-	16,572	+11.1%
1983	15,848	10,364	331	-	26,543	+60.2%
1984	14,369	10,348	699	-	25,416	- 4.3%
Average Annual Growth						+15.4%

Source: CAB Forms 41.

TABLE 10A

CHANGES IN WEEKLY PASSENGER & CARGO FLIGHTS
BY U.S. FLAG CARRIERS BETWEEN
U.S. AND KOREA

	Passenger	All Cargo	Total	Index 1978 = 100
May 1978	16	13	29	100
May 1979	20	18	38	131
May 1980	32	16	48	166
May 1981	24	14	38	131
May 1982	20	14	34	117
May 1983	20	14	34	117
May 1984	30	18	48	166
May 1985	46	17	63	217

Source: Office Airline Guide, May of each year; Air Cargo Guide, May of each year.

KOREA IS FOURTH MOST ACTIVE POINT FOR U.S. CARRIERS IN THE PACIFIC

REVENUE PASSENGERS ENPLANED BY U.S. CARRIERS
1980 - 1984

Scheduled Service

City	1980	1981	1982	1983	1984	Percent Growth 1980 - 1984
Tokyo	846,665	904,434	1,042,333	1,323,790	1,520,882	79.6%
Hong Kong	294,726	277,625	267,483	354,008	388,503	31.8
Manila	126,791	154,358	169,896	206,575	211,645	66.9
Seoul	118,881	131,346	148,302	167,811	199,265	67.6
Osaka	160,918	160,982	154,166	163,985	173,948	8.1
Taipei	107,944	118,353	115,714	139,038	145,965	35.2
Sydney	106,481	105,658	96,678	110,814	111,153	4.4
Auckland	77,581	75,588	84,068	80,133	84,734	9.2
Singapore	44,156	40,780	41,914	64,303	67,772	53.5
Melbourne	27,350	26,137	24,254	26,401	27,853	1.8
Okinawa	35,382	25,943	25,468	24,781	18,075	(48.9)
Shanghai	0	4,156	5,670	7,198	15,481	272.5 1/
Peking	0	8,040	8,168	9,082	12,076	50.2 1/
Kuala Lumpur	0	0	0	0	0	0.0
Nandi, F.I.	29,919	19,791	16,276	13,357	0	(100.0)
Total	1,976,794	2,053,191	2,180,390	2,691,276	2,977,352	50.6%

1/ Percent growth 1981-1984.

Source: CAB Forms 41.

TABLE 11

KOREA IS FOURTH MOST ACTIVE POINT FOR U.S. CARRIERS IN THE PACIFIC

TONS REVENUE FREIGHT ENPLANED BY U.S. CARRIERS
1980 - 1984

Scheduled Service

City	1980	1981	1982	1983	1984	Percent Growth 1980 - 1984
Tokyo	81,033	90,839	97,597	149,747	224,303	176.8%
Taipei	34,343	35,501	39,897	58,255	78,561	128.8
Hong Kong	32,776	31,632	35,249	60,898	74,867	128.4
Seoul	13,647	14,912	16,572	26,543	25,416	86.2
Osaka	10,682	11,366	11,136	16,061	23,978	124.5
Singapore	2,355	2,104	3,477	8,076	12,522	431.7
Manila	3,231	3,861	4,894	6,811	11,295	249.6
Sydney	4,920	4,709	7,378	6,346	7,247	47.3
Auckland	8,372	7,434	9,207	6,612	7,083	(15.4)
Kuala Lumpur	179	336	620	1,126	4,391	2,353.1
Nandi, F.I.	886	415	944	463	4,598	419.0
Melbourne	1,373	2,447	4,350	2,552	3,492	154.3
Peking	0	282	264	528	548	94.3 1/
Shanghai	0	161	358	250	221	37.3 1/
Okinawa	51	83	28	56	25	(51.0)
Total	193,848	206,082	231,971	344,324	478,547	146.9

1/ Percent growth 1981-1984.

Source: CAB Forms 41.

TABLE 12

TABLE 13

U.S. CARRIERS DERIVE MORE THAN $153 MILLION IN REVENUES FROM PASSENGER SERVICE TO/FROM KOREA

	Passengers	Miles	Passenger Miles (000)
Seoul-Seattle/Beyond	96,520 (1)		
- Anchorage/Beyond	780 (1)		
- West Coast/Beyond via Tokyo	110,688 (2)		
Subtotal	207,988	6,154 (4)	1,279,958
- Taipei	25,277 (1)	917	23,179
- Manila	346 (1)	1,629	564
- Tokyo	62,993 (3)	762	48,001
Total 1982	296,604 (3)		1,351,702
Growth to 1984 @ 34.4% (5)			1,816,687
Total Revenue @ yield of 8.45¢/RPM (6)			$153,510,093

Notes: (1) Revenue traffic by flight stage per ICAO Digest of Statistics No. 300 (1982).

(2) Estimated U.S.-SEL traffic via TYO @ 115% of SEL-SEA/beyond shown above, per relationship of frequencies in 1982.

(3) Total NWA enplaned traffic at SEL in 1982 was 148,302. Therefore, total traffic estimated at 296,604 (148,302 x2). All other traffic shown above totals 233,611, leaving a residual of 62,993. This traffic, regarded as fifth freedom traffic, brings total SEL-TYO flow to 173,681 (62,993 + 110,688). The resultant 173,681 is 23,498 less than the ICAO recorded traffic flow of 197,179.

(4) Average mileage of flight routings in 1982 between SEL and first (or last) U.S. mainland point.

(5) Growth in traffic from 1982 to YE 10/31/84 per enplanements at Seoul per Table 10. Part of growth attributable to entrance of Pan American in market.

(6) NWA experience in scheduled trans Pacific service in 1984.

U.S. CARRIERS DERIVE MORE THAN $68 MILLION IN REVENUE FROM CARRIAGE OF FREIGHT TO/FROM KOREA

Year 1984 - U.S.-Korea freight carried by U.S. flag carriers	28,757.2 tons (1)
Northwest/PAA (2) - 43.5%	12,509
Flying Tiger (3) - 56.5%	16,248
Mileage - NWA (3)	5,540
FTL (3)	6,483
Ton-Miles - NWA	69,299,860
- FTL	105,335,784
Total	174,635,644
Yield/RTM (4)	39¢
Revenue Total	68,107,901

Notes (1) Per Department of Commerce, Bureau of Census.

(2) Distribution based on enplanements at SEL

NWA/PAA	11,047	43.5%
FTL	14,369	56.5
Total	25,416	100.0%

(3) Mileage as flown between SEL and first (last) U.S. mainland point by all-cargo aircraft.

(4) NWA and FTL yields on transpacific operations are the same. PAA's is 42¢/per ton mile but PAA share of traffic was minor.

TABLE 15

U.S. CARRIERS SERVING KOREA
HAVE ACCESS TO LARGE FIFTH FREEDOM MARKETS

(Origin-Destination Traffic)

City	Total Passengers, All Carriers, Year Ending 31 December 1983 To SEL	From SEL	Total	U.S. Flag Carrier Now Serving
3rd/4th Freedom				
Honolulu	46,101	53,614	99,715	NW, PA
Los Angeles	94,121	101,392	195,513	NW
New York	49,404	59,097	108,501	NW, PA
Total	189,626	214,103	403,729	
Average	63,209	71,368	134,576	
5th Freedom				
Manila	25,217	20,688	45,905	NW
Osaka	192,631	182,819	375,450	PA
Taipei	137,800	117,145	254,945	NW, PA
Tokyo	384,253	396,585	780,838	NW, PA
Total	739,901	717,237	1,457,138	
Average	184,975	179,309	364,285	

City	Freight (tonnes), Year Ended 31 December 1983 To SEL	From SEL	Total	U.S. Flag Carrier Now Serving
3rd/4th Freedom				
Honolulu	216.02	1,661.20	1,877.22	NW, PA
Los Angeles	9,495.10	15,160.30	24,655.40	NW, FT
New York	8,289.29	15,035.53	23,324.82	NW, PA
Total	18,000.41	31,857.03	49,857.44	
Average	6,000.14	10,619.01	16.619.15	
5th Freedom				
Manila	900.51	1,241.51	2,142.02	NW
Osaka	6,219.29	5,275.02	11,494.31	PA
Taipei	7,045.13	2,092.95	9,138.08	NW, PA, FT
Tokyo	20,183.48	26,369.15	46,552.63	NW, PA, FT
Total	34,348.41	34,978.63	69,327.04	
Average	8,587.10	8,744.66	17.331.76	

Note: PA not included in above Osaka/Taipei traffic for 1983.

Source: ICAO, On-Flight Origin and Destination, Digest of Statistics No. 307.

TABLE 16

U.S. CARRIERS SERVING KOREA OPERATE SUBSTANTIAL CAPACITY IN THE FIFTH FREEDOM MARKETS

SERVICE PROVIDED BY U.S. FLAG CARRIERS IN FIFTH FREEDOM SECTORS TO/FROM SEOUL 1978-1984 AND ESTIMATED 1985

Year	Flights	Seats
1978	936	368,784
1979	1,092	423,696
1980	1,430	535,002
1981	1,027	399,659
1982	897	353,418
1983	1,209	452,764
1984	1,716	595,736
Est. 1985	2,353 1/	707,462 1/

1/ Based on May 1985 Actual plus relationship of Annual to May seats for period 1978-1984.

Source: Official Airline Guides, Worldwide Edition, February, May, August, November, 1978 to 1984; April 1985.

U.S. CARGO CARRIERS SERVING KOREA CONDUCT SUBSTANTIAL FIFTH FREEDOM OPERATIONS

SERVICE AND CAPACITY PROVIDED BY U.S. CARGO CARRIERS OVER FIFTH FREEDOM SECTORS TO/FROM SEOUL 1978-1984 AND ESTIMATED 1985

Year	Flights	Tons
1978	949	96,213
1979	949	95,290
1980	897	103,155
1981	897	103,155
1982	845	97,175
1983	806	92,690
1984	923	106,145
Est. 1985	842 1/	96,172 1/

1/ Based on May 1985 Actual plus relationship of Annual to May tons for period 1978-1984.

Source: Air Cargo Guide, February, May, August, November 1978-1984, April 1985.

U.S. PASSENGER CARRIERS SERVING KOREA DERIVE SUBSTANTIAL
BENEFITS FROM FIFTH FREEDOM MARKETS

TRAFFIC OVER FIFTH FREEDOM SECTORS INTO/OUT OF SEOUL
Revenue Passengers

FLIGHT STAGE	1982	1981	1980	1979	1978
Seoul-Taipei					
CX	154,649	136,761	117,216	126,699	124,977
KE	192,672	140,652	121,656	116,820	95,640
MH	30,239	21,825	17,610	2,793	-
NW	25,277	20,844	23,967	-	-
SQ	38,104	33,453	25,404	18,210	27,576
TG	71,883	51,315	35,424	20,757	14,118
Total	512,824	404,850	341,277	285,279	262,311
Seoul-Tokyo					
BN	-	-	534	414	-
JL	265,905	127,938	43,767 1/	162,462	176,943
KE	385,563	337,068	278,223	321,351	331,968
NW	197,179	179,964	150,198	198,393	111,723
CX	-	-	42,036	105,939	140,541
Total	848,647	644,970	514,758	788,559	761,175

1/ Complete data for year not available.

Note: The latest annual data available are for 1982.

Source: ICAO Digests of Statistics (Traffic by Flight Stage).

TABLE 18

U.S. CARGO CARRIERS SERVING KOREA DERIVE SUBSTANTIAL
BENEFITS FROM FIFTH FREEDOM MARKETS

TRAFFIC OVER NON-U.S. SECTORS INTO/OUT OF SEOUL
Revenue Freight (Tonnes)

FLIGHT STAGE	1982	1981	1980	1979	1978
Seoul-Hong Kong					
FT	324	-	513	-	-
KE	12,251	13,386	9,252	6,345	1,149
NW	662	1,521	1,071	1,137	507
BN	-	-	165	-	-
TG	-	-	9	-	-
Total	13,237	14,907	11,010	7,482	1,656
Seoul-Osaka					
FT	5,233	4,659	4,854	2,484	843
JL	1,213	1,845	816 1/	1,176	2,001
KE	8,559	9,516	8,709	8,223	5,838
NW	3,277	3,498	1,605	1,395	-
Total	18,282	19,518	15,984	13,188	8,682
Seoul-Taipei					
CX	4,864	4,959	4,179	4,527	3,591
FT	215	291	186	1,002	5,280
KE	9,279	7,611	5,286	5,094	3,516
MH	380	369	393	60	-
NW	2,515	3,501	2,703	3,471	1,614
SQ	1,276	1,056	768	729	741
TG	1,765	1,155	894	642	561
Total	20,294	18,942	14,409	15,525	15,303

TABLE 19
Page 1 of 2

U.S. CARGO CARRIERS SERVING KOREA DERIVE SUBSTANTIAL
BENEFITS FROM FIFTH FREEDOM MARKETS

TRAFFIC OVER NON-U.S. SECTORS INTO/OUT OF SEOUL
Revenue Freight (Tonnes)

FLIGHT STAGE	1982	1981	1980	1979	1978
Seoul-Tokyo					
BN	-	-	3	3	-
FT	10,881	7,242	6,762	6,039	13,689
JL	7,864	5,085	2,163 1/	8,307	7,302
KE	20,316	24,333	23,052	22,425	20,322
NW	6,740	8,466	7,581	8,358	4,701
CX	-	-	1,170	3,243	3,009
Total	45,821	45,138	40,731	48,375	49,023

1/ Complete data for year not available.

Source: ICAO Digests of Statistics (Traffic by Flight Stage).

TABLE 19
Page 2 of 2

CHICAGO AND SAN FRANCISCO ARE RELATIVELY UNDERSERVED TO KOREA CONSIDERING THEIR SIZE AND IMPORTANCE

WEEKLY NON-STOP AND ONE-STOP PASSENGER FLIGHTS MAY 1985

To/From	New York	Los Angeles	Chicago	San Francisco
Seoul	22	16	16	12
Tokyo	56	70	34	49
Hong Kong	40	21	0	44
Taipei	10	28	5	17
Manila	0	11	9	17

1980 POPULATION OF TOP TEN U.S. METROPOLITAN AREAS 1/

	1980 (000)
New York	17,539
Los Angeles	11,498
Chicago	7,937
Philadelphia	5,681
San Francisco	5,368
Detroit	4,488
Boston	3,972
Washington	3,251
Houston	3,101
Dallas/Ft. Worth	2,931

1/ Consolidated metropolitan statistical areas as defined by OMB as of June 30, 1983.

Source: Official Airline Guide, Worldwide Edition, April 1985; Statistical Abstract of the United States, 1984, U.S. Department of Commerce, Bureau of the Census.

TABLE 21

CHICAGO AND SAN FRANCISCO ARE RELATIVELY UNDERSERVED TO KOREA CONSIDERING THEIR SIZE AND IMPORTANCE

WEEKLY CARGO FLIGHTS

MAY 1985

To/From	New York	Los Angeles	Chicago	San Francisco
Seoul	19	19	9	8
Tokyo	62	36	31	38
Hong Kong	21	6	12	8
Taipei	21	13	15	14
Manila	6	0	4	0

Source: Air Cargo Guide, April 1985.

CHICAGO AND SAN FRANCISCO ARE RELATIVELY UNDERSERVED TO KOREA

USING JAPAN AS AN INDEX,
AIR FREIGHT IN THE CHICAGO-REPUBLIC OF KOREA MARKET LAGS BEHIND
NEW YORK/LOS ANGELES - REPUBLIC OF KOREA MARKETS
(WHERE KAL PROVIDES SERVICE)
(pounds in thousands)

	NEW YORK		LOS ANGELES		CHICAGO		SAN FRANCISCO	
Year 1984	Pounds	Rel. to Japan	Pounds	Rel. to Japan	Pounds	Rel. to Japan	Pounds	Rel. to Japan
U.S. Exports to - Republic of Korea	9,813	19.2	19,913	56.6	3,469	11.5	2,058	8.5
Japan	51,148	100.0	35,180	100.0	30,211	100.0	24,242	100.0
U.S. Imports from - Republic of Korea	41,503	39.7	29,214	28.6	10,609	14.5	11,864	13.8
Japan	104,608	100.0	102,095	100.0	73,077	100.0	86,228	100.0

Source: U.S. Department of Commerce, Bureau of the Census, IA-154, Imports, and EM 563, Exports, Monthly for 1984.

TABLE 22

MEASURED AGAINST USA-JAPAN AIR FREIGHT MARKETS,
THE USA-REPUBLIC OF KOREA MARKETS MOST LAGGARD
ARE CHICAGO AND SAN FRANCISCO
1979-1984

	Six Year Total			Index
	Export	Imports	Total	Japan = 100
	(ooo pounds)			
Chicago				
Republic of Korea	18,100	35,259	53,359	14.2
Japan	152,872	222,837	375,709	100.0
New York				
Republic of Korea	45,975	148,382	194,357	30.0
Japan	264,992	382,992	647,984	100.0
Los Angeles				
Republic of Korea	100,213	115,736	215,949	36.5
Japan	213,841	377,859	591,700	100.0
San Francisco				
Republic of Korea	7,409	47,484	54,893	14.9
Japan	131,368	236,073	367,441	100.0

Source: U.S. Department of Commerce, Bureau of the Census, IA-154, Imports, and EM 563, Exports, Monthly for 1984.

TABLE 23

IDENTIFICATION

SJR 30
Relating to Passenger Service by Korean Airlines in Anchorage

DATE INTRODUCED
1/13/86

RELATED BILLS PENDING

SPONSOR(S)
Bill Ray

REFERRALS
Trans. Rules
Passed Unanimous 1/30/86

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

LEGAL DIVISION SUMMARY
N/A

DEPT OF LAW SUMMARY
N/A

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes

FISCAL NOTE
N/A

AGENCY RESPONSE
Report issued by Kal
Position Paper by NCEN

OTHER INTERESTED LEGISLATORS NOTIFIED

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
Korean Airlines contacted

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes

DATE & PLACE SET
1/29/86 Rm 205

STAFF MEMO TO COMMITTEE
Yes

TELECONFERENCE
No

BACKGROUND MATERIAL DISTRIBUTED
✓

PSA/PRESS RELEASE
No

LIST OF WITNESSES
Paula Scavera For Sen. Ray

SUGGESTED AMENDMENTS/CS DRAFTED
No

Department of Commerce & Economic Development / POSITION PAPER

SENATE RESOLUTION NO. 30

"A Resolution allowing Korean Airlines to pick up passengers at Anchorage airport."

The Department of Commerce and Economic Development strongly endorses the passage of Resolution No. 30.

The advancement of international trade and the diversification of our economy through the development of trade is a priority of this Administration. Objectives include attracting investments, increasing labor participation in our industries, and improving access to international markets. Obtaining the rights for Korean Airlines to pick up passengers in Anchorage is more than a symbolic event. Such a routing by Korean Airlines would give Alaska a direct access to our most active trading partner after Japan.

During the past several years, Korea has taken one of the most important investment roles of any foreign nation in Alaska's economy. From joint ventures in fishing, to coal exports, to in-state construction, Korea has provided an infusion of capital which represents a good faith interest in a long-term economic relationship with Alaska. Indeed, Korea sees Alaska as an ideal location for the development of a stable resource base and as a place where it can invest capital in response to increasing pressure by the U.S. government to reduce the U.S.-Korea trade deficit which is hovering in the billions. Investment in Alaska is especially attractive to the Koreans since they have the opportunity of investing in those resource industries which will benefit that nation.

Moreover, Korean construction technology is now rivaling Japan in many areas and the Korean construction industry is looking for new outlets or markets for this expertise. As Alaska continues to develop its infrastructure of port facilities and the like and as the State expands its industry to include new refineries and other facilities, so will Korea continue to operate in our marketplace.

Alaska can ill afford to presume, however, that Korea will develop our market potential with us unless our products are competitively priced and our citizens, from the government to the private sector, are supportive of creating an environment conducive to the expansion of trade. Such support can be represented by our own good faith efforts to make access to Alaskan markets easy and profitable for the Koreans. The rights to pick up passengers would represent successful progress toward creating a good trade atmosphere through a new partnership at the international airport.

The rights in question also mean a great deal of future capital for the State. Anchorage International Airport already provides millions of dollars of revenue for the State through both stopover rights and passenger pick-up rights. Japan Air Lines is the biggest customer of the State with millions of dollars generated through landing fees, passenger pick-up fees, duty free shopping revenue, and the tourist industry. Korea, however, is beginning to have more mobility as a national population. Business and leisure travel is becoming far more common than it was even five years ago as a result of an increase in disposable income and a relaxation in visa procedures. The rights in question would serve to stimulate an increased interest by the Koreans in developing the Alaskan market as a tourist destination rather than as merely a stopover location.

Anchorage International Airport, finally, is facing a very serious future issue involving the possibility of airlines establishing overflight routes which bypass the airport. The rights in question granting Korean Air Lines the ability to pick up passengers in Anchorage could positively impact this issue.

International airline landings at Anchorage International Airport have increased by 42% from 1981 to 1984. The increase in international landings is projected to continue through the 1980's. However, as the market for nonstop flights develops and new aircraft technologies are purchased, international passenger flights via Anchorage International Airport will likely decrease while nonstop flights over the U.S.S.R. and other routes will increase. The Boeing 747-400, expected to be in production in 1988-1989 and in use by 1990, will reduce fuel consumption by 10-12% over existing 747 aircraft while increasing passenger loads by up to 32%. It will have a flight range of 7,000 miles. The nonstop flight from Tokyo to London is 5,400 miles.

It is imperative, therefore, that the State work in conjunction with the Municipality of Anchorage and other appropriate groups to market Alaska as the ideal tourist destination that it is for visitors from the Pacific Rim. We also need to develop any other mechanisms which promote an anchoring of the international airline community at Anchorage International Airport. If there is a legitimate passenger market or other inducements for the carriers, it is unlikely that Anchorage International Airport would face catastrophic losses. However, we must act now to begin the anchoring process. The obtaining of the rights permitting Korean Air Lines to pick-up passengers in Anchorage is a logical and major first step in our process.

Loren H. Lounsbury

Loren H. Lounsbury, Commissioner

1/28/86

Date

lt4610t

HB
1

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation Committee 1/22/1985 7:00am

Alaska State Legislature

House of Representatives

House Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

MEMO: March 25, 1985

TO: Sen. Jack Coghill
Chairman, Senate Transportation Committee

FROM: Rep. M. Mike Miller (Juneau)

RE: HB 1/Free ferry transport of goods for charities
Request for hearing in Senate Transportation Committee

You have in your committee CSHB 1(Transportation), which would allow the Alaska Marine Highway System to provide occasional free transport of essential goods -- food, clothing and furnishings -- for charitable (free) donations to the poor living in outlying communities served by the ferry system.

I would appreciate the early scheduling of a hearing on this bill by your committee if it can be arranged. There would be no fiscal impact on the ferry system as the bill is currently written, as transportation would be on a space-available basis, thereby not causing revenue losses from paying passengers.

The CS adopted by the House Transportation Committee and later passed by the House is an improvement of my original bill. It tightens eligibility requirements for charities to receive this privelege and prevents abuses. In addition to providing this limited privelege for charities, the bill also provides authority for the Marine Highway System to transport needed goods in declared disasters and emergencies, an authority that is unclear under existing statutes. Although the ferry system did provide emergency transport to Tenekee Springs following 1984's Thanksgiving Day storm and the resulting declared disaster by the Governor, the ferry system does not have statutory authority to do so. The bill would make that authority specific.

If you have any questions about the bill, or about the requested hearing, please contact me. For the information of your staff who may be researching the bill, the staff person handling the bill for me is Bob Speed (x-4990). He will be glad to provide any assistance or information required prior to hearings.

MAR 26 1985

April 9, 1985

MEMORANDUM

To: Committee members

From: Committee staff

Re: Background on CS HB 1(Trans)

Tomorrow, the committee will take up CS HB 1(Trans), which proposes to allow free transportation of clothing and household goods for charitable organizations on board the Alaska Marine Highway ferries. This service would be used to move charitable items, primarily by the Salvation Army, from places where they have a surplus, like Juneau, to outlying villages where there is a distinct need. Salvation Army personnel testified to House Transportation hearings that they would likely use the free ferry ride to each of the Southeastern communities they serve two or three times each year.

As it was originally introduced, HB 1 was opposed by DOT/PF as it might be potentially easily-abused, and could create additional administrative work for the department. The department also anticipated problems loading and unloading free vans and trucks, which could increase the amount of time the ferries would be in port. Most of their concerns have been addressed in the committee substitute that was passed by the House, however, the department is still not wildly enthusiastic about the bill.

IDENTIFICATION

BILL NAME
"An Act Authorizing the ferry system to transport certain items without charge."

BILL NUMBER
CS HB 1

DATE INTRODUCED
3/4/85

RELATED BILLS PENDING
None

SPONSOR(S)
M. Mike Miller

REFERRALS
Finance

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

LEGAL DIVISION SUMMARY
No

DEPT OF LAW SUMMARY
No

SPONSOR CONTACTED FOR BACKUP MATERIALS
Yes-Supplied

FISCAL NOTE
Yes (DOT)

AGENCY RESPONSE
DOT Objected to original bill
less objection to CS (see Summary

OTHER INTERESTED LEGISLATORS NOTIFIED

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES
None Known

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC
None known

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
Salvation Army (See Minutes 4/10/85)
Marine Highway " "

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes

DATE & PLACE SET
4-10-85

STAFF MEMO TO COMMITTEE
Yes

TELECONFERENCE
no

BACKGROUND MATERIAL DISTRIBUTED
Yes

PSA/PRESS RELEASE
no

LIST OF WITNESSES
Lt. Bradford Russell - Salvation Army
M M Miller - Prime Sponsor
Josephine Emery - Alaska Marine Hwy

SUGGESTED AMENDMENTS/CS DRAFTED
House CS Passed 4-10-85

Hein
1/30/85

Original sponsors: M.M.Miller, Goll,
Sund and Duncan

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 1 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing the ferry system to transport certain items without charge."

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

* Section 1. AS 19.65 is amended by adding new sections to read:

Sec. 19.65.030. TRANSPORTATION OF GOODS FOR CHARITABLE ORGANIZATIONS. (a) To the extent that unsold space is available, the commissioner of transportation and public facilities may provide to authorized nonprofit charitable organizations free transportation of vans and vehicles on Alaska marine highway system vessels between Alaska ports only. A van or vehicle transported under this section may contain only clothing and household furnishings that are to be distributed without charge to needy individuals and families.

(b) The commissioner shall determine which organizations are authorized to receive free transportation services under (a) of this section and shall maintain a list of those organizations. Authorization is limited to organizations that have been in existence at least three years. The commissioner may establish additional criteria for authorization. A nonprofit charitable organization not authorized under this subsection may submit a written request for authorization. The request shall include the organization's justification for authorization.

(c) An organization may lose its authorization for failing to comply with the provisions of this section or regulations adopted under this section.

Sec. 19.65.040. EMERGENCY TRANSPORTATION OF GOODS. The commissioner of transportation and public facilities may provide for the free transportation of goods on Alaska marine highway system vessels during an emergency declared by the governor.

* Sec. 2. AS 19.65.030 is repealed three years after the effective date of this Act.

Alaska State Legislature

House of Representatives

Rep. Bette Cato, Chairman

Committee on Transportation

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

DATE: 23 JANUARY 1985

TO: LEGAL SERVICES

FROM: Rhonda Cargill
Committee Aide
House Transportation Committee

RE: HB 1

The following suggestions were made in our January 22nd committee meeting for possible amendments. Staff was instructed to forward them to Legal Services for implementation into the work draft for CSHB 1. I have also attached a copy of the minutes from that meeting for your information. Please give me a call should you need to discuss this further.

SUGGESTED AMENDMENTS

1. Have the Department of Transportation and Public Facilities develop a list of authorized organizations in order to narrow the number of charities which could use the system for free.

2. Additional charitable organizations must petition the Commissioner with written justification to be admitted to that list.

3. Violators or abusers of the law would be excluded from the list.

4. Declare emergencies - let the Marine Highway System transport goods for free during times of emergencies. (This should be a separate section making it separate and distinct from the eligibility list of requirements; this would give DOT the ability to deal with emergency situations legally--an ability which, as we understand it, they do not have at the present time.)

5. The charitable organizations must be in existence for 3 years.

6. This provision shall sunset after 3 years.

7. Line 17 add the "free" between "distributed" and "to".

8. Line 12 add the word "unsold" between the words "that" and "space".

As you can tell from the minutes, the Committee is concerned with the potential abuse of this proposed legislation. Any assistance you can offer with attempting to close any such loopholes appreciated.

cc: Transportation Committee Members

Offered: 2/1/85
Referred: Finance

Original sponsors: M.M.Miller, Goll,
Sund and Duncan

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 1 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

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HOUSE TRANS. C.S.

Sec. 19.65.040. EMERGENCY TRANSPORTATION OF GOODS. The commissioner of transportation and public facilities may provide for the free transportation of goods on Alaska marine highway system vessels during an emergency declared by the governor.

* Sec. 2. AS 19.65.030 is repealed three years after the effective date of this Act.

Introduced: 1/14/85
Referred: Transportation and Finance

BY M.M.MILLER,GOLL,SUND AND DUNCAN

IN THE HOUSE

HOUSE BILL NO. 1

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act authorizing the ferry system to transport certain items for charitable organizations without charge."

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

* Section 1. AS 19.65 is amended by adding a new section to read:

Sec. 19.65.030. TRANSPORTATION OF GOODS FOR CHARITABLE ORGANIZATIONS. To the extent that space is available, the commissioner of transportation and public facilities may provide to nonprofit charitable organizations free transportation of vans and vehicles on Alaska marine highway system vessels. A van or vehicle transported under this section may contain only clothing and household furnishings that are to be distributed to needy individuals and families.

ORIGINAL

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 1

Title: Transportation of goods for Charitable Organizations

Sponsor: M. Miller, Goll, Sund & Duncan

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: Dept. of Transp. & P.F.

Program Category Affected: Transportation

RRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91	
OPERATING							
100 PERSONAL SERVICES							
200 TRAVEL							
300 CONTRACTUAL							
400 SUPPLIES							
500 EQUIPMENT							
600 LAND & STRUCTURES							
700 GRANTS, CLAIMS							
800 MISCELLANEOUS							
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-	*
CAPITAL							
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-	*

FUNDING: (Thousands of Dollars)

GENERAL FUND							
FEDERAL FUNDS							
OTHER							
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-	*

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

It is assumed that those "Charitable Organizations" requesting free transportation for a van or vehicle containing clothing and household goods for distribution to needy persons certify this need by formal written request and that free passage will be granted by pass with no liability of the State to those organizations.

* - Historical information not available to calculate revenue loss.

Prepared By: Joe D. Camp, Deputy Commissioner Phone: 465-3950

Division: Alaska Marine Highway System Date: 01/18/85

Approved by Commissioner: Date: 01/21/85

Agency: DOT&PF

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Affected Agency(ies)

ZERO FISCAL NOTE

7/1/84

lwb

HB 1: An Act authorizing the ferry system to transport certain items for charitable organizations without charge.

The Department of Transportation and Public Facilities is opposed to the transport of items for charitable organizations without charge. The multitude of charitable organizations in the state would inundate the Alaska Marine Highway with requests. According to Department of Labor statistics, there are 892 potential charitable organizations in the State. The investigation and processing of these requests would require administrative time that could evolve into a requirement for additional personnel.

Small communities usually have a low economic base therefore high ratio of needy individuals and families. With many it is a way of life preferred over urban dwelling. The free carriage of these items could have a definite effect on the economy of a small community and would compete with private industry both in transportation and local businesses.

Operationally it is not feasible to carry vans on a space available basis. Vans are required to be loaded prior to other vehicles.

However we believe that HB 1 should be amended to provide this assistance to needy individuals in communities that have been declared a disaster area by the Governor.

DOT/PF POSITION STATEMENT

HB

100

MEMORANDUM State of Alaska

TO: Bill Ross
Commissioner

DATE: Febuary 19, 1985

FILE NO:

TELEPHONE NO: 465-2640

FROM: Keith Kelton
Director
Division of Environmental Quality

SUBJECT: Spill Expense Reserve Account History and Status Report

In 1976, the Alaska Legislature passed its first major legislation addressing the problem of oil spills. It required oil spill contingency plans, proof of financial responsibility for cleanup efforts, as well as provisions for charges against terminal users and oil tankers based on the degree of spill risk their equipment and operations presented. Funds collected from the program were to be used to develop a contingency fund to meet cleanup costs in the event of a major spill. The fund was struck down by the courts, leaving the other two provisions intact.

In order to maintain the State's oil pollution control program, a new bill, HB 205, was introduced by the 1979 Legislature. This legislation extended the contingency plans and financial responsibility to offshore exploration and production facilities, and oil barges. The new legislation was to correct the defects in the 1976 law and ensure that Alaska had a strong program for preventing and mitigating the effects of an oil spill. Chapter 120, SLA 80, Section 53 provided $1,542,600 for HB 205 (FY 80), and provided a $1 million expense reserve and a fiscal note to start and fund the Oil Pollution Control Program. The Spill Expense Reserve was to pay costs directly involved in the abatement, containment, and removal of a discharge of oil or hazardous substances: the fiscal note provided for staff, equipment, and training.

House Journal Supplement No. 43 indicated that, "the cleanup reserve be maintained by capital appropriation at the $1 million level. The balance of the reserve should carry over from year to year. Subsequent budget requests may be less than $1 million." An additional $250,000 was appropriated in 1981 and another $250,000 in 1984.

Since the inception of the program, hundreds of spills have been cleaned up. Most of the expenses are charged directly to the spiller. When the spiller was unknown or the spill incident required immediate emergency action, the spill reserve was used to fund the cleanup work.

Some spills involve action by the courts and the Attorney General's Office. The account balance on January 31, 1985, was $410,080.74. There are several spills that are still in the litigation or pre-litigation stages and may require sizable funding. The Nome Gasoline Spill has cost over $680,000 to date.

On December 27, 1984, we received a reimbursement of $597,896.07 for spill expenses from the U.S. Coast Guard for the Nome Spill; this is the first time that the state has received federal funds for reimbursement of spill expenses.

On July 14, 1983, a settlement/agreement was reached between the State and the Alyeska Pipeline Service Company on the two spills that occurred over four years prior, the Atigun Pass Spill and the Mile Post 734 Spill. The settlement was for $350,000.

AS 46.03.758(k) states that "penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the 'oil spill mitigation account.' The legislature may annually appropriate from the spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriation to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects."

Amount expended in FY 84		$ 785,112.62
Amount expended for FY 85 to date		69,827.18
	TOTAL	$ 854,939.80
Amount recovered FY 84		354,541.73
Amount recovered FY 85 to date		608,885.58
	TOTAL	$ 963,427.31

We are asking for a capital appropriation of $550.0 for FY 86 to bring the Spill Reserve Account back up the $1.0 million level.

4

PROJECT TITLE: Spill Expense Reserve Account

AGENCY PRIORITY: __ __ OF __ __

LOCATION: Statewide

ELECTION DISTRICT: 99

FISCAL YEAR: 8 6 DURATION: continuing

APPROPRIATION TO: Alaska Department of Environmental Conservation

PROGRAM: Oil Pollution Control

	FUNDING:	CAPITAL REQUEST	REVISED REQUEST	OPERATING COSTS
1002	FEDERAL RECEIPTS			
1003	GENERAL FUND MATCH			
1004	GENERAL FUND	550.0		
1005	INTER-AGENCY RECEIPTS			
1028	PROGRAM RECEIPTS			
	TOTALS:	550.0		
	POSITIONS (PFT):			-0-

PROJECT DESCRIPTION AND JUSTIFICATION:

LINE (1) To fund cleanup of oil or hazardous substance on land and inland waters of the state, account originated

LINE (2) in FY 80 by HB250 with $1 million and appropriations in FY 81 and 84 of $250.0 each. HJ Supplement 40

LINE (3) states account to be maintained at $1 million, funds to be continuing from year to year. AS 46.03.758(k)

LINE (4) states appropriations may be made annually, revenue from fines and forfeitures deposited to General Fund.

CP1 CAPITAL PROJECTS DESCRIPTION

DATA ENTRY WORKSHEET

(6/84)-cp1

WORKSHEET

REVISED DATE

FY 86

Since the inception of the program, hundreds of spills have been cleaned up. Most of the expenses are charged to the spiller. If the spiller is unknown or the spill incident requires immediate emergency action, the spill reserve account is used to fund the cleanup work.

Some spills involve action by the courts and the Attorney General's Office. The account balance at this time is $447.0. There are several spills that have not been cleaned up completely and may require sizable funding. The Nome Gasoline Spill has cost over $680.0 to date and the North Slope Salvage Spill has cost over $38.0, both are under litigation.

From July 1980 to the end of August 1984, the amount received from spillers has been more than $470.0. Reimbursement from federal funds for the major part of the Nome Spill is expected upon completion of an audit by the U.S. Coast Guard.

We are asking for a capital appropriation of $550.0 for FY 86 to bring the Spill Reserve Account back up to the $1 million level.

CP1 ADDITIONAL EXPLANATION FORM

(6/84)-ae1

AGENCY Environmental Conservation

PROGRAM NRMEC

BRU Environmental Conservation

COMPONENT Oil Pollution Control

REVISED DATE

FY 86

EXPLAIN THE REMAINING FIVE YEARS OF THE SIX-YEAR CAPITAL IMPROVEMENT PLAN (FY 87, 88, 89, 90, 91). DESCRIBE THE NEEDS TO BE MET IN THE COMING YEARS AND THE PROJECTS OR TYPES OF PROJECTS WHICH MAY BE REQUESTED TO MEET THOSE NEEDS. PLEASE INCLUDE MAJOR MAINTENANCE OR REPLACEMENT PROJECTS. ESTIMATE THE APPROXIMATE COST OF THE PROJECTS. IF THE PROJECTS ARE TO OCCUR SO FAR IN THE FUTURE OR ARE OF SUCH AN INDETERMINATE NATURE THAT A COST ESTIMATE WOULD NOT BE RELIABLE, PLEASE INDICATE THIS FACT. NOTE WHETHER A SIGNIFICANT PORTION OF THE TOTAL FUNDING WILL COME FROM NON-GENERAL FUND SOURCES. MAKE SPECIFIC REFERENCE TO FORMAL PLANNING DOCUMENTS USED AS A BASE FOR THIS DISCUSSION (FOR EXAMPLE, THE LONG-RANGE STATE TRANSPORTATION PLAN). PLEASE ATTACH A COPY OF PUBLISHED MATERIALS.

During the next five years, we would like to have yearly appropriations from the general fund that would keep the account at the $1 million level. All of the projects are of an indeterminate nature since we cannot predict when a spill will occur or its severity, location, chemical composition, or the environmental implications involved.

Chapter 116 SLA 1980 states "the two main purposes of this law are to provide protection to Alaskans from damage from oil spills and to provide the ability to clean up a spill and restore damaged areas."

The increase in oil and chemical development, increase in traffic and shipment of product, increased population and land development all lead to a broader spill experience potential. Our projection for following years will be based on records, experience and continuing projects.

AS 46.04.010 states the Department shall promptly seek reimbursement, either under 46.03.760(e) or from an applicable federal fund, for the expenses it incurs in cleaning up or containing a discharge of oil. Monies received under this section shall be deposited in the general fund.

In most cases the amount of requested appropriation will be offset by revenue received from fines and forfeitures.

CP2 CAPITAL PROJECTS PLAN FY 87-FY 90 EXPLANATION

(6/84)-cp2

AGENCY Environmental Conservation

PROGRAM Oil Pollution Control

PAGE OF

REVISED DATE

FY 86

CH, SLA, PAGE, LINE, OR RP	PROJECT TITLE AND LOCATION	AMOUNT AUTHORIZED	ESTIMATED TOTAL EXPENDITURE THROUGH JUNE 1984	PLANNED EXPENDITURE THROUGH COMPLETION	EST. COMP. DATE	STATUS
CH 82/81 P 141 L7	Spill Reserve Account Statewide	250.0	25.5	224.5		These are continuing funds

CP3 STATUS OF CURRENTLY AUTHORIZED CAPITAL PROJECTS

(6/84)-cp3

AGENCY Environmental Conservation

PAGE OF

REVISED DATE

FY 86

4. State Hazardous Waste Disposal Day Campaign

- This is the third year that ADEC has conducted this service to assure proper disposal of unregulated hazardous wastes from households and small businesses. This year ADEC requested the 4 municipalities contribute a percentage toward the cleanup. Testing and disposal costs are increasing so rapidly that the state will need to request a significant amount from municipalities next year or reduce services.

II. Site Investigations of Potentially Hazardous Waste Disposal

- In Alaska there are currently 97 potential uncontrolled hazardous waste sites identified on an EPA list. 45 of those sites are being investigated by the Department of Defense, 7 sites are being investigated by EPA, and during the past year ADEC performed preliminary investigations at 45 sites.

- ADEC ranked the 50 sites as to the significance of potential hazards and will be further evaluating 15 of the high ranking sites this summer. These site investigations may disclose potential or actual environmental contamination causing the site(s) to be listed as a federal Superfund site.

- To cope with any necessary remedial action, Alaska will need to establish a state site cleanup fund and hire additional staff to manage any corrective actions required at each site.

III. Drilling Muds and Fluids

- Drilling muds and fluids are excluded from regulation as a hazardous waste under both the federal and state hazardous waste statutes.

- Drilling muds are managed in Alaska under existing solid waste regulations for land disposal. Muds and fluids generated off-shore are regulated either under a state waste water discharge permit or a federal NPDES permits. In many cases muds are stored for re-use and the fluids reinjected into the formation.

- The existing statutes are strong enough to allow development of the states resources and minimize risks to the public and the environment. ADEC is developing internal guidelines for permit review and stipulations to assure consistency as well as protection of the environment considering the diverse geological and climatalogical conditions found in the state.

IV. Waste Oil

1. Oil Spill Expense Reserve

- Established by the 1980 legislature at $1.0 million level for the cleanup and litigation of coastal, inland, and underground oil spills.

- Current balance is $385,000.

- Requested $550,000 for FY 86.

- Expenditures to date - $1.12 million.
  Revenues to date - $1.10 million.

- A major spill cleanup, such as at Nome, can cost $700,000

- Anticipated FY 86 expenditures from the reserve is $300,000.

2. Road Oiling Regulations

- New regulations will become effective May 2, 1985.

- Regulations prohibit the use of contaminated oil on roads as a dust suppressant.

- Regulations define prohibited levels of PCBs, lead, volatile aromatics, and halogenated organics in road oil.

- Analytical testing is required of all road oil and sample analysis must be submitted to DEC before road oil permit is granted.

- Approximately 2 million gallons of waste oil is generated in Alaska per year.

- Approximately 1 million gallons is applied annually to roads in Alaska.

- EPA has stated their intent to ban road oiling throughout the U.S. by May 1987.

- EPA is now reviewing the federal hazardous and solid waste amendments of 1984 to determine whether Alaska and more than 30 other states will be allowed to issue road oiling permits this summer.

- Alternate dust suppressants exist and are in use throughout Alaska.

- Alternate methods of waste oil disposal exist (e.g. burning) but unresolved and logistical problems may limit their use in Alaska.

DD9/sm

Neve'/Wood/Kelton/Hungerford

Alaska Oil and Gas Association

505 W. Northern Lights Boulevard
Suite 219
Anchorage, Alaska 99503-2553
(907) 272-1481

December 11, 1984

4

Dr. Richard A. Neve', Commissioner
Alaska Department of Environmental
Conservation
Pouch O
Juneau, Alaska 99811

Dear Commissioner Neve':

Pursuant to our meeting with Dave Walker on November 2, 1984, the attached material is intended to provide background information on the State's Hazardous Waste Program; the intent of SB503, Section 1; an explanation as to how the Degree of Hazard (DOH) approach differs from the Federal regulatory scheme; general issues associated with pursuing a regulatory approach substantially different from the Federal program; and sections of the regulations which need to be deleted to obtain a proper beginning vehicle.

Please feel free to contact me or Tom Brooks if we can provide additional information.

Very truly yours,

WILLIAM W. HOPKINS
Executive Director

WWH:TR2:211

Attachment

cc: Bob Martin w/attachment
Dave Walker w/attachment

ALASKA OIL AND GAS ASSOCIATION
DISCUSSION PAPER ON ADEC HAZARDOUS WASTE PROGRAM
DECEMBER, 1984

BACKGROUND

In 1981 the Alaska State legislature passed AS 46.03, charging the Alaska Department of Environmental Conservation with the task of developing Hazardous Waste Management regulations which are "consistent with and substantially equivalent to" federal regulations. AOGA was informed on November 24, 1981 that the Department would begin preparation of a "plan" for the State's Hazardous Waste Program. In May 1982 AOGA received the first draft of the State's proposed regulations at the May 28, 1982 Hazardous Waste Advisory Work Group Meeting (HWAWG). At this meeting, ADEC discussed its intent to establish a State program parallel to the Federal program; so convincing was ADEC that AOGA's representative reported:

> "ADEC very much wants their Program to be "consistent with and substantially equivalent to" the Federal Program. Although there was a difference of opinion regarding the interpretation of certain complex sections of the Federal Program, I am not as concerned about this difference as I was when I first reviewed the draft regulations. This is because it can be resolved with a close reading of the regulations. The important point is that the State intended to, and thought they had, interpreted the existing regulations. This significantly assuages my concern that the State had been trying to greatly expand their authority in this program, and trying to include regulatory requirements much more restrictive than the existing Federal Program. ADEC was not trying to expand their program, <u>they were trying to interpret and parallel the Federal Program</u>. Interpretation problems are resolvable with some time devoted to discussing the various sections of the regulations in detail, and utilizing the existing background documents from these same discussions which occurred at the Federal level."

It was not until February 7, 1983, that AOGA received the first draft of State regulations which reflected a "Degree of Hazard" (DOH) regulatory mechanism (a mechanism which is patterned after Washington State's program and is divergent from Federal regulations).

It is appropriate at this time to briefly reflect on Washington's Program. Their program began with passage of their Hazardous Waste Disposal Act in 1976. As a result, Washington's program and the Federal program were being developed simultaneously with the basis for Washington's Program being defined by statute.* The Act took the form of three pages of general directives regarding the identification and management of hazardous wastes. Principal among these directives was the establishment of the "two tiered" designation system or "designation-based on degree of risk". The fundamental basis for designating wastes with this early program was biological and other testing.

In late 1980, the issue was again before the Washington legislature. Unfortunately, its designation process was sufficiently complex to preclude any meaningful review by the legislators. There was no discussion at the legislative level of various alternative approaches that would satisfy the State's enabling act, nor was there any realization that the technical complexities of the State agency's program may have been overly complex to meet the need at hand. Fueling the controversy was the fact that a State site (Commencement Bay) was designated a priority cleanup site under Superfund and other examples of egregious past practices were brought to light during the public hearing process. It is likely that these past practices were illegal under either pre-existing State law or the RCRA regulations and would not have been prevented had the new regulations been in place. Nevertheless, public concern led to a demand for "an approach more stringent than the minimum federal requirements". Hence, in late 1980 the State legislature amended the original act to provide authority to bring the State regulations into federal compliance and did not allow the flexibility to parallel the federal program.

Washington State adopted on February 4, 1982, their present regulatory program. It is a combination of the original concept of waste designation based solely on testing and the Federal concept of designation based on rulemaking and simple testing. In its first few years of operation, the program captured 15% more wastes than the Federal RCRA program. Of the incremental wastes captured, most were designated as "dangerous" wastes; a classification not intended by the original State act to receive the comprehensive management strategy that was to be applied to State designated "extremely hazardous wastes" or Federally designated "hazardous wastes".

*NOTE: The U.S. EPA began formulating the national program (RCRA) in 1976. In 1980, RCRA was significantly amended to its present regulatory framework. At this time EPA decided that waste classification based on testing was inappropriate. For a detailed discussion as to EPA's rationale behind this decision, re: FR Vol. 45, #98/May 19, 1980 pages 33164-33165, and 33105.

In 1984, Washington enacted legislation which required the Department of Ecology to conduct studies regarding the "best management practices" for "dangerous" waste disposal. In the interim and until such time as "best management practices" regulations are in place (July 1, 1986) "dangerous" wastes may not be disposed of at commercial, off-site land disposal facilities. "Dangerous" wastes are now being stored or disposed of on site or must be shipped to RCRA disposal sites out of state.

In addition to the State being unable to facilitate the installation of a "dangerous" waste disposal site, the State has also been ineffective over an eight-year period in facilitating the acceptance and/or installation of an in-state disposal site for "hazardous or extremely hazardous" wastes.

Regarding the Alaska program, on March 3, 1983, AOGA informed Mr. Hungerford that the proposed rules of February 7, which reflected the DOH scheme from Washington State, were in need of in-depth technical review and notified him of forthcoming technical comments. On April 6, 1983, AOGA provided ADEC an in-depth technical review of the regulations. These comments were the culmination of extensive efforts by many engineers, marine biologists, toxicologists, attorneys and corporate management level individuals. The Department informed AOGA's representative on the Advisory Group that the ADEC could not expend the money or the manpower to consider AOGA's comments prior to release of a public hearing draft. On April 11, 1983, AOGA strongly requested that the regulations not be released until AOGA's comments could be reviewed and considered.

On April 19, 1983, the regulations were moved to public notice, with no apparent review or consideration of the technical comments provided to ADEC by AOGA. On April 25, 1983, Commissioner Neve' wrote AOGA indicating that the "comments of every member of the work group...were reviewed seriously and did help significantly in the preparation of these draft regulations". On May 25, 1983, at the Public Hearing AOGA stated that we felt that there was a lack of consideration of our industry's input in the development of the April 11, 1983, draft regulations.

By June 8, 1983, AOGA had provided ADEC with extensive oral and written testimony which was developed by the Environmental Committee in conjunction with the following industry experts:

- Joan DiNal, Senior Counsel, Environmental Affairs for Atlantic Richfield Company.
- Michael Hulse, Environmental Analyst, IMCO Services.
- James P. Ray, Ph.D., Manager of Environmental Sciences Support, Shell Oil Company.

- Robert E. Abbott, Ph.D., Coordinator of Environmental Affairs, Conoco Inc.
- Philip Dorn, Ph.D., Shell Development Company.
- Ilene Danse, M.D., Senior Advisor, Environmental Health Protection, Chevron Environmental Health Center, Inc.

The Department issued their latest draft in October 1983 which failed again to address significant concerns which have been repeatedly expressed by our industry. The Department has accepted AOGA's comments on three sets of draft regulations and failed to address the problems identified by AOGA.

AOGA next presented its case to the legislature. During this process, AOGA participated in the drafting of SB503, a piece of legislation which involved a compromise between members of the environmental community, small business, ADEC, AOGA, Labor, the Governor's Office, Sen. Fahrenkamp's office, etc., on key issues, one of which was DOH vs. the Federal Program.

INTENT OF SB503, SECTION 1

The compromise reached between the various parties for the management and control of hazardous waste in Alaska was a very delicate one. Because the legislature did not desire any confusion over the intent of this legislation, it adopted a Letter of Intent drafted by the Senate Resources Committee. The intent of the Legislature was for the Department of Environmental Conservation to "evaluate the most appropriate mechanism by which to identify a waste characteristic of toxicity, persistence or carcinogenicity and other characteristics identified as hazardous by the EPA". In order for a proper and complete analysis to be performed, no prior assumptions can be made as to the "appropriate mechanism" to be used by the State in its hazardous waste program.

Any regulations that are ultimately developed by the Department "must incorporate the results of this analysis" according to the intent letter. The Legislature, by the action of adopting this wording, instructed the Department to make an analysis and evaluation with no preconceived bias or ideas as to the appropriate mechanisms and only after the analysis is completed are the regulations to be drafted.

In summary, the Legislature has instructed ADEC to begin anew on identifying the regulatory mechanism of waste designation.

EXPLANATION OF DOH VS. RCRA

On May 19, 1980, EPA promulgated RCRA regulations that designated wastes by a formal rulemaking process (lists) and four reproducible and supportable characteristic tests. They reviewed various DOH programs and concluded a DOH approach was not an appropriate waste designation mechanism. To qualify for interim authorization, a state program had to encompass all RCRA wastes. In Washington, the two approaches were consolidated, resulting in the most complex designation system in use in the nation.

To briefly summarize, the DOH program is based on the concept that different wastes should be regulated with different procedures based on the degree of risk presented to human health and the environment, as demonstrated by existing biological and other test data or test results produced by generators. Initially, when the DOH approach was being developed it was envisioned that such data would be the sole basis for designating wastes, and that testing (bioassay, etc.) would be mandatory for all generators.

Although not specifically a designation issue, it must be kept in mind that nationally the small quantity generator exclusions are now much lower. If applied to Alaska, particularly without any special provision for small quantity generators, the combination of a much lower quantity exclusion and an extremely complex designation mechanism will result in an unenforceable program.

One of the difficulties inherent in the DOH designation procedure is that there is no adequate or simple means to describe how the federal and state universes of waste compare. No straightforward comparison can be made between a given category of federal wastes and categories defined under the state program. Consequently, the waste generator would often need to retain expert assistance. For example, professional assistance is especially recommended in instances where a waste not regulated under RCRA has "flunked" the state's proposed toxicity bioassay test. Determinations must be made regarding whether the test animals responded adversely to the potential toxic constituents or whether a physiological response to test conditions was involved. Such determinations will be subjective and inconsistent.

Technical complexities aside, the legal theory underlying the DOH regulations represents a marked departure from that embodied in the federal RCRA regulations. The federal regulations specify the criteria that the EPA administrator will consider in adding wastes to the lists in the RCRA regulations. The administrator is to consider potential wastes from the standpoint of toxicity, persistence, bioaccumulation, genetic effects, etc., and then to add appropriate wastes through formal rulemaking procedures. Thus, EPA's approach for developing hazardous waste lists inherently addresses biological considerations but centralizes the testing under EPA.

In contrast, DOH regulations place the burden on each generator to determine whether a waste not otherwise encompassed by the RCRA regulations is part of the state universe of wastes, and as previously stated, this determination may be made based on uncertain test results.

An individual generator's determination that a waste not regulated by RCRA might, for biological or other reasons, be regulated under the DOH regulations does not lead to a conclusive rulemaking. Thus, the process of identifying state regulated wastes is not accompanied by the certainty and procedural due process protections that characterize the listing process at the federal level.

A legal burden of designation is not to be confused with the cost burden of testing. Under both the federal and state regulations, the generator pays testing costs, as is typical of most environmental programs.

A major difficulty with the DOH designation system is that it creates an area of legal and technical vagueness. For example, biological test data can be inconclusive with regard to actual toxicity. The test animals may react adversely to test conditions rather than to the suspected toxic constituents, thus resulting in the over-designation of wastes. To further complicate the bioassay issue, there are no standard bioassay procedures which have been accepted by the scientific community at large. Difficulties may arise if a generator relies on an initial series of bioassay test results that show a waste to be nonhazardous. A subsequent test on the same waste yielding a positive determination of toxicity by the same or yet another generator may result in liability to the generator, who relied on the first series of tests in good faith. In either case, the uncertainties involved in the biological response of laboratory test animals to potentially toxic wastes may create a large gray area of potential liability for generators.

Under the State's proposed regulations, a generator may apply to the state agency for a determination of hazardous or nonhazardous status of a given waste. (This procedure is specific to the individual generator and does not provide notice or opportunity for comment from other generators of similar or related wastes and the scientific community at large.) However, such a certification would still not shield the generator from potential liability in the event of an erroneous certification by the state agency. Again, this ad hoc certification process cannot be viewed as a substitute for the certainty inherent in the federal designation system. In summary, the DOH generator is truly "at risk" to a degree not experienced by generators in the rest of the nation.

GENERAL ISSUES ASSOCIATED WITH PURSUING A REGU TORY APPROACH SUBSTANTIALLY DIFFERENT THAN THE FEDERAL PROGRAM

A substantial departure from the Federal and national trend in hazardous waste management by Alaska will make the State's program continually fraught with inherent technical, legal, and economic problems. Such a program will not be as readily able to take full advantage of the continued evolution or efforts of the Federal program.

The technical aspects of the national program is not the product of a few staff specialists or even the combined effort of one or two states. Rather, the Federal program has been and will continue to be the product of a concerted effort by this country's regulatory agencies, academic/scientific community, private industrial sector and environmental organizations. This effort cannot begin to be equaled by any single state.

As you are probably aware, the management of hazardous wastes is technically and legally complicated and highly controversial. Should the State embark on a program substantially different than the Federal program, Alaska will have to expend considerable amounts of time and resources in pursuing the continued development of a program which will be fraught with continuing implementation, legal, educational and enforcement problems. On the other hand, a state program that parallels the national trend can take full advantage of the billions of dollars this country has and will continue to spend in further evolving and implementing hazardous waste regulations.

Again, a state that is contemplating an approach that differs fundamentally from the Federal program should consider the following questions:

- Will the alternative program, if based on fundamentally different technical theories, isolate the state from the larger body of developing scientific expertise at the national level?

- Will the alternative program, if based on different legal theories, create the need for a divergent trend of judicial interpretation and thereby isolate the state from legal developments at the national level?

- How will a fundamentally different program that is more expansive than its federal counterpart be reconciled with related programs such as Superfund that provide mechanisms for partial federal funding for incidents involving federally designated waters?

- How will the fundamentally different state program relate to the interstate aspects of hazardous waste transport and management? This involves issues of reciprocity and the equity of burdening another state's disposal facilities if the state of origin has not provided ample sites for its own wastes.

- How will a fundamentally different state program be modified to remain consistent with evolving RCRA requirements?

- Does the fundamentally different state program exacerbate the interstate problems of hazardous waste management?

- What is EPA's enforcement interest in an incident involving a nonfederal waste that is considered hazardous in the state of origin but not in the state where the incident occurs? This issue stems from the fact that authorized state programs operate in lieu of RCRA regulations.

- To what extent would a fundamentally different program be delayed in obtaining final authorization?

- Will funding levels by the State be adequate to implement and maintain a program that is technically and legally divergent from the Federal program?

SECTIONS TO BE DELETED TO OBTAIN A PROPER BEGINNING VEHICLE

The following is intended as a list to highlight those major portions of the October 26, 1983, draft which should be deleted, pending a detailed evaluation by the Department:

- 18 AAC 62.010 Definition of Hazardous Wastes
- 18 AAC 62.030 Lists of Hazardous Wastes
- 18 AAC 62.050 Discarded Chemical Products
- 18 AAC 62.060 Characteristic of Toxicity
- 18 AAC 62.070 Characteristic of Persistence
- 18 AAC 62.080 Characteristic of Carcinogenicity
- 18 AAC 62.120 Waste Extraction Procedure (WEP) Characteristic
- 18 AAC 62.140 Exclusions
- Article 5 - Management of Moderate Risk Wastes

For a more detailed discussion, attached are both oral testimony and detailed written comments which were provided to the Department at the May, 1983 Public Hearing.

In addition, attached is an article from the October 26, 1984, Environmental Reporter, entitled EPA Staff Summary of 1984 Amendments to Resource Conservation and Recovery Act. This recent reauthorization addresses the majority of the real or perceived "loopholes" in the RCRA regulations. The reauthorization amendments only reinforce ACGA's contention that the nation's commitment to properly manage hazardous waste is real and a divergence from the Federal program is unnecessary.

tr2:220
Attachments

Alaska Health Project

Providing information about hazardous materials on the job and in the community.
417 West Eighth Avenue, Anchorage, Alaska 99501 (907) 276-2864

April 25, 1985

APR 2 9 RECD

Representative Mike Davis
Pouch V
Juneau, Alaska 99811

Dear Representative Davis:

Alaska Health Project appreciates your interest in issues concerning hazardous wastes in Alaska. As you may know, I have been directly involved with this issue for about three years at both the state and local level. Reflecting on my involvment in this area brings to mind the need for the Legislature to become more educated about the issue and for the Legislature to decide whether it deems hazardous wastes a priority concern for the future. It is my hope that the oversight hearings, or hearings of that type become the vehicle for this type of education. Further, it is my hope that the Legislature attack that hazardous waste issue in a similar fashion to the way it investigated proposals to develop a full scale petrochemcial industry several years ago. The hazardous waste issue deserves legislative commitment and coordination with state and local agencies, the public and industry.

It is important, in my opinion, that Alaska work hard to develop a preventive approach to hazardous waste, rather than falling into a dangerous trap of simply developing a program that reacts to hazardous materials incidents.

In light of this, certain testimony at the teleconference concerned me. While I agree with industry on the need for some sort of a hazardous waste disposal facility in Alaska (not necessarily a landfill) and with their concern regarding the current time frame for selecting a site, I do not wish to see the development of a site supersede development and implementation of a "total" state hazardous waste program. To develop a disposal facility without a state definition for when a solid waste becomes hazardous could result in serious technical, legal, and political problems down the road.

While I am the first to admit that management programs (such as a disposal site) are perhaps dollar for dollar better at solving problems than a regulatory approach, central to any management approach is a regulatory foundation, which the state currently lacks. It is important that the state define, by regulation, when a waste becomes hazardous thus allowing Alaska to decide on hazardous waste management approaches. Determining

a state definition for hazardous wastes will also help industry with their plans to manage wastes as well as provide incentives for industry to reduce their wastes streams or investigate alternative processes which do not create a hazardous waste as defined by the State of Alaska.

Last year The Department of Environmental Conservation published a set of hazardous waste regulations which define hazardous waste by degree of hazard. While admittedly controversial, this approach provides a good starting point for future discussions. Regardless of the fact that earlier debates addressing this definition scheme resulted in a "cold war" relationship between industry and public interest organizations, it is important to confront this issue directly. Once the state can settle on a hazardous waste definition, all other aspects of the program will fall into place.

Once again, I sincerely appreciate your interest in this issue and I am available to discuss this issue with you at any time.

Cordially,

David Wigglesworth

David Wigglesworth
Occupational Health Specialist

cc: Commissioner Ross
Committee Members

Statement by ARCO Alaska, Inc.
for Presentation to the
House Oil and Gas Committee
April 24, 1985

By Dr. T.R. Fink, Manager
Environmental Conservation

Waste categories

Waste materials are regulated by both Federal and State requirements. In general, the Federal requirements pertain to hazardous wastes and the State requirements to non-hazardous wastes. All wastes should be handled in an environmentally sound manner. All wastes do not require the same degree of environmental protection.

Wastes are considered hazardous if they are listed as such by the Environmental Protection Agency of if they meet certain characteristics for ignitability, corrosivity, reactivity or toxicity. Diesel fuel and acids are two examples that, when discarded, meet the hazardous characteristics. Household garbage and sewage are solid wastes, not hazardous waste. Drilling mud is a waste common in our industry which is a solid waste but not a hazardous waste.

Alaska must develop a hazardous waste disposal site in the State

There is no hazardous waste disposal site available for general use in Alaska. Even if the various entities involved in the hazardous waste issue in Alaska were to agree on the definition of hazardous waste, the procedures for regulating hazardous waste, and the means for cleaning-up abandored hazardous waste sites, the hazardous waste problem in Alaska will not be resolved until there is a viable disposal option in Alaska. Costs, legal and technical restrictions and political considerations associated with shipping hazardous waste to the Lower 48 preclude it from being the answer for Alaska's hazardous waste.

The State of Alaska must be involved in the development of a hazardous waste management facility

NIMBYS - Not In My Back Yard Syndrome - is alive and well in Alaska. For a hazardous waste management facility to be developed in Alaska, the State of Alaska must be heavily involved. With the active involvement of the State we can take the most important step toward solving Alaska's hazardous waste problems.

The SB 503 timeframe for hazardous waste siting is too slow

SB 503 requires disposal options and sites to be selected by 1989. After disposal options and sites are selected, the permitting and construction phases will require four to five years to complete. Alaska can not afford to wait until the early 1990's to have a safe, permitted disposal option for Alaska hazardous waste.

The 1984 amendments to the Federal hazardous waste program have forced the siting issue to the forefront. The 1984 Federal amendments phase out land disposal, greatly increase the number of hazardous waste generators, require the study and listing of additional materials as hazardous waste, add a citizens's suit provision and increase the penalty provisions. The Amendments increase the cost and decease the options currently available for disposal in the Lower 48. There is no statewide hazardous waste disposal site available in Alaska.

A Governor appointed executive level committee is needed

The hazardous waste siting issue can best be resolved by a Governor appointed executive level committee with representatives from DEC, DNR, local government, environmental groups and industries. The task of the committee would be to develop a plan of action for siting a hazardous waste management facility in Alaska.

MEMORANDUM State of Alaska

TO: Ms. Billie Trent
Administrative Assistant
Department of Environmental
Conservation-Juneau

DATE: February 8, 1984

FILE NO: 122-548-84

TELEPHONE NO: 276-3550

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: State v. Transportes del Este Navegacion, S.A., et al.

By: LL
Madeleine R. Levy
Assistant Attorney General
Natural Resources Section-Anchorage

The recent oil spill from the M/V Cepheus and the hearing on the temporary restraining order (T.R.O.) in that case point out the imminent need to amend AS 46.03.770 and AS 46.03-.765. Section 770 provides for detention of a vessel without warrant for security for oil spill damages assessed under AS 46.03.760(b) as that latter statute existed prior to the 1976 amendments. Under 770, a vessel may be released after posting a bond not to exceed $100,000.00. Prior to 1976, AS 46.03.760(b) permitted the court to assess liquidated damages for an oil spill not to exceed $100,000.00, so the limitation of a bond to $100,000.00 under 770 made sense at that time.

However, in 1976, the legislature repealed and re-enacted AS 46.03.760(b). § 9, ch. 220 SLA 1976. The re-enacted version eliminates <u>any</u> reference to a maximum amount of damages; it states only that damages assessed under section 760 may not be punitive and must be remedial and compensatory in nature. Section 770 should have been contemporaneously repealed and re-enacted to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822. Unfortunately, section 770 was left untouched, but not unaffected, by the 1976 legislative changes.

The above discrepancy came to the forefront when we asked the court to grant the T.R.O. enjoining the Cepheus under AS 46.03.765 from leaving the port of Anchorage until it had complied with the requirements of AS 46.04.040(c) by posting a twenty million dollar bond. Attorneys for the Cepheus' owners argued that the proper remedy was not the requested injunctive relief but, rather, detention and release after posting $100,000.00 bond under AS 46.03.770. While we did prevail on our argument in front of Judge Shortell, we might not be so fortunate in the future. Since section 770 is a vestigial remnant emptied of meaning after the 1976 re-enactments contained in ch 220 SLA 1976, your department should request a bill repealing section 770 as a technical, corrective measure. I would urge you to seek such legislative relief immediately. In order to preserve detention

Department of Law Summary

of a vessel as a remedy under AS 46.03.765, I would suggest requesting the legislature to insert the following language in section 765 when and if 770 is repealed:

> Sec. 46.03.765. Injunctions. The superior court has jurisdiction to enjoin a violation of this chapter or AS 46.04, or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04. In actions brought under this section, temporary or preliminary relief, INCLUDING DETENTION OF A VESSEL, may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

Please let me know if the Department of Law can be of further assistance in this regard.

MRL:cai

cc: Dick Neve'-Commissioner, DEC
Chris Noah-Deputy Commissioner, DEC
Ron Lorenson-Deputy Attorney General
Bob Martin-Deputy Director, DEC

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

January 22, 1986

TO: All Committee Members

FROM: Committee Staff

RE: Sectional Analysis of H.B. 100

H.B. 100 makes technical, corrective amendments to Title 46; Chapter 3; Section-7 Prohibited Acts and Penalties.

Section 770 of AS 46.03 provides for detention of a vessel without warrant for security for oil spill damages assessed under AS 46.03.760(b).
Currently under this section, posting a bond of not over $100,000 may release a detained vessel. This section is inconsistent with the 1976 amendment to AS 46.03.760, which requires that the amounts assessed be "compensatory and remedial in nature" and not used for punitive purposes. A simultaneous amendment should have been made to AS 46.03.770, but did not occur.

This gap may allow a vessel to post a bond of $100,000, be released from detention, and leave millions of dollars of environmental damage behind

Section 1: Deletes the current $100,000 ceiling and sets the bond at

"an amount not to exceed the maximum amount of damages available under

AS 46.03.758, 46.03.760 and 46.03.822."

AS 46.03.758 pertains to civil penalties for discharges of oil.

AS 46.03.760 pertains to civil action for pollution; damages.

AS 46.03.822 pertains to strict liability for the discharge of hazardous

substances. (Statutes attached.)

Section 2: This amendment is another housekeeping measure. It amends AS 46.03.826(5) defining what actions constitute control of a vessel that will create strict liability for the discharge of hazardous substances under AS 46.03.822.

AS 43.826 only defines what "having control over a hazardous substance" entails; the phrase "owning or" is superfluous to the definition and has been deleted.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 1/9/86

REQUEST

Bill/Resolution No. : HB 100
Title : Detention of vessels as security for oil pollution damages

Sponsor : House Rules for Governor
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : ADEC
BRU : Environmental Quality

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS : NONE

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Billie Trent — Phone : 465-2600
Division : Office of the Commissioner — Date : January 9, 1986

Approved by Commissioner : Bill Rose — Date : January 9, 1986
Agency : Department of Environmental Conservation

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Ross / Trust / O'Brien
copy copy

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE
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PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER
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SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 2, 1985

RECEIVED
MAY 3 1985
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Honorable Marco Pignalberi
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Due process and seizure of boats
File No. 366-477-85

Dear Representative Pignalberi:

We are responding to your request for opinion concerning the constitutionality of AS 46.03.770 which authorizes the detention of a vessel which has illegally discharged oil or ballast water; by the terms of § 770, the detention may occur in advance of a hearing to contest the propriety of the detention. You raised this question at a hearing of the House Transportation Committee on HB 100 on the morning of May 1, 1985.

The question was resolved by the Alaska Supreme Court in the case of F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), which involved a forfeiture proceeding brought against a boat for alleged violations of Alaska's laws regarding the king crab fishery. The vessel was seized by state officials on January 15, 1976 while it was unloading crab in Pelican. The state thereafter filed a complaint for forfeiture of the vessel.

The Alaska Supreme Court held as follows:

> The standards of due process under the Alaska and federal constitutions require that a deprivation of property be accompanied by notice and opportunity for hearing at a meaningful time to minimize possible injury. [citation omitted] Where property allegedly used in an illicit act is confiscated by government officials pending a forfeiture action, no notice or hearing is necessary prior to the seizure. [citation omitted] However, when the seized property is used by its owner in earning a livelihood, notice

> and an unconditioned opportunity to contest the state's reasons for seizing the property must follow the seizure within days, if not hours, to satisfy due process guarantees even where the government interest in the seizure is urgent.

Id. at 666-667.

The American Eagle case involved a statute which, like AS 46.03.770, does not set forth detailed procedures for contesting seizures; rather, an aggrieved owner may proceed under any statute, court rule or legal theory that will afford redress, or the state may bring the matter before the court, as usually occurs. Significantly, the court in American Eagle applied a hindsight test under which it does not require the legislature to map out in advance the administrative or judicial procedures to be followed after a seizure. So long as there is, in fact, "notice and opportunity for hearing at a meaningful time to minimize possible injury," there is no violation of due process. The Alaska Supreme Court reaffirmed these principles last year in State v. F/V Baranof, 677 P.2d 1245 (Alaska 1984).

If we may be of further assistance to you, please do not hesitate to call upon us.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Thomas M. Jahnke
Thomas M. Jahnke
Assistant Attorney General

TMJ:jf

cc: Honorable Bill Ross
Commissioner
Department of Environmental
Conservation

Madeline Levy
Assistant Attorney General
Anchorage, AGO

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone:(907)
Address:
(907) 465-2600

OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

January 10, 1986

The Honorable Jack Coghill
Chairman, Transportation Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Coghill:

This letter is in reference to HB 100 (detention of vessels for oil spill violations) which is now before your committee for consideration. A copy of the bill is enclosed.

This legislation corrects an oversight which occurred when AS 46.03.760(b) was amended in 1976 to remove any ceiling for assessed oil spill damages. A simultaneous amendment should have been made to AS 46.03.770, removing the ceiling on bond limitations pending damage judgments, but that did not happen.

The effect of that oversight is that, while we could detain a vessel to secure $30 million in oil spill damages, that vessel could be released after posting the $100,000 maximum bond now required under § 770.

This serious discrepancy was discovered in January 1984 when the Greek vessel M/V CEPHEUS went aground near Anchorage, spilling in excess of 300,000 gallons of oil into Alaska waters. The State then sought a temporary restraining order and a $20 million bond under AS 46.04.040. Judge Shortell awarded the requested bond only because the vessel was planning to offload in Alaska waters. Had the vessel planned to simply leave Alaska, he would probably have allowed it to do so after posting the $100,000 bond.

DEC Position Paper

After the close call in the courtroom, the Attorney General's office suggested immediate amendment to § 770. It was stated that:

> Section 770 should have been contemporaneously repealed and reenacted [with § 760(b)] to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822. Unfortunately, section 770 was left untouched, but not unaffected, by the 1976 legislative changes.

I trust this summary conveys the importance of this legislation, but please let me know whether you require anything further. I would appreciate your using your good offices to see that this bill receives a hearing in your committee early enough in the session to assure its becoming law this year.

Sincerely,

Bill Ross
Commissioner

Enclosure
cc: Hal M. Brown, Esq.
Attorney General

Mr. James R. Ayers
Director, Legislative Relations
Office of the Governor

Rossi/Trivett/O'Brien
copy copy

BILL SHEFFIELD, GOVERNOR

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JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 2, 1985

RECEIVED
MAY 3 1985
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Honorable Marco Pignalberi
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

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File No. 366-477-85

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If we may be of further assistance to you, please do not hesitate to call upon us.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Thomas M. Jahnke
Thomas M. Jahnke
Assistant Attorney General

TMJ:jf

cc: Honorable Bill Ross
Commissioner
Department of Environmental
Conservation

Madeline Levy
Assistant Attorney General
Anchorage, AGO

Ross/O'Brien/Trent copy

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

May 7, 1985

The Honorable John Sund
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

RECEIVED
MAY 9 1985
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

Re: HB 100

Dear Representative Sund:

In a meeting of the House Resources Committee on HB 100 yesterday, there was some uncertainty about section two of the bill, which deletes the words "owning or" from AS 46.03.826(5). That provision currently provides that "owning or having control over a hazardous substance means producing, handling, storing, transporting or refining a hazardous substance...."

The problem the definition creates is this: The law imposes strict liability for hazardous substance spills on two classes of persons: (1) those who hold title to the substance, i.e., the owners; and (2) those who have control of the substance, e.g., the transporters or refiners. See AS 46.03.822. However, AS 46.03.826(5) defines "owners" to include only producers, handlers, storers, transporters or refiners; the definition of "owners" omits from the list of liable persons that person who actually has title to the substance. That omission may let the actual owner of the hazardous substance (who is blameworthy for selecting the handlers, transporters and refiners) off scot-free if a spill occurs.

The word "owner" has a clear definition in the common law and common usage. It is not necessary to define the term in the statute because the common law and common usage provide the definition applied in the Alaska courts. AS 01.10.010; AS 01.10.040. By removing the term from the definition section, we preserve its commonly-understood meaning and insure that both the owner's agents and the owner may be held strictly liable for

hazardous substance spills. This amendment is essential to insure the correct application of the law in the courts.

Thank you for you attention to our concerns.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: Thomas M. Jahnke
Thomas M. Jahnke
Assistant Attorney General

TMJ:jf

cc: Honorable Bill Ross
Commissioner
Department of Environmental
Conservation

Madeline Levy
Assistant Attorney General
Anchorage, AGO

Alaska State Legislature

Fourteenth Legislature — Second Session

Senate Calendar

THURSDAY
February 27, 1986
11:00 a.m.

Official Business of the Senate

Forty-sixth Legislative Day

Chaplain: Reverend Loren Jones of Chapel by the Lake Church

SENATE BILLS IN SECOND READING

CSSB 278(FIN)	Impoundment and registration of motor vehicles; senior citizen motor vehicle tax exemptions; licensing of certain drivers; fees for drivers licenses and permits; refusal to submit to a chemical test for intoxication; and the drivers license compact (with Senate Letter of Intent) Held from 2/26

SECOND READING OF HOUSE BILLS

HB 100	Detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances eff. date Transportation report pg 1616 Resources offered SCS pg 1913
CSHB 240(HESS) am	Overtaking and passing school buses Transportation offered SCS pg 1928

Publication Notice

Honoring - Anderson High School 1986 Girls Basketball Team by Senator Coghill and Representative Shultz

Honoring - Edward A. Merdes by Representatives M.W. Miller, Ringstad, Frank, Fuller, Binkley, Koponen, Collins, Hurley, M.M. Miller, Duncan, Gruenberg, Cato; Senator Bennett

Honoring - Paige Adams by Representatives Hurley, Larson and Navarre; Senators Kerttula and DeVries

HOUSE BILL 100

DETENTION OF VESSELS FOR OIL SPILL VIOLATIONS

BEFORE THE ALASKA SENATE
February 27, 1986
11:00 a.m.

PURPOSE

HB 100 makes AS 46.03.770 consistent with itself, and with AS 46.03.760, to assure that the State will have enough "money in hand" to cover any damage done in the event of an oil spill.

BACKGROUND

When enacted, AS 46.03.760 provided for penalties not to exceed $100,000. In 1976, that statute was amended to remove any ceiling on assessed damages, but AS 46.03.770 retains an outdated reference to AS 46.03.760 and limits to $100,000 any bond posted in lieu of vessel detention.

This renders § 770 inconsistent with itself, and the reference to 760(b) no longer makes sense.

Under the current law, the State could hold a vessel to secure $30 million in oil spill damages, but that vessel could leave Alaska after posting a $100,000 bond. Such a scenario does not provide the type of cost recovery guarantee that adequately protects state interests.

IMPETUS FOR HB 100

This serious discrepancy was discovered when the Greek vessel M/V CEPHEUS went aground near Anchorage, spilling in excess of 300,000 gallons of oil into Alaska waters.

The judge in that matter ruled that a $20 million bond was necessary (based on the $20 million financial responsibility requirement elsewhere in the law) because the vessel planned to continue offloading in Alaska waters. Had the vessel planned to simply leave Alaska, he would probably have allowed it to do so after posting the $100,000 bond.

AS 46.03.770 should have been contemporaneously repealed and reenated with § 760(b) to provide for a bond not to exceed the maximum amount of damages available under newly enacted 46.03.760 and 46.03.822.

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*Sec. 2, amending AS 46.03.826(5), merely restores the original, common sense meaning of the term "owner."

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

November 26, 1984

M E M O R A N D U M

TO: Honorable Bill Sheffield
Governor

FROM: Norman C. Gorsuch
Attorney General

RE: Attached bill regarding detention of vessels for security for oil-pollution damages
Our file: 377-001-85

Attached is a bill that was requested by the Department of Environmental Conservation, and approved by your office on July 30, 1984. The bill simply makes the bond posting provision in the statute on detention of vessels involved in oil spills consistent with the 1976 amendment of the statute providing for damages for oil pollution. This is intended as a simple, but important, housekeeping amendment.

A nearly identical bill, SB 534 (Department of Law file no. 377-136-84), was prepared by this department last year, and was introduced by the Senate Resources Committee. That bill was still in committee when the legislature adjourned. The version which is presented now adds one technical change. Section 2 clarifies the definition of "owner" with regard to strict liability for oil spills and other hazardous substances. This, too, is merely a technical housekeeping amendment.

Also attached is a draft transmittal letter to the legislature.

NCG:MRL:md

cc w/enc.: Hon. Richard Neve'
Commissioner
Department of Environmental
Conservation

Madeleine R. Levy
Assistant Attorney General
Natural Resources Section
Anchorage

Dept. of Environmental Conservation
NOV 8 10 51 AM

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the detention of vessels as security for oil-pollution damages and clarification of a definition relating to discharge of hazardous substances. This bill is intended to correct two statutory oversights brought to light as a result of the January 21, 1984 oil spill from the M/V Cepheus.

AS 46.03.760, providing for civil actions for pollution, and AS 46.03.770, providing for detention of vessels as security for oil-pollution damages, were both enacted by ch. 120, SLA 1971. As enacted, AS 46.03.760(b) set a maximum of $100,000 for liquidated damages to be assessed by the court in an oil-pollution case. And, as enacted, AS 46.03.770 provided for the court to release a detained vessel upon posting of a bond set by the court in an amount not to exceed $100,000. AS 46.03.770 referred to AS 46.03.760(b), and the two $100,000 provisions were compatible with each other.

However, in 1976, along with other amendments, AS 46.03.760(b) was amended to remove the $100,000 liquidated damages maximum, but AS 46.03.770 was not correspondingly amended. It has never been amended. This bill seeks to correct that oversight. It removes the reference to $100,000 and inserts a reference (in two places) to the

relevant civil penalty and damages statutes that were enacted and amended after AS 46.03.770 was enacted.

Second, AS 46.03.822 provides for strict liability for the discharge of hazardous substances, including oil, for a person owning or having control over the hazardous substance prior to its discharge. "Owning or having control over a hazardous substance" is presently defined in AS 46.03.826(5) in a manner which arguably negates the common sense definition of an owner. Section 2 of this bill corrects that problem by eliminating the word "owner" from the statutory definition section, thereby restoring the original meaning of that word.

Sincerely,

Bill Sheffield
Governor

1976 -

Offered: 2/24/86
Referred: Rules

Original sponsor: Rules/Governor

IN THE HOUSE BY THE RESOURCES COMMITTEE

SENATE CS FOR HOUSE BILL NO. 100 (Resources)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to detention of vessels as security for oil-pollution damages; clarifying a definition relating to discharge of hazardous substances; and providing for an effective date."

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

* Section 1. AS 46.03.770 is amended to read:

Sec. 46.03.770. DETENTION OF VESSEL WITHOUT WARRANT AS SECURITY FOR DAMAGES. A vessel that [WHICH] is used in or in aid of a violation of AS 46.03.740 - 46.03.750 may be detained after a valid search by the department, an agent of the department, a peace officer of the state, or an authorized protection officer of the Department of Fish and Game. Upon judgment of the court having jurisdiction that the vessel was used in, or was the cause of, a violation of AS 46.03.740 - 46.03.750 with knowledge of its owner or under circumstances indicating that the owner should reasonably have had this knowledge, the vessel may be held as security for payment to the state of the amount of damages assessed by the court under AS 46.03.758, 46.03.760, and 46.03.822. If [AS 46.03.760(b), AND IF] the damages [SO] assessed are not paid within 30 days after judgment or final determination of an appeal, the vessel shall be sold at public auction, or as otherwise directed by the court, and the damages paid from the proceeds. The balance, if any, shall be paid by the court to the owner of the vessel. The court shall permit the release of the vessel upon posting of a bond set by the court in an amount not to exceed the maximum

amount of damages available under AS 46.03.758, 46.03.760, and 46.03.822 [$100,000]. The damages received under this section shall be transmitted to the proper state officer for deposit in the general fund. A vessel seized under this section shall be returned or the bond exonerated if no damages are assessed under AS 46.03.758, 46.03.760, or 46.03.822 [AS 46.03.760(b)].

* Sec. 2. AS 46.03.826(5) is amended to read:

(5) "[OWNING OR] having control over a hazardous substance" means producing, handling, storing, transporting, or refining a hazardous substance for commercial purposes immediately before entry of the hazardous substance in or upon the waters, surface, or subsurface lands of the state, and specifically includes bailees and carriers of a hazardous substance;

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 2/6/76
Referred: Resources

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 267 am H (e.date added) re-engrossed

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Department of Environmental Conservation; and providing for an effective date."

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

* Section 1. AS 46.03.020(10)(C) is amended to read:

(C) protection of public water supplies by establishing minimum drinking water standards, and [SETTING] standards for the construction, improvement, and maintenance of public water supply systems;

* Sec. 2. AS 46.03.030(b) is amended to read:

(b) The department may grant [PAY] to a municipality, as funds are available, up to the lesser of 50 [25] per cent of the eligible [ESTIMATED] cost or 50 per cent of the eligible [ESTIMATED] cost not financed [BORNE] by the federal government, [IF THERE IS FEDERAL ASSISTANCE,] for [OF] public water supply, treatment and distribution systems and public sewage collection, treatment and discharge facilities for which construction has not commenced on or before the effective date of this Act [SYSTEMS, INCLUDING COLLECTION AND IMPOUNDING FACILITIES, AND OF THOSE PORTIONS OF SEWERAGE SYSTEMS NOT COVERED BY (a) OF THIS SECTION]. The eligible [ESTIMATED] cost of a project or portions of a project [ANY PART OF A SYSTEM] will be as determined by the federal agency granting [WHICH GIVES] the most monetary assistance [OR, IF NONE, BY THE DEPARTMENT]. On projects or portions of projects, for which federal participation is not available, eligible costs will be determined by the department. Projects [SYSTEMS] shall be constructed

Original Legislation

in accordance with [ACCORDING TO] plans and specifications approved by [THE FEDERAL AGENCY WHICH GIVES THE MOST MONETARY ASSISTANCE OR, IF NONE, BY] the department.

* Sec. 3. AS 46.03.100(a) is amended to read:

(a) A person who conducts an [A COMMERCIAL OR INDUSTRIAL] operation which results in the disposal of solid or liquid waste material or heated process or cooling water into the waters or onto the land of the state must procure a permit from the department before disposing of the waste material or water. The permit must be obtained for direct disposal and for disposal into publicly operated sewerage systems.

* Sec. 4. AS 46.03.110(a) is amended to read:

(a) An application for a permit shall be made on forms prescribed by the department or on forms prescribed by the United States Environmental Protection Agency and shall contain the name and address of the applicant, a description of his operations, the quantity and type of waste material sought to be disposed of, the proposed method of disposal, and any other information considered necessary by the department. Application for permit shall be made at least 60 days before commencement of a proposed discharge.

* Sec. 5. AS 46.03.110 is amended by adding a new subsection to read:

(e) If the department has certified a National Pollutant Discharge Elimination System permit under sec. 401 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Sec. 1341), and the United States Environmental Protection Agency has issued that permit to a person, the department may waive the requirements of this section, and adopt the federal permit as the permit required under sec. 100 of this chapter.

* Sec. 6. AS 46.03.180 is amended to read:

Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. Records and information other than emission data in the possession of the department which relate to production or sales figures or to processes or production techniques of the owner or operator of an air contaminant source are considered confidential records of the department after application by the party and certification that their public disclosure would tend to adversely affect his competitive position.

* Sec. 7. AS 46.03.720 is amended to read:

Sec. 46.03.720. CONSTRUCTION AND OPERATION OF CERTAIN FACILITIES PROHIBITED. (a) No person may construct, extend, install or operate a sewerage [SEWAGE] system or treatment works, or any part of a sewerage [SEWAGE] system or treatment works, until plans for it are submitted to the department for review[,] and the department approves them in writing and issues a written permit. [THE DEPARTMENT MAY WAIVE THE REQUIREMENT THAT PLANS BE SUBMITTED TO IT.]

(b) No person may construct, extend, install or operate a public water supply system, or any part of a public water supply system until plans for it are submitted to the department for review and the department approves them in writing.

(c) The department may waive the requirements of this section.

* Sec. 8. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.755. DISCHARGE REPORTING. (a) A person in charge of a facility, operation or vessel, as soon as he has knowledge of any discharge from the facility, operation or vessel in violation of secs. 740 or 750 of this chapter, shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state.

* Sec. 9. AS 46.03.760 is repealed and re-enacted to read:

Sec. 46.03.760. CIVIL ACTION FOR POLLUTION; DAMAGES. (a) A person who violates or causes or permits to be violated a provision of this chapter or a regulation, a lawful order of the department, or a permit or term or condition of a permit issued under this chapter is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500, nor more than $100,000 for the initial violation, nor more than $5,000 for each day thereafter on which the violation continues, and which shall reflect, where applicable:

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation; and

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisi-

tion, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a)--(d) of this section, a person who violates or causes or permits to be violated a provision of secs. 740--750 of this chapter is liable to the state, in a civil action, brought under sec. 822 of this chapter, for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs.

* Sec. 10. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.765. INJUNCTIONS. The superior court has jurisdiction to enjoin a violation of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time.

* Sec. 11. AS 46.03.790 is repealed and re-enacted to read:

Sec. 46.03.790. CRIMINAL PENALTIES. (a) A person who violates or who causes or permits a violation of a provision of this chapter, or of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $25,000 and costs of prosecution.

(b) A person who wilfully violates a provision of this chapter, or

of a regulation, lawful order of the department, or permit or term or condition of a permit issued under this chapter is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not more than $25,000 and costs of prosecution, or by imprisonment for not more than one year, or by both fine, costs, and imprisonment.

(c) Each day on which a violation described in (a) or (b) of this section occurs is considered a separate violation.

(d) A person who fails to provide or falsely states information required under sec. 755 of this chapter is guilty of a misdemeanor, and, upon conviction, is punishable by a fine of not more than $25,000, or by imprisonment for not more than one year, or by both. Each unlawful act constitutes a separate offense.

* Sec. 12. AS 46.03.810(a) is amended to read:

(a) A person is guilty of creating or maintaining a nuisance if he

(1) places or deposits upon a lot, street, beach, or premises, or upon[,] or anywhere within 200 feet of a public highway, [UNLESS THE HIGHWAY ABUTS UPON TIDAL WATER,] any garbage, offal, dead animals, or any other matter or thing, which would be obnoxious or cause the spread of disease or in any way endanger the health of the community;

(2) allows to be placed or deposited upon any premises owned by him or under his control garbage, offal, dead animals, or any other matter or thing which would be obnoxious or offensive to the public or which would produce, aggravate, or cause the spread of disease or in any way endanger the health of the community.

* Sec. 13. AS 46.03.822 is amended to read:

Sec. 46.03.822. STRICT LIABILITY FOR THE DISCHARGE OF HAZARDOUS SUBSTANCES. To the extent not otherwise preempted by federal law, a

person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. [IF AN ACTION IS BROUGHT BY THE STATE TO RECOVER DAMAGES FOR OIL POLLUTION, LIABILITY IS LIMITED AS SPECIFIED IN SEC. 760(b) OF THIS CHAPTER.] In an action to recover damages, the person is relieved from strict liability, without regard to fault, if he can prove

(1) that the hazardous substance to which the damages relate entered in or upon the waters, surface or subsurface lands of the state solely as a result of

(A) an act of war,

(B) an intentional act or a negligent act of a third party, other than a party (or its employees) in privity of contract with, or employed by, the person,

(C) negligence on the part of the United States government or the State of Alaska, or

(D) an act of God; and

(2) in relation to (1)(B), (C) or (D) of this section, that he discovered the entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time.

* Sec. 14. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.850. COMPLIANCE ORDER. (a) When, in the opinion of the department, a person is violating or is about to violate a provision of this chapter or a regulation or lawful order of the department, or a permit or a term of a permit issued by the department, the department may notify the person of its determination by personal service or

certified mail. The determination and notice do not constitute an order under sec. 820 of this chapter.

(b) The recipient of the determination must file with the department, within the time period specified in the notice, a report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the notice.

(c) After the report is filed under (b) of this section or the time period specified for it has elapsed, the department may issue a compliance order in conformity with the authority of the department and the public policy declared in sec. 10 of this chapter. A copy of the compliance order shall be served personally or sent by certified mail to the person affected. A compliance order is effective upon receipt.

(d) Within 30 days after receipt, the recipient may request a hearing to review the compliance order. Failure to request a hearing within 30 days after the receipt of a compliance order constitutes a waiver of the recipient's right of review.

(e) The department shall hold a hearing within 20 days after receipt of a request for one under (d) of this section. After the hearing, the department may rescind, modify or affirm the compliance order.

(f) The attorney general shall seek enforcement of a compliance order.

* Sec. 15. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.875. REMEDIES CUMULATIVE. All remedies provided by this chapter are cumulative, and the securing of relief, whether injunctive, civil or criminal, under a section of this chapter does not estop the state from obtaining relief under any other section of this chapter.

* Sec. 16. AS 46.03.900(12) is amended to read:

(12) "other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, trimmings from logging operations, sand, lime cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, <u>heat from cooling or other operations,</u> and other substances not sewage or industrial waste which may cause or tend to cause pollution of the waters of the state;

* Sec. 17. AS 46.03.900(20) is amended to read:

(20) "standard" means the measure of purity or quality for <u>air, water, and land</u> [WATERS] in relation to their reasonable and necessary use as established by the department;

* Sec. 18. AS 44.62.330 is amended by adding a new paragraph to read:

(43) Department of Environmental Conservation, except to the extent that secs. 360--400 of this chapter are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03.

* Sec. 19. AS 46.03.030(a), 46.03.130, 46.03.230(a), 46.03.240 and 46.03.750(d) are repealed.

* Sec. 20. This Act takes effect immediately in accordance with AS 01.10.070(c).

ballast water from a cargo tank of a tank vessel into the waters of the state. A tank vessel may not take on petroleum or a petroleum product or by-product as cargo unless it arrives in ports in the state without having discharged ballast from cargo tanks into the waters of the state and the master of the vessel certifies that fact on forms provided by the department.

(b) The master of a tank vessel may discharge ballast water from a cargo tank of his tank vessel if it is necessary for the safety of the tank vessel and no alternative action is feasible to assure the safety of the tank vessel. (§ 3 ch 120 SLA 1971; am § 19 ch 220 SLA 1976; am § 3 ch 266 SLA 1976; am § 3 ch 116 SLA 1980)

Cross references. — As to discharge of ballast into navigable waters, see AS 30.50.020.

Effect of amendments. — The 1980 amendment rewrote this section.

Editor's notes. — Section 11, ch. 266, SLA 1976, provides: "Severability. If any provision of this Act or the application of it to any person or circumstance is held invalid, particularly those provisions that establish incentives for carriers to use vessels with certain safety or maneuvering capability features, the remainder of this Act and the application to other persons or circumstances, including but not limited to those provisions which create a coastal protection fund, shall not be affected."

Sec. 46.03.755. Discharge reporting. (a) A person in charge of a facility, operation or vessel, as soon as he has knowledge of any discharge from the facility, operation or vessel in violation of AS 46.03.740 or 46.03.750 shall immediately notify the department of the discharge.

(b) Notwithstanding (a) of this section, the department may enter into a written agreement with a person for the periodic reporting of minor discharges other than into the waters of the state. (§ 8 ch 220 SLA 1976; am § 4 ch 266 SLA 1976; am § 4 ch 116 SLA 1980)

Effect of amendments. — The 1980 amendment deleted "or AS 30.25.020" following "46.03.750" in subsection (a).

Editor's notes. — Section 11, ch. 266, SLA 1976, provides: "Severability. If any provision of this Act or the application of it to any person or circumstance is held invalid, particularly those provisions that establish incentives for carriers to use vessels with certain safety or maneuvering capability features, the remainder of this Act and the application to other persons or circumstances, including but not limited to those provisions which create a coastal protection fund, shall not be affected."

Sec. 46.03.758. Civil penalties for discharges of oil. (a) The legislature finds that

(1) recent information discloses that the discharge of oil may cause significant short and long-term damage to the state's environment. Even minute quantities of oil released to the environment may cause high mortalities among larval and juvenile forms of important commercial species, may affect salmon migration patterns, and may otherwise degrade and diminish the renewable resources of the state;

(2) the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however, in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state, and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil, in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, because of its subtle, long-term or unquantifiable nature, compensation would not otherwise be received; and

(3) the handling of oil in large quantities is a hazardous undertaking which poses a significant threat to the economy and environment of the state, which can be substantially reduced only by the taking of rigorous safety precautions involving considerable expense; conversely, persons handling oil in smaller amounts pose a correspondingly lower risk to the economy and environment of the state, and are capable of safe oil handling practices at correspondingly lower costs; in order to provide an incentive which is effective, but not punitive, it is necessary and appropriate that the assessment of civil penalties for discharges of small quantities of oil be left for case-by-case judicial determination, while insuring, through the penalty provisions of this section, that the handling of oil in large quantities occurs in a manner which will not impair the renewable resources of the state.

(b) No later than the 10th day after the convening of the Second Session of the Tenth Alaska Legislature, the department shall submit to the legislature regulations establishing the following schedule of fixed penalties for discharges of oil:

(1) Subject to (3) of this subsection, the penalties for the following categories of receiving environments may not exceed

(A) $10 per gallon of oil which enters an anadromous stream or other freshwater environment with significant aquatic resources;

(B) $2.50 per gallon of oil which enters an estuarine, intertidal or confined saltwater environment; and

(C) $1 per gallon of oil which enters an unconfined saltwater environment, public land or freshwater environment without significant aquatic resources.

(2) For discharges of oil which are caused by the gross negligence or intentional act of the discharger, or when the court finds that the discharger did not take reasonable measures to contain and clean up the discharged oil, the penalty shall be determined by multiplying the penalty established under (1) of this subsection by a factor of five.

(c) Regulations adopted under (b) of this section shall become effective 60 days after submission to the legislature, unless disapproved by a special concurrent resolution introduced in either house, and con-

curred in by a majority of the members in joint session within 60 days of the submission of the regulations. The department may periodically revise regulations adopted under (b) of this section. Revised regulations shall be submitted to the legislature no later than 10 days after the convening of the appropriate regular session of the legislature, and are subject to disapproval as specified in this subsection.

(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or sensitive receiving environments.

(e) Upon the effective date of regulations adopted under (b) of this section, if a discharge of oil in excess of 18,000 gallons not permitted under applicable state and federal law occurs within the territorial jurisdiction of the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations, or $100,000,000, whichever is less,

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee (or permittee), and operator of the facility;

(2) if the discharge occurs from a vessel,

(A) the owner and operator of the vessel; and

(B) the owner of the oil carried as cargo on the vessel at the time the vessel was loaded, if the loading occurred within the territorial jurisdiction of the state, or at a deepwater port or other offshore storage facility adjacent to the state; however, if the owner of the oil temporarily transfers ownership of the oil to another person, and the transfer has the purpose or effect of evading the vicarious liability imposed by this section, the transferor will be considered the owner of the oil for the purposes of this subsection; and

(3) if the discharge occurs from an offshore platform, the lessee (or permittee) of the tract or acreage upon which the platform is situated, and the operator of the platform.

(f) The court shall deduct from the penalties for which the person charged is liable under (e) of this section that amount of oil which was removed from the environment as a result of a cleanup operation undertaken in conformity with applicable state and federal law, unless the oil was removed by an agency of state, local or federal government. The dispersal of oil through the use of chemical agents or other means is not considered removal for the purposes of this subsection. The court may estimate the amount of oil removed.

(g) Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply. If mitigating circumstances are proven by a preponderance of the evidence, the court may reduce or totally eliminate the penalty, in accordance with the purposes of this section.

(h) A person otherwise liable for penalties under (e) of this section is not liable if he demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of

(1) an act of God;

(2) an act of a third person with intent to cause a discharge, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section;

(3) a negligent or intentional act of the State of Alaska or the United States; or

(4) an act of war.

(i) Notwithstanding AS 46.03.875, a person liable under this section is not also liable for the discharge of oil under AS 46.03.760(a). A person causing or permitting a discharge of oil of 18,000 gallons or less not permitted under applicable state or federal law is liable for that discharge under the penalty provisions of AS 46.03.760(a); however, the court may impose a penalty of less than $500 for the discharge.

(j) The court may reduce the penalty imposed under this section if the person charged demonstrates, by a preponderance of the evidence, that the discharge was caused solely by a negligent act of a third person, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) — (3) of this section.

(k) Penalties received by the state under this section shall be deposited in the general fund and credited to a special account called the "oil spill mitigation account". The legislature may annually appropriate from the oil spill mitigation account a sum equivalent to the amount of penalties received under this section for the calendar year preceding the legislative session in which the appropriation is made, the appropriations to be made for the purpose of restoring and enhancing environments affected by oil pollution, including but not limited to the funding of aquaculture projects.

(l) As used in this section,

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf which would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "confined saltwater environment" means a bay, sound or other partially enclosed saltwater body in which flushing through tidal or current action is significantly restricted;

(3) "discharge of oil" means the entry of oil into or upon the water or public land of the state (except oil discharges into an enclosed and impervious oil spill containment area), regardless of causation;

(4) "intertidal" means the ocean area between highest high water and lowest low water of tidal action;

(5) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(6) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(7) "operator" means the person who, through contract, lease, sublease or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, prime or general contractors, the master of a vessel (and his employer), or any other person who, through himself, his agents, or contractors, undertakes the general functioning of the facility;

(8) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms. (§ 1 ch 129 SLA 1977; am §§ 1-3 ch 128 SLA 1978; am § 110 ch 59 SLA 1982)

Cross references. — For provision that actions brought under this section may be brought directly against insurers or other persons providing evidence of financial responsibility, see AS 46.04.040(e).

Effect of amendments. — The 1978 amendment substituted the language beginning "and appropriate that the assessment of civil penalties" for "that the civil penalties imposed reflect a balance between the gravity of the discharge, the magnitude of risk, and the level of incentive necessary to induce safe operations" at the end of paragraph (3) of subsection (a), inserted "in excess of 18,000 gallons" near the beginning of the introductory paragraph of subsection (e), and added the second sentence of subsection (i).

The 1982 amendment, effective May 28, 1982, deleted "notwithstanding AS 30.25.20(b)" preceding "penalties" at the beginning of subsection (k).

Editor's notes. — Section 3, ch. 129, SLA 1977, provides: "If the application of AS 46.03.758 to discharges of oil solely into and upon the adjacent outer continental shelf of the state is held invalid, the application of that section to discharges of oil into and upon the water or public land within the territorial jurisdiction of the state is not affected by that holding. This severability provision is intended to clarify and not limit the severability provision of AS 01.10.030."

The schedule of civil penalties required by (b) of this section may be found at 18 AAC 510 — 18 AAC 600. The effective date (referred to in (e) of this section) of the regulation adopting the schedules is April 19, 1978.

AS 30.25.220, referred to in subsection (k), was repealed by § 11, ch. 116, SLA 1980. For provisions concerning oil pollution control, see AS 46.04.

Sec. 46.03.760. Civil action for pollution; damages. (a) A person who violates or causes or permits to be violated a provision of this chapter or AS 46.04, or a regulation, a lawful order of the department, or a permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04 is liable, in a civil action, to the state for a sum to be assessed by the court of not less than $500 nor more than $100,000 for the initial violation, nor more than $5,000 for each day thereafter on which the violation continues, and which shall reflect, when applicable,

(1) reasonable compensation in the nature of liquidated damages for any adverse environmental effects caused by the violation, which shall be determined by the court according to the toxicity, degradability and dispersal characteristics of the substance discharged, the sensitivity of the receiving environment, and the degree to which the discharge degrades existing environmental quality;

(2) reasonable costs incurred by the state in detection, investigation, and attempted correction of the violation; and

(3) the economic savings realized by the person in not complying with the requirement for which a violation is charged.

(b) Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature.

(c) The court, upon motion of the department or upon its own motion, may defer assessment of all or part of that portion of the sum imposed upon a person under (a)(3) of this section conditioned upon the person complying, within the shortest feasible time, with the requirement for which a violation is shown.

(d) As used in this section, "economic savings" means that sum which a person would be required to expend for the planning, acquisition, siting, construction, installation and operation of facilities necessary to effect compliance with the standard violated.

(e) In addition to liability under (a) — (d) of this section, a person who violates or causes or permits to be violated a provision of AS 46.03.740 — 46.03.750 is liable to the state, in a civil action brought under AS 46.03.822, for the full amount of actual damages caused to the state by the violation, including direct and indirect costs associated with the abatement, containment or removal of the pollutant, restoration of the environment to its former state, and all incidental administrative costs. (§ 3 ch 120 SLA 1971; am § 9 ch 220 SLA 1976; am § 5 ch 266 SLA 1976; am §§ 5, 6 ch 116 SLA 1980)

Cross references. — As to oil pollution control, see AS 46.04. For provision that actions brought under subsections (a) and (e) of this section may be brought directly against insurers or other persons providing evidence of financial security, see AS 46.04.040(e).

Effect of amendments. — The 1980 amendment substituted "AS 46.04" for "AS 30.25.020" and for "AS 30.25" and substituted "approval, or acceptance" for "or certificate" in two places, all in the introductory paragraph of subsection (a), deleted "except disbursements for pollution abatement cost under AS 30.25.260(a)(2)" following "violation" in paragraph (2) of subsection (a), and deleted the former second and third sentences of subsection (e), which read, respectively: "That portion of the damages recovered by the state in a civil action brought under AS 46.03.822 attributable to costs incurred by the department in the abatement, containment or removal of the pollutant resulting from a discharge of crude oil, refined petroleum products or their by-products shall be deposited in the coastal protection fund created under AS 30.25.220" and "Except for special risk charges collected under AS 30.25.270, a person holding a risk avoidance certificate may not be held liable for costs associated with the abatement, containment or removal of the pollutant."

NOTES TO DECISIONS

This section and AS 46.03.790 held not unconstitutional. — See Stock v. State, Sup. Ct. Op. No. 1076 (File No. 2007), 526 P.2d 3 (1974), decided prior to the 1976 amendment of those sections.

Quoted in State v. Alaska Int'l Air, Inc., Sup. Ct. Op. No. 1409 (File No. 2808), 562 P.2d 1064 (1977).

Collateral references. — Injunction against pollution of stream by private persons or corporations. 46 ALR 8.

When statute of limitations commences to run as to action against municipality for damages to riparian premises by pollution of stream by discharge of sewage. 122 ALR 1509.

Tenant's remedy against stranger for wrongful pollution of waters. 12 ALR2d 1234.

Measure and elements of damages for pollution of well, cistern, or spring. 19 ALR2d 769.

Measure and elements of damages for pollution of stream. 49 ALR2d 253.

Landowner's right to relief against pollution of his water supply by industrial or commercial waste. 39 ALR3d 910.

Maintainability in state court of class action for relief against air and water pollution. 47 ALR3d 769.

Preliminary mandatory injunction to prevent, correct, or reduce effects of polluting practices. 49 ALR3d 1239.

Liability of water supplier for damages resulting from furnishing impure water. 54 ALR3d 936.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute. 81 ALR3d 1258.

Recovery in trespass for injury to land caused by airborne pollutants. 2 ALR4th 1054.

Sec. 46.03.765. Injunctions. The superior court has jurisdiction to enjoin a violation of this chapter or AS 46.04, or of a regulation, a lawful order of the department, or permit, approval, or acceptance, or term or condition of a permit, approval, or acceptance issued under this chapter or AS 46.04. In actions brought under this section, temporary or preliminary relief may be obtained upon a showing of an imminent threat of continued violation, and probable success on the merits, without the necessity of demonstrating physical irreparable harm. The balance of equities in actions under this section may affect the timing of compliance, but not the necessity of compliance within a reasonable period of time. (§ 10 ch 220 SLA 1976; am § 6 ch 266 SLA 1976; am § 7 ch 116 SLA 1980)

missioner presents an imminent or present danger to the health or welfare of the people of the state or would result in or be likely to result in irreversible or irreparable damage to the natural resources or environment, and it appears to be prejudicial to the interests of the people of the state to delay action until an opportunity for a hearing can be provided, the department may, without prior hearing, order that person by notice to discontinue, abate or alleviate the condition or activity. The proscribed condition or activity shall be immediately discontinued, abated or alleviated.

(b) Upon receipt of an order of the department made under (a) of this section, the person affected has the right to be heard and to present proof to the department that the condition or activity does not constitute an actual or potential source of irreversible or irreparable damage to the natural resources or environment of the state, or that the order may constitute a substantial private hardship.

(c) In the commissioner's discretion or upon application made by the recipient of an order within 15 days of receipt of the order, the department shall schedule a hearing at the earliest possible time. The hearing shall be scheduled within five days of the receipt of the application. The submission of an application or the scheduling of a hearing does not stay the operation of the department's order made under (a) of this section.

(d) After a hearing the department may affirm, modify or set aside the order. An order affirmed, modified or set aside after hearing is subject to judicial review as provided in AS 44.62.560. The order is not stayed pending judicial review unless the commissioner so directs. If an order is not immediately complied with, the attorney general, upon request of the commissioner, shall seek enforcement of the order.

(e) The department may adopt additional regulations prescribing the procedure to be followed in the issuance of emergency orders. (§ 3 ch 120 SLA 1971)

Sec. 46.03.822. Strict liability for the discharge of hazardous substances. To the extent not otherwise preempted by federal law, a person owning or having control over a hazardous substance which enters in or upon the waters, surface or subsurface lands of the state is strictly liable, without regard to fault, for the damages to persons or property, public or private, caused by the entry. In an action to recover damages, the person is relieved from strict liability, without regard to fault, if he can prove

(1) that the hazardous substance to which the damages relate entered in or upon the waters, surface or subsurface lands of the state solely as a result of

(A) an act of war,

(B) an intentional act or a negligent act of a third party, other than a party (or its employees) in privity of contract with, or employed by,

(C) negligence on the part of the United States government or the State of Alaska, or

(D) an act of God, and

(2) in relation to (1)(B), (C) or (D) of this section, that he discovered the entry of the hazardous substance in or upon the waters, surface or subsurface lands of the state and began operations to contain and clean up the hazardous substance within a reasonable period of time. (§ 1 ch 122 SLA 1972; am § 13 ch 220 SLA 1976)

Cross references. — For provision that actions brought under this section may be brought directly against insurers or other persons providing evidence of financial responsibility, see AS 46.04.040(e).

Sec. 46.03.824. Damages. Damages include but are not limited to injury to or loss of persons or property, real or personal, loss of income, loss of the means of producing income, or the loss of an economic benefit. (§ 1 ch 122 SLA 1972)

IDENTIFICATION

BILL NAME

BILL NUMBER: HB100

DATE INTRODUCED: 1-23-85

RELATED BILLS PENDING

SPONSOR(S): Rules Committee By Request of the Governor

REFERRALS

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

LEGAL DIVISION SUMMARY: ✓ - Doug Mertz will attend

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS: ✓

FISCAL NOTE: - 0 -

AGENCY RESPONSE: Comm. Ross will probably attend

OTHER INTERESTED LEGISLATORS NOTIFIED

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES: SB534

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS: Bradbury, Bliss - maritime atty's oppose

HEARING PREPARATION

CHAIRMAN BRIEFED: ✓

DATE & PLACE SET: 1-22 Butrovich

STAFF MEMO TO COMMITTEE: ✓

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES
- Doug Mertz
- Bill Ross
- Jim Ayres

SUGGESTED AMENDMENTS/CS DRAFTED

HB

111

File 1

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

May 3, 1985

MEMORANDUM

To: Committee members

From: Committee staff

Re: Background and analysis for CSHB 111 (Trans)am

On Monday, May 6, the committee will take up CSHB 111 (Trans)am, relating to local service roads and trails. This bill was introduced by the Governor as a housekeeping measure, and has been changed somewhat since its introduction.

Sections 1, 2, and part of 3 add language to allow for the use by the LSR&T program of a census other than the federal census. This change was made on the House floor with the general concern that with Alaska's dynamic, transient population, the federal census is too quickly outdated. The change would permit the use of a "state" census (provided such a census is ever instituted) or "other census approved by the department of community and regional affairs".

Sections 3, 4 and 6 delete the current inclusion of first class cities within the direct allocation portion of the program. Presently, and since 1982, each first class city is treated the same as a home rule city, a municipality or a borough, in that funds are allocated to it each year strictly by the formula. The net result has been that most of the allocations to first class cities are not enough to fund a project, even if the city saves up its allocations over five years, which they are allowed to do. By deleting first class cities, the boroughs (or DOT/PF for the unorganized borough) would decide which LSR&T requests would be funded in first class cities, based upon certain criteria (a listing of the criteria is included in the file).

Section 5 requires the commissioner's approval on design standards, right-of-way and widths for LSR&T projects involving federal-aid secondary routes.

Section 7 revises the definition of "local service road" to mean a road used by fewer than 750 vehicles a day, and is not on the primary, urban or interstate highway system.

Section 8 provides an immediate effective date.

Materials included in the members files are:

- CSHB 111 (Trans)am
- CSHB 111 (Trans)
- Original version of HB 111
- Zero fiscal note and DOT/PF analysis
- Governor's transmittal letter
- Comparison of distribution formulas
- Short summary of LSR&T program
- Summary of LSR&T projects
- Criteria to be used to determine priority of submitted projects
- House floor amendment (from House journal)
- Appropriate statutes

Although FY86 funding for the LSR&T program was cut during the recent budget adjustments, a special appropriation of $7 million is contained in HB 291, which has not yet emerged from House Finance.

Offered: 3/15/85
Referred: Resources

Original sponsor: Rules/Governor

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 111 (Transportation) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to local service roads and trails; and providing for an effective date."

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

* Section 1. AS 19.30.131(a) is amended to read:

(a) During each fiscal year the commissioner shall allocate sums appropriated or otherwise designated for expenditure upon local service roads for that fiscal year among the five allocation districts in the following manner: one-half in the ratio which the area of each allocation district bears to the total area of the state and one-half in the ratio which the population of each allocation district bears to the total population of the state as shown by the latest available federal <u>or state</u> census <u>or other census approved by the Department of Community and Regional Affairs</u>.

* Sec. 2. AS 19.30.131(b) is amended to read:

(b) The commissioner shall also further allocate the sums in each allocation district to the boroughs within each allocation district in the following manner: one-half in the ratio which the area of each organized borough (excluding salt water areas) within that district bears to the total area of the allocation district and one-half in the ratio which the population of each organized borough area within that district bears to the total population of the allocation district as shown by the latest available federal <u>or state</u> census <u>or other census approved by the Department of Community and Regional Affairs</u>.

HOUSE-PASSED VERSION

Sec. 19.30.161. DESIGN STANDARDS, RIGHTS-OF-WAY AND WIDTHS. Design standards, rights-of-way and widths for each local service road and trail project must [SHALL] have the prior approval of the commissioner, unless the project is under the supervision of a local government that has assumed local road powers. If the project is under the supervision of a local government that has assumed road powers, and the project is not located on a federal-aid secondary route, design standards, rights-of-way and widths shall be established by the local government. If a project under the supervision of a local government that has assumed road powers is located on a federal-aid secondary route, design standards, rights-of-way, and widths must have the prior approval of the commissioner.

* Sec. 6. AS 19.30.241(3) is amended to read:

(3) "local government" means an organized borough of any class, a unified municipality organized under AS 29.68.240 - 29.68.-440, [A HOME RULE CITY,] or a city of any [THE FIRST] class;

* Sec. 7. AS 19.30.241(4) is amended to read:

(4) "local service road" means a public road that is used by an average of fewer than 750 vehicles each day and that [WHICH] is not designated as a route on the approved primary, urban, or interstate federal-aid highway system;

* Sec. 8. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Offered: 3/15/85
Referred: Resources

Original sponsor: Rules/Governor

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 111 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to local service roads and trails; and providing for an effective date."

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

* Section 1. AS 19.30.131(c) is amended to read:

(c) The commissioner shall also further allocate portions of the sum allocated to any borough, either organized or unorganized, and to any home rule [OR FIRST CLASS] city within the borough in the following manner:

(1) one-half in the ratio which the area of each home rule [OR FIRST CLASS] city bears to the total area of the borough excluding salt water areas; and

(2) one-half in the ratio which the population of each home rule [OR FIRST CLASS] city bears to the total population of the borough as shown by the latest available federal census.

* Sec. 2. AS 19.30.141 is amended to read:

Sec. 19.30.141. ACQUISITION AND CONSTRUCTION PROGRAMS. Before October 1 of each fiscal year each local government eligible for allocation of funds under AS 19.30.131 shall submit to the commissioner for approval a five-year plan for the acquisition and construction of local service roads and trails. Before December 1 of each fiscal year the commissioner shall submit to the governor a five-year plan for the acquisition and construction of local service roads and trails, including the approved local government programs. An organized borough shall include in its five-year plan local service road

HOUSE TRANS. C.S.

acquisition and construction programs for all cities other than home rule [AND FIRST CLASS] cities within the boundaries of the borough. The commissioner shall include in the [HIS] five-year plan local service road and trail acquisition and construction within the unorganized borough.

* Sec. 3. AS 19.30.161 is amended to read:

Sec. 19.30.161. DESIGN STANDARDS, RIGHTS-OF-WAY AND WIDTHS. Design standards, rights-of-way and widths for each local service road and trail project must [SHALL] have the prior approval of the commissioner, unless the project is under the supervision of a local government that has assumed local road powers. If the project is under the supervision of a local government that has assumed road powers, and the project is not located on a federal-aid secondary route, design standards, rights-of-way and widths shall be established by the local government. If a project under the supervision of a local government that has assumed road powers is located on a federal-aid secondary route, design standards, rights-of-way, and widths must have the prior approval of the commissioner.

* Sec. 4. AS 19.30.241(3) is amended to read:

(3) "local government" means an organized borough of any class, a unified municipality organized under AS 29.68.240 - 29.68.-440, [A HOME RULE CITY,] or a city of any [THE FIRST] class;

* Sec. 5. AS 19.30.241(4) is amended to read:

(4) "local service road" means a public road that is used by an average of fewer than 750 vehicles each day and that [WHICH] is not designated as a route on the approved primary, urban, or interstate federal-aid highway system;

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 1/25/85
Referred: Transportation and Resources

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 111

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to local service roads and trails; and providing for an effective date."

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

* Section 1. AS 19.30.127 is repealed and reenacted to read:

Sec. 19.30.127. ALLOCATION DISTRICTS. (a) The state is divided into allocation districts that are identical to the department's operating regions.

(b) Where a department region boundary divides a local government unit, the allocation district boundary must be adjusted by the department to include the local government unit within the department region that contains the largest portion of the area of the local government unit.

* Sec. 2. AS 19.30.131(a) is amended to read:

(a) During each fiscal year the commissioner shall allocate sums appropriated or otherwise designated for expenditure <u>on</u> [UPON] local service roads for that fiscal year among the [FIVE] allocation districts in the following manner: one-half in the ratio which the area of each allocation district bears to the total area of the state and one-half in the ratio which the population of each allocation district bears to the total population of the state as shown by the latest available federal census.

* Sec. 3. AS 19.30.131(c) is amended to read:

(c) The commissioner shall also further allocate portions of the sum allocated to any borough, either organized or unorganized, and to

ORIGINAL HB 111

any home rule [OR FIRST CLASS] city within the borough in the following manner:

(1) one-half in the ratio which the area of each home rule [OR FIRST CLASS] city bears to the total area of the borough excluding salt water areas; and

(2) one-half in the ratio which the population of each home rule [OR FIRST CLASS] city bears to the total population of the borough as shown by the latest available federal census.

* Sec. 4. AS 19.30.141 is amended to read:

Sec. 19.30.141. ACQUISITION AND CONSTRUCTION PROGRAMS. Before October 1 of each fiscal year each local government eligible for allocation of funds under AS 19.30.131 shall submit to the commissioner for approval a five-year plan for the acquisition and construction of local service roads and trails. Before December 1 of each fiscal year the commissioner shall submit to the governor a five-year plan for the acquisition and construction of local service roads and trails, including the approved local government programs. An organized borough shall include in its five-year plan local service road acquisition and construction programs for all cities other than home rule [AND FIRST CLASS] cities within the boundaries of the borough. The commissioner shall include in <u>the</u> [HIS] five-year plan local service road and trail acquisition and construction within the unorganized borough.

* Sec. 5. AS 19.30.161 is amended to read:

Sec. 19.30.161. DESIGN STANDARDS, RIGHTS-OF-WAY AND WIDTHS. Design standards, rights-of-way and widths for each local service road and trail project <u>must</u> [SHALL] have the prior approval of the commissioner, unless the project is under the supervision of a local government that has assumed local road powers. If the project is under the

supervision of a local government that has assumed road powers, and the project is not located on a federal-aid secondary route, design standards, rights-of-way and widths must [SHALL] be established by the local government. If a project under the supervision of a local government that has assumed road powers is located on a federal-aid secondary route, design standards, rights-of-way, and widths must have the prior approval of the commissioner.

* Sec. 6. AS 19.30.241(3) is amended to read:

(3) "local government" means an organized borough of any class, a unified municipality organized under AS 29.68.240 -- 29.68.-440, [A HOME RULE CITY,] or a city of any [THE FIRST] class;

* Sec. 7. AS 19.30.241(4) is amended to read:

(4) "local service road" means a public road that is used by an average of fewer than 750 vehicles each day and that [WHICH] is not designated as a route on the approved primary, urban, or interstate federal-aid highway system;

* Sec. 8. This Act takes effect July 1, 1985.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 111

Title: An act relating to local service roads and trails

Sponsor:

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: DOT&PF

Program Category Affected: Design and Construction

BRU, Program or Subprogram(s) Affected: Capitol Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Charles D. Karella Phone: 465-4070

Division: Date: 10/19/84

Approved by Commissioner: Date: 11/15/84

Agency: Transportation & Public Facilities

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

ZERO FISCAL NOTE & ANALYSIS

ANALYSIS

The proposed bill is strictly a housekeeping measure and has no fiscal impact on either the operating or capital budget. No additional positions are required.

The proposed bill revises A.S. 19.30 in five areas:

1) AS 19.30.127 and AS 19.30.131(a) are reworded to make allocation district boundaries coincide with DOT&PF regional boundaries. This simplifies the allocation process of LSR&T monies.

2) AS 19.30.131(c) and AS 19.30.141 removes first class cities from district allocation. This change returns the first class cities to their former status which allows them to receive adequate funds to construct a project.

3) AS 19.30.161 is reworded to require LSR&T projects constructed on a federal-aid secondary route to be approved by the Commissioner of DOT&PF. This language change is needed to assure that federal requirements for roadway width, design standards and right-of-way are met.

4) AS 19.30.241(3) is necessary to enable any political subdivision of the State to construct and maintain a project under the provisions of this act.

5) AS 19.30.241(4) is reworded to limit LSR&T construction to low volume roads. The break between high volume roads and low volume roads is 750 vehicles per day.
Correction of an oversite of past legislation in defining specific routes of the Federal-aid highway system is necessary.

 NEW LEGISLATION

An Act relating to local service roads, trails and providing for an effective date.

These amendments to the Act are necessary in order to revise the out-of-date allocation areas, assure sufficient funding of projects under the priority system, clarify design standards for secondary federal routes, revise the local government definition to conform with other Alaska Statutes, limit LSR&T construction to low volume roads and correct an oversite of defining specific routes of the federal highway system.

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1985

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the local service roads and trails program. The bill makes minor amendments to existing statutes.

Section 1 repeals and reenacts AS 19.30.127. The current language establishes five allocation districts. The proposed language creates allocation districts by simply saying that they are identical to the Department of Transportation and Public Facilities' operating regions. When the local service roads and trails program was enacted in 1971 there were five highway districts within the Department of Highways. The allocation districts established in the statute coincided with those highway districts. Those allocation districts bear little relationship to the manner in which the state's highway program is administered today. There are currently three regional offices with headquarters in Anchorage, Fairbanks, and Juneau, respectively. This amendment will allow the program to be administered in a way that is consistent with the Department of Transportation and Public Facilities' current administrative structure. The amendment will enable the allocation districts to match any future changes in geographic organization of the department.

Additionally, sec. 1 of the bill provides a mechanism to address the problem of local governments which lie within two allocation districts. Subsection (b) of AS 19.30.127 will provide that the boundary between the allocation districts is to be adjusted to include the local government within the allocation district in which the largest portion of the local government's land is located.

Section 2 amends AS 19.30.131(a) by deleting the reference

GOVERNOR'S TRANSMITTAL LETTER

to five allocation districts. This amendment is necessary because of the new method of establishing the allocation districts found in sec. 1 of the bill.

Section 3 amends AS 19.30.131(c) by deleting first-class cities from direct allocations.

The need for this change is to provide first-class cities with adequate funds to construct local service roads. Presently, the law treats allocation of funds to first-class cities the same as home rule cities. Present allocations for most first-class cities are not adequate to construct a local service road project. This change in the law allows funding of projects for first-class cities through their respective borough or unorganized borough on a priority basis.

Section 4 amends AS 19.30.141 by deleting first-class cities from direct allocations as explained above.

Section 5 amends AS 19.30.161 by adding language requiring the prior approval of design standards, rights-of-way, and widths for projects which are constructed on a federal-aid secondary route, even though the project will be constructed by a local government that has assumed road powers. As a general proposition under the local service roads and trails program, if a local government has assumed road powers it is responsible for the maintenance of the facility after construction. Consequently, the state has little concern over the standards. In 1981, the nature of the program changed when AS 19.30.111 was amended to allow the use of program money on the federal-aid secondary highway system. These facilities can be quite complicated and the state is required to comply with various standards to continue to receive federal aid for the route. It is therefore appropriate that the commissioner of DOT/PF have a right of prior approval of design standards, rights-of-way, and width.

Section 6 amends AS 19.30.241(3) by adding language which includes second-class cities to conform with the definition of municipality in AS 29.78.010(8). This change is necessary to enable any political subdivision of the state to construct and maintain a project under the provisions of this bill.

Section 7 amends the definition of local service road to make it more precise.

Sincerely,

Bill Sheffield
Governor

Office of the City Clerk
832-5441
Incorporated November 17, 1921

City of Nenana

State of Alaska

January 14, 1986 JAN 17 1986

Senator John B. Coghill
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Coghill,

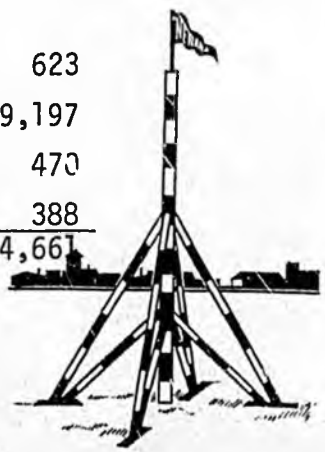
RE: LSR&T FUNDING LEVELS AND CSHB 111 * CHANGES TO TITLE 19, CHAPTER 30

After considerable research, I have assembled some interesting facts and figures regarding Allocation District Number Two of the Local Service Roads and Trails (LSR&T) program, and the basis for the Area/Population formula.

There are five allocation districts among which LSR&T funding is shared. Allocation District Two, to which the City of Nenana belongs, gets 23.6% of the total LSR&T funding in any given particular year.

The following is a breakdown of the percentages within District Two, along with the area and population figures for each.

	Percentage (in hundreths)	Area (square miles)	Population
1. Fairbanks North Star Borough	.437	7,500	53,983
- within FNSB -			
a) City of Fairbanks	[.212]	[30]	[22,645]
b) City of North Pole	[.007]	[3]	[724]
2. North Slope Borough (Eastern Portion)	.119	41,615	623
3. Unorganized Borough	.437	133,387	9,197
4. City of Nenana	.004	9	470
5. City of Tanana	.003	1	388
TOTALS	1.000	182,512	64,661



Now, speaking to CSHB 111, the only substantive change proposed in this bill appears to be allowing a State census (or other census approved by C&RA) figure to be substituted for the Federal census figure. For Nenana this would mean a population of approximately 592 instead of 470. I imagine that other communities would also increase their population figure's allowing for the use of the State census figures. Then, referring back to the area/population table, and understanding that the percentage figure is a derivative of the pro-rated area/population products, one can deduce that the change proposed by CSHB 111 will have very little positive benefit for the City of Nenana.

What is needed is a change in the allocation formula. The cities of Nenana, and Tanana, and North Pole don't stand a chance against the boroughs when the only criteria used in dividing the funds are area and population.

We should probably eliminate first class and home rule cities from the allocation formula direct appropriation process, and allow for our projects to be funded from another source on a prioritized needs basis. This would hopefully bring us back to thinking of project funding as it relates to a project rather than an area-population formula.

It is difficult to do any kind of a road project with $864! (The total of Nenana's allocation in 1985)

You might find the following table interesting as to Nenana's allocations in past years.

YEAR	Total L.S.R.& T Appropriation	Nenana's Allocation
1980	Funded on a needs basis	$30,000
1981	" " " " "	$60,000
1982	-0-	-0-
1983	$7.0 million	$ 6,046
1984	$3.5 million	$ 3,023
1985	$1.15 million	$ 864
1986	In D.O.T.'s CIP budget at a ZERO FUNDING LEVEL (7 million to start)	?

It looks as though, given the current proposed zero funding level for L.S.R. & T., that all the above discussion on a funding formula might be of little consequence this year. (I hear there is a L.S.R. & T funding request in HB291 - I will get a copy of this and provide you with some comments)

Sincerely,

Steve Bainbridge

Steve Bainbridge
City of Nenana

SB/tli

DRAFT

DRAFT

Proposed Senate Transportation Committee substitute to CSHB 111 am

For an Act entitled: "An Act relating to local service roads and trails; and providing for an effective date."

*Section 1. AS 19.30.131(a) is amended to read:

(a) During each fiscal year the commissioner shall allocate sums appropriated or otherwise designated for expenditure upon local service roads for the fiscal year among the five allocation districts in the following manner: one-half in the ratio which the area of each allocation district bears to the total area of the state and one-half in the ratio which the population of each allocation district bears to the total population of the state as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs.

*Section 2. AS 19.30.131 (b) is amended to read:

[And unorganized Municipalities]

(b) The commissioner shall also further allocate the sums in each allocation district to the boroughs within each allocation district in the following manner: one-half in the ratio which the area of each organized borough (excluding salt water areas) within that district bears to the total area of the allocation district and one-half in the ratio which the population of each organized borough area within that district bears to the total population of the allocation district as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs.

*Section 3. AS 19.30.131(c) is amended to read:

(c) The commissioner shall also further allocate portions of the sum allocated to any organized borough, [EITHER ORGANIZED OR UNORGANIZED] and to any home rule [OR FIRST CLASS] city within the organized borough in the following manner:

(1) one-half in the ratio which the area of each home rule [OR FIRST CLASS] city bears to the total area of the borough excluding salt water areas; and

(2) one-half in the ratio which the population of each home rule [OR FIRST CLASS] city bears to the total population of the borough as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs

DRAFT

DRAFT

DRAFT

*Section 4. AS 19.30.141 is amended to read:

Sec. 19.30.141. ACQUISITION AND CONSTRUCTION PROGRAMS. Before October 1 of each fiscal year each local government eligible for allocation of funds under AS 19.30.131 shall submit to the commissioner for approval a five-year plan for the acquisition and construction of local service roads and trails. Before December 1 of each fiscal year the commissioner shall submit to the governor a five-year plan for the acquisition and construction of local service roads and trails, including the approved local government programs. An organized borough shall include in its five-year plan local service road acquisition and construction programs for all cities other than home rule [AND FIRST CLASS] cities within the boundaries of the borough. The commissioner shall include in the [HIS] five-year plan local service road and trial acquisition and construction within the unorganized borough.

*Section 5. AS 19.30.161 is amended to read:

Sec. 19.30.161. DESIGN STANDARDS, RIGHTS-OF-WAY AND WIDTHS. Design standards, rights-of-way and widths for each local service road and trail project must [SHALL] have the prior approval of the commissioner, unless the project is under the supervision of a local government that has assumed local road powers. If the project is under the supervision of a local government that has assumed road powers, and the project is not located on a federal-aid secondary route, design standards, rights-of-way and widths shall be established by the local government. If a project under the supervision of a local government that has assumed road powers is located on a federal-aid secondary route, design standards, rights-of-way, and widths must have the prior approval of the commissioner.

*Sec. 6. AS 19.30.241(3) is amended to read:

(3) "local government" means an organized borough of any class, a unified municipality organized under AS 29.68.240- 29.68.440, [A HOME RULE CITY,] or a city of any [THE FIRST] class;

*Sec. 7. AS 19.30.241(4) is amended to read:

(4) "local service road" means a public road that is used by an average of fewer than 750 vehicles each day and that [WHICH] is not designated as a route on the approved primary, urban, or interstate federal-aid highway system;

*Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c)

LOCAL SERVICE ROADS AND TRAILS PROGRAM

Primary Functions:

The Local Service Roads and Trails (LSR&T) program was established by the State Legislature in 1971 to provide for special needs to "bush" communities, rural communities and communities both within and outside of organized boroughs.

Local Service Roads and Trails was designed to aid communities in accomplishing projects that do not have the financial means nor the technical expertise to achieve alone. These projects were to be in the nature of roads, trails, bridges and boardwalks specifically. Special exceptions are considered and granted if justification is sufficient.

The LSR&T Program is wholly State funded. Wherever costs are not prohibitive, generally within organized boroughs, projects are awarded by bid contract. In the remote areas where, because of location and size of the project bid contracts cost are prohibitive, LSR&T maintains its own small fleets of equipment or rents equipment, if available, and directs the operation of the projects.

The scope of LSR&T is basically three-fold. This is particularly true for "bush" projects. It provides:

1. Needed projects to communities that have not the capabilities of accomplishing alone.

2. A source of training for construction work by employing local residents as laborers and equipment operators.

3. Provides supplemental income to communities that are single-income or subsistence oriented.

Project Limitation:

Local Service projects are confined to roads which are not part of the primary federal-aid system and are not the responsibility of corporate units or private individuals but are dedicated to public use. These projects cover wide ranging road needs. They include State recreation routes, connections between outlying villages and airports, villages and canneries, villages and port facilities, short routes needed to better integrate subdivision roads and State highways, and improvements to existing roads.

PROGRAM SUMMARY

PLANNING

Five Year Program

The allocation districts are the boundaries of the Highway Department established in 1970. The larger of the five districts being the Western District, engulfing nearly half of the land mass of Alaska, is administered by the Central and Northern Regions. This split jurisdiction is strictly an economic measure.

Whenever organized boroughs whose boundaries partially overlap allocation districts, the administrative responsibility lies with the primary region.

A construction program utilizing LSR&T construction equipment, State employees, village labor, and equipment rental when available, is the primary mode of operation in the unorganized boroughs of the Central, and Northern Regions. Programming the projects in the unorganized boroughs depends on requests from local governing bodies (both submitted and solicited), available road building materials, right-of-way access, and coordination of other projects in the area.

The State equipment fleet and maintenance personnel are utilized when local equipment is not available or when a contract for the work is not feasible.

The Local Service Roads and Trails Program is a vital link in the State road network. It is the only State program established for solving local transportation needs. During a typical construction season, several miles of new road, new and reconstructed boardwalk, year around foot trails, winter trail staking, foot bridges, paved bike paths and vehicle bridges are constructed with LSR&T funds.

These and other special projects are completed each year in answer to what the LSR&T is all about, "Get the people out of the mud". This program does a lot for all the people of Alaska and is presently performing a service the people of Alaska could not do without.

Summary

I. Definition

A. Purpose

a. To get people out of the mud
b. Flexibility of Program
c. To aid communities with no revenue
d. Economy of operation

B. Type of Projects

a. Local Service Roads
b. Year around foot trails
c. Winter trail staking
d. Bicycle paths
e. Erosion control
f. Foot bridges
g. Boardwalks

II. Allocation

A. F.Y. Year Legislation (6 million proposed)
B. Five Year Duration
C. 50-50 Factor, Area - Population
D. Operating Budget - Program Support

a. Bridge Design - Headquarters
b. Road Design and Advertising - Region
c. R/W Certification - Region
d. Construction Review - Region
e. Administration Headquarters and Region

III. Administration

A. Allocation District - Regional Control
B. Organized Boroughs and Home Rule Cities

a. Construction contract by Local Government
b. Local Government Labor and Equipment

C. Unorganized Boroughs

a. Construction Contract by Local Government or State
b. Village or City Labor and Equipment
c. State Equipment and Village Labor
d. State Equipment and State Employees
e. State Equipment and Village State Employees

IV. Five Year Program

A. Project Selection

a. Organized Boroughs, First Class Cities and Home Rule Cities

1. Select their own projects
2. Able to change program at will

b. Unorganized Boroughs

1. Cities and Villages select their own projects.
2. Region sets priorities within funds available.
3. Regions may subfill projects with funds available on non-federal routes.

APPLICANT GUIDELINES

Nature and Purpose of Program:

To provide State assistance in the development of roads and trails on routes that are not eligible for federal-aid matching funds.

Who May Apply:

Each organized borough, first class city and home rule city is eligible for a direct allocation, based on their population and area. All other areas are considered unorganized boroughs and are eligible for projects administered by the Department, subject to priority scheduling within the respective allocation districts.

Authorizing Legislation:

AS 19.30.111-251

Administrative Agency:

Department of Transportation and Public Facilities, State of Alaska.

Type of Assistance:

Financial and Engineering.

How Program is Financed:

100% State. Organized boroughs and home rule cities may supplement their allocation with local funding in any amount. Unorganized borough areas will be encouraged to provide local participation whenever possible. Federal and State grants can be used in conjunction with LSR&T funds.

How to Apply:

Each organized borough, first class city and home rule city may receive their allocation by submitting a five-year project program for the construction of such roads to their Regional DOT&PF Deputy Commissioner by October 1 of each year, indicating the priorities for construction on the program. When a project is approved, a project agreement will be drafted, and development of the project may proceed. No payment can be made for work done prior to execution of the project agreement.

Unorganized borough communities should provide input data for road needs in their areas to their Regional DOT&PF Deputy Commissioner, who will compile a five-year program and establish priorities for the unorganized borough projects within his jurisdiction. When a project is approved, the Department will proceed with development of the project.

BILL SHEFFIELD, GOVERNOR

P.O. Box 3-1000
Juneau, Alaska 99802
PHONE: (907) 789-0841

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
STANDARDS AND TECHNICAL SERVICES DIVISION

FEB 28 1984

February 27, 1984

Re: Local Service Roads
and Trails Program

File No: 2519

House Transportation Committee
Pouch V
Juneau, Alaska 99811

Dear Sir:

The attached document gives a brief summary of the Local Service Roads and Trails (LSR&T) Program.

Sincerely,

John J. Simpson, Director
Standards and Technical
Services Division

JJS:CDK:ct

Attachment

cc: Dan Malick, Acting Deputy Commissioner, Statewide Programs

25A-T2LH

LSR&T PROJECT SUMMARIES

MEMORANDUM

State of Alaska
Department of Transportation & Public Facilities

TO: John J. Simpson, Director
Standards and Technical
Services Division

DATE: February 10, 1984

FILE NO: 2519

TELEPHONE NO: 789-0841

FROM: Charles D. Karella
LSR&T Engineer
DC&M Standards

SUBJECT: LSR&T Program

This program is designed to accomplish the most with the least amount of State dollars under the rules and regulations of the Alaska State Statutes, 19.30.111 - 19.30.251.

FUNDING

First Allocation	1971	$ 6 Million
	1972	4 Million
	1974	8 Million
	1976	7 Million
	1978	15.8 Million
	1980	10 Million
Last Allocation	1983	7 Million
Total Allocation		$60.8 Million

Projects (Dollars)

Completed or under agreement	$54.5 Million
Reimbursements remaining	6 Million

Under the present allocation, Local Governments throughout the State share 57% of each LSR&T Bond issue. The unorganized boroughs share in the remaining 43%. Annual expenditures average to this percentage.

ANNUAL PROGRAM (Typical)

1. 150 Active Projects
   50 Road Projects Completed
   50 Miles of Road Completed
   2000 Miles of Winter Trail Staking
   Several Miles of Boardwalk
   Foot Trails and Bike Paths

2. Expenditures For Typical $6.0 Million Annual Program

Roads	$4.5 Million	(75%)

Includes $1.1 million (25%) for subdivision streets and roads.

Trail Staking	$100,000	(2%)
Boardwalks	600,000	(10%)
Foot Trails	200,000	(3%)
Bike Paths	100,000	(2%)
Shelter Cabins	50,000	(1%)
State Maintenance Routes	250,000	(4%)
Engineering and Administration	200,000	(3%)

3. Administrative support is $200,000 or 3%

PROGRAM PHASE OUT

During the period of time the program was in a phase-out status (1/2/82 to 7/25/83) no planning for future LSR&T projects was accomplished. As a result, it has taken some time to accelerate the program. A Statewide five-year program has now been prepared, and by the end of calendar year 1984, the program should be up to its former capability once again.

MANAGEMENT

LSR&T Managers and Project Engineers are tailored after the early Alaska bush pilots. Quite often, they have to operate by the seat of their pants, which is why this program is successful.

LSR&T PROGRAM 1977-1981

1. 250 road projects completed.
   Average Length one mile.
   Average cost $100,000.00

2. Expenditures $25 Million.

3.* $19.0 million for road projects, includes five million for subdivision roads.

4. $750,000 for project administration charged to projects.

*It is difficult to define subdivision roads or streets, i.e. access roads to new subdivisions can be considered an intergal part of the subdivision network or in some communities, it may be the only transportation corridor available. For this report, subdivision roads are those roads or streets within subdivisions, designated as such, by the local entity.

5. One million dollars for program support ($200,000 per year).

6. Administered several special legislative appropriated projects; totalling in excess of a million annually.

COST COMPARISON

The cost of a project constructed under contract ranges between 25% and 200% more than a comparable project constructed with local equipment rental when available or LSR&T equipment and local hire, depending on size and location. Much of this is due to our policy of paying the prevailing community wage.

PRESENT PROGRAM

See Attached.

SUMMARY

Over 95% of all Alaskan communities have had at least one LSR&T project since the program set out to "Get the people out of the mud" in 1971.

There are many reasons why the program is successful, least of which is the maximization of State dollars. The LSR&T Program offers more to a rural community than just a finished product; it offers a learning experience. Traditionally, LSR&T has been able to offer additional benefits to the community as the program is tailored to their needs.

The LSR&T program spends a considerable amount of time administering projects funded through special Legislative appropriations and grants. In administering these projects for the Department, the program guarantees the credibility of the State in its commitment to meet the transportation needs of the bush communities.

Attachment

cc: Loren Rasmussen, Chief, DC&M Standards

CDK:ct

PROJECTS FUNDED

CENTRAL REGION June 30, 1982 to January 31, 1984

Unorganized Boroughs[1]	33 Projects	$2,483,730
Bristol Bay Borough	1 Project	54,753
Municipality of Anchorage	7 Projects	1,006,596
Matanuska-Susitna Borough	1 Project	211,600
Kenai Peninsula Borough	4 Projects	337,636
Kodiak Island Borough	1 Project	18,262
City of Kenai	3 Projects	84,288
Unalaska[2]	1 Project	25,443
TOTAL REGION	18 Projects	$1,738,578

(1) Includes 12 projects funded with $810,000 from 1983 allocation.

(2) Funded from 1983 allocation.

PROJECTS FUNDED

NORTHERN REGION June 30, 1982 to January 31, 1984

Unorganized Borough II	6 Projects	$678,425
Unorganized Borough IV (N)	7 Projects	510,850
Unorganized Borough V (N)	2 Projects	56,520
Total Unorganized Boroughs	15 Projects	$1,245,795 (1)
CITY OF FAIRBANKS	(2) Projects	$178,305
CITY OF NORTH POLE	(1) Project	11,243
Total Local Governments	3 Projects	$189,548 (2)
TOTAL REGION	18 Projects	$1,435,343

(1) Includes 13 projects funded with $1,175,000 from 1983 allocation.

(2) Includes 2 projects funded with $164,500 from 1983 allocation.

93% of these projects were funded with 1983 allocation.

PROJECTS FUNDED

SOUTHEAST REGION June 30, 1982 to January 31, 1984

Unorganized Borough III	13 Projects	$465,000(1)
CITY OF HAINES	1 Project	$ 34,000
CITY AND BOROUGH OF SITKA	3 Projects	251,000
CITY OF WRANGELL	1 Project	80,000
CITY OF PETERSBURG	1 Project	20,000
CITY AND BOROUGH OF JUNEAU	2 Projects	361,000
CITY OF KETCHIKAN	3 Projects	80,000
Total Local Government	11 Projects	$826,000(2)
TOTAL REGION	24 Projects	$1,291,000

(1) Includes 8 projects funded with $144,000 from 1983 allocation.

(2) Includes 6 projects funded with $291,000 from 1983 allocation.

don't know of any other way to do it."

Number 599

Representative Marrou: "Second class cities and second class boroughs are left out, they don't get anything?"

Commissioner Knapp: "They get it now."

Representative Marrou: "Even the third class borough?"

Commissioner Knapp: "Yes. You see the problem is you got the universe of people you distribute money to. The problem--and it is all done exactly the same way--the problem is that some elements of that universe are so small that the amount of money that they get doesn't do them or anyone else any good. If you could put it into some kind of nucleus-type effect, you could then have bigger numbers for the formula, put the money out, and maybe get some use out of it."

Number 607

Representative Davis, the issue of Pelican still unclear, wanted to know who makes the decisions in allocations.

Mr. Karella: "The department would make the decisions, but I would like, if you could bear with me, to read the requirements for prioritizing the projects. Pelican, for instance, is in an unorganized and that's eleven steps.

(1) The first priority step would be the number of projects done in the past with Local Service Roads and Trails funds.

(2) The amount of dollars funded in the past.

(3) The year the last project funded for the community.

(4) Local participation in funding of a project. If they furnish labor, equipment, or materials--quite often this happens.

(5) Availability of local equipment--do they have a back-hoe, a truck?

(6) Availability of local labor.

CRITERIA FOR PRIORITY

(7) The location of the Local Service Roads and Trails equipment. Our equipment is set up in the Northern Region and in the Central Region. We have one large fleet.

(8) The possibility of the Department of Transportation having a contract in the area.

(9) Maybe the department can get the job and tack it on an existing project.

(10) Whether the project is connected to the existing road system.

(11) Availability of a contractor on the site of the project during the proposed time of construction.

"With the organized boroughs, there are only six priority systems that we use.

(1) First off we use the need--just like Representative Shultz was talking about.

(2) The involvement of an L.I.D. For instance, in the Fairbanks North Star Borough they use the L.I.D. concept very heavily, so does Mat-Su. 'Local Improvement District.' If there is something like a road surface maintenance area, Fairbanks North Star Borough has 77 of them. That's how they funnel their dollars--into the road maintenance service areas who come up with half of the dollars which stretches their allocation quite strongly. They prefer that over anything else.

(3) The third priority is the viability..."

CHANGE TAPE #17, SIDE TWO

Number 004

Mr. Karella continued with the list of priorities for organized boroughs: "...several areas in the North Star would come up with priorities.

(4) Is the fundability transportation oriented? Is it going to be easier to maintain. It's a problem. You got to always look at the maintenance part of it.

(5) The number of past Local Service Roads and Trails projects--that's what they look

at too. If Seldovia had a project last year or two years ago and they don't have enough money for what they are asking for now and they are vying with the city of Soldotna, then the city of Soldotna would probably get the job.
(6) Again, they use the amount of dollars spent on these projects in the past.

"It's a real good priority system which the boroughs use and we use as administering the unorganized borough. The work in the past has been highly commended. It's a very young program--since 1971. It's been highly successful prior to 1981 when this change was made. There is going to be home rule cities that don't like it. The city of Nenana, said that 'We used to get a lot of money, now we don't get any.' Their apportionment went to a first class city. They were out of luck anyway when they became a home rule city."

Number 057

Representative Cato asked the committee whether it would be amenable if the staff, working with Mr. Karella, would work up a committee substitute. Representative Furnace so moved. Representative Cato repeated the motion and then brought before the committee a work draft of an appropriation bill entitled, "An Act making a special appropriation to the Department of Transportation and Public Facilities for local service roads and trails; and providing for an effective date." She read section one of the work draft: "The sum of $7,000,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for allocations for local service roads and trails authorized under AS 19.30.111 - 19.30.251." She asked whether there were any problems with the appropriations bill.

Number 081

Representative Pignalberi questioned whether it were high enough. Representative Cato explained that Mr. Karella has said in the past that $7,000,000 is an excellent sum to work with. Mr. Karella confirmed this. Representative Cato said that she would entertain a motion to pass the bill out of committee. Representative Furnace moved to pass the bill out of committee with individual recommendations, but

LEGISLATIVE CITATIONS

Representative Clocksin moved and asked unanimous consent that the House approve the citation In Memoriam - Arnold Muldoon. There being no objection, it was so ordered and the citation was referred to the Chief Clerk for transmittal to the Senate.

THIRD READING OF HOUSE BILLS

CSHB 111(Trsp)

Representative Szymanski brought up reconsideration of COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 111 (Transportation) (relating to local service roads and trails; effective date).

CSHB 111(Trsp) was read the third time.

Representative Szymanski moved and asked unanimous consent that CSHB 111(Trsp) be returned to second reading for the purpose of specific Amendment No. 3. There being no objection, it was so ordered.

Amendment No. 3 by Szymanski, Cotten, Pignalberi, Marrou, Shultz, Larson, M.W. Miller, Navarre, Hurley and Pourchot:

Page 1, after line 8, insert new bill sections to read:

"* Section 1. AS 19.30.131(a) is amended to read:

(a) During each fiscal year the commissioner shall allocate sumsappropriated or otherwise designated for expenditure upon local service roads for that fiscal year among the five allocation districts in the following manner: one-half in the ratio which the area of each allocation district bears to the total area of the state and one-half in the ratio which the population of each allocation district bears to the total population of the state as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs.

* Sec. 2. AS 19.30.131(b) is amended to read:

(b) The commissioner shall also further allocate the sums in each allocation district to

HOUSE FLOOR AMENDMENT

CSHB 111(Trsp)

the boroughs within each allocation district in the following manner: one-half in the ratio which the area of each organized borough (excluding salt water areas) within that district bears to the total area of the allocation district and one-half in the ratio which the population of each organized borough area within that district bears to the total population of the allocation district as shown by the latest available federal or state census or other census approved by the Department of Community and Regional Affairs."

Page 1, line 9:

Delete "Section 1." and insert "Sec. 3."

Renumber remaining bill sections.

Page 1, line 19:

After "federal", insert "or state"

After "census" insert "or other census approved by the Department of Community and Regional Affairs"

Representative Szymanski moved and asked unanimous consent that Amendment No. 3 be adopted.

Representative Pettyjohn objected and withdrew his objection.

There being no further objection, Amendment No. 3 was adopted.

CSHB 111(Trsp)am

The question to be reconsidered: "Shall CSHB 111(Trsp)am pass the House?" The roll was taken with the following result:

CSHB 111(TRSP) AM

Yeas: 39 Adams, Binkley, Boucher, Cato, Clocksin, Collins, Cotten, Davis, Duncan, Frank, Fuller, Furnace, Goll, Gruenberg, Grussendorf, Hanley, Herrmann, Hurley, Jenkins, Koponen, Larson, Marrou, Martin, Miller,M.M., Miller,M.W., Navarre, Pearce, Pettyjohn, Phillips, Pourchot, Rieger, Ringstad, Shultz, Sund, Szymanski, Taylor, Thompson, Uehling, Wallis

HB

111

File 2

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

February 5, 1986

TO: All Committee Members

FROM: Committee Staff

RE: LSR&T packets

Today you will find in your packets new information requested at the previous hearing on CS HB 111 (tran) am.

Enclosed are the following:

1. A draft Committee Substitute for CS HB 111 (tran) am.

2. A memorandum on the funding formula.

3. An explanatory letter from Dep. Comm. Warren Sparks.

4. A listings of cities effected under the different scenarios.

5. A breakdown of LSR&T allocations reflecting different scenarios.

Please bring this packet and the origional packet from the January 29 meeting. Thank you.

February 5, 1986

TO: All Members of the Transportation Committee

FROM: Committee Staff

RE: LSR&T Funding formula

Sec. 19.30.131. Allocation of Funds.

Subsection (a) Commissioner allocates local service roads monies among the five allocation districts. THe funds allotted are based on the ratio formula; one half of the funds are based on allocation district population (ADP) compared to the total state population (TPS); one half is based on a comparison of the allocation district area (ADA) and the total area of the state (TAS).

$$\frac{1}{2} \times \frac{ADP}{TPS} + \frac{1}{2} \times \frac{ADA}{TAS}$$

Subsection (b) Commissioner further allocates the above amounts in each allocation district (5) to each borough within each district.
The funds appropriated to the boroughs are based on a formula derived from; a ratio of one half of the organized borough's area (OBA) compared with the total allocation district area (ADA); and one half based on a ratio of the organized borough population (OBP) to the allocation district population (ADP).

$$\frac{1}{2} \times \frac{OBA}{ADA} + \frac{1}{2} \times \frac{OBP}{ADP}$$

Subsection (c) Commissioner further allocates the above amounts funds to any organized borough and to any home rule city within the organized borough. The funds appropriated to home rule cities in an organized borough is similar to the above ratios. One half of the home rule area (HRA) compared with organized borough's area (OBA); one half of the home rule population (HRP) to the organized borough's population (OBP).

Memo on Funding Formula/Cities Effected

$\frac{1}{2}\ \frac{HRA}{OBA}\ \frac{1}{2}\ \frac{HRP}{OBP}$

Subsection (d) The sums not allocated to the organized boroughs in (b) and (c) are allocated in the unorganized boroughs on a competitive basis between all communities, organized or unorganized.

February 5, 1986

TO: All Transportation Committee members

FROM: Committee Staff

RE: Cities effected by restructuring of formula

A. Removing First Class & Home Rule Cities in the Unorganized boroughs

Unorganized Borough 1 V (S)	Kenai Borough
Dillingham	Homer
King Cove	Soldotna
St. Mary's	Seldovia
Sand Point	
Unalaska	
Unorganized Borough V	North Slope Borough
City of Cordova	Barrow
Unorganized Borough 2	Haines Borough
Nenana	Haines
Tanana	

Unorganized Borough IV (N)

Nome
Galena

Unorganized Borough V (N)

City of Valdez

Unorganized Borough III

Hoonah
Hydaburg
Kake
Klawack
Pelican
Skagway
Craig
Yakutat

February 5, 1986

TO: All Committee Members

FROM: Committee Staff

RE: Cities effected by restructuring of formula

C. Removing All First Class Cities

Kenai Borough

Homer
Soldotna
Seldovia

Unorganized Borough IV S

Dillingham
King Cove
St. Mary's
Sand Point
Unalaska

Unorganized Borough II

Tanana

North Slope Borough

Barrow

Unorganized Borough IV N

Nome
Galena

Haines Borough

Haines

Unorganized Borough III

Hoonah	Hydaburg
Kake	Klawack
Pelican	Skagway
Craig	Yakutat

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH Z
JUNEAU, ALASKA 99811
PHONE: (907) 465-3900

January 31, 1986

The Honorable Jack Coghill
Senator
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

In order to view the ramifications of the proposed changes to the funds distribution formulae in the LSR&T Act, I have prepared the following comparisons based on a one million dollar appropriation.

A. Distribution reflecting your proposal at the Senate Transportation Committee hearing January 29, 1986, which deletes the direct allocation to all first-class cities and the home-rule cities which are not within the boundaries of an organized borough. Projects for these local governments will have to compete with all cities and villages within their respective unorganized borough.

B. This distribution reflects CSHB 111 version which deletes only the first-class cities, returning the distribution method to pre-1981.

C. Distribution of funds by deleting direct allocations to any city, whereby all cities and villages within their respective allocation district would compete for funds.

I am also enclosing the distribution of LSR&T funds presently in use and a map reflecting the allocation districts for your use.

Sincerely,

Warren Sparks
Deputy Commissioner

Enclosure

cc: Charles Karella, Chief, Plans and Programs
Susan Fleischhauer, Legislative Liaison

25A-T1LH

HB

133

ALASKA AIR CARRIERS ASSOCIATION
TESTIMONY BEFORE
THE SENATE TRANSPORTATION COMMITTEE
FEBRUARY 6, 1986

Chairman Coghill and members of the Senate Transportation Committee, my name is Reed Stoops and I am here today to discuss the implementation of House Bill 133, which was passed last year. We would like to thank you for your cooperation in working with us on the legislation last year, and for your continuing interest in its implementation.

First, I will briefly comment on the Interim Committee report which addressed points raised in the letter of intent which accompanied HB 133. As you are aware, 1985 was not a very good year in terms of air safety. We had a total of 43 accidents, in which there were 17 fatalities. While this was a higher number of accidents than experienced during the last three years, it is below the number of accidents and fatalities in 1980-1981.

In trying to determine whether additional safety related requirements are necessary to insure improved safety in the air industry, we have to concur with the findings of the interim report that there is insufficient statistical analysis at this time to support the need for new requirements. We do, however, feel that we should try to improve accident data in 1986, as there could well prove to be a demonstrable need for higher standards of flight operations.

As to the need for additional pilot training, we feel strongly that this is vital to improved safety. The Alaska Aviation Safety Foundation has very recently completed a set of lesson plans designed specifically for Alaskan conditions. These are now being presented to pilots in communities throughout the State. With continued support from the State for this training effort, we hope to reduce air accidents through this voluntary program.

The implementation of HB 133 through the Department of Commerce and Economic Development has been acceptable administratively, but suffers from lack of enforcement. Shortly after passage of the bill last year, we found ourselves in disagreement with the Department over the enforceability of the provisions requiring a certificate of compliance for minimum insurance levels. An attorney general's opinion was requested last summer, but to our knowledge no written opinion has yet been completed. In the absence of enforcement, some air carriers are able to operate without the minimum insurance levels adopted in HB 133.

In order to correct this situation, we have reviewed suggested amendments to HB 133 prepared by the Department of Commerce, and wish to endorse several of them in order to assure that the bill will be enforced. I have prepared our recommendations, and enclose them for the committee's consideration, along with justification for each.

We urge you to prepare legislation which incorporates our suggestions, which we view as technical amendments, and which leaves alone the more controversial provisions of HB 133 such as the minimum insurance levels. We also endorse the Governor's budget request for additional administrative support to the Division of Weights and Measures to enforce HB 133.

Thank you for the opportunity to appear before you today.

Amendment 1 to Sec. 42.30.200(e) increases the size and severity of a fine to an air carrier who flies passengers for hire without first securing the minimum insurance levels required by HB 133 ($150,000 per seat). Without a more strict penalty, carriers may find it cheaper to ignore the law than to comply.

Amendment 2 to Sec. 42.30.225(b) allows the insurance "certificate of compliance" to be posted in a visible location other than in the aircraft. This would be particularly helpful to the jet carriers which often interchange planes, thus making it difficult to post certificates in the aircraft. It would also reduce the cost of a certificate from $50 to $25.

Amendment 3 to Sec. 42.30.225(c) specifically authorizes the Department of Commerce to stop aircraft from carrying passengers for hire until they comply with HB 133.

Amendment 4 to Sec. 42.30.225(d) provides for a specific penalty for a carrier who fails to obtain a certificate of insurance from the State.

Amendment 5 to Sec. 42.30.380(3) clarifies the definition of aircraft to include rotor devices (helicopters).

Study seeks to pinpoint factors in Alaska air crash

By CHRIS GEIGER
Daily News reporter

Alaska pilots who fly unfamiliar aircraft, land in Juneau, or fly on hunting trips may be taking a greater risk than they know.

According to statistics compiled by the state Epidemiology Office, about 46 percent of fatal crashes during a 19-year period involved pilots with less than 50 hours of experience in the plane they were flying. About 31 percent of accidents in the Juneau area and about 35 percent of hunting-related crashes were killers.

As part of a continuing study, the office has analyzed many other causes of Alaska aircraft crashes from 1963 to 1981 and put numbers to some of the specific dangers of Alaska aviation.

Although the numbers are more suggestive than definitive, said State Epidemiologist John Middaugh, they may help pinpoint factors that need more study — and eventually lead to safety measures by aircraft manufacturers and regulatory agencies.

Begun in 1983, the study analyzes Federal Aviation Administration and National Transportation Safety Board crash data for 3,887 general aviation accidents.

The study identi of 12,426 risk fa organized them in categories. The thre ics most often con accidents were pil weather and terrain.

Some of the spec dent factors analyze time of year, locatio aircraft, weather cc drug and alcohol carbon monoxide blood.

According to ti crashes of private showed a lower fata

See Page B-

Crash study

Continued from Page B-1

1.2 percent) than air taxi rashes (15.5 percent). The air ixi crashes were more often aused by weather conditions nd ground personnel, while rivate aircraft accidents ere more often the result of ilot error or hazardous ter- ain.

The study said the total umber of flying hours, and tal number of hours in the odel of aircraft that ashed, were of "striking im- ortance."

"Analysis . . . strongly sug- sts that experienced pilots e at high risk of accidents hen flying a new aircraft gardless of total numbers of urs of aviation experience," e study said.

Thirteen out of 309 Alaska lots involved in crashes — out 10 percent — had blood levels of the poisonous gas carbon monoxide that could have impaired their flying ability, the study says. Nine of the 309 pilots had drugs in their bloodstreams, and 36 — about 12 percent — had some level of alcohol.

The study also found:

• The proportion of fatal crashes to total accidents was highest in and near Juneau, followed by Ketchikan, Palmer, Cordova and Bettles.

• Flying associated with hunting was more likely to result in fatal accidents. Alaska NTSB chief Jim Michelangelo said this may be because hunters tend to overload their aircraft with game.

• Pilot error was cited in about 41 percent of all accidents. Inadequate preflight preparation, failure to maintain or reach flying speed, and aircraft overload were the most common specific causes.

• Passengers in helicopters that crash are more likely to get hurt than those in fixed-wing aircraft.

• Night flying was a cause of a significant number of deaths.

Seminars aimed at flying safety in Alaska

Continued from Page B-1

seminar already has been held in Bethel.

Next fall's seminars will be presented by longtime pilots with experience in the various subject areas, Zundel said, and will either be free or cost very little.

One of the lessons, called "Flight Techniques: Area Specific," consists of eight different seminars, each tailored to a different part of the state.

The other eight lessons are entitled:

• "Flight Techniques in Adverse Weather."

• "Pilotage and Navigation in Alaska."

• "Mountain Flying — General and Specific Pass Flying."

• "Fuel Handling and Management."

• "Cold Weather Operations."

• "Gathering and Interpreting Weather Information and Trends."

• "Landings and Takeoffs."

Nothing short of total safety will do

The Federal Aviation Administration has a lengthy record of achievement in Alaska few federal agencies can match. But the U.S. Department of Transportation's recent draft audit of the Alaska Region's Aviation Safety Enforcement Program raises some serious questions about FAA practices that have yet to be answered adequately.

Auditors discovered that the FAA was not inspecting Alaska air carriers with required frequency. They also revealed a lack of standard inspection procedures, a records management system that had fallen into disuse, and a pattern of reduced sanctions and penalties against carriers found in violation of air safety regulations. In response, an Alaska FAA spokesman charged the auditors were mistaken and misguided — but he would not release a copy of the FAA's official reply to the auditors.

The FAA audit is particularly troubling given one of the records that is available: the Alaska aviation accident record. According to the National Transportation Safety Board, there were 26 accidents involving air taxi operators between Oct. 1, 1984 and April 18, 1985. Seven of these accidents produced fatalities — 15 people were killed. That's a painful record.

Gone are the days when bush pilots routinely confronted danger and saved passengers' lives with aviation miracles. Today, Alaska commercial aviation is a business, not a form of wilderness adventure.

Although most Alaskan carriers surely operate in a responsible manner, Alaskans deserve continued assurance they can fly with confidence. Planes must be safe; pilots must prove they can do the job; companies must operate in a safe manner. There is no excuse for anything less than a premium on safety from the entire aviation industry. And the FAA must be there to see that regulations and requirements protecting the public are met. Nothing less than the highest standards — and enforcement levels — will do.

Seminars designed [illegible] flying conditions in state

By CHRIS GEIGER
Daily News reporter

Pilots in Georgia generally don't have to worry about whiteout conditions, fuel freezing into gel, or wings that get so cold they fall off.

But Alaska pilots have more to contend with, and that was part of the inspiration for a special curriculum on Alaska aviation developed by the Alaska Aviation Safety Foundation.

Under contract from the Legislature, the foundation completed the curriculum a month ago, and if all goes well will begin presenting its series of nine safety seminars in October. Videotapes of the seminars eventually will be distributed all over the state, a foundation spokesman said.

"The terrain and climate here are so different," said Dave Zundel, vice president of the foundation. "People need to know more specifics about what to expect."

The foundation, an educational arm of the Alaska Air Carriers Association, began developing the lesson plans a year-and-a-half ago, after studies by federal and private agencies indicated a need for such educational efforts, Zundel said. One free preliminary

See Page B-3, SEMINARS

Sec. 42.30.200. AIR CARRIER FINANCIAL RESPONSIBILITY. (a) A person who carries passengers or freight for commercial purposes intrastate in an aircraft shall procure and maintain security in the following minimum amounts:

(1) Liability for bodily injury or death of persons:

A limit of at least $150,000 for any one person in any one occurrence and a limit for each occurrence in any one aircraft of at least an amount equal to the sum produced by multiplying one hundred fifty thousand dollars ($150,000) by seventy five percent (75 percent) of the total rated seating capacity of the aircraft. [$150,000 PER SEAT FOR BODILY INJURY OR DEATH IN A SINGLE OCCURRENCE; AND]

(2) Liability for loss of or damage to property:

A limit of at least one hundred thousand dollars ($100,000) for each occurrence. [$100,000 FOR PROPERTY DAMAGE IN A SINGLE OCCURRENCE]

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

Commerce's Proposed Changes to AS 42.30.200, .205, 380 - (Air Carrier financial responsibility)

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days written notice to the department. This requirement must be clearly stated in the policy or endorsement for an insurance policy submitted as proof of financial responsibility under AS 42.30.225(a)(1). The 30 day notice period is measured from the date on which the department receives notice.

(e) A person who violates [(a) OF] this section is guilty of a class [B] A misdemeanor and is punishable by a fine of not less than [$500] $1,000 or more than [$1,000] $5,000.

Sec. 42.30.225. CERTIFICATION OF COMPLIANCE OF AIR CARRIERS. (a) A person may not use an aircraft in air commerce before obtaining an annual certificate of compliance for that aircraft from the department. The department shall issue or renew a certificate of compliance upon application and presentation of

(1) proof of financial responsibility required under AS 42.30.200;

(2) proof of compliance with Federal Aviation Administration requirements, and, where applicable, federal certification for scheduled airline service.

(b) The annual fee for a certificate of compliance is $50. The certificate is valid for a period of 12 months following the date of certification. The certificate shall be displayed [ON THE AIRCRAFT] so that it [IS] is visible to boarding passengers.

(c) The department may investigate complaints or violations of this section and conduct other investigations that the department considers appropriate and advisable to develop information on possible violations of AS 42.30.200 or AS 42.30.225 and may, upon completion of this investigation

where a violation of AS 42.30.200(a) exists, issue a stop use order. [USE OF AN AIRCRAFT IN AIR COMMERCE BEFORE OBTAINING A CERTIFICATE OF COMPLIANCE REQUIRED UNDER (a) OF THIS SECTION MAY BE CAUSE FOR DENIAL OF THE CERTIFICATE]

(d) A person who violates this section is guilty of a class B misdemeanor and is punishable by a fine of not less than $500 or more than $1,000. [A PERSON WHO HAS OBTAINED A CERTIFICATE TO USE AN AIRCRAFT IN AIR COMMERCE FROM THE ALASKA TRANSPORTATION COMMISSION BEFORE THE EFFECTIVE DATE OF THIS ACT IS NOT REQUIRED TO OBTAIN A CERTIFICATE OF COMPLIANCE UNDER (a) OF THIS SECTION UNTIL THE DATE THE INSURANCE POLICY FOR THE AIRCRAFT IS RENEWED]

(e) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

Sec. 42.30.380. DEFINITIONS. (a) In AS 42.30.200 - 42.30.380,

(1) "air carrier" means a person undertaking to engage in air commerce, whether directly or indirectly, or by lease, contract, or any other arrangement, and whether over regular or irregular routes;

(2) "air commerce" means carriage by aircraft of persons or freight for commercial purposes or hire in intrastate commerce, including the carriage by aircraft of persons or freight that move partly by aircraft and partly by other forms of transportation;

(3) "aircraft" means a propeller, rotor or jet powered device used or designed for flight in the air;

(4) "commercial purposes" means activities for which the persons receives direct monetary compensation and does not include activities incidental to and done in furtherance of the person's primary business;

(5) "department" means the Department of Commerce and Economic Development;

(6) "freight" means commodities, articles, and cargo, of whatever nature or value, excluding garbage and trash.

Introduced: 1/31/86
Referred: State Affairs
and Labor and Commerce

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE BILL NO. 380

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to commercial vehicle financial responsibility; and providing for an effective date."

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

* Section 1. AS 28.33.010(a) is amended to read:

(a) A person who carries passengers or freight for hire intrastate in a commercial motor vehicle or a person who carries freight in a motor vehicle for commercial purposes, or a person who rents or leases a motor vehicle for the use of another to carry freight shall procure and maintain security [IN THE FOLLOWING MINIMUM AMOUNTS:

(1) $200,000] for property damage, [IN A SINGLE OCCURRENCE;

(2) $500,000 FOR] bodily injury, or death, in a single occurrence, in minimum amounts set by the department in regulations adopted under this chapter.

* Sec. 2. AS 28.33.010(c) is amended to read:

(c) The department may authorize department personnel to enforce this section and shall [MAY] adopt [PROCEDURAL] regulations necessary to implement this section, including regulations to set minimum security amounts under (a) of this section.

* Sec. 3. Section 2 of this Act takes effect immediately in accordance with AS 01.10.070(c).

* Sec. 4. Section 1 of this Act takes effect on the effective date of regulations adopted under AS 28.33.010(c), amended in sec. 2 of this Act, which set the minimum security amounts required for commercial vehicles.

Governor's Proposed Bill

Offered: 5/12/85

Original sponsor: Rules/Governor

IN THE HOUSE BY THE CONFERENCE COMMITTEE

CONFERENCE CS FOR HOUSE BILL NO. 133

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to transportation safety and financial responsibility; and providing for an effective date."

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

* Section 1. AS 28.10.041(a) is amended by adding a new paragraph to read:

(9) the vehicle is without a certificate of inspection required under AS 28.32.010.

* Sec. 2. AS 28.15.041 is amended by adding a new subsection to read:

(c) A person may not drive a commercial motor vehicle until the person applies for and is issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has held a valid driver's license at least one year, and has successfully completed all required driving tests and written and physical examinations. In this subsection, "commercial motor vehicle" has the meaning given in AS 28.32.900.

* Sec. 3. AS 28 is amended by adding a new chapter to read:

CHAPTER 32. COMMERCIAL MOTOR VEHICLE SAFETY INSPECTIONS.

Sec. 28.32.010. COMMERCIAL MOTOR VEHICLE SAFETY INSPECTIONS. A commercial motor vehicle may not be operated after January 1, 1986 without a certificate of inspection. An owner of a commercial motor vehicle shall renew a certificate of inspection at least semi-annually at an official inspection station under AS 28.32.030. The owner may

renew a certificate of inspection at any time during the office hours of the inspection station. An owner of a commercial motor vehicle shall display a current sticker of inspection visible from outside the vehicle in a location determined by the division.

Sec. 28.32.020. EXEMPTIONS. A commercial motor vehicle is exempt from the requirements of AS 28.32.010 if it is

(1) owned and operated by the federal government unless the vehicle is used to transport property of the general public for compensation in competition with other persons who own or operate a commercial motor vehicle subject to this chapter, and except to the extent regulation of vehicles operated by the federal government is permitted by federal law;

(2) used exclusively to transport ranch and farm products other than bulk milk; or

(3) customarily and historically used for commercial purposes for less than 20 hours per month.

Sec. 28.32.030. OFFICIAL COMMERCIAL MOTOR VEHICLE INSPECTION STATIONS. (a) A person may not operate an official commercial motor vehicle inspection station without a permit from the division. The division shall approve an application for permit to operate an inspection station if

(1) the division determines the inspection station has proper equipment and competent personnel; and

(2) a commercial motor vehicle inspector certified under AS 28.32.040 is employed at the inspection station.

(b) After the division approves an application for a permit to operate an official inspection station under (a) of this section, it shall provide the applicant with a permit and certificates of inspection.

(c) Upon receipt of a permit from the division under (b) of this section, the operator of an official commercial motor vehicle inspection station shall post the permit in a conspicuous place at the location designated by the division.

(d) The division may enter the premises of the operator of an official commercial motor vehicle inspection station during the station's business hours to inspect the work of a certified commercial motor vehicle inspector or to determine if the operator continues to meet the requirements of this section.

(e) The division shall suspend or revoke a permit of an operator of an official commercial motor vehicle inspection station if the operator fails to meet the requirements of this section.

(f) Upon notice of suspension or revocation of a permit under (e) of this section, the operator of an official commercial motor vehicle inspection station shall immediately terminate all inspection activities and, on demand by the division, return the permit and all unissued certificates of inspection. The division shall issue a receipt for all returned certificates of inspection.

(g) If a permit is suspended or revoked under (e) of this section, the division shall give the holder of the permit a hearing within 10 days after receipt of a written request filed with the division within 30 days after suspension or revocation.

(h) A permit to operate an official commercial motor vehicle inspection station may not be assigned, transferred, or used at a location other than the location designated by the division.

Sec. 28.32.040. CERTIFICATION OF COMMERCIAL MOTOR VEHICLE INSPECTORS. (a) A person may not conduct a commercial motor vehicle inspection at an official inspection station under AS 28.32.030 unless certified as a commercial motor vehicle inspector by the division.

(b) The division may suspend or revoke the certification issued to a commercial motor vehicle inspector under (a) of this section if the commercial motor vehicle inspector improperly conducts inspections or fails to comply with a provision of this section.

(c) If a certificate is revoked or suspended under (b) of this section the division shall give a commercial motor vehicle inspector a hearing within 10 days after the receipt of a written request filed with the commissioner within 30 days after revocation or suspension.

Sec. 28.32.050. ISSUANCE OF CERTIFICATE OF INSPECTION. (a) A person operating an official commercial motor vehicle inspection station shall issue a certificate of inspection to the owner of a commercial motor vehicle after determining that the commercial motor vehicle is in a safe and mechanically sound condition.

(b) A person operating an official commercial motor vehicle inspection station shall keep a record of each inspection performed at the station. The division may audit the records of an official inspection station at any time.

Sec. 28.32.060. FALSELY REPRESENTING TO BE AN OFFICIAL STATION. (a) A person may not represent a place as an official commercial motor vehicle inspection station unless the station is operating under a valid permit issued by the division under AS 28.32.030.

(b) A person may not issue a certificate of inspection under AS 28.32.050 unless the person holds a valid permit under AS 28.-32.030.

Sec. 28.32.070. COUNTERFEIT CERTIFICATES OF INSPECTION. (a) A person may not make, issue, or knowingly use an imitation or counterfeit of an official certificate of inspection.

(b) A person may not knowingly display or issue a certificate of inspection on a commercial motor vehicle unless the commercial

motor vehicle has met the requirements of AS 28.32.050(a).

Sec. 28.32.080. DUTIES OF COMMISSIONER. The commissioner of public safety shall adopt procedural regulations appropriate to achieve compatibility with other western states and procedural regulations necessary to implement this chapter.

Sec. 28.32.090. VIOLATION A MISDEMEANOR. A person who violates a provision of this chapter is guilty of a class B misdemeanor.

Sec. 28.32.900. DEFINITIONS. In this chapter,

(1) "commercial motor vehicle" means a vehicle used by the owner or another person for commercial purposes upon a highway or vehicular way with a daily traffic volume greater than 499 that is a part of the state highway system or is connected by another highway or vehicular way to the state highway system, if the vehicle is

(A) a school bus;

(B) a state or local government vehicle of more than 10,000 pounds unladen gross weight;

(C) a truck or bus of more than 10,000 pounds unladen gross weight; or

(D) a trailer of 5,000 pounds or more unladen gross weight attached to a vehicle described in (C) of this paragraph;

(2) "commercial purposes" means activities for which a person receives direct monetary compensation or activities for which a person receives no direct monetary compensation but are incidental to and done in furtherance of the person's primary business;

(3) "division" means the division of motor vehicles, Department of Public Safety.

* Sec. 4. AS 28 is amended by adding a new chapter to read:

CHAPTER 33. COMMERCIAL MOTOR VEHICLE FINANCIAL RESPONSIBILITY.

Sec. 28.33.010. FINANCIAL RESPONSIBILITY. (a) A person who

carries passengers or freight for hire intrastate in a commercial motor vehicle or a person who carries freight in a motor vehicle for commercial purposes, or a person who rents or leases a motor vehicle for the use of another to carry freight shall procure and maintain security in the following minimum amounts:

(1) $200,000 for property damage in a single occurrence;

(2) $500,000 for bodily injury or death in a single occurrence.

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days' written notice to the department. This requirement must be clearly stated in the policy or endorsement for an insurance policy submitted as proof of financial responsibility under AS 42.30.225(a)(1). The 30-day notice period is measured from the date on which the department receives notice.

(e) A person who violates (a) of this section is guilty of a class B misdemeanor and is punishable by a fine of not less than $500 or more than $1,000.

(f) In this section "freight" means commodities, articles, and cargo, of whatever nature or value.

* Sec. 5. AS 42.30.200 is amended to read:

Sec. 42.30.200. AIR CARRIER FINANCIAL RESPONSIBILITY. (a) A person who carries passengers or freight for commercial purposes [HIRE] intrastate in an aircraft shall procure and maintain security in the following minimum amounts:

(1) $150,000 per seat for bodily injury or death in a single occurrence; and

(2) $100,000 for property damage in a single occurrence [AN AMOUNT DETERMINED BY THE DEPARTMENT OF PUBLIC SAFETY AS NECESSARY FOR THE REASONABLE PROTECTION OF THE PUBLIC AGAINST DAMAGES OR INJURY CAUSED BY THE PERSON].

(b) Evidence of security required under (a) of this section shall be filed with the department and must be

(1) a policy or certificate of insurance issued by an insurer acceptable to the department; or

(2) a bond of a surety company licensed to write surety bonds in the state; or

(3) evidence accepted by the department, showing ability to self-insure; or

(4) other security approved by the department.

(c) The department may authorize department personnel [ENFORCEMENT OFFICERS] to enforce this section and may adopt procedural regulations necessary to implement this section.

* Sec. 6. AS 42.30.200 is amended by adding new subsections to read:

(d) A policy of insurance, surety bond, or other form of security may not be cancelled on less than 30 days' written notice to the department. This requirement must be clearly stated in the policy or

endorsement for an insurance policy submitted as proof of financial responsibility under AS 42.30.225(a)(1). The 30-day notice period is measured from the date on which the department receives notice.

(e) A person who violates (a) of this section is guilty of a class B misdemeanor and is punishable by a fine of not less than $500 or more than $1,000.

* Sec. 7. AS 42.30 is amended by adding new sections to read:

Sec. 42.30.225. CERTIFICATION OF COMPLIANCE OF AIR CARRIERS. (a) A person may not use an aircraft in air commerce before obtaining an annual certificate of compliance for that aircraft from the department. The department shall issue or renew a certificate of compliance upon application and presentation of

(1) proof of financial responsibility required under AS 42.30.200;

(2) proof of compliance with Federal Aviation Administration requirements, and, where applicable, federal certification for scheduled airline service.

(b) The annual fee for a certificate of compliance is $50. The certificate is valid for a period of 12 months following the date of certification. The certificate shall be displayed on the aircraft so that is is visible to boarding passengers.

(c) Use of an aircraft in air commerce before obtaining a certificate of compliance required under (a) of this section may be cause for denial of the certificate.

(d) A person who has obtained a certificate to use an aircraft in air commerce from the Alaska Transportation Commission before the effective date of this Act is not required to obtain a certificate of compliance under (a) of this section until the date the insurance policy for the aircraft is renewed.

(e) The department may authorize department personnel to enforce this section and may adopt procedural regulations necessary to implement this section.

Sec. 42.30.380. DEFINITIONS. (a) In AS 42.30.200 - 42.30.380,

(1) "air carrier" means a person undertaking to engage in air commerce, whether directly or indirectly, or by lease, contract, or any other arrangement, and whether over regular or irregular routes;

(2) "air commerce" means carriage by aircraft of persons or freight for commercial purposes or hire in intrastate commerce, including the carriage by aircraft of persons or freight that move partly by aircraft and partly by other forms of transportation;

(3) "aircraft" means a propeller or jet-powered device used or designed for flight in the air;

(4) "commercial purposes" means activities for which the person receives direct monetary compensation and does not include activities incidental to and done in furtherance of the person's primary business;

(5) "department" means the Department of Commerce and Economic Development;

(6) "freight" means commodities, articles, and cargo, of whatever nature or value, excluding garbage and trash.

* Sec. 8. AS 44.33.020 is amended by adding a new paragraph to read:

(27) implement the safety and financial responsibility requirements for air carriers under AS 42.30.200 - 42.30.380.

* Sec. 9. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

MEMORANDUM

To: Committee Members

From: Committee Staff BC

Re: Meeting of February 5, 1986

Today the committee will be taking up a discussion of problems and potential solutions regarding the enforcement of what was known last year as HB 133. Commissioner Sundberg and Joe Swanson of DCED, Division of Measurement Standards, will be giving testimony on any problems with enforcement of the new statutes that they have run into.

Included in this packet is a copy of the Conference Committee Substitute passed by the House and Senate Conference Committee on HB 133 last year, a "clean up" bill introduced by the Governer's office, Commerce's proposed changes to the statutes, and a letter by the Insurance Company of North America to a company in Soldotna in response to the passage of HB 133.

We will also be continuing work on CSHB 111, please bring both 111 packets for that discussion, thank you.

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

February 4, 1986

TO: Senator John B. Coghill

FROM: Elizabeth Ziegler

RE: HB 133 positions

Tomorrow the following groups will be attend the committee meeting and voice their concerns regarding hb133.

This memo attempts to outline what those positions are, so you will be prepared.

Joe Swanson--has submitted proposed legislation regarding air carrier financial responsibility, enforcement and adding rotor craft to the definition of aircraft.

Reed Stoops--Air Carriers will also say that the portion dealing with enforcement of air certificate of compliance needs more teeth.

Comm. Sundberg and Jim Vaden--Public Safety will just talk about how much money is needed to implement the truck inspection safety program. They will report how the insurance certificate program went since its implementation last fall.

Alaska Trucking Assn.--will testify about how difficult it is to get insurance in the proscribed amounts of the bill.

Gov's office--no word they are coming, but they have introduced SB 380 to allow the dept. to promulgate regulations to deal with the insurance problem.

5, 1986

TO: SENATOR COGHILL

FROM: EZ

RE: TODAY'S MEETING

A. TODAY'S FIRST ORDER OF BUSINESS IS THE OVERVIEW OF WHAT HAS HAPPENED TO HB133 SINCE ITS PASSAGE LAST MAY.

1. FIRST CALL COMMISSIONER SUNDBERG TO TESTIFY

2. ASK SUNDBERG WHAT HAS BEEN IMPLEMENTED BY PUBLIC SAFETY SINCE PASSAGE.

3. ASK HOW THE PROGRAM HAS BEEN SET UP, I.E. THE INSURANCE CERTIFICATES AND WHAT IF ANYTHING HAS BEEN ACCOMPLISHED ON THE TRUCK SAFETY INSPECTION PLAN.

4. ASK SUNDBERG WHAT THE DEPARTMENT'S FISCAL NOTE IS ON THE IMPLEMENTATION OF HB 133.

5. ASK SUNDBERG HOW SOON WOULD THE GOVERNOR'S BUDGET MONIES WOULD BE AVAILABLE TO THE DEPARTMENT.

B. NEXT CALL JOE SWANSON, DIRECTOR, DIVISION OF MEASUREMENT STANDARDS, COMMERCE AND ECONOMIC DEVELOPMENT.

1. ASK JOE ABOUT WHAT MEASUREMENT STANDARDS IS DOING ABOUT THE AIR CARRIER CERTIFICATES OF COMPLIANCE PROGRAM IN HB133.

2. ASK JOE IF THERE ARE ANY PROBLEMS WITH THE BILL

C. NEXT CALL THE AIR CARRIERS

1. REED STOOPS WILL BE THERE.

2. ASK REED HOW THE AIR CARRIER INDUSTRY VIEWS HB 133 AND ANY CONCERNS.

D. NEXT CALL T.J. TRASHER, AK. TRUCKERS ASSN.

THE TRUCKERS CONCERN IS WITH FUNDING FOR THE TRUCK SAFETY PROGRAM.

C.
2.

ALASKA TRUCKING ASSOCIATION POSITION PAPER
ENFORCEMENT OF CHAPTER 104, SESSION LAW '85

THE ALASKA TRUCKING ASSOCIATION URGES THE SECOND SESSION OF THE 14TH LEGISLATURE TO ADEQUATELY FUND THE DEPARTMENT OF PUBLIC SAFETY FOR PROPER ENFORCEMENT OF THE STATE COMMERCIAL VEHICLE LAW.

THE ALASKA TRUCKING ASSOCIATION HAS SUPPORTED HOUSE BILL 133 THROUGH THE FIRST SESSION OF THE 14TH LEGISLATURE AND URGES THAT THIS BILL REMAIN INTACT.

THE ALASKA TRUCKING ASSOCIATION SUPPORTS FUNDING FOR:

The enforcement of the insurance provision which requires that a person who carries passengers or freight intrastate in a commercial motor vehicle shall procure and maintain insurance for property damage and bodily injury or death.

The promulgation of regulations to require a person who drives a commercial motor vehicle to apply for and be issued a license after successful completion of driving tests and written and physical examination.

The promulgation of regulations requirement that all vehicles registered in the State obtain a certificate of inspection, conducted in the private sector under State issued guidelines and control.

THE ALASKA TRUCKING ASSOCIATION BELIEVES FUNDING FOR MINIMUM SAFETY LAWS TO BE ENFORCED IS CRUCIAL FOR TODAY'S DEREGULATED ENVIRONMENT.

Ch 104, SLA 198

HB133

Insurance Company of North America
Aetna Insurance Company
Alaska Pacific Assurance Company
CIGNA companies

P.O. Box 6620
Anchorage, AK 99502
(907) 561-1400

July 29, 1985

AUG 5 10 12 AM '85

Stock Effects

AUG 27 1985

GOVERNOR'S OFFICE

RECEIVED
Department of Law

AUG 14 1985
AM 7|8|9|10|11|12|1|2|3|4|5|6 PM

Hand Delivered

Pat Cowan
Cowan & Cowan, Inc.
167 Warehouse Drive, Suite A
Soldotna, AK 99669

SUBJECT: NEW FINANCIAL RESPONSIBILITY REQUIREMENTS FOR ALASKA MOTOR VEHICLE OPERATORS

The 1985 Alaska State Legislature has enacted a major change in the motor vehicle financial responsibility requirements for your commercial clients. Because this change has arrived unexpectedly, and because the law is ambiguous on some key points, we would like to inform you of the actions we are taking to comply with the change.

Effective June 13, 1985, Alaska Statutes 28, was amended to include a new chapter, Chapter 33, which imposes a new requirement of financial responsibility as follows:

"A person who carries passengers or freight for hire intrastate in a commercial motor vehicle or a person who carries freight in a motor vehicle for commercial purposes, or a person who rents or leases a motor vehicle for the use of another to carry freight shall procure and maintain security in the following minimum amounts:

(1) $200,000 for property damage in a single occurrence;
(2) $500,000 for bodily injury or death in a single occurrence."

Unfortunately, Chapter 33 does not define the key phrase "for commercial purposes." There is a definition in Chapter 32, which relates to inspections, which states "In this chapter.....(2) 'commercial purposes' means activities for which a person receives direct monetary compensation or activities for which a person receives no direct monetary compensation but are incidental to and done in furtherance of the person's primary business;"

The Division of Motor Vehicles, Department of Public Safety, is using the Chapter 32 definition to interpret Chapter 33. They are also using the Chapter 32 definition of "commercial motor vehicle" to limit the the application of Chapter 33 to "....a vehicle used by the owner or another person for commercial purposes upon a highway or vehicular way.....if the vehicle is

(A) A school bus;
(B) A state or local Governmental vehicle of more than 10,000 pounds unladen gross weight;
(C) A truck or bus of more than 10,000 pounds unladen gross weight; or
(D) A trailer of 5,000 pounds or more unladen gross weight attached to a vehicle described in (C) of this paragraph."

Insurance Company of North America Response to HB 133

→ SDC by phone — told Frank Gorham that he could interpret statutes in part materially to give some definit ↓ said about legislative intent

These interpretations are based on an informal opinion from the Attorney General regarding the Legislature's intent.

The new Chapter 33 also requires your clients to file evidence of security meeting these requirements with the Division of Motor Vehicles. Because of the broad scope of the interpretation, this will cost us significant expense for filings and cancellations of those filings.

There is also a substantial question regarding the use of combined single limits to satisfy the law requirements. We believe that split limits may be mandated by the law. This poses a difficulty, as the vast majority of our commercial automobile liability coverage is now written at $500,000 CSL.

Because of the expense and effort involved in this matter, we will not pursue those risks which require filings. Please do not bind us on any new business which requires filings. If you must submit any such new business, we will require:

(1) Copies of the motor vehicle records (not merely the releases) for all drivers of all vehicles to be insured; and
(2) Complete four-year loss history, including amounts paid and reserved, premiums, carrier name and policy numbers.

Any applications submitted after August 1, 1985, without these items will be returned. We will not write this business unless supported by acceptable package collateral lines.

For supported renewals, and the few new risks we do accept, we will follow these procedures:

(1) All policies which require filings will be written for the same limits for all vehicles. We will not apply separate limits to exempted vehicles.
(2) No auto risks with filings will be written as part of a package policy. This is to enable us to control the filings and cancellations. We will remove any such risks from our in-force packages at expiration.
(3) We will not endorse in-force policies to new limits unless you request. At renewal, our policies will be available (for risks with filings) with three options:
    a) 500/500/250
    b) 500/500/500
    c) 500/1000/250

    Renewals with expiring limits of $500,000 CSL will be written at 500/500/500, unless you advise otherwise. Those with $1,000,000 CSL will be written at 500/1000/250, unless you request otherwise. Any request for higher limits than expiring, or for more than 500,000, per person, will be subject to very stringent underwriting, and we will limit our acceptance strictly to a few select risks.

4. Effective immediately, we will no longer write bobtail or dead-heading (non-trucking) liability. All such coverage will be non-renewed. No new bobtail coverage will be accepted after August 1, 1985. We will not make filings on this coverage.

These changes reflect our desire to offer coverage within a selected range of risks. It is important to remember that we will entertain no unsupported auto coverage, new or renewal, which requires filings. We wish to provide the coverage only for those accounts which offer a sufficient opportunity for an underwriting profit.

Thank you for taking the time to read this letter. If you have questions or suggestions, please contact the Anchorage Marketing Office through your underwriter.

David G. Sever/CE

David G. Sever
Marketing Vice President

HB

1811

2D SS HB 181 - An Act relating to the maintenance of vessels of the Alaska Marine Highway System.

Chairman Adams said the bill would require ferries be maintained at Alaska ports if it could be done at competitive prices. He said the sponsor was proposing to expand the bill to cover all state vessels, not just ferries. He noted that the Department of Transportation and Public Facilities was currently unable to estimate the cost of the bill. He informed members the bill would be placed in a subcommittee consisting of Representatives Szymanski, chair; Duncan and Uehling.

REPRESENTATIVE TAYLOR said the purpose of the legislation is to ensure that the $77 million already invested by the state in maintenance facilities will be utilized. He discussed the difficulties faced by the Ketchikan and Seward facilities in trying to develop the capital infrastructure necessary to become competitive in the area of vessel repair. He discussed the 5% Alaska bidder preference in relationship to the bill and the bill as an Alaskan hire bill which could legally and constitutionally be enforced. He said there are several large vessels owned by different departments within the state which would not fall within the jurisdiction of the bill. For this reason, Representative Taylor said he would suggest language change to read "all state owned vessels".

REPRESENTATIVE CATO encouraged the Committee's support of the proposed changes to HB 181. She said originally she and Representative Taylor wanted a vehicle to require the state ferry system to utilize marine repair facilities in Seward and Ketchikan. She discussed state investments in the two facilities which had been made to date. According to Representative Cato, a University of Alaska vessel, based in Seward, had been sent to Seattle for prop repair instead of checking and utilizing the facility across the bay in Seward. She said the facility was capable of repairing the vessel; however, since no requirement existed requiring the vessel to first utilize state facilities, $50,000 was spent in fuel.

Representative Cato said there are skilled laborers available and passage of the bill would serve as an additional incentive for hiring and training of laborers to service the vessels. She noted the economic advantages to the communities of Ketchikan and Seward should the bill become law.

(Tape change, 86-28, Side 1)

Representative Larson referred to line 14 of the Transportation CS which states "that there is no facility in the state able and available to perform the maintenance at competitive prices" asking if it should not read able or available. Representative Cato said it should read "or" instead of "and".

RON GARZINI, MANAGER, CITY OF SEWARD, said he had been traveling in an effort to secure private venture capital in the Seward Marine industrial center. He advised members that in addition to the $74 million contributed by the state to develop the two facilities, the City of Seward had spent $4.6 million to develop their facility. He said this year they would do approximately $1.5 million private sector work, operating the facility on a short-term interim basis. Mr. Garzini informed members of inquiries made during their marketing efforts with regard to possible maintenance by the Seward facility of the state's vessels. He said it had been determined that the Seward facility could maintain 95% of the vessels in the Gulf of Alaska, and provide an asset to fisheries development and offshore oil and gas development in the Gulf. Mr. Garzini discussed their need for investment capital to complete the facility and concurrent need for a commitment by the state with regard to in-state maintenance of state vessels.

MIKE MEEHAN, VICE MAYOR, CITY OF SEWARD, reiterated Mr. Garzini's comments with regard to efforts made by the City of Seward to secure private investment emphasizing the need for state support. He urged the Committee to support the bill.

DON CUBLEY, REPRESENTING THE KETCHIKAN GATEWAY BOROUGH, CITY OF KETCHIKAN, CITY OF SAXMAN, INLAND BOATMANS UNION OF THE PACIFIC, AND MASTERS, MATES AND PILOTS UNION, testified in support of the bill. He said it is essential for the state to concentrate on diversification of the state's economy to new industries and revenue sources trying to revitalize traditional renewable resource industries. Mr. Cubley said new industries would create new jobs for Alaskans and keep revenues in-state. According to Mr. Cubley, the marine maintenance facilities in Ketchikan and Seward provide an excellent opportunity in diversifying the state's economy and reducing its dependence upon oil.

The bill was HELD in committee and assigned to a subcommittee consisting of Representatives Szymanski, chair; Duncan and Uehling.

ADJOURNMENT

The meeting adjourned at 2:50 p.m.

(Tape HFC 86-27, Side 1, #512-end)
(Tape HFC 86-27, Side 2)
(Tape HFC 86-28, Side 1, #000-#387)

SENATOR JAN FAIKS, SPONSOR OF THE BILL, said the bill would allow the Department of Health and Social Services to accept the JCAH inspections in lieu of yearly inspections. She said there are 14 hospitals in the state which pay for and receive JCAH inspections. She said this represents a slight duplication of effort. Senator Faiks said should the Department be allowed to receive the accreditation in lieu of their own inspections it would save the state time, effort, and money.

Representative Taylor said he strongly supported the bill.

Representative Ringstad MOVED AND ASKED UNANIMOUS CONSENT to report out of Committee House Committee Substitute for Committee Substitute for SB 45 (Judiciary) with a zero fiscal note. There being NO OBJECTION, it was so ordered and HCS CS SB 45 (Judiciary) was reported out of Committee with a "do pass" recommendation and zero fiscal note.

2dSS HB 181

2dSS HB 181 - An Act relating to maintenance of vessels of the Alaska Marine Highway System.

Chairman Adams informed members the bill had been assigned to a subcommittee consisting of Representatives Szymanski, chair; Duncan and Uehling. He advised members the subcommittee had drafted a proposed Finance Committee Substitute for their consideration.

Representative Szymanski explained the title was changed to include all marine vessels, language added to consider investment within the state of Alaska to marine repair facilities, and examination by the Commissioner of DOTPF concerning amount of state funds invested along with amortization, direct and indirect benefits to the economy, and state labor force. According to Representative Szymanski an exemption under AS 37.05.230, provisions relating to competitive bidding, would be allowed for contract awarded for the maintenance of marine vessels owned by the state of Alaska if the contract is awarded to an in-state facility.

In response to a question from Representative Pourchot concerning competitive bidding, Representative Taylor said it would be easy for the two major ship repair facilities in the Pacific Northwest to be able to under bid significantly work on Alaska's highway system for the first year or so. He said this could totally destroy the viability for the start of any business for either the Seward or Ketchikan site, consequently destroying the costs savings to the state of Alaska which would result. There was discussion concerning the estimated length of contracts.

Representative Larson referenced line 13 of the proposed Committee Substitute which read able "and" available recommending that it be changed to read able "or" available.

Representative Szymanski MOVED AND ASKED UNANIMOUS CONSENT to adopt the work draft dated 4/7/86 for 2d SS HB 181 as the Finance Committee Substitute for the bill. There being NO OBJECTION, it was so ordered.

Representative Larson MOVED to delete the word "and" on line 13 and reinsert the word "or" after able. There being NO OBJECTION, it was so ordered.

Representative Szymanski MOVED AND ASKED UNANIMOUS CONSENT to report out of Committee CS 2d SS HB 181 (Finance) with a zero fiscal note. There being NO OBJECTION, it was so ordered and CS 2d SS HB 181 (Finance) was reported out of Committee with a "do pass" recommendation and zero fiscal note.

HB 552

HB 552 - An Act relating to setting speed limits and neighborhood speed zones.

Chairman Adams said the bill would require that the Department of Transportation and Public Facilities take into account neighborhood concerns before setting speed zones and speed limits on state highways and roads. He said the bill had no fiscal impact until prior to the meeting at which time DOTPF submitted a request for $40,000 to hold public hearings required by the bill. Chairman Adams felt the hearings could be easily absorbed within the Department's budget therefore had prepared a zero fiscal note.

REPRESENTATIVE UEHLING, SPONSOR OF THE BILL, said the bill would require DOTPF to consider the presence of neighborhood schools, parks and pedestrian traffic when setting speed limits. He said state law charges DOTPF with setting speed limits; however, the Legislature has never really given DOTPF any indication of what factors should be considered when setting speed limits. According to Representative Uehling, speed limits are set according to internal policy called the "85th percentile". He informed members the Department almost solely relies upon the use of the 85 percentile, meaning they set speeds at the rate at which 85 percent of the drivers are currently driving. He said HB 552 would give local areas an initiative to help establish reduced speed limits in neighborhoods and help keep them low when new roads go in. He noted there are 12 co-sponsors on the bill and it had generated a number of inquiries from interested individuals.

Representative Pourchot cited an example of an arterial road in Anchorage which runs by schools, through residential areas, contains pedestrian crosswalks, etcetera. He asked if the bill would supersede what might otherwise be placed as a speed based on engineering and design. Representative Uehling said the bill would simply require the Department to consider resident's concerns as expressed through the hearing process.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS For 2d Sponsor Sub. HB181

Title : "...maintenance of vessels of the Alaska Marine Highway System."

Sponsor : Taylor, Sund and Goll

Requestor : _____

Date of Request : _____

FISCAL DETAIL

Agency Affected : DOT&PF - AMHS

BRU : Marine Operations

Components : 1) SE Vessels Operations and Overhaul 2) SW Vessels Operations and Overhaul.

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by : Joe D. Camp, Deputy Commissioner Phone : 465-3950

Division : Alaska Marine Highway System Date : 3/18/86

Approved by Commissioner : _____ Date : 3/18/86

Agency : DOT/PF

Distribution (by Agency preparing fiscal note) :

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS For 2d Sponsor Substitute for HB 181

There are eventualities relating to the maintenance of vessels of the Alaska Marine Highway System within the State of Alaska that could be positive or negative in impact. At this point in time it is not possible to assess the fiscal-impact of the presently written bill.

There is the possibility that the higher costs of doing business in an "Alaskan Shipyard" could be somewhat offset by the savings generated from an interport differental or cost of delivery of a vessel to and from Alaska. On the other side, it would be less desirable for crewmembers to live outside Alaska and more would likely move back resulting in higher COLA payments.

The fiscal impact will remain unknown until some experience is generated in vessel repairs in Alaska.

SOUTHEAST CONFERENCE
P.O. Box 275 • Juneau, Alaska 99802
(907) 586-8000

April 3, 1986

Representative Al Adams
Chair, House Finance Committee
Alaska State Legislature
Juneau, AK 99811

Dear Representative Adams:

The Southeast Conference supports 2D SSHB 181 (relating to the maintenance of vessels) as it is now written. It is our opinion that interport differential and the Alaska bidder preference should allow the Ketchikan shipyard to bid competitively within the West Coast Ship repair market.

The Southeast Conference believes that the Ketchikan shipyard will have the ability to economically serve the Alaska Marine Highway and other potential customers. The shipyard will provide local employment and will benefit the State of Alaska.

We request that the House Finance Committee do pass this bill.

Sincerely,

John Farnan

John Farnan
Executive Director
Southeast Conference

cc: House Finance Committee Members

Southeast Conference Position

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: 181 (2nd Sponsor Substitute) **APPROVED:** R. O. Knapp
Commissioner

TITLE: An Act relating to the Maintenance of Vessels of the Alaska Marine Highway System **DATE:**

The department agrees with the concept that Alaska Marine Highway System (AHMS) vessels should be repaired in Alaska.

However, we disagree with this bill as written as it removes the competitive process from repair contracts. In effect, this bill gives a "blank check" to the private shipyard operator to charge AMHS whatever he pleases since he would have a captive market.

AMHS has made a conscious effort to reduce repair costs and thus make more of the limited budget available for operations. One undesirable result of enactment of this bill, as written, could be an unreasonable increase in the cost of repairs which would be paid out of operating funds with the net result being a reduction in service to Alaskan communities.

Market economic factors favor the operator of the Ketchikan Shipyard. He will have three distinct economic advantages over outside shipyards.

1. He will have minimal capital costs to recover in his repair pricing.

2. He will have an Alaska bidders preference.

3. Any outside bidder will have an "interport differential" added to their bid in the evaluation process.

(Interport differential is the cost of positioning a vessel to another repair port. It includes full, crew repatriation, per diem, and any other identifiable direct cost of the positioning/repositioning. It is calculated for each vessel at each overhaul but would be in the neighborhood of $50,000.00 for a mainline vessel.)

The department recommends that the bill be modified by adding the words "at competitive prices" on line 15 following the word maintenance.

For further information call Susan Fleischhauer at 465-3900.

DOT Position on Bill Before Floor Amend.

HOUSE

COMMITTEE REPORT

(11)

Date referred: 3/19/86

FURTHER REFERRALS:

DATE: 4-7-86

The FINANCE Committee has considered 2d SSHB 181

"An Act relating to the maintenance of vessels of the Alaska marine highway system.

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[ ] replace with CS for 2d SS HB 181 (FIN) [ ] same title [X] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[X] ~~zero~~ fiscal note (indeterminate amount Fy 87)

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS: NO REC

No Recommendation

ALASKA jobs and more jobs? NO REC.

DO NOT PASS

Chairman

Alaska State Legislature

COMMITTEES:

VICE-CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES

JUDICIARY

FINANCE SUB-COMMITTEE
ON COURT SYSTEM

JOINT COMMITTEE ON
FOREIGN TRADE

P.O. BOX 1441
WRANGELL, ALASKA 99929
(907) 874-2316

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4905

House of Representatives

ROBIN L. TAYLOR

March 31, 1986

TO: Representative Al Adams
Chairman, House Finance Committee

From: Representative Robin L. Taylor

Subject: Committee Substitute for 2nd Sponsor Substitute for House Bill 181 (Transportation)

As you know, House Bill 181 will be before the House Finance Committee on April 3, 1986. I would like to offer the following ammendment to include all state owned vessels:

Section 19-65.030 is ammended to read:

All state owned vessels [a vessel of the Alaska Marine Highway System] may not be transported outside of the state for purposes of maintenance unless the Commissioner of Transportation and Public Facilities determines that there is no facility in the state able and available to perform the maintenance at competitive prices.

cc: House Finance Committee Members

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: CS for 2d Sponsor Sub. HB 181
Title : "...maintenance or vessels or the Alaska Marine Highway System."

Sponsor : Taylor, Sund and Goll
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : DOT&PF - AMHS
BRU : Marine Operations

Components : 1) SE Vessels Operations and Overhaul 2) SW Vessels Operations and Overhaul.

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	/	/	/	/	/	/
CAPITAL	/	/	/	/	/	/
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	/	/	/	/	/	/
FEDERAL FUNDS	/	/	/	/	/	/
OTHER	/	/	/	/	/	/
TOTAL	/	/	/	/	/	/

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by : Joe D. Camp, Deputy Commissioner
Division : Alaska Marine Highway System
Phone : 465-3950
Date : 3/18/86

Approved by Commissioner : _____
Agency : DOT/PF
Date : 4/2/86

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS For 2d Sponsor Substitute for HB 181

There are eventualities relating to the maintenance of vessels of the Alaska Marine Highway System within the State of Alaska that could be positive or negative in impact. At this point in time it is not possible to assess the fiscal impact of the presently written bill.

There is the possibility that the higher costs of doing business in an "Alaskan Shipyard" could be somewhat offset by the savings generated from an interport differental or cost of delivery of a vessel to and from Alaska. On the other side, it would be less desirable for crewmembers to live outside Alaska and more would likely move back resulting in higher COLA payments.

The fiscal impact will remain unknown until some experience is generated in vessel repairs in Alaska.

Offered: 4/8/86
Referred: Rules

Original sponsors: Taylor, Sund,
Goll, and Szymanski

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR 2d SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 181 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the maintenance of marine vessels of the state; and providing for an expiration of the Act."

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

* Section 1. AS 36.20 is amended by adding a new section to read:

Sec. 36.20.020. MAINTENANCE OF STATE MARINE VESSELS. (a) A marine vessel owned by the state may not be transported outside of the state for the purpose of maintenance or repair unless the commissioner of transportation and public facilities determines that there is no facility in the state able to perform the maintenance at a price that is in the state's best interests. In making this determination, the commissioner shall consider, and document through written findings

(1) the amount of money the state has granted to, or otherwise invested in, marine vessel maintenance facilities in the state;

(2) the amortization, overhead, and start-up costs of the facilities in the state; and

(3) the direct and indirect benefits to the economy and labor force of the state that may be obtained by contracting with a facility in the state.

(b) AS 37.05.230 and the competitive bidding provisions of any other law do not apply to a contract for the maintenance or repair of a marine vessel owned by the state if the contract is awarded to a facility in the state.

Sec. 2. The provisions of this Act expire six years after the date it

SUMMARY OF ALASKA MARINE HIGHWAY EXPENDITURES

DIVISION OF ALASKA

10 YEARS

FY76 - FY85

	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85	TOTAL	
SOUTHEAST	2,673,791	2,926,822	3,566,406	6,027,483	4,308,541	5,760,868	5,275,662	4,820,657	5,615,427	4,945,234	$ 45,917,891	84%
SOUTHWEST	733,742	645,768	818,828	677,399	754,132	922,636	1,047,574	1,010,674	1,029,075	1,045,727	8,685,945	16%
TOTAL	3,407,533	3,572,590	4,385,234	6,704,882	5,062,673	6,683,504	6,323,236	5,831,331	6,644,502	5,991,161	54,603,836	100%

DOT DEPT. BUDGET

	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85	TOTAL
AUTHORIZED BUDGET	29,164,700	33,856,600	36,791,200	38,020,000	47,157,000	52,197,100	56,559,600	60,616,000	63,279,600	65,415,585	483,062,300
EXPENDED	28,706,200	33,586,600	34,410,400	37,978,400	45,920,000	51,129,100	56,233,100	60,563,621	62,262,082	65,310,294	476,100,800
% of AMHS To Total Dept	11.9%	10.6%	12.7%	17.6%	11%	13%	11.2%	9.6%	10.7%	7.2%	11.5%

Alaska State Legislature

COMMITTEES:

VICE-CHAIRMAN
HEALTH, EDUCATION & SOCIAL SERVICES

JUDICIARY

FINANCE SUB-COMMITTEE
ON COURT SYSTEM

JOINT COMMITTEE ON
FOREIGN TRADE

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House of Representatives

ROBIN L. TAYLOR

April 23, 1986

R.L.T.

TO: Senator Jack Coghill
FROM: Representative Robin L. Taylor
RE: CS For 2nd SS HB181

CSSSHB181 in my estimation is one of the strongest local hire legislation. Its effect is not only going to be felt in Ketchikan and Seward but throughout the surrounding areas.

In the past ten years the state of Alaska has spent in excess of 54 million dollars in the area of marine vessel maintenance outside the state of Alaska (see attached). That is 54 million dollars that could have stayed in the state had we had a law such as the one proposed in the above bill.

The state of Alaska has invested 36 million dollars in the Seward ship yard facility and 38 million dollars in the Ketchikan facility. Unless we generate and encourage the use of these facilities, not only would we have wasted over 74 million dollars, but we will continue to send very much needed money and job opportunities outside of the state. In these days of declining revenues, we can not allow that to happen.

The result of this bill if it becomes law, will be the creation of approximately 200 jobs in Ketchikan and numerous jobs in Seward.

Therefore because of the above stated reasons, I urge you to give this bill your most positive consideration and if I can provide anymore information please do not hesitate to ask. I appreciate your prompt attention and dedication to the idea of state monies being spent within the state.

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: CH For 2nd Sponsor Substitute for House Bill No. 181 (Finance)

TITLE: Maintenance of Marine Vessels of the State

APPROVED: R. J. Knapp, Commissioner

DATE: 4/23/86

The Department of Transportation and Public Facilities fully supports the performance of maintenance of Alaska public vessels within the state but believes that the economic factors of the market place will cause that to take place without waiving the competitive bidding provisions of AS 37.05.230. For instance, in the case of Alaska Marine Highway System (AMHS) vessels, an interport differential would be added to the bid of shipyards outside Alaska for the purpose of evaluation. Interport differential is defined as the extra costs such as fuel, crew transportation, per diem, pilotage, etc., that are incurred as a result of taking a vessel from the repair yard nearest to the vessel's operating area (Alaska) to any other yard. As an example, the current interport differential between Seattle and Portland on the contract for M/V COLUMBIA bow thruster installation is $32,500. Were the Ketchikan Shipyard now in operation, the interport differential between Ketchikan and Seattle on that contract would be at least $50,000, and between Ketchikan and Portland at least $77,000.

The economic advantage of interport differential to Alaska Shipyards is significant enough alone to provide a strong margin in favor of any Alaska Shipyard. In addition, the operators of Shipyards in Alaska (all private) also will have the advantage of reduced capital costs and the Alaska bid preference.

The disadvantage to the State of Alaska of waiving AS 37.05.230 or any other competitive bidding law is that such a waiver will in effect offer a blank check to the private operator of any shipyard located in Alaska. AMHS is appropriated a fixed amount annually to both maintain and operate the vessels. A conscious effort has been made to maximize funds spent for operations and to minimize funds spent on maintenance and repairs, consistent with safety and good engineering practices. The result of CS for 2nd SS for HB 181 as currently written would likely be an increase in the amount of money spent on maintenance and repairs and a decrease in the amount of money available for operations, resulting in less service to the public who depend on the AMHS for basic transportation needs.

The Department of Transportation and Public Facilities opposes CS for 2nd SS for HB 181 as currently written for the above stated reasons.

For further information call Susan Fleischhauer at 465-3900.

POSITION PAPER

Bill No. CH For 2nd Sponsor Substitute for House Bill 181 (Finance)

However, we are in favor of the overall objectives, and propose the following as an alternative.

A. Expand Alaska bidder preference factor from 5% to 15% on all marine repair contracts.

B. If qualified competition exists in state restrict bids to Alaska firms.

C. If qualified competition does not exist in state advertise as necessary taking into account Alaska bidder preference plus interport differentials.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation Committee, 3/18/1986, 7:00 am

MEMORANDUM State of Alaska

TO: Joe Camp
Deputy Commissioner
Department of Transportation
and Public Facilities

DATE: March 20, 1986

FILE NO:

TELEPHONE NO: 465-3603

FROM: Harold M. Brown
Attorney General

By: Gary I. Amendola
Assistant Attorney General
Transportation Section-Juneau

SUBJECT: Legislative Intent for CS for 2nd SSHB 181 (Trans)

You have asked for language to clarify the legislative intent of CS for 2d SSHB 181 (Trans), which amends AS 19.65 by adding a new section to read:

> Sec. 19.65.030. MAINTENANCE OF ALASKA MARINE HIGHWAY SYSTEM VESSELS. A vessel of the Alaska marine highway system may not be transported outside of the state for the purpose of maintenance unless the commissioner of transportation and public facilities determines that there is no facility in the state able and available to perform the maintenance at competitive prices.

Draft language of legislative intent could be as follows:

> The transportation committee supports the concept of using facilities located in the State of Alaska for the repair and maintenance of Alaska marine highway system vessels. The committee also recognizes, however, that the Alaska marine highway system is required under AS 37.05.230 to award a contract for the maintenance or repair of its vessels on the basis of competitive bidding. The committee does not intend this legislation to conflict with the provisions of AS 37.05.230 nor does it intend by this legislation to relieve the Alaska marine highway system of its obligation to award contracts for the maintenance or repair of its vessels except by competitive bid.

GIA:prm

Alaska State Legislature

House of Representatives

Committee on Transportation

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

LETTER OF INTENT
FOR
CS FOR 2D SSHB 181 (TRSP)

The House Transportation Committee supports the concept of using facilities located in the State of Alaska for the repair and maintenance of the Alaska Marine Highway system vessels. The Committee also recognizes, however, that the Alaska Marine Highway System is required under AS 37.05.230 to award a contract for the maintenance or repair of its vessels on the basis of competitive bidding. The Committee does not intend this legislation to conflict with the provisions of AS 37.05.230 nor does it intend by this legislation to relieve the Alaska Marine Highway System of its obligation to award contracts for the maintenance or repair of its vessels except by competitive bid.

CONCUR	OTHER
Bette Cato	

Bette Cato
CHAIRMAN

Alaska State Legislature

REPRESENTATIVE
BETTE CATO
DISTRICT 6
BOX 775
VALDEZ, ALASKA 99686
(907) 835-4568

WHILE IN JUNEAU
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(907) 465-4858
(907) 586-2660

House of Representatives

COMMITTEES

CHAIRMAN
HOUSE TRANSPORTATION

MEMBER
RESOURCES
STATE AFFAIRS

DATE: 20 March 1986

TO: Representative Robin Taylor

FROM: Representative Bette Cato BC

RE: CS 2d HB 181 (TRSP)

Would you please consider amending CS 2d HB 181(TRSP) to include all state vessels instead of only vessels of the Alaska Marine Highway System?

I understand several state agencies have vessels which should also be maintained in-state whenever possible. I believe we could simply change language to cover all state vessels and leave the responsibility of determination with the Commissioner of Transportation.

Please give Rhonda Cargill of our Transportation Committee staff a call and let her know what you decide, as I will be out of town until Sunday night. Rhonda will be more than happy to gather data to substantiate this amendment if you are agreeable to the idea.

Thanks so much for your consideration and assistance.

Cato Memo that asks for All vessels to be covered

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 2, 1986

MEMORANDUM

TO: Representative Bette Cato

ATTN: Rhonda Cargill

FROM: Deb Pomeroy, Administrative Officer

RE: Vessels Owned by the State of Alaska
Research Request 86-155

You requested information on the number of boats larger than 16 feet that are owned by various departments of the State. I contacted Bob Head, Property Manager with the Division of General Services and Supply in the Department of Administration (DOA). He was able to provide computer printouts on vessels owned by all the State agencies with the exception of the University of Alaska.[1] The attached table contains the data on boats larger than 16 feet by department.

In addition to the nine ferries owned by the Marine Highway System, the State of Alaska owns 173 boats larger than 16 feet. The following is a breakdown of the size and ownership:

Size	# of boats	Ownership
> 45'	13	8--DF&G; 5--DPS
26' - 45'	26	12--DF&G; 12--DPS; 1--DOE; 1--Surplus
17' - 25'	130	96--DF&G; 27--DPS; 1--Corr.; 1--DEC 1--H&SS; 1--DNR; 2--DOT/PF; 1--Surplus
Unknown	6	4--DPS; 1--DNR; 1--Surplus

I hope this information answers your questions. It you have any questions or would like additional information, please contact this agency.

DP

Attachments

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[1]This printout is on file at House Research it you would like to see it. Julie Mipes with the University of Alaska in Fairbanks will be sending information on the U of A's vessels in the next week. I will forward that information to you as soon as it is received.

STATE OF ALASKA
VESSELS OVER 16 FEET

DEPARTMENT	VESSEL LENGTH	CLASS DESCRIPTION
Fish & Game	91' Patrol	Metal Enclosed Inboard Power
	72' M/V Kittiwake	Boat, General
	70' (21' Beam) M/V Steller	Metal Enclosed Inboard Power
	70' Schooner	Metal Enclosed Inboard Power
	66' Crabber/Troller	Metal Enclosed Inboard Power
	65'Steel Hull T-Boat	Metal Enclosed Inboard Power
	58' Seine Boat	Metal Enclosed Inboard Power
	48' X' 24 Catamaran Fish Trap	Barge, Metal Power
	40' Utility	Metal Enclosed Inboard Power
	36' M/V O'Nerka	Plastic Enclosed Inboard Power
	34' M/V Cutthroat	Plastic Enclosed Inboard Power
	32' M/V Smolt	Plastic Enclosed Inboard Power
	32' M/V Puffin (Fiberglass)	Plastic Enclosed Inboard Power
	32' M/V Iliaska (Cruiser)	Plastic Enclosed Inboard Power
	31' M/V Clupea	Plastic Enclosed Inboard Power
	31' MV 09Kisutch	Plastic Enclosed Inboard Power
	31' Blind Slough	Barge, Metal Power
	31' Blind Slough	Barge, Metal Power
	30' Alum Boat	Metal Open Outboard Power
	26' JBC Radar	Metal Open Outboard Power
	25' Bristol Bay Drift Skiff	Wood Enclosed Outboard Power
	25' Boston Whaler	Plastic Open Outboard Power
	24' X 9' Wood Arctic Queen	Boat, General
	24' X 8' Scow Flat	Plastic Open Outboard Power
	24' X 40' Wanigan Float House	Wood Barge
	24' Gussic Ventures	Metal Open Outboard Power
	23' Dories Interceptor	Metal Enclosed Outboard Power
	23' Commercial Cuddy	Plastic Enclosed Outboard Power
	22' X 25' Boathouse	Wood Barge
	22' ORCA Workboat	Plastic Open Outboard Power
	22' Marine Fiberglass	Plastic Open Outboard Power
	21' Woolridge	Metal Open Outboard Power
	21' Wooldridge	Metal Open Outboard Power
	21' Silver Streak	Metal Open Outboard Power
	21' Munson	Metal Open Outboard Power
	21' Glassply	Plastic Enclosed Inboard Power
	21' Glaspar Ventura	Plastic Enclosed Outboard Power
	21' Boston Whaler	Plastic Open Outboard Power
	21' Boston Whaler	Plastic Open Outboard Power
	21' Boston Whaler	Plastic Open Outboard Power
	21' Boston Whaler	Plastic Open Outboard Power
	21' Alum	Metal Open Outboard Power
	20' Wood Plank	Boat, General
	20' Smokercraft	Metal Open Outboard Power
	20' Ouachita	Metal Open Outboard Power
	20' Ouachita	Metal Open Outboard Power
	20' Fiberform	Plastic Enclosed Outboard Power
	20' Custom Made	Metal Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	20' Boat	Boat, General
	20' Alumaweld	Metal Open Outboard Power

[illegible]	Vessel Length	Class Description
Fish & Game	19.6' Workboats	Metal Open Outboard Power
	19' Yankee Finestkind	Plastic Open Outboard Power
	19' Skiff	Boat, General
	19' Ski Barge	Plastic Enclosed Outboard Power
	19' Silver Streak	Metal Open Outboard Power
	19' Seine Skiff	Boat, General
	19' Monark	Metal Open Outboard Power
	19' Glass-ply	Plastic Enclosed Outboard Power
	19' Boston Whaler	Plastic Open Outboard Power
	19' Boston Whaler	Plastic Open Outboard Power
	18' Skiff	Boat, General
	18' Wooden Boat	Boat, General
	18' Westcoast Bayrunner	Metal Open Outboard Power
	18' Smokercrft	Metal Open Outboard Power
	18' Smokercraft	Metal Open Outboard Power
	18' Smoker Craft	Metal Open Outboard Power
	18' Skiff	Boat, General
	18' Skiff	Boat, General
	18' Skiff	Boat, General
	18' Plank Skiff	Boat, General
	18' Monark	Metal Open Outboard Power
	18' Lund	Metal Open Outboard Power
	18' Lund	Metal Open Outboard Power
	18' Lund	Metal Open Outboard Power
	18' Lund	Metal Open Outboard Power
	18' Loweline	Metal Open Outboard Power
	18' Loweline	Metal Open Outboard Power
	18' Gussic Ventures	Metal Open Outboard Power
	18' Fisher Marine	Metal Open Outboard Power
	18' Bayrunner	Metal Open Outboard Power
	18' Almar Jetstream	Metal Open Outboard Power
	18' Aeroweld	Metal Open Outboard Power
	17' Workboats	Metal Open Outboard Power
	17' Workboats	Metal Open Outboard Power
	17' Workboats	Metal Open Outboard Power
	17' Ski Barge	Plastic Enclosed Outboard Power
	17' Gregor	Metal Open Outboard Power
	17' Boston Whaler	Plastic Enclosed Outboard Power
	17' Boston Whaler	Plastic Enclosed Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
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	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Almar Lite	Metal Open Outboard Power
	16' Starcraft	Metal Open Outboard Power
	16' Starcraft	Metal Open Outboard Power
	16' Monark	Metal Open Outboard Power

STATE OF ALASKA
VESSELS OVER 16 FEET

DEPARTMENT	VESSEL LENGTH	CLASS DESCRIPTION
Public Safety	Olympic OMV 2600	Plastic Enclosed Outboard Power
	Glasply 2100 Series	Plastic Enclosed Outboard Power
	F/V Snafu w/ Diesal Power	Wood Enclosed Outboard Power
	Boston Whaler Mdl V-20 Outrage	Plastic Enclosed Outboard Power
	121' Patrol Vessel	Metal Enclosed Inboard Power
	100' P/V Vigilent	Metal Enclosed Inboard Power
	65' 4300 ton OV-T483	Metal Enclosed Inboard Power
	65' 4300 Ton OV-T482	Metal Enclosed Inboard Power
	47' Delta	Metal Enclosed Inboard Power
	42' Uniflite	Plastic Enclosed Inboard Power
	38' Bertram	Plastic Enclosed Inboard Power
	38' Bertram	Plastic Enclosed Inboard Power
	38' Bertram	Plastic Enclosed Inboard Power
	32' Modutech	Metal Enclosed Inboard Power
	32' Modutech	Metal Enclosed Inboard Power
	32' Modutech	Metal Enclosed Outboard Power
	32' Modutech	Plastic Enclosed Inboard Power
	32' Modutech	Plastic Enclosed Inboard Power
	32' Marco Alum. Gillnetter	Metal Enclosed Inboard Power
	29' Lynda M	Plastic Enclosed Outboard Power
	28' Bow-Picker	Plastic Enclosed Inboard Power
	25' Workboat Frontier	Plastic Open Outboard Power
	22' Boston Whaler	Boat, General
	22' Boston Whaler	Plastic Open Outboard Power
	21' Boston Whaler	Plastic Open Outboard Power
	21' Boston Whaler	Plastic Open Outboard Power
	20' Sea Ox	Plastic Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	20' Boston Whaler	Plastic Open Outboard Power
	19' Boston Whaler	Plastic Open Outboard Power
	19' Boston Whaler	Plastic Open Outboard Power
	19' Boston Whaler	Plastic Open Outboard Power
	19' Boston Whaler	Plastic Open Outboard Power
	18' Lowe Jon Boat	Metal Open Outboard Power
	18' Jet	Metal Open inboard Power
	18' Boston Whaler	Plastic Open Outboard Power
	18' Boston Whaler	Plastic Open Outboard Power
	17' Gregor	Metal Open Outboard Power
	17' Fiberform	Plastic Open Outboard Power
	17' Custom Built Skiff	Metal Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power
	17' Boston Whaler	Plastic Open Outboard Power

STATE OF ALASKA
VESSELS OVER 16 FEET

DEPARTMENT	VESSEL LENGTH	CLASS DESCRIPTION
Corrections	18' Valco	Metal Open Outboard Power
Education	30' Utility Boat	Boat, General
Environmental Cons	19' Boston Whaler	Plastic Enclosed Outboard Power
H&SS	20' R.R. Hewes Craft	Metal Open Outboard Power
Natural Resources	16'7" Boston Whaler	Plastic Enclosed Outboard Power
	Silverline MDL Hilo	Plastic Enclosed Outboard Power
Transportation	Bartlett	Ferries
	Tustamena	Ferries
	Chilkat	Ferries
	Matanuska	Ferries
	Columbia	Ferries
	Taku	Ferries
	Malasoina	Ferries
	LeConte	Ferries
	Aurora	Ferries
	16' X 30' Paint Float	Metal Barge
	20' Aluminum	Metal Open Outboard Power
Surplus Warehouse	Glasply 2600 Escort	Plastic Enclosed Inboard Power
	17' Glasply	Plastic Enclosed Outboard Power
	25' Cabin Skiff Barricuda	Wood Enclosed Outboard Power

Prepared by the House Research Agency, April 1986.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

April 18, 1986

MEMORANDUM

TO: Representative Bette Cato

ATTN: Rhonda Cargill

FROM: Deb Pomeroy, Administrative Officer DP

RE: Vessels Owned by the State of Alaska
Research Request 86-155 (Supplemental Information)

Attached is the list of vessels over 16 feet owned by the University of Alaska which I received today. This brings the number of State-owned vessels over 16 feet to 309. If you would like this information incorporated into the table I delivered to you on April 4, please let me know.

DP

Attachment

University of Alaska

DESCRIPTION	POWER	LENGTH	LOCATION
LUND,ALUMINUM,OPEN	OUTBOARD	16	UAJ - JUNEAU
BOSTON WHALER,FIBERGLASS,OPEN	NONE	17	UAJ - JUNEAU
LUND,ALUMINUM,OPEN	OUTBOARD	16	UAJ - JUNEAU
GLASPLY,FIBERGLASS,CABIN	OUTBOARD	23	UAJ - JUNEAU
UNIFLITE,PLYWOOD/GLASS,CABIN	INBOARD	23	UAJ - JUNEAU
SABRECRAFT,PLYWOOD/GLASS,CABIN	INBOARD	26	UAJ - JUNEAU
RESEARCH VESSEL,WOOD,"MAYBESO"	INBOARD DIESEL	47	UAJ - JUNEAU
LAKE BOAT,ALUMINUM	UNKNOWN	16	FAIRBANKS
BOSTON WHALER	UNKNOWN	16	SEWARD
BOSTON WHALER	UNKNOWN	16	SEWARD
DURACRAFT RIVER BOAT	UNKNOWN	20	FAIRBANKS
RIVER BOAT	UNKNOWN	24	FAIRBANKS
MONARK RIVERBOAT	UNKNOWN	20	FAIRBANKS
RIVERBOAT	UNKNOWN	30	FAIRBANKS
GRUMMAN CANOE	UNKNOWN	17	FAIRBANKS
GRUMMAN CANOE,SQUARE STERN	UNKNOWN	19	FAIRBANKS
ZODIAK INFLATABLE RUBBER RAFT	OPTIONAL	16	FAIRBANKS
BOAT SKIFF WOOD	UNKNOWN	24	KODIAK
BOAT METAL	UNKNOWN	24	GALENA

HB

201

HYDER, Alaska

Known as "The Friendliest Ghost Town in Alaska". Hyder has an interesting history. The community is located on the fringe of Misty Fiord National Monument and the Tongas National Forest.

Photo by T.W. Parkin

The U.S. Corps of Engineers Storehouse No.4, located on the International Border, is the oldest masonary structure in Alaska. It is listed in the National Register of Historic Sites.

While in Hyder visit bars, gift shops, and cafes, or visit old mine sites worked at the turn of the century by prospectors hoping to find the "Mother Lode". At Fish Creek two miles northeast of Hyder see North America's largest species of Chum Salmon spawn during the months of July and August.

Before leaving don't forget the friendly tradition of being "Hyderized".

This brochure is funded in part by the Division of Tourism, State of Alaska.

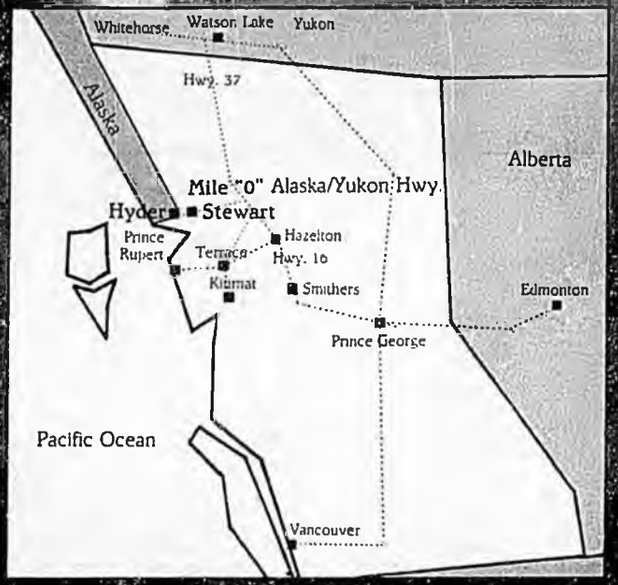
Cover: Photo courtesy of L. Horne

PRINTED IN CANADA

STEWART
BRITISH COLUMBIA

HYDER
ALASKA

Your Gateway to Alaska and the Yukon!



For information contact:

Stewart - Hyder
Chamber of Commerce
Box 306, Stewart, B.C.
V0T 1W0

STEWART, British Columbia

Located at the head of the Portland Canal Stewart has seen many changes take place. The town literally grew overnight as gold discoveries attracted over 10,000 prospectors and merchants to the area in 1906. Evidence of this exciting era still exists. Pilings, once used to support buildings above the tide flats, can still be observed along the shoreline.

Photo by L. Horne

On the way to Stewart why not stop at the fish ladder near Nass Bridge. Reportedly over 25,000 fish use this ladder annually.

With mining being the largest industry of the area Stewart has always been influenced by mineral prices. However, with the opening of Highways 37, tourists have realized the beauty of the region.

Several major movies have been filmed on location in the Stewart area. The first film, 'Bear Island', involved such stars as Donald Sutherland and Vanessa Redgrave. As the number of tourists increases each year, the town of Stewart meets their needs. A beautiful tent-camper park has been set up in town. A variety of accommodations and services are available in both communities.

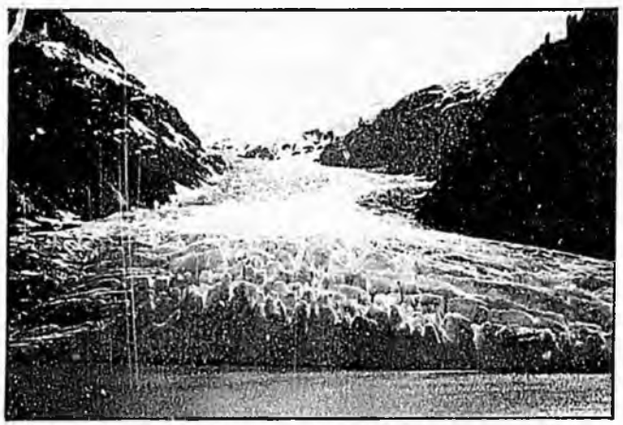


Photo by B. Wellwood

A breathtaking view of the Bear Glacier awaits all travellers on their way to Stewart. This beautiful ribbon of ice is located just 30 km east of Stewart.

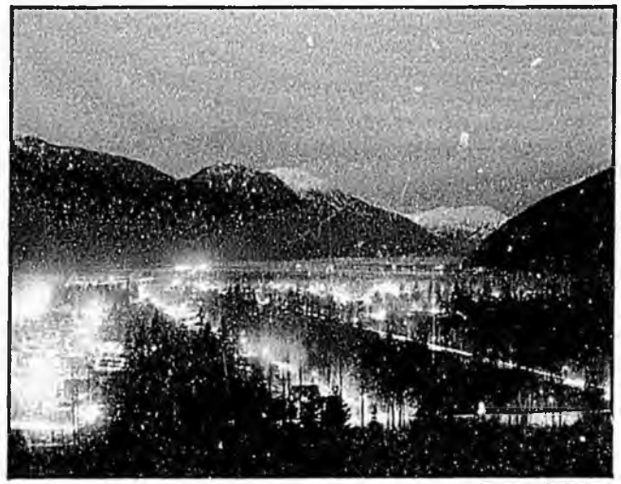


Photo by R. Eckert

The evening lights of Stewart are a welcome sight for travellers on the Portland Canal.

Events

Stewart-Hyder can boast of having the longest birthday party in North America. They begin celebrating on July 1st in Stewart and end on July 4th in Hyder. One special attraction is the international bed race which begins in Alaska and ends in British Columbia.

Alaska

Every year more tourists realize that they no longer have to travel for days on gravel roads to visit Alaska. With the last 28 km of road slated to be paved in 1984, people may now visit Alaska with a pleasant, relaxing drive.

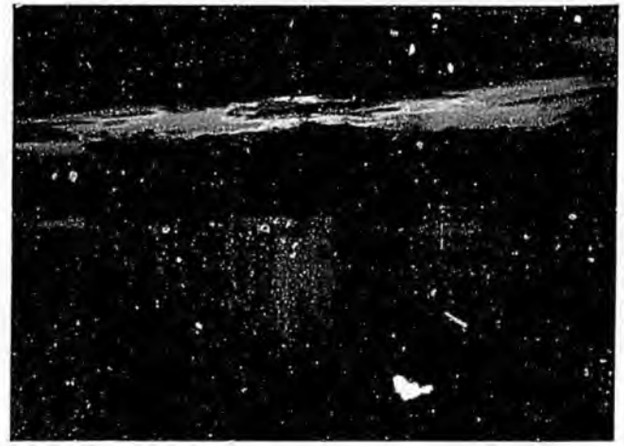


Photo by L. Perry

After a day on the lake, fishermen can relax to the splendor of a sunset over Meziadin Lake.

Photo by L. Horne

Stewart's splendid marina is the gateway to exciting fishing or magnificent scenery. Charter trips are available.

This frozen waterfall is only one of the many sights that makes winter hiking much more rewarding.

Photo by L. Horne

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation Committee 2/28/1985, 7:00 am

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

April 19, 1985

MEMORANDUM

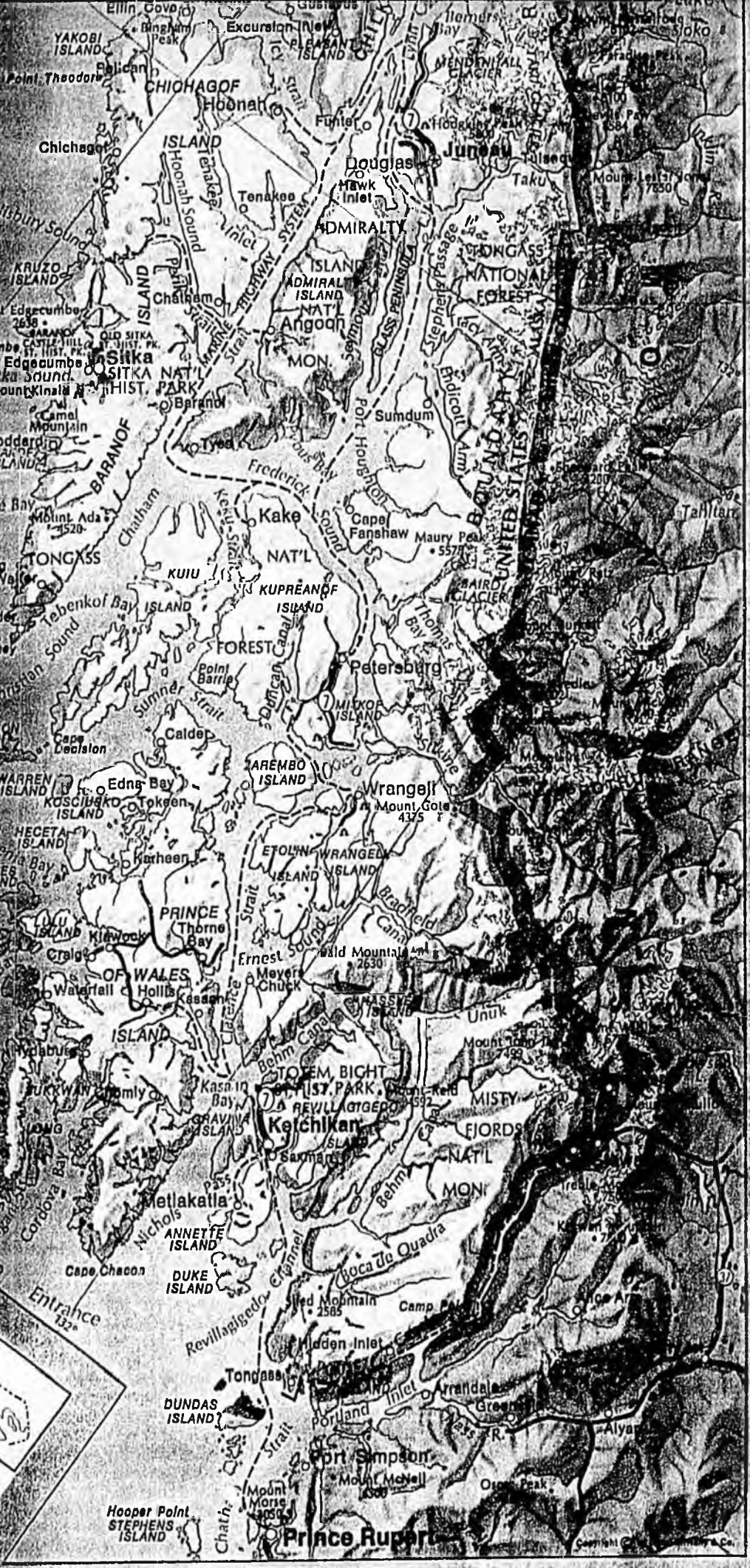
To: Committee members

From: Committee staff JM

Re: File information on HB 201

On Monday, the committee is scheduled to hear HB 201, which would appropriate $22,000 to DOT/PF for weekly ferry service from Ketchikan to Hyder. This service would begin in 1987, if Hyder gets a dock and ferry terminal, however, the companion bill appropriating $2.1 million for construction of the facilities, HB 202, has been held up in House Finance.

There remains the possibility, however, that the ferry could use docking facilities in Stewart, B.C. (about a mile away), until the terminal is built in Hyder.


Ellin Cove
Excursion Inlet
YAKOBI ISLAND
Pelican
Point Theodore
CHICHAGOF ISLAND
Hoonah
Funter Bay
Chichagof
Tenakee Inlet
Douglas
Juneau
Hawk Inlet
Tenakee
ADMIRALTY ISLAND
KRUZOF ISLAND
Chatham Strait
Angoon
Edgecumbe
Sitka
SITKA NAT'L HIST. PARK
Baranof
Sumdum
Tyee
Kake
Cape Fanshaw
Maury Peak
TONGASS NAT'L FOREST
KUIU ISLAND
KUPREANOF ISLAND
Tebenkof Bay
Petersburg
Point Barrie
Sumner Strait
Duncan Canal
Thomas Bay
Calder
Cape Decision
Edna Bay
Kosciusko Island
Tokeen
Wrangell
Mount Gote 4375
Karheen
ETOLIN ISLAND
WRANGELL ISLAND
PRINCE OF WALES ISLAND
Thorne Bay
Klawock
Craig
Waterfall
Hollis
Kasaan
Ernest Sound
Meyers Chuck
Bradfield Canal
Unuk
Behm Canal
TOTEM BIGHT STATE PARK
Kasaan Bay
Ketchikan
MISTY FJORDS NAT'L MON.
Saxman
Metlakatla
ANNETTE ISLAND
DUKE ISLAND
Cape Chacon
Boca de Quadra
Revillagigedo Channel
Hidden Inlet
Tongass
DUNDAS ISLAND
Portland Inlet
Port Simpson
Mount McNeil
Mount Morse
Hooper Point
STEPHENS ISLAND
Prince Rupert
Entrance
Cordova Bay
Nichols Passage
Clarence Strait
Behm Canal
Stephens Passage
Endicott Arm
Port Houghton
Frederick Sound
Keku Strait
Chatham Strait
Seymour Canal
GLASS PENINSULA
Taku Inlet
Taku
Mount Leslie James 7850
Mendenhall Glacier
Juneau Icefield
Stikine
Baird Glacier
Thomas Bay
Tahltan
Sheep Mountain
Mount Ratz
Mount Burnett
Treble Mountain
Kawkawa
Mount Jumbo
Mount Kelly
Mount Reid
Gold Mountain 2630
Camel Mountain
Edgecumbe 2638
Mount Ada 1520
Maury Peak 5577
Mount Gote 4375
Mount Jumbo 7490
Mount Reid 4592
Red Mountain 2585
Mount McNeil 4300
Mount Morse 3050
Ogden Peak
Alyan
Arrandale
Greens
Ports
R.
Camp Pt.
Prince Arthur
Copyright

Introduced: 2/15/85
Referred: Transportation and Finance

Funding Information
General Fund $22,000
Other Funds -0-
$22,000

IN THE HOUSE BY TAYLOR AND SUND

HOUSE BILL NO. 201

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Transportation and Public Facilities to provide weekly summer Marine Highway service to Hyder; and providing for an effective date."

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

* Section 1. The sum of $22,000 is appropriated from the general fund to the Department of Transportation and Public Facilities for expenses incurred in providing weekly summer Marine Highway service to Hyder for the fiscal year ending June 30, 1986.

* Sec. 2. This Act takes effect July 1, 1985.

Expar. mailat

HYDER COMMUNITY ASSOC. INC.

P.O. BOX F
HYDER, ALASKA 99923 (604) 636-9148

March 25, 1985

MARINE HIGHWAY SERVICE — HYDER, ALASKA

The Southeast Alaska Transportation Plan published by the Alaska Department of Transportation in June, 1980 recommended that ferry service be introduced to Hyder in 1985.

The Governor's Alaska Marine Highway Task Force recommended in February, 1984 that ferry service would be economically viable and should be introduced between Ketchikan and Hyder in 1986.

Hyder is connected with Highway 16 via 141 miles of excellent paved highway, and provides a shorter highway route to the lower 48 states than from Prince Rupert.

The M/V Aurora is based at Ketchikan and has sufficient time in its current summer schedule to provide weekly round trips between Ketchikan and Hyder with no negative effect on the communities now served. The Aurora is currently crewed on a full time basis, and the only additional expense to provide service between Ketchikan and Hyder would be for fuel.

The Marine Highway Task Force projects that the proposed route would generate capacity passenger and vehicle loads in both directions, and increase revenues. Service with the Aurora on this route would provide an alternate to the Prince Rupert gateway, with an increase in the level of service between British Columbia and Southeastern Alaska.

Currently there are twenty-eight adults unemployed in Hyder, Alaska. Our year round population is one-hundred. Stewart, 1.5 miles away, has a population of approximately 1000. Hyder has three bars, three cafes, three gift shops, one grocery store and a motel. There is only one bar open now. One cafe is open on a full-time basis. One gift shop is open on a full-time basis. Needless to say these businesses are not covering their expenses of operation. The proposed service would provide a needed economic stimulus for the people of Hyder, Alaska.

The children who attend public school are bused into Stewart, B. C. Our electricity is furnished by B. C. Hydro. Our telephone area code is (604) British Columbia. If you call Alaska long distance information you will be informed that there is no such place as Hyder, Alaska. Now we only receive mail once per week — weather permitting. We have gone as long as six (6) weeks without mail service. A round trip charter to Ketchikan can cost as high as $1,000.00.

Documented Canadian border crossing statistics show inexcess of 20,000 visitors entering between May—August, 1985. These figures are based on a 40/hr work week.

I hope these ideas will assist you in your deliberations on establishing a terminal and ferry service at Hyder and that a favorable response can be obtained.

John W. Chatham

John W. Chatham, President

Hyder Position

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 201

Title: An act making appropriation to DOT&PF to provide weekly summer Marine Highway service to Hyder.

Sponsor: Taylor & Sund

Requestor:

Date of Request:

FISCAL DETAIL

Agency Affected: DOT&PF

Program Category Affected: Transportation

BRU, Program or Subprogram(s) Affected: Alaska Marine Highway System

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING		-0-	-0-	-0-	-0-	-0-
100 PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
200 TRAVEL		1.0	2.1	2.2	2.4	2.5
300 CONTRACTUAL		6.0	12.7	13.5	14.3	15.1
400 SUPPLIES		3.5	7.4	7.8	8.3	8.8
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		10.5	22.2	23.5	25.0	26.4
CAPITAL						
REVENUE		1.2	2.5	2.7	2.9	3.0

FUNDING: (Thousands of Dollars)

GENERAL FUND		10.4	22.0	23.3	24.3	25.2
FEDERAL FUNDS						
OTHER PGM Rec.		.1	.2	.2	.2	.2
TOTAL		10.5	22.2	23.5	25.0	26.4

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

- See Attached -

Prepared By: Joe D. Camp

Phone: 465-3950

Division: Alaska Marine Highway System

Date: 2/25/85

Approved by Commissioner:

Date: 2/27/85

Agency: DOT&PF

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Fiscal Note

ANALYSIS HB 201

Service to Hyder could not begin until a suitable docking and terminal facility were constructed. Engineer estimates for site selection, design and construction would require from eighteen (18) to twenty-four (24) months.

Assumptions:

Assuming an eighteen (18) month time frame to put the facility on-line, terminal and vessel operating costs would not be required in FY 86 and in FY 87 only for the last quarter. FY 88 and onward, would require full funding for the operation of a summer schedule.

While the terminal building would be heated, lighted and have restroom facilities no state employee would be stationed in Hyder. A contractual arrangement with the City of Hyder or a local resident is opted and payment for services would be from ticket sale commissions generated by the contractor.

A link between Hyder and Ketchikan added to the present routes would provide a new option for travelers. This could result in an increase in traffic.

POSITION

HYDER, ALASKA - MARINE HIGHWAY SERVICE

The Department of Transportation and Public Facilities has no position on the concept of weekly Marine Highway summer service connecting to the land highway system of Hyder, Alaska. Such service would provide an alternate connection to the British Columbia land highway network, serve an increased number of Alaskans and provide a potential for increased visitor trade. This service is to be studied in the update of the Southeast Transportation plan due to be completed in December, 1985.

Docking, transfer and terminal facilities must be provided in Hyder before such service can begin.

Site selection, design and construction would require 18 to 24 months; therefore, if House Bill 202 is passed, service could begin in the summer of 1987 at the earliest.

A vessel could be made available to provide this service by shifting the summer season weekly port call of the M/V AURORA from Prince Rupert, B.C., to Hyder.

The distance from Ketchikan to Hyder is 130 nautical miles, compared to a distance of 92 nautical miles between Ketchikan and Prince Rupert. This results in a one way running time from Ketchikan to Prince Rupert of six hours and thirty minutes, versus slightly more than nine hours to Hyder for the M/V AURORA. Schedule time is available as indicated below.

Normal summer schedules call for the M/V AURORA to provide a connection to Prince Rupert on Tuesdays. This could be approximated from Hyder as follows:

CURRENT AURORA SCHEDULE

MON	LV	Hollis	7:30 AM
MON	AR	Ketchikan	10:15 AM
MON	AR	Ketchikan	2:45 PM
MON	AR	Hollis	5:30 PM
MON	AR	Hollis	7:15 PM
MON	LV	Ketchikan	11:15 PM
TUE	AR	Pr Rupert	*6:30 AM
TUE	LV	Pr Rupert	*10:30 AM
TUE	LV	Ketchikan	5:15 PM
TUE	LV	Hollis	9:15 PM

ETC - ETC

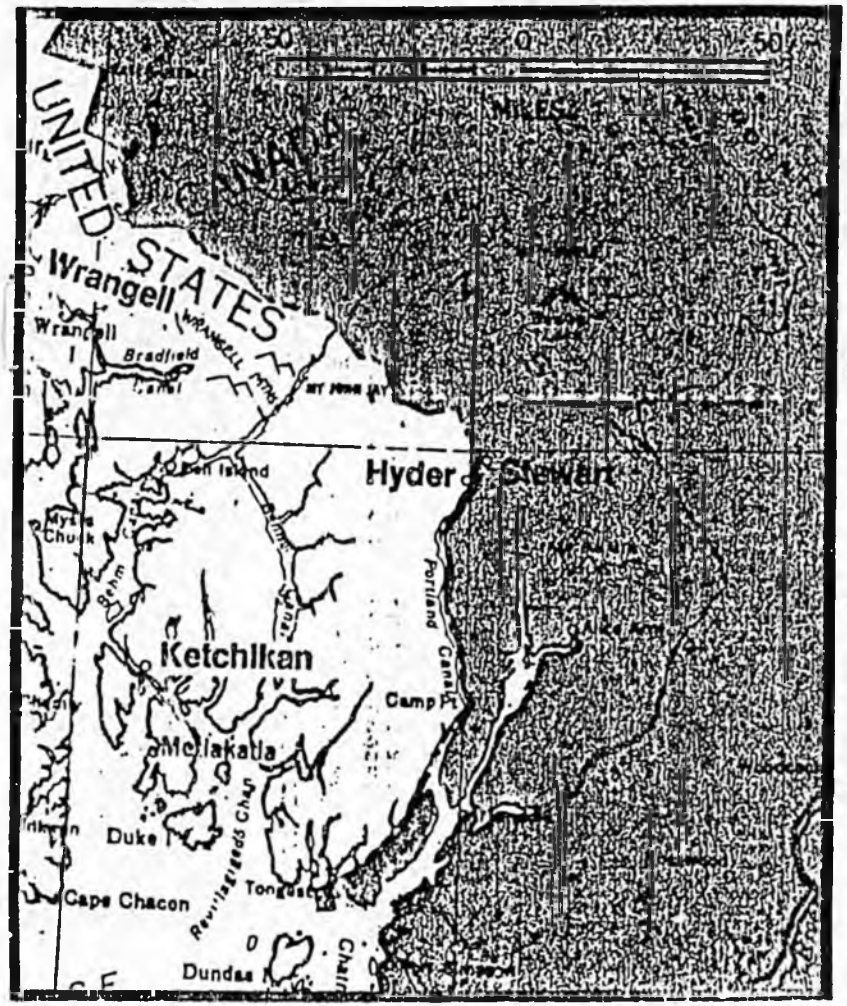
* Prince Rupert time

PROPOSED HYDER SERVICE

MON	LV	Hollis	7:30 AM
MON	AR	Ketchikan	10:15 AM
MON	LV	Ketchikan	2:45 PM
MON	AR	Hollis	5:30 PM
MON	LV	Hollis	7:00 PM
MON	LV	Ketchikan	10:45 PM
TUE	AR	Hyder	8:00 AM
TUE	LV	Hyder	10:00 AM
TUE	LV	Ketchikan	8:00 PM
TUE	LV	Hollis	11:30 PM

ETC - ETC

DOT Position



Times Art Department

Hyder, 'Alaska's friendliest ghost town' is two miles away from Stewart, B.C.

A hidden Hyder

Ferry plan sets Southeast town abuzz

by Chriss Swaney
Times Business Writer

Hyder — Residents of this tiny southeast Alaskan community say the zip code is the only connection they have with their state and nation.

But "Alaska's Friendliest Ghost Town," — the inscription on a sign at the outskirts of the unpaved 250-acre community — may yet overcome its isolation if the legislature approves a bill that would provide weekly ferry service to the community and $2.1 million to build a dock and terminal there.

Hyder, located about 100 miles northeast of Ketchikan at the head of the Portland Canal, has no roads to Alaskan cities nor any regular marine or airline transportation. Flights must be chartered from Ketchikan and cost $250 one way. However, costs can reach more than $1,500 if snow or fog forces Bush pilots to bypass Rudyard Pass — a faster aerial route to Hyder.

Because of its remoteness, residents use Canadian money, hospitals, telephone exchanges and schools. Although Hyder has a small grocery store, residents say they drive two miles to nearby Stewart, B.C. to purchase dairy products.

"We need a dock and ferry terminal to keep the community alive," said John Chatham, administrator of the Hyder Community Association Inc. "We've been isolated too long," he said.

Many residents don't even know who their local representatives are because the community of 100 is bordered on the north and west by the Tongass National Forest and British Columbia on the east, Chatham said.

But the entire community recently jumped aboard Rep. Robin Taylor's bandwagon to lobby for construction of the ferry dock and terminal.

Taylor, R-Wrangell, introduced a bill to the legislature earlier this year asking for funds to build the ferry dock and terminal. The bill is now being studied by the House Finance Committee.

"We hope to see some kind of movement on the bill in the next couple of weeks," Taylor said. "I think Hyder residents have finally realized that the squeaky wheel does get some oil," he said.

Meanwhile, the economy of Hyder remains flat. Two of the community's three

See Hyder, page D-3

Hyder wants dock

Continued from page D-1

tourist gift shops are closed and the 11-room hotel is closed indefinitely. Sales also are down for the community's three bars and the one gift shop still open.

Dorothy Britton, owner of the "This and That Gift Shop" which is still open, said the proposed ferry terminal would help community morale and business. "We get about 60,000 tourists (mostly Canadians) each summer but things die in the winter and fall because of our remoteness," Britton said.

"We love the beauty of the area but we also need to be able to support ourselves," she said.

Another problem for Hyder businesses was the recent closure of two mines in Stewart. "Our bars and gift shops used to get a lot of business from the miners but now things are real slow," said Lawrence Marx, who has lived in Hyder the past 25 years.

Most Hyder residents are self-employed in construction, lumber and tourist-related jobs. A few residents work in California and live in Hyder during the summer.

"There are no food lines or anything yet because of the depressed economy, but we have delivered some canned goods and wood to several families," said preacher Don Hagen of the Brookside Baptist Church in Hyder.

Kathy Tschakert, whose 9-year-old daughter Amanda attends a Canadian school, said construction of the ferry dock would make Hyder residents feel more a part of their state and nation. "The Canadian schools are fine but I wish my daughter was singing "The Star Spangled Banner" instead of "Oh Canada."

CITY OF KETCHIKAN, ALASKA

RESOLUTION NO. 85-1424

A RESOLUTION REQUESTING THE IMPLEMENTATION OF ALASKA MARINE HIGHWAY SERVICE BETWEEN KETCHIKAN AND HYDER, ALASKA AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Southeastern Alaska Transportation Plan published by the Alaska Department of Transportation in June, 1980 recommended that ferry service be introduced to Hyder in 1985, and

WHEREAS, the Governor's Alaska Marine Highway Task Force recommended in February, 1984 that ferry service would be economically viable and should be introduced between Ketchikan and Hyder in 1986, and

WHEREAS, Hyder is connected with Highway 26 via 141 miles of excellent paved highway and provides a shorter highway route to the lower 48 states than from Prince Rupert, and

WHEREAS, the Marine Highway Task Force projects that the proposed route would generate capacity passenger and vehicle loads in both directions and increase revenues, and

WHEREAS, service on this route would provide an alternate to the Prince Rupert gateway with an increase in the level of service between British Columbia and Southeastern Alaska, and

WHEREAS, the proposed service would provide a needed economic stimulus for the people of Hyder, Alaska.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Ketchikan, Alaska, as follows:

Section 1. The City of Ketchikan strongly urges the State of Alaska to implement Alaska Marine Highway service between Ketchikan and Hyder, Alaska as soon as possible.

Section 2. The City Council hereby directs the City Clerk to distribute copies of this resolution to Governor Sheffield, Commissioner Knapp, Senator Ziegler, Representatives Sund and Taylor and Mr. John Chatham, President, Hyder Community Association, P.O. Box F, Hyder, Alaska 99923.

Section 3. This resolution shall become effective immediately upon passage and approval.

PASSED AND APPROVED by the Council of the City of Ketchikan, Alaska, this 21st day of February, 1985.

Charles E. Freeman, Mayor

ATTEST:

Karen Miles, City Clerk

City of Ketchikan Resolution

HB

2223

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation Committee 3/20/1985, 7:00 am

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: HB 223

Title: Designation of the Dillingham to Aleknagik Road

Sponsor: Herrmann

Requestor: House Transportation

Date of Request: 3-19-85

FISCAL DETAIL

Agency Affected: DOT&PF

Program Category Affected:

BRU, Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

HB 223 has no impact on the Department of Transportation and Public Facilities.

Prepared By: William R. Snell (signed) Phone: 266-1462

Division: Central Region Planning Date: 3-19-85

Approved by Commissioner: Date: 3-19-85

Agency: DOT&PF

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: HB 223

TITLE: Designation of the Dillingham to Aleknagik Road

APPROVED: R. J. Knapp
Commissioner

DATE: March 19, 1985

The Department of Transportation and Public Facilities takes no position on this bill except to encourage coordination with local governments to ensure acceptance of this designation.

For further information call Susan Fleischhauer at 465-3900.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS AND OUTDOOR RECREATION

225A CORDOVA STREET
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-2653

MAILING ADDRESS:
POUCH 7001
ANCHORAGE, ALASKA 99510

March 19, 1985

The Honorable Bette Cato
Chair, House Transportation Committee
Alaska House of Representatives
Pouch V (MS 3100)
Juneau, AK 99811

Dear Representative Cato:

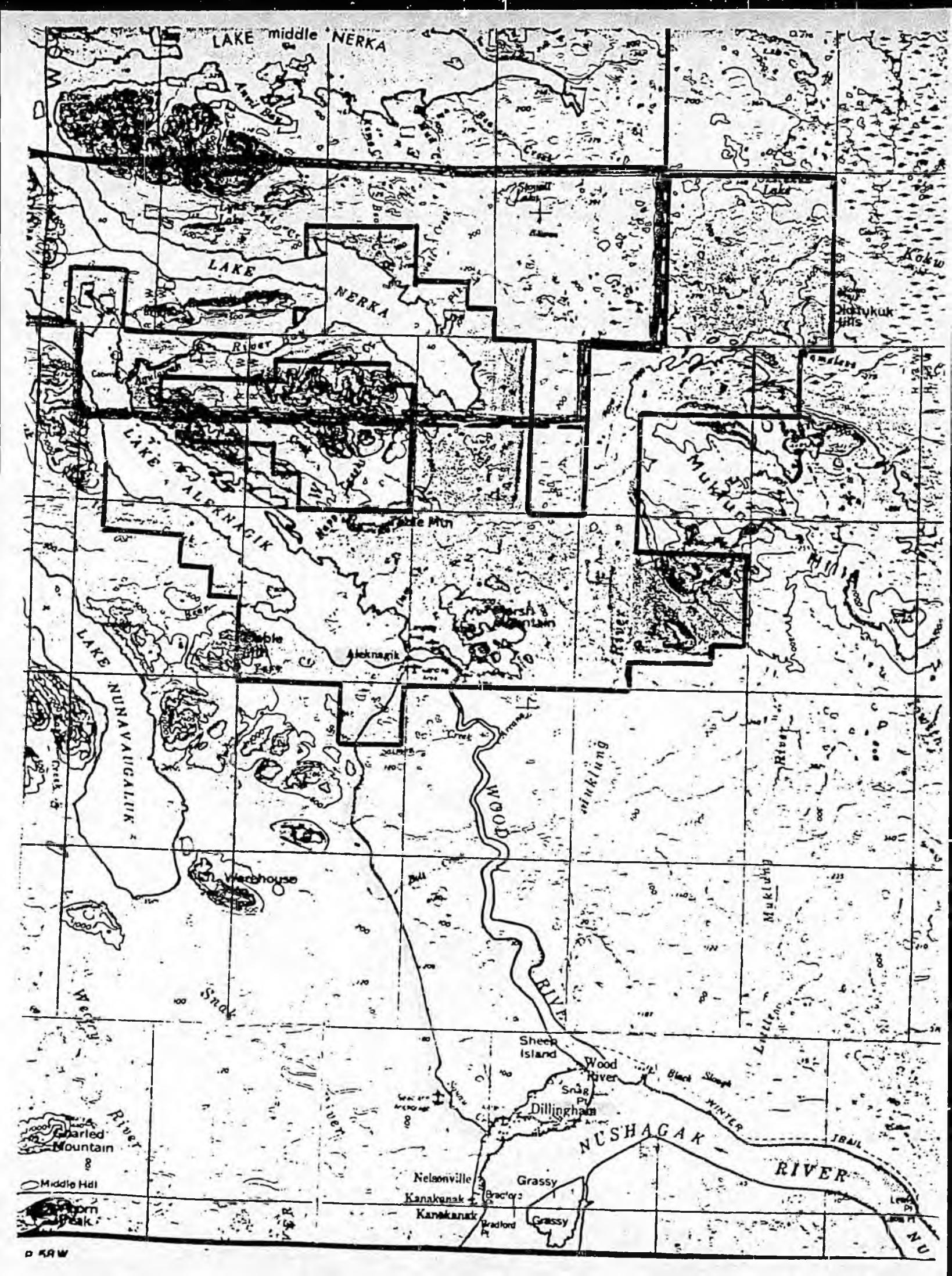
The creation of the Wood-Tikchik State Park in 1978 was a significant step to protect the waters in which one-third of the Bristol Bay Sockeye Salmon spawn, an area of unique and outstanding scenic grandeur and to enhance our state's important tourism industry. At 1.5 million acres, this state recreation unit comprises one-half of the acreage of the entire state park system. It is the largest state park in America, and was popularly received by local residents.

House Bill 223 by Representative Herrmann is a fine bill, which I wholly support. The road between Dillingham and Aleknagik receives increasing recreation and subsistence user traffic to gain access to this outstanding park. To name the road "Gateway to Wood-Tikchik State Park" is a proper and appropriate action and I hope the House Transportation Committee supports the passage of Representative Herrmann's bill.

Sincerely,

Neil C. Johannsen
Director

cc: Members, House Transportation Committee
The Honorable Esther C. Wunnicke


LAKE middle NERKA
LAKE NERKA
LAKE ALEKNAGIK
Aleknagik
Dillingham
Nelsonville
Kanakanak
Grassy
Sheep Island
Wood River
Snag Pt
NUSHAGAK RIVER
WINTER TRAIL
Middle Hill
Horn Peak
Snowy Mountain
Weary River
Wickersham
Kokwok
Ekwok
Mulchatna
Nunavaugaluk
Woodchopper
Mukluk
Lake

MAR 19 1985

CITY OF ALEKNAGIK

P.O. Box 33
ALEKNAGIK, ALASKA 99555
(907) 842-5963

March 18, 1985

Representative Adelheid Herrmann
House of Representatives
District 26
Pouch V
Juneau, AK 99811

Dear Representative Herrmann:

At the most recent City Council meeting, consideration was given to your proposed Bill to designate the road between Dillingham and Aleknagik, the gateway to Wood-Tikchik State Park.

The City Council supports this proposal, especially in light of the increased use this road is experiencing. As you know, the road provides a vital link between the regions largest City (Dillingham), and the Park.

Sincerely,

CITY OF ALEKNAGIK

Helen M. Chythlook

Helen M. Chythlook
City Administrator

cc: City Mayor
City Council

IDENTIFICATION

"An Act relating to designation of the Dellington to Alekagek road."

DATE INTRODUCED
4-15

RELATED BILLS PENDING
None

SPONSOR(S)
~~Allen~~ AOSI HEID Herrmann

REFERRALS
Trans.
Finance

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

SPONSOR CONTACTED FOR BACKUP MATERIALS

FISCAL NOTE

AGENCY RESPONSE

OTHER INTERESTED LEGISLATORS NOTIFIED

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS

HEARING PREPARATION

CHAIRMAN BRIEFED

DATE & PLACE SET

STAFF MEMO TO COMMITTEE

TELECONFERENCE

BACKGROUND MATERIAL DISTRIBUTED

PSA/PRESS RELEASE

LIST OF WITNESSES

SUGGESTED AMENDMENTS/CS DRAFTED

HB

240

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SCSCS HB 240 Trans
Title : "An Act relating to overtaking and passing school buses."

Sponsor : Thompson, et.al
Requestor : Senate Transportation
Date of Request : February 26, 1986

FISCAL DETAIL

Agency Affected : Department of Education
BRU : K-12 Support

Components : Pupil Transportation

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	Ø	Ø	Ø	Ø	Ø	Ø
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Mary Hakala
Division : Commissioner's Office
Phone : 465-2800
Date : February 26, 1986

Approved by Commissioner : Harold Reynolds, Jr.
Agency : Department of Education
Date : February 26, 1986

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

School buses & seat belts

A discussion

Alaska Department of Education
Pouch F, Juneau, AK 99811
August 1985

Contents

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School buses and safety 2
Positions 5
The real danger 9
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Foreword

The success of seat belts in reducing injuries and deaths in automobile accidents appears at first glance to apply also to school buses. Yet school buses are not equipped with seat belts. Why not?

Next to parents, those most concerned about the safety of children on school buses are the people responsible for the pupil transportation program. These people—school bus drivers, school bus driver instructors, and school district administrators involved in the day-to-day operation of school vehicles—are familiar with the many issues concerning seat belts on school buses. The subject has been studied for many years at the national and state levels, and much information is available on both sides of the issue.

The purpose of this publication is to provide

- information on why seat belts are not installed on school buses
- research results on the use of seat belts on school buses
- the positions of national and state safety organizations on the seat belt issue.

School buses and safety

Why seat belts are used in automobiles

One purpose of seat belts is to prevent the person wearing them from being thrown out of a vehicle during a collision. But, unlike automobiles, school bus seats are not located opposite a door which could open and allow passengers to be ejected upon impact. School buses usually have only two doors. Neither is located beside a passenger seat.

A second purpose of seat belts is to prevent the wearer from striking sharp objects in the vehicle during an accident. Again, automobiles and school buses are not the same. School buses do not have steering wheels, dashboards, and door and window handles protruding into the passenger compartments. The only person in a school bus threatened by these objects is the bus driver, who wears a seat belt.

Other differences between automobiles and school buses

Passengers in school buses are protected by careful padding of seats, seat backs, sides and aisles. During a sudden impact the padding cushions students and absorbs most of the impact.

The outer construction of school buses and automobiles also is different. A school bus is encased in a metal frame much like a metal rib cage. In comparison, modern automobiles have little reinforcement. Also the passenger compartment in buses is well above the bumper height of automobile bumpers, so the impact of a collision is not at the same height as an automobile. And the impact is not as great on the passengers. This is the reason why interstate buses, public transit buses and school buses are exempt from safety belt requirements. They have a natural safety edge because they are bigger and heavier than automobiles and their interiors are designed to provide much more safety.

School buses are safer for other reasons as well. Other drivers easily see them because of their bright yellow color, flashing lights, special markings and low traveling speed. School buses are also recognized for

the special cargo they carry—our children. These factors make drivers more cautious around school buses.

Federal school bus standards

The National Highway Traffic Safety Administration in the 1970s studied how to improve the interior of the passenger compartment of school buses. The research, based on many crash tests, resulted in major seating and body design recommendations. The federal government used these recommendations to require bus manufacturers to change the way school bus interiors were designed. The design changes required in school buses made after April 1, 1977 were:

- Seats were redesigned to meet specific spacing requirements.
- Seats were to be fully padded in front and back. Seat backs were heightened. These newly designed seats provided a padded cavity for passengers—a concept called compartmentalization—which crash tests proved to provide the most effective protection in a collision.
- School bus bodies were greatly strengthened to withstand heavy impacts from the side, front and rear. Improvements also were made to school bus roofs for protection in case of roll over.

Improvements were made to school bus fuel tanks and lines to lessen the possibility of fuel spillage during collision.

Compartmentalization

How does compartmentalization work? Upon vehicle impact, an unbelted child will slide forward on the seat and into the padded back of the seat ahead. This distributes the forces of impact and injuries most likely will be minor. On the other hand, the lap-belted child's hips will act as a fulcrum, throwing the upper body forward with great force. This may cause severe injuries to the abdominal region because of the pressures involved.

Tests conducted by the Southwest Research Institute in 1977 showed

that 40 inches or more of unobstructed space is required in front of a lap-belted passenger to avoid upper body and head injuries. Since school bus seats are closely spaced, the lap-belted child's throat or head will most likely strike the back of the seat ahead during an accident. In such cases, the head or throat will receive all the forces of the impact and could result in severe physical injuries.

Positions

The National Highway Traffic Safety Administration, the National Safety Council, and the National School Transportation Association have stated that current school bus safety standards in force since 1977 provide adequate protection for school bus passengers. The following are the positions of those organizations:

National Highway Traffic Safety Administration

The U.S. Department of Transportation in Issue Paper HS-806-000 dated September, 1981 states:

"The National Highway Traffic Safety Administration agrees that children should be protected on school buses but does not support a requirement for seat belts for passengers in large school buses. Improving the seating compartment eliminates the need for seat belts and provides sufficient crash protection."

National Safety Council

The National Safety Council in its policy statement *Protecting Pupil Passengers in School Buses* dated June 28, 1984, states:

"The Council recommends that until further research and testing demonstrate that pupils will be safer by the installation of seat belts in school buses, the Council believes that passive protection provided by compartmentalization as required by the current (1977) federal standard on school bus seating and crash protection protects seated pupil passengers in school buses with gross vehicle weight ratings (GVWR) greater than 10,000 pounds."

National School Transportation Association

The Board of Directors of the National School Transportation Association (NSTA) in its Spring, 1984 special edition of *National School Bus Report*, states:

"Those of us who work with the children and school buses every day feel that every new item that is added or changed on school buses should be well tested and engineered prior to being mandated as a regulation. That is why NSTA will continue to support the compartmentalization concept until documented research establishes that seat belts on school buses will raise the level of protection for the occupants."

Canadian Government

School bus tests have shown that in some crashes belted passengers suffer more severe injuries than those not belted. A case in point is the most recent crash tests by the Canadian government.

In 1984 the Canadian government sponsored crash testing to determine the effectiveness of seat belts in three sizes of school buses. Results of the crash testing were summarized in the December 19, 1984 issue of the *Bulletin*, published by the Supply and Services Division of the Canadian government, and a February 1985 technical memorandum on automotive safety entitled *School Bus Collision Tests,* published by Transport Canada of the Canadian government. These publications state:

"Transport Canada has reaffirmed that the safety features Canada (same as U.S. Federal Motor Vehicle Safety Standards) has incorporated into its school buses—well-padded, high-backed, energy-absorbing seats, spaced at controlled intervals—provide a safe environment without seat belts."

"The use of lap seat belts in any of the 3 sizes of recent model school buses which were tested may result in more severe head and neck injuries for a belted occupant than for an unbelted one in a severe frontal collision."

State of Arkansas

On March 25, 1983 a school bus accident in Jonesboro, Arkansas, killed nine persons including four students. The tragedy heightened concern for school bus safety among parents, interested citizens, school officials and legislators. Because of the accident, the Arkansas Legislature studied whether to install seat belts on school buses. In its September 20, 1984 report entitled *Feasibility of Requiring School Districts to Install Seat Belts on School Buses* the Arkansas Legislative Council concluded:

"It appears that based on the costs, the lack of data indicating a great fatality decline with the installation of seat belts, the possible dangers which could arise from the installation of the seat belts themselves, and the outstanding safety records of school buses in general, the issue of seat belts in school buses could be left as a decision to be made by individual school districts and should not be mandated by the legislature."

State of New Jersey

Independent groups in New Jersey have thoroughly studied over the last 15 years the subject of seat belts on school buses. The groups have not recommended installation of belts. A March 1, 1983 letter written by the New Jersey Department of Education regarding the research states:

"In any decision-making process involving the safety and well being of transported students, the bus internal and external safety environment must be carefully analyzed. Such questions as, 'Is what we are proposing more safe, less safe or as safe as what we already have?' (should be raised). It is apparent that there still are too many safety trade offs that, under highly critical questioning, prohibit mandated seat belts at this time."

State of Minnesota

In 1984 the Minnesota Legislature created a task force to answer concerns about school bus safety after fatal school bus accidents. The task force recommended against mandating seat belts in school buses.

State of Maryland

The Maryland Department of Education has concluded that seat belts would not improve the safety of pupils on school buses and may even present hazards to their safety. In the publication *Concerns about Seat Belts on School Buses* dated January, 1985, the department made these findings:

- If the bus rolls over on its side or roof during an accident, passengers may suffer serious injuries when releasing their seat belts because the bus roof would be three to four feet from their heads. Also, young children may find it difficult to unfasten a seat belt because of their suspended weight.
- If the school bus catches fire, particularly with unconscious children aboard, rescuers may not have enough time to release seat belts for as many as 60 children.

State of Alaska

The Department of Education in 1983 appointed a committee of school bus company representatives and school transportation officers to study school bus safety issues. In February 1985 the committee issued a resolution that since has been endorsed by the Alaska School Transportation Association and the Alaska Association for Pupil Transportation. The resolution states:

"The Alaska School Bus Safety Committee is agreed in its opinion that no legislative or regulatory action be taken in the State of Alaska to require seat belts on school buses until an authoritative body of test data has been produced showing conclusively that the overall safety of the ridership on pupil transportation buses is significantly enhanced."

The real danger

According to the National Safety Council, in 1983 55 pupils were killed in school bus accidents nationwide. Ten were school bus passengers and 45 were pedestrians approaching or leaving a loading zone.

Evidence does not show that fatalities inside the bus could have been prevented by seat belts. Most school bus accidents resulting in fatalities inside the bus involve another large vehicle such as a tractor-trailer combination or a railroad train. A section of the bus is usually torn away, intruded into or crushed. In these types of accidents it is sometimes evident that students would have suffered more severe injuries or even suffered a greater number of fatalities if they had been belted in some seat locations.

According to the National Safety Council, the greatest danger area for children is outside the school bus in an area known as "the loading zone." The loading zone is the area where pupils wait for the bus in the morning and get off the bus in the afternoon. Of the 45 fatalities in this area during 1983, more than half were killed when hit by the bus they regularly rode. The others were killed by motorists who failed to stop for school buses loading and unloading passengers.

The Alaska School Bus Safety Committee recommends that efforts be increased to lower loading zone fatalities. The committee's resolution:

"Alaska pupil transportation professionals should continue their ongoing efforts to reduce the incidence of external loading zone fatalities which exceed internal crash fatalities by a ratio of approximately 3 to 1 through state regulation of roadworthiness, in-depth school bus driver safety training, and preventative maintenance program for buses and that these same pupil transportation professionals should work diligently to develop a comprehensive program to promote loading and unloading zone safety awareness in the students' minds through classroom curriculum, in the motoring publics' mind through the public media, and in the parents' minds through use of parent-teacher associations and other concerned citizen groups."

Conclusion

The Department of Education has carefully reviewed available information about using seat belts in school buses. In light of the evidence, the department has concluded that it cannot support seat belt use in school buses until further testing shows that it is safer than compartmentalization.

Until such time, the department supports the position favoring compartmentalization of the National Highway Traffic Safety Administration, the National Safety Council and the National School Transportation Association.

The department also supports the Alaska School Bus Safety Committee's resolution that encourages greater efforts to reduce external loading zone fatalities. The department also encourages all concerned Alaskans to work with the Alaska School Bus Safety Committee in promoting programs on safety awareness in the loading and unloading zone area.

An Equal Opportunity Employer
Bill Sheffield, Governor

Failed to be added by committee 2/24

DEPARTMENT OF LAW PROPOSED CS

FOR SCS CSHB 240 (TRANSPORTATION)

Subsections (a), (b), and (c) remain the same.

(d) A driver who violates this section is guilty of an infraction and, in addition to other penalties provided by law, is subject to a mandatory assessment of six demerit points under AS 28.15.221 -- 28.15.261.

(e) A vehicle owner, or in the case of a leased vehicle, a lessor, may be punished by a civil penalty not to exceed $100 if the vehicle owned or leased by the person is operated in violation of this section. It is an affirmative defense to a civil penalty under this subsection that 1) the owner's or lessor's vehicle was stolen; 2) the driver of the vehicle was convicted under (d) of this section; or 3) the lessor of the leased vehicle has disclosed to law enforcement authorities the name and address of the person who was the lessee of the motor vehicle at the time of the offense. Demerit points under AS 28.15.221 -- 28.15.261 may not be assessed against an owner or lessor who has been punished by a civil penalty under this subsection. This subsection does not prohibit or limit the prosecution of a vehicle driver for violating (a) or (b) of this section.

(f) This section does not preclude prosecution for any other infraction or criminal offense that may have been committed.

DEPARTMENT OF LAW PROPOSED CS

FOR SCS CSHB 240 (TRANSPORTATION)

Subsections (a), (b), and (c) remain the same.

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(f) This section does not preclude prosecution for any other infraction or criminal offense that may have been committed.

KODIAK ISLAND BOROUGH
RESOLUTION NO. 85-38-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY SUPPORTING COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 240 CONCERNING OVERTAKING AND PASSING SCHOOL BUSES.

WHEREAS, Committee Substitute for House Bill No. 240 has been introduced which increases the regulations on passing school buses and stiffens the penalties for violations of this law, and

WHEREAS, school bus passing has been a serious problem in the Kodiak Island Borough during the current school year, and

WHEREAS, the State Troopers and City Police cannot be everywhere at once which means a greater deterrence must be placed in this law to encourage citizens to abide within the law, and

WHEREAS, the school children must be protected while loading and unloading on school buses.

NOW, THEREFORE, BE IT RESOLVED that the Kodiak Island Borough Assembly strongly supports Committee Substitute for House Bill No. 240 and urges that it be passed and signed into law, and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the following individuals:

The Honorable Bill Sheffield, Governor of Alaska
The Honorable M. Mike Miller, Chairman House Judiciary Committee
The Honorable Fred F. Zharoff, Senator District N
The Honorable David W. Thompson, Representative District 27

PASSED AND APPROVED this 4th day of April, 1985.

KODIAK ISLAND BOROUGH

By Romas H. Peterson
Borough Mayor

ATTEST:

By Shirley Miller, CMC
Borough Clerk

Alaska State Legislature

Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

February 10, 1986

TO: All Members of the Committee

FROM: Committee staff

RE: HB 240

In today's packet you will find:

1. a sectional analysis of HB 240
2. a DOE position paper
3. resolutions in support of HB 240 from the Kenai Peninsula Borough, the Kodiak Assembly and the Alaska School Bus Committee
4. the Association of Alaska School Boards position paper
5. the Department of Public Safety position paper

HB 240 clearly defines what the penalties will be for passing or overtaking a school bus while the bus is loading or unloading. This new section is added to the miscellaneous provisons under Title 28, Motor Vehicles.

One convicted of this infraction will receive 6 points on his driver's license. A total of 12 points within one year will result in suspension, revocation or denial of a driver's license. The enclosed sectional analysis addresses under what circumstances one will be cited.

A RESOLUTION OF

THE ALASKA SCHOOL BUS SAFETY COMMITTEE

RELATIVE TO SCHOOL BUS STOP ARM VIOLATIONS

WHEREAS, the safety of all Alaska school children who are transported to and from school is jeopardized by motorists who pass school buses displaying the red flashing stop lights while loading and unloading school children, and

WHEREAS, these violations occur in rural areas as well as in urbanized areas each school day in Alaska where an estimated 2,000 violations occur each school year with a negligible citation and conviction rate estimated to be less than 1%, and

WHEREAS, in the absence of identification and conviction of these motorists there exists no effective deterrent to the continuing lack of sensitivity to the safety of Alaska school children and is a discouragement to pupil transportation professionals in Alaska, and

WHEREAS, current reporting requirements set out in Alaska state law for stop arm violations have proven to be usually impossible to satisfy in the everyday work situation, and

WHEREAS, conviction of motorists who commit these violations and endanger the lives of Alaska school children is effectively stifled because of these onerous requirements,

NOW THEREFORE BE IT RESOLVED, that the Alaska School Bus Safety Committee urges the Alaska State Legislature to strengthen the current law to allow for citation and vigorous prosecution of the registered owner of the vehicle responsible for violating the law.

Saundra C. Hutchins
Chairperson
Alaska School Bus Safety Committee

February 27, 1985
Date

The Real Danger Zone

According to National Safety Council statistics, 55 pupils were killed in school bus transportation accidents during 1983. Ten were passengers on school buses, and 45 were pedestrians either approaching or leaving a loading zone.

Of the fatalities inside the bus, no evidence exists that seat belts would have prevented any of these. Most school bus accidents resulting in fatalities inside the bus, involve another large vehicle such as a tractor-trailer combination or a railroad train. Usually a section of the bus is torn away or there is a serious intrusion into, or compression of, the passenger compartment. In these types of accidents it is sometimes evident that if pupils had been belted in some seat locations they would have suffered more severe injuries and/or a greater number of fatalities.

As can be surmised from the National Safety Council statistics, the greatest danger area for children is outside the school bus, in the loading zone--the area where pupils wait for the bus in the morning and are discharged from the bus in the afternoon. Of the 45 fatalities in this area during 1983, more than half were killed when hit by the bus they regularly rode. The others, by passing motorists who disobeyed the law reguiring motorists to stop for school buses loading and unloading passengers.

The Alaska School Bus Safety Committee recommends that emphasis be placed on reducing the incidence of external loading zone fatalities. Their Resolution dated February 27, 1985 states the following:

> Alaska pupil transportation professionals should continue their ongoing efforts to reduce the incidence of external loading zone fatalitites which exceed internal crash fatalities by a ratio of approximately 3 to 1 through state regulation of roadworthiness, in-depth school bus driver safety training, and preventative maintenance program for buses and that these same pupil transportation professionals should work diligently to develop a comprehensive program to promote loading and unloadong zone safety awareness in the students' minds through classroom curriculum, in the motoring publics' mind through the public media, and in the parents' minds through use of parent-teacher associations and other concerned citizen groups.

Conclusion

The Department of Education has carefully reviewed all material that we have been able to obtain on the subject, including information on recent crash testing done in Canada. Results of that testing indicate that in certain situations, belted passengers suffer more severe injuries than those not belted.

DOE Position

Introduced by: Dimmick
Skogstad, Keene
Carey, Walli
Date: Mar. 19, 1985
Vote: 10 Yes, 5 No
Action: Adopted

KENAI PENINSULA BOROUGH

RESOLUTION 85-49

URGING PASSAGE OF HOUSE BILL 240 BY THE LEGISLATURE.

WHEREAS, the safety of our children when transported to and from school is of paramount importance; and

WHEREAS, the most dangerous part of the trip is exiting the bus on a travelled roadway at the students regular stop.

WHEREAS, there have been increasing reports of vehicles passing school buses when they are stopped to let children on or off, threatening the lives and safety of the children; and

WHEREAS, House Bill 240 would allow prosecution of the owner of a vehicle identified as driving in violation of the law requiring vehicles to stop when the school bus is loading and unloading, and may help to cut down the number of violators and potential accidents;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the Kenai Peninsula Borough Assembly supports House Bill 240 and urges passage immediately.

Section 2. That this resolution shall take effect immediately upon its adoption.

Section 3. That a copy of this resolution shall be sent to Governor William J. Sheffield, to Senators Edna DeVries, Paul Fischer, Jalmar M. Kerttula, and John C. Sackett, to Representatives Bette Cato, Andre Marrou, Mike Navarre, Kay Wallis, Mike Szymanski, David Thompson, Robin Taylor, and John L. Sund.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 2nd DAY OF April, 1985.

Marilyn Dimmick, Assembly President

ATTEST:

Borough Clerk

Kenai Peninsula Borough Position

ASSOCIATION OF ALASKA SCHOOL BOARDS

1985 FINAL RESOLUTIONS

Passed At November 1985 Annual Meeting

Association of Alaska School Boards Position Paper

85-31

REQUIRE WARNINGS BE ISSUED TO OWNERS OF VEHICLES
ACCUSED OF PASSING SCHOOL BUSES LOADING OR UNLOADING STUDENTS

WHEREAS, Alaska law requires all vehicles approaching a school bus loading or unloading children to come to a full stop without passing the bus until the bus warning lights have been turned off; and

WHEREAS, this practice is common to all states and communities to protect children from potential accidents in traffic; and

WHEREAS, persons acting in a wreckless manner that endangers the lives of children must be assured of penalties that are swift, sure and of suitable consequence to deter similar behavior; and

WHEREAS, laws in other states successfully support more active prosecution and punishment of drivers who endanger childrens' lives by illegally passing school buses while students are boarding or leaving the school bus,

THEREFORE BE IT RESOLVED, that the Association of Alaska School Boards supports changes in the law that allow the school bus driver or others reporting violations of this law to the local law enforcement agency to identify the vehicle license number and/or description of vehicle, date and time of the alleged violation to secure a warning against the owner of vehicle reportedly endangering children's lives.

Sectional Analysis of HB 240 ( )

Section 1 AS 28.35 is amended by adding a new section. Section 28.35.145(a) requires that a driver of a vehicle that meets or overtakes a school bus stopped on a highway or vehicular way or area must stop at least 30 feet before reaching the school bus when the bus has red lights flashing. The driver must remain stopped until the bus proceeds, or the red lights are extinguished.

Subsection (b) requires that the driver of a vehicle yield the right of way to a person crossing a highway or vehicular way or area to embark on or disembark from a school bus, regardless of whether the school bus has red lights flashing or whether the person crosses outside of a crosswalk.

Subsection (c) provides that the driver of a vehicle on a highway with separate roadways is not required to stop for a school bus on a different roadway or, when driving on a controlled access highway, for a school bus stopped in a loading zone if pedestrians are not permitted to cross the highway.

Subsection (d) provides that if convicted, the driver is guilty of an infraction and subject to a mandatory assessment of six demerit points. An infraction carries a maximum penalty of a $300 fine.

Subsection (e) is an entirely new subsection, and does not appear in HB 240 (Judiciary). This subsection provides that an owner, or in the case of a leased vehicle a lessee, is subject to a civil peralty not to exceed $100 if a vehicle owned or leased is operated in violation of this section. There are two exceptions to this provision. If the vehicle is stolen, or if the driver is convicted under subsection (d), the owner or lessee cannot be penalized. Also a lessor is not responsible if the lessor keeps a record of the name and address of the lessee. This subsection also provides that no loss of driver's license, privilege to drive, or assessment of demerit points can occur if this subsection is violated. Also this subsection specifies that it does not prohibit or limit prosecution of a vehicle driver under subsection (a) or (b). The subsection is patterned after a Minnesota statute, Minn. Stat. 169.44 (1) (c) (2), and is in substance identical to that law.

Ford
12/6/85

Original sponsors: Thompson, Cato and Sund

IN THE HOUSE

CS FOR HOUSE BILL NO. 240 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to overtaking and passing school buses."

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

* Section 1. AS 28.35 is amended by adding a new section to read:

Sec. 28.35.145. OVERTAKING AND PASSING SCHOOL BUS. (a) The driver of a vehicle that meets or overtakes a school bus stopped on a highway or vehicular way or area shall stop not less than 30 feet from the school bus before reaching it when there are in operation on the school bus flashing red lights as required by regulation. The driver may not proceed until the school bus proceeds and the flashing lights are no longer illuminated.

(b) When a school bus is stopped on a highway or vehicular way or area, whether or not there are in operation on the school bus flashing red lights as required by regulation, the driver of a vehicle shall yield the right-of-way to a person crossing a highway, vehicular way, or area to embark on or disembark from the school bus, whether or not the person is crossing within a marked crosswalk.

(c) The driver of a vehicle on a highway with separate roadways is not required to stop when meeting or passing a school bus that is on a different roadway or, if upon a controlled access highway, when a school bus is stopped off the highway in a loading zone that is part of, or adjacent to, the controlled access highway, and pedestrians are not permitted to cross the highway.

(d) A driver convicted under this section is guilty of an

infraction and, in addition to other penalties as provided by law, is subject to a mandatory assessment of six demerit points under AS 28.15.221 - 28.15.261.

(e) A vehicle owner, or in the case of a leased vehicle a lessee, may be punished by a civil penalty not to exceed $100, if the vehicle owned or leased by the person is operated in violation of this section. The owner or lessee may not be penalized if the vehicle was stolen, or the driver of the vehicle is convicted under (d) of this section. This subsection does not apply to a lessor of a vehicle if the lessor keeps a record of the name and address of the lessee. A violation of this subsection may not result in the loss of a driver's license or privilege to drive and does not constitute grounds for assessment of demerit points under AS 28.15.221 - 28.15.261. This subsection does not prohibit or limit the prosecution of a vehicle driver for violating (a) or (b) of this section.

Alaska State Legislature
House of Representatives
COMMITTEE ON HEALTH, EDUCATION
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCH V
JUNEAU, AK 99811
465-3759

House HESS Committee

Letter of Intent

CSHB 240 (HESS)

It is the intent of the House Health, Education, and Social Services Committee in passing out this bill that the Supreme Court specify in its court rules that a court appearance be required for a violation of AS 28.35.145 (a) or (b).

Representative Max F. Gruenberg, Jr.
Co-Chair
House HESS Committee

Representative Niilo Koponen
Co-Chair
House HESS Committee

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

BILL SHEFFIELD, GOVERNOR

P.O. BOX 100960
ANCHORAGE, ALASKA 99510-0960
PHONE: (907) 269-5551

December 16, 1985

The Honorable Max F. Gruenberg, Jr.
Co-Chair, House HESS Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Gruenberg:

I have reviewed HB-240 (Draft) you sent. It does not appear that the Division of Motor Vehicles would have a problem with this bill, however I have one reservation.

Under paragraph (e) of the bill, I question what recourse an owner would have if a civil penalty is imposed on them and they choose to contest the penalty. If the court system is the owner's recourse there would no fiscal impact on DMV. However, if this bill visualizes the Division of Motor Vehicles' administrative hearing officers as an avenue of recourse to affected owners, there would be a fiscal impact that would need to be evaluated.

If we don't receive further correspondence from you on this matter it will be assumed that the court system will be any affected owner's recourse. In the event the Division of Motor Vehicles will be involved in reviews of penalties, please advise and we'll prepare a fiscal note.

Sincerely,

John H. Lucking
Director

HB

321

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 16, 1986

SUBJECT: P.L.O. 1613, P.L.O. 601, and related problems [CSHB 321(Finance) am]

TO: Senator John Coghill, Chair
Senate Transportation Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Before preceding with the sectional analysis, it may be useful to offer some background comments.

> In 1940, in order to protect the roads that promoted the development of the Territory of Alaska, the Department of the Interior withdrew 150 feet of public lands along both sides of several "through roads," including the Glenn, Richardson, and Haines highways. [Public Land Order (PLO) 601.] Congress criticized these withdrawals as excessive, stating that they hindered commercial and private development, and, in 1956, enacted a law providing that if the Secretary [of the Interior] revoked such a withdrawal "the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary." [43 U.S.C. 971a.] The law authorized the Secretary to "sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining

Sectional Analysis

claims or entries and to owners of adjoining private lands. [43 U.S.C. 971b.]

In 1958 the Department issued PLO 1613 revoking the earlier withdrawals, replacing them with easements, offering for sale "the lands released from withdrawal * * * which, at the date of this order, adjoin lands in private ownership," and providing that released lands which on the same date "adjoin lands in valid unperfected entries, locations or settlement claims, shall be subject to inclusion in such entries, locations and claims." [PLO 1613.] Owners of private lands and holders of such entries were given a preference right to purchase the adjoining released lands or to amend their entries to include them, respectively . . . .

Many adjoining landowners or entry holders applied for the released lands located between the adjoining lands and the centerline of the highway, made the required payments, and received receipts, but their applications were not processed [by BLM or the Interior Department] for many years. Many who applied subsequently sold the lands adjoining the released lands. In August 1984 BLM issued decisions granting the released lands to the original applicants. In these consolidated appeals, present adjoining landowners claim the released lands should have been granted to them.

Appellants argue that Congress intended that the released lands be granted to owners of adjoining lands . . . . The released lands are important, and sometimes essential, to the present owners of the adjoining lands for access to those lands . . . and of no practical use to the original applicants, some of whom are deceased persons . . . .

BLM's decisions state that when the "purchase price was received * * * and a receipt for the purchase price was issued * * * equitable title vested in the applicant * * *." [Citations omitted.] Once equitable title vests, in BLM's view, "the Secretary has no discretion in the issuance of a patent and events subsequent to such vesting can have no bearing upon the claimant's right to patent," citing Wyoming v. United States, 225 U.S. 489 (1921).

BLM's decisions must be affirmed. [Emphasis and bracketed material added.]

The above quote is from the decision of the Interior Board of Land Appeals, Robert and Patricia Bailey, IBLA 84-874 et al., decided November 22, 1985.

CSHB 321(Fin) am is a response to the land title situation described in the Bailey decision; the Bailey decision, in fact, implicitly invites this legislation (as I note below).

Section 1 of the bill amends AS 09.25.050 by adding a new subsection. The section itself now provides:

> Sec. 09.25.050. CONCLUSIVE EVIDENCE OF ADVERSE POSSESSION. The uninterrupted adverse notorious possession of real property under color and claim of title for seven years or more is conclusively presumed to give title to the property except as against the state or the United States.

Sec. 50(b) as added in Section 1 of the bill is significant; it provides that except for the "easement created by Public Land Order 1613 [the reservation of the highway itself], adverse possession will lie against property that is held by a person who holds equitable title from the United States" under PLO 1613.

Recall that the Bailey decision holds that those who applied for the land and received a receipt from BLM have "equitable title." If the applicant has not been in "possession" of the land, then the present person in possession may gain title to the land by the principles of adverse possession under AS 09.25.050, above.

Section 2 of the bill add a new section to AS 09.45, "Actions Relating to Real Property".

Sec. 09.45.015(a) establishes a "statutory presumption" that a patent for land that was issued after April 7, 1958 (the date of PLO 1613) to land that adjoined a highway reservation listed in section 1 of PLO 1613 is presumed to have conveyed land up to the center-line of the highway subject only to the reservation for the highway itself created by PLO 601 as well as any highway easement created by PLO 1613. The statutory presumption would be of use to a person litigating the title to the land released from PLO 601 by PLO 1613.

Sec. 09.45.015(b) makes a similar point in a different way: it provides that the burden of proof in litigation involving title to the released land is "on the person who claims that the patent did not convey an interest in land up to the center-line of the highway."

Section 3 of the bill provides for an immediate effective date.

If I may be of further assistance, please advise.

RAB:mkr
m4/123

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ *1031 W 4th AVENUE*
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

☐ *1st NATIONAL CENTER*
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

☒ P.O. Box K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

April 17, 1986

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Re: CS for House Bill 321 (Finance) am

Dear Mr. Call:

You have requested our review of the above bill, a copy of which is attached. A brief analysis follows.

This bill has undergone a considerable number of revisions since its original introduction. In its original form, the bill appeared to eliminate certain valuable public highway easements created by Public Land Order 1613. As a result, the state would have had to incur considerable expenses in reacquiring these easements. In its present form (CS for HB 321 (Finance) am), the existence of these highway easements is protected. Section 1 of the bill, while it allows one to assert a claim of adverse possession against certain real property, makes it clear that an adverse possession claim cannot be made against a public road easement. Similarly, section 2 of the bill, while it creates a presumption that certain conveyances conveyed land up to the center-line of a PLO 1613 highway, makes it clear that such conveyances are subject to any highway easements created by PLO 1613.

In sum, the present version of this bill does not jeopardize the existence of any public highway easements.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Jack B. McGee
Jack B. McGee
Assistant Attorney General

JBM:ebc
Enclosure

A.G.'s Opinion

03-C5LH

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: CS HB 321 (Fin) am

APPROVED: R. J. Knapp
Commissioner

TITLE: An Act relating to adverse claims and boundary disputes; and providing for an effective date

DATE: 4/11/86

CS for House Bill No. 321 (Finance) recognizes and excepts the reservations and easements created by Public Land Orders 601 and 1613. The bill places the burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 on the person who claims that the conveyance did not convey an interest in land up to the centerline of the highway.

This bill should have no fiscal impact on the Department of Transportation and Public Facilities nor involve the Department in disputes between claimants.

DOT POSITION

For further information call Susan Fleischhauer at 465-3900.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/18/86

REQUEST

Bill/Resolution No. : SSHB 321
Title : An Act Relating to adverse claims and boundary disputes; and providing for an effective date.
Sponsor : Cotten and Marrou
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected :
BRU :
Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		-0-				
TRAVEL		-0-				
CONTRACTUAL		-0-				
SUPPLIES		-0-				
EQUIPMENT		-0-				
LAND & STRUCTURES		-0-				
GRANTS, CLAIMS		-0-				
MISCELLANEOUS		-0-				
TOTAL OPERATING		-0-				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		-0-				

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

SSHB 321 has no measurable fiscal impact on the Department of Transportation and Public Facilities.

Prepared by : Milton H. Lentz, CRA Phone : 465-2985
Division : Engineering and Operations Standards Date : 2/18/86
Approved by Commissioner : Date : 2/18/86
Agency : Department of Transportation and Public Facilities

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Zero Fiscal Note

IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

ROBERT AND PATRICIA BAILEY ET AL.

IBLA 84-874 et al. Decided November 22, 1985

Consolidated appeals from decisions of the Bureau of Land Management, Alaska State Office, determining that equitable title vested in Public Land Order No. 1613 applicants, approving issuance of patents, and rejecting Alaska State selection A-061179, in part, and conflicting Public Land Order No. 1613 applications. A-063457, et al.

Affirmed.

1. Act of Aug. 1, 1956—Patents of Public Lands: Generally—Public Lands: Alaska—Public Sales: Preference Rights—Withdrawals and Reservations: Revocation and Restoration

   Equitable title vests in preference right applicants for public lands, restored in accordance with 43 U.S.C. § 971a through e (1982) and Public Land Order No. 1613, when they have paid the purchase price and received a receipt from BLM, and BLM may properly grant them patents even though they have subsequently sold the lands adjoining the public lands.

APPEARANCES: Donald D. Hopwood, Esq., of Anchorage, Alaska, for appellants; 1/ Robert C. Babson, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management.

1/ For appearances on behalf of other appellants, see Appendix A. Under the circumstances, we do not decide whether all of these appearances conform to the requirements of 43 CFR 1.3 governing who may practice before the Department.

Bailey Decision

OPINION BY ADMINISTRATIVE JUDGE IRWIN

In 1949, in order to protect the roads that promoted the development of the Territory of Alaska, the Department of the Interior withdrew 150 feet of public lands along both sides of several "through roads," including the Glenn, Richardson, and Haines highways. 2/ Congress criticized these withdrawals as excessive, stating that they hindered commercial and private development, and, in 1956, enacted a law providing that if the Secretary revoked such a withdrawal "the lands involved shall be subject to disposal only under laws specified by the Secretary of the Interior, subject to easements as established by the Secretary." 3/ The law authorized the Secretary to "sell such restored lands for not less than their appraised value, giving an appropriate preference right to the holders of adjoining claims or entries and to owners of adjoining private lands." 4/

In 1958 the Department issued PLO 1613 revoking the earlier withdrawals, replacing them with easements, offering for sale "the lands released from withdrawal * * * which, at the date of this order, adjoin lands in private ownership," and providing that released lands which on the same date "adjoin lands in valid unperfected entries, locations or settlement claims,

2/ Public Land Order No. (PLO) 601, Aug. 10, 1949, 14 FR 5048 (Aug. 16, 1949); see also PLO 757, Oct. 16, 1951, 16 FR 10749.
3/ 43 U.S.C. § 971a (1982).
4/ 43 U.S.C. § 971b (1982). The purpose of the law was to "permit the disposal of lands restored from [such] withdrawals * * * in such a manner as to recognize the equities of those landowners who have acquired lands abutting such withdrawals prior to their restoration." S. Rep. No. 2641, 84 Cong., 2d Sess., reprinted in 1956 U.S. Code Cong. & Ad. News 4052. 43 U.S.C. § 971a also authorizes the Secretary to permit amendment of the land-description of an unpatented claim or entry on adjoining land to include restored lands, notwithstanding any statutory limitation on the area which may be included in such a claim or entry.

shall be subject to inclusion in such entries, locations and claims." 5/ Owners of private lands and holders of such entries were given a preference right to purchase the adjoining released lands or to amend their entries to include them, respectively, for which they could apply any time after the date of the order by giving notice to the Bureau of Land Management (BLM). Failure to pay for the land or to make any required payments would cause a preference right claimant to lose his preference.

Many adjoining landowners or entry holders applied for the released lands located between the adjoining lands and the centerline of the highway, made the required payments, and received receipts, but their applications were not processed further for many years. 6/ Many who applied subsequently sold the lands adjoining the released lands. In August 1984 BLM issued decisions granting the released lands to the original applicants. 7/ In

5/ PLO 1613, Apr. 7, 1958, 23 FR 2376 (Apr. 11, 1958). Entries, locations and claims specifically named as included in Paragraph 8 of PLO 1613 were certificates to purchase under the Alaska Public Sale Act, 48 U.S.C. § 364a through e, (see 43 U.S.C. §§ 687b-687b-5, repealed by § 703(a), P.L. 94-579 90 Stat. 2789), and leases with option to purchase under the Small Tract Act, 43 U.S.C. § 682a, repealed by § 702, P.L. 94-579, 90 Stat. 2787.

6/ An adjoining landowner's application form read:

"I am the owner of the land described below and hereby make application to purchase the land lying between my property and the centerline of the Glenn Highway. I understand that patent, when issued, will be subject to an easement on this land for highway purposes, and to any other valid existing rights. I also understand that patent to the land between my property and the highway centerline will not be issued until the land has been surveyed and the plat of survey is filed in the Anchorage District and Land Office. I further understand that it is my responsibility to keep the Anchorage District and Land Office informed of any change of my address or transfer of title."

7/ In early November 1984, BLM published a legal notice of the list of the applications approved in the August decisions and mailed the notice to current owners of the adjoining lands. The notice gave current owners until Dec. 15, 1984, to file appeals. Because of our disposition of these appeals we need not decide whether the notice complies with 43 CFR 4.411(a) or whether persons who were served with the August decisions could file an appeal until Dec. 15, 1984, in accordance with the notice.

these consolidated appeals, present adjoining landowners claim the released lands should have been granted to them.

Appellants argue that Congress intended that the released lands be granted to owners of adjoining lands and that when the original applicants for the released lands sold their adjoining lands to appellants they intended to convey their rights to the released lands along with the adjoining lands. The released lands are important, and sometimes essential, to the present owners of the adjoining lands for access to those lands, appellants argue, and of no practical use to the original applicants, some of whom are deceased persons or dissolved corporations. Failure to grant them legal title to the released lands between the highway and their adjoining lands will cause great hardship, appellants claim.

BLM's decisions state that when the "purchase price was received * * * and a receipt for the purchase price was issued * * * equitable title vested in the applicant * * *." Equitable title vests then under 43 U.S.C. § 971b and PLO 1613, BLM states, because under the analogous provisions of the Isolated Tracts Act, 43 U.S.C. § 1171 (repealed by section 703(a), Federal Land Policy and Management Act of 1976, 90 Stat. 2789), it vests when a preference right applicant has tendered the purchase price and been issued a cash certificate by the Department. Willcoxson v. United States, 313 F.2d 884 (D.C. Cir.), cert. denied, 373 U.S. 932 (1963). 8/ Once equitable title vests, in BLM's view, "the Secretary has no discretion in the issuance of a patent and events subsequent to such vesting can have no bearing upon the

8/ BLM Answer at 7.

claimant's right to patent," citing Wyoming v. United States, 255 U.S. 489 (1921). 9/

[1] BLM's decisions must be affirmed. The language of the Act involved gives the Secretary the discretion to sell the released lands to adjoining landowners and to permit the holders of unperfected claims on adjoining lands to amend their land descriptions to include released lands. The language of 43 U.S.C. §§ 971a and 971b is that the Secretary "may sell" the restored lands and "may permit the amendment" of land descriptions to include them. Like the Isolated Tracts Act, supra, and unlike the statutes involved in the cases cited by appellants (e.g., Payne v. Central Pacific Railway Co., 255 U.S. 228 (1921)), the Act does not entitle one to rights in lands if he proves he meets the statutory requirements, but authorizes the Secretary to take action in his discretion. Willcoxson v. United States, supra at 888; Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967); Estate of Lyle K. Gross, 77 I.D. 174 (1970); Jack H. Stockstill, 1 IBLA 278 (1971). In PLO 1613 the Secretary specified what a preference right claimant must do: give notice to BLM and pay for the land within the time specified by BLM. Once a claimant did these things and BLM accepted the payment and issued the receipt for the purchase price, his equitable title to the released land he applied for vested. The United States is therefore obligated to perform its duty to issue the patent, after completion of the appropriate survey and other ministerial acts. Benson Mining Co. v. Alta Mining Co., 145 U.S. 428 (1892). Whether the claimant (or his successor) intended to convey--or will be deemed to have conveyed--the released land when he sold his adjoining lands during

9/ Id.

the pendency of the claim is a matter of state law dependent on the circumstances of the transaction, 10/ not a matter for the Department to adjudicate. Finally, we must observe that although the delay in acting on the applications has certainly inconvenienced appellants, it was not for their benefit that the statute was enacted but rather for "landowners who * * * acquired lands abutting [the] withdrawals prior to their restoration," i.e., for the original applicants. 11/ BLM's decisions are therefore consistent both with applicable case law and with the intent of Congress.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Franklin D. Arness
Administrative Judge

10/ See for example, Willis v. City of Valdez, 546 P.2d 570, 575 (Alaska 1976); Sabo v. Horvath, 559 P.2d 1038, 1041-42 (Alaska 1976).
11/ Sen. Rep. No. 2641, supra note 4.

APPENDIX A

	IBLA Case No.	Appellant	BLM Case No.	PLO 1613 Applicant	Appearances for Appellants
1.	84-875	Lige & Ruth Wierzbicki	A-063521	Gilbert A. Henkens, Jr.	M. Ashby Dickerson, Esq. of Anchorage, Alaska
2.	84-876	Carolyn & Joseph Vallieres; John and Dorothy Liska	A-063459	Janelle F. Lamay	John & Dorothy Liska, pro sese; Carolyn & Joseph Vallieres, pro sese.
3.	84-877	Wayne Cousineau	A-063526	E. G. Fenn	Wayne Cousineau, pro se.
4.	84-878	A & S Construction, Inc.	A-063525	Gilbert A. Henkens, Jr.	Salvatore Aiello, president, A & S Construction Co., Inc.
5.	84-879	Salvatore Aiello & Wayne Cousineau	A-063455	Matanuska Telephone Association, Inc.	Salvatore Aiello & Wayne Cousineau, pro sese.
6.	84-880	William E. & Jeannette Knowlton	A-063455	Ralph M. Anderson	William E. & Jeannette M. Knowlton, pro sese.
7.	84-881	William E. & Jeannette Knowlton	A-063452	Ralph & Lavenia Doyle	William E. & Jeannette M. Knowlton, pro sese.
8.	84-882	William E. & Jeannette Knowlton	A-063453	Ralph M. Anderson	William E. & Jeannette M. Knowlton, pro sese.
9.	84-883	Harold V. & Marga M. Jurgensen	AA-3794	William J. Hendrickson	Harold V. & Marga M. Jurgensen, pro sese.
10.	84-884	Rogers & Babler	A-063462 (conflicts with AA-51038)	Virgil D. & Lou B. Stone	Michael W. Price, Esq. of Anchorage, Alaska
11.	84-904	Jay D. & Florence Kay Williams	A-063471	McKinley Heights, Inc.	Jay D. & Florence Kay Williams, pro sese.

	IBLA Case No.	Appellant	BLM Case No.	PLO 1613 Applicant	Appearances for Appellants
12.	85-21	Arthur F. Wallace	A-063495	Einer Huseby	Thillman F. Wallace
13.	85-24	Kathryn Dawson	A-063464	Gene E. & Rugh Ann Needels	Kathryn Dawson, pro se.
14.	85-128	R. L. Pellissier	A-063469	Gordon H. Lee	R. L. Pellissier, pro se.
15.	85-129	R. L. Pellissier	A-063470	McKinley Heights, Inc.	R. L. Pellissier, pro se.
16.	85-130	Forest E. & Mary M. Burlew	A-063529	General Supply Company, Inc.	Forest E. & Mary M. Burlew, pro sese.
17.	85-138	John C. & Barbara L. Franklin	A-063498	Harry Goudchaux	John C. & Barbara L. Franklin, pro sese.
18.	85-139	Chugiak-Eagle River Industries	A-063477 A-063478	William H. Stephens, Jr. Cleda A. Stephens	Ruth Callan, Office Mgr., Chugiak Eagle River Industries
19.	85-140	MaryAnn C. Yoakum	A-063528	Gilbert A. Henkens, Jr.	MaryAnn Yoakum, pro se.
20.	85-174	Peters Creek Chapel, Inc.	A-063481 A-063482	Victory Tabernacle, Inc. Joann C. Jensen	Robert J. Byron of Chugiak, Alaska
21.	85-175	L. G. Gardner	A-063497	Clarence C. Call	L. G. Gardner, pro se.
22.	85-186	Kit J. & Dillia Vercella	A-063527	Gilbert A. Henkens, Jr.	Kit J. & Dilia Vercella, pro sese.
23.	85-198	Billy E. & Pat M. McGowen	A-063513 A-063514	Robert E. & Katherin G. Fleming Harold P. Groseth	Ray D. Gardner, Esq. of Anchorage, Alaska

	IBLA Case No.	Appellant	BLM Case No.	PLO 1613 Applicant	Appearances for Appellants
24.	85-200	Jeff & Darlene Hunter Gary & Donna Young	A-063521	Gilbert A. Herkens, Jr.	Jeff & Darlene Hunter, pro sese. Gary & Donna Young, pro sese.
25.	85-201	Harold & Marga Jurgensen	AA-3794	William J. Hendrickson	Harold V. & Marga M. Jurgensen, pro sese.
26.	85-207	Bruce A. & Melody G. Swanson	A-063449	First Baptist Church of Birchwood	Bruce A. & Melody G. Swanson, pro sese.
27.	85-208	Lawrence D., Cecillia M., & George M. Allen	A-063449	Herman O. Boyman	Lawrence D., Cecilia M. & George M. Allen, pro sese.
28.	85-209	Roland N. & Marie S. Ericson	A-063483	Mont S. Johnson, Jr.	Roland N. & Marie S. Ericson, pro sese.
29.	85-210	James A. Stokes	A-063502 (conflicts with AA-05976)	Herbert S. Johnson, Jr.	James A. Stokes, pro se.
30.	85-211	Burton Carver & Co., Inc.	A-063510	William G. & Theo. E. Knight	Dave R. Christianson, Esq., Anchorage, Alaska
31.	85-212	Estate of William G. Knight	A-063511 A-063517	Clarence C. Call Pearl M. Johnson	Ashley Schmiedeskamp, Rainier Bank, Anchorage, Alaska
32.	85-213	William H. Martin	A-064410	Geneveive M. Hayes	William H. Martin, pro se.
33.	85-214	Estate of Ray Allen Williams	A-064413	Glen Griffin	Roger R. Williams, P.R. for Estate
34.	85-231	Samuel S. & Christine S. Taylor	A-063525	Gilbert A. Henkens, Jr.	Samuel S. & Christine S. Taylor, pro sese.

	IBLA Case No.	Appellant	BLM Case No.	PLO 1613 Applicant	Appearances for Appellants
35.	85-232	Frieda Rokita	A-063470	McKinley Heights, Inc.	Frieda Rokita, pro se.
36.	85-233	James A. Stokes	A-063504	Daniel & Margaret Berg	James A. Stokes, pro se.
37.	85-234	Claire C. Morton	A-063476	Saima E. Ising	Claire C. Morton, pro se.
38.	85-255	Frank F. Mullins; Jonathan Bettridge	A-063465	McKinley Heights, Inc.	Frank F. Mullins, pro se.
39.	85-598	Bruce A. Swanson	AA-54199 (conflicts with AA-6661A; AA-54873	Christa L. Burg	Bruce A. Swanson, pro se.

RTH,RANGE I WEST OF THE SEWARD MERIDIAN,ALASKA

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MTP
SUPPL SEC 30
NO 12

INDEX TO SEGREGATED TRACTS

RESURVEY	ORIGINAL SURVEY			
TRACT NO	T	R	SEC	SUBDIVISION

FOR ORDERS EFFECTING DISPOSAL OR USE OF UNIDENTIFIED LANDS WITHDRAWN FOR CLASSIFICATION MINERALS, WATER AND/OR OTHER PUBLIC PURPOSES REFER TO INDEX OF MISCELLANEOUS DOCUMENTS.

Subj to 150' C/L Easement (Glenn Hwy) Ref of
8/1/1956 (70 Stat 858; 48 USC 420-420b)
& PLO 1613 4/7/1958 (23 FR 2318)

A058730 SS 2/18/1963 NE entire Tp

A06179 SS entire Tp Excl Pat lands

AA6187 Easement Dead RCA 25' C/L (81 Stat 441-444)
as to the following:
Sec 30: lots 6,7,36,37,59,60,87,88,95,96,97,98
104,105,106,107

* AA6861-EE Esmt pursuant to Sec 17(b)(3) of
PL 92-203 12/18/1971 Existng

PLO 5184 3/10/1972 Wd Cl by Sec 1 PLO 92-203
12/18/1971 affects this Tp

30

SEE ENLARGEMENT DIAGRAM

☐ Patented to Collectors (There is other land in this township that is patented but it is not near the highway)

☒ This individual owning these lots adjacent to the highway have all applied for PLO 1613 lots.

ENLARGEMENT DIAGRAM

WARNING:
THIS PLAT IS THE BUREAUS RECORD OF TITLE AND SHOULD BE USED ONLY AS A GRAPHIC DISPLAY OF TOWNSHIP SURVEY DATA. RECORDS HEREON DO NOT REFLECT TITLE CHANGES WHICH MAY HAVE BEEN EFFECTED BY LATERAL MOVEMENTS OF RIVERS OR OTHER BODIES

DEC 19 1984

BY

SUPPL NO 12

TO: Members, House Committee on Finance.

DATE: March 12, 1986

FROM: Rep. Sam Cotten

RE: Proposed CS for HB 321

The proposed CS for HB 321 aims to resolve rights-of way problems plaguing Chugiak area residents living along the Old Glenn Highway; it also affects similarly situated residents living on other Alaska highways. The problem stems from the federal government awarding ownership of a narrow strip of land in front of the lots to someone else.

The situation dates back almost 30 years when the Act of August 1, 1956 and Public Land Order 1613 (in 1958) allowed people to purchase highway lots and file for patents to the abutting highway easements. The intent of the law was to award the highway easement to the abutting landowner. However, after a decades-long delay, BLM has only recently started issuing these patents. In doing so, BLM has decided to award the patents to the original applicants, who in many cases, no longer live there, rather than the abutting owners. (In some cases the original applicants have died, in other cases the land has changed hands several times.) This administrative delay by BLM has meant that current highway residents face the situation of having someone else claim ownership to the highway easement they thought they owned. This clearly contradicts the intent of the law.

The situation has caused much distress and confusion among Chugiak area residents in particular. The lots have little value except nuisance value. The lots are fairly small, and are long narrow strips. They are also subject to highway easement which diminishes any potential value.

The original version of HB 321 required involvement by the Department of Transportation and would have used condemnation as the method to gain the P.L.O. lots. The proposed CS would solve the problem without cost to the state.

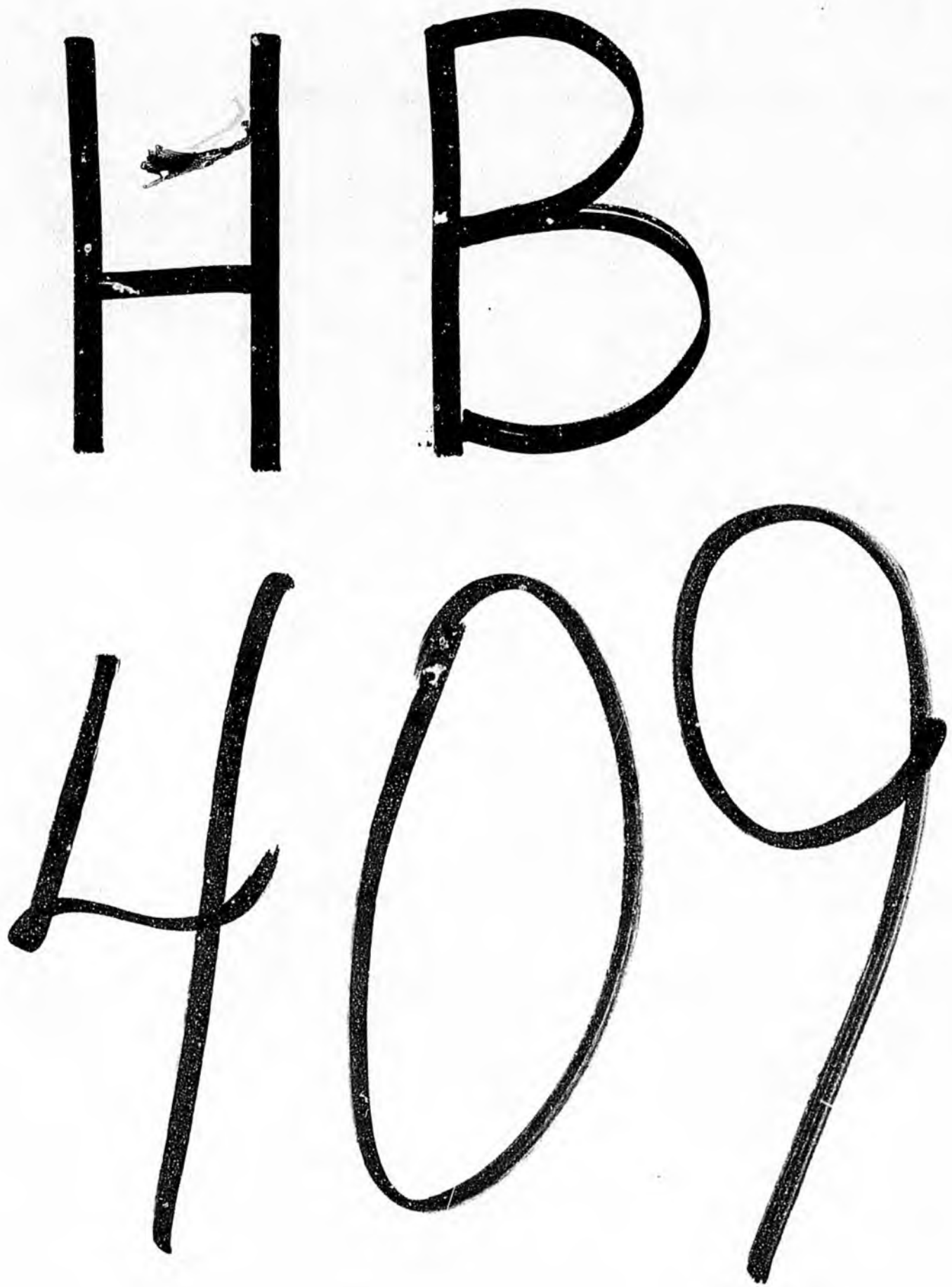
The proposed CS for HB 321 gives the abutting lot owner the

Cotten Memo

ability to gain possession of the P.L.O. highway lots, subject to any P.L.O. easements, by use of adverse possession laws. The bill changes the existing law of adverse possession, by allowing adjoining owners to count time they occupied the highway lot while legal title was held by the federal government toward the seven year period required to gain title to the land. This is legal, as the federal government has determined that title is transferred upon payment of the purchase price of the highway lot.

Additionally, the bill provides that in cases where the existing owner believes the sale included the highway lot, the highway lot owner has the burden of proving that the deed clearly excluded the highway lot. If the highway lot owner fails to meet this burden, the adjoining land owner will get the highway lot in a quiet title action.

Passage of this bill would give the affected highway property owners a way to resolve a serious problem. The Dept. of Transportation has issued a zero fiscal note for the proposed CS.


HB
409

Alaska State Legislature

Blank File

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

Representative Roger Jenkins

DISTRICT 11

April 16, 1986 APR 18 1986

The Honorable Jack Coghill
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Coghill:

Thank you for your support on the Senate Floor today of my bill, CSHB 409 (Transportation), "An Act relating to training and licensing of school bus drivers; and providing for an effective date."

I am particularly grateful to you for standing up against today's proposed amendment.

Cordially,

Roger Jenkins

Representative Roger Jenkins

P.S. Again thanks

CSHB 409(TRSP) NOTEBOOK INDEX

I.....CSHB 409 (TRSP); Bill Outline/Sectional Analysis; Letter by Bill Brown, Chief of Driver Services, addressing background checks and licenses

II.....Fiscal Notes

III.....Costs and Summary of Proposed School Bus Driver Training Program

IV.....Position Papers and Letters of Support

V.....Committee Recommendations

VI.....Articles, Studies, and Statistics:

- "School Bus Accidents, 1984" from the National Safety Council's 1985 Edition of Accident Facts.
- National School Bus Loading & Unloading Survey for Calendar Year 1984, School Year 84-85.
- Alaska Department of Education Accident Statistics for 07/01/83-06/30/84 and 01/07/84-06/31/85.
- "Kids Need To Be Watched Too" from June-July 1985 School Bus Fleet.
- "Safe Passage: Driver Training Is The Key" from February 1986 American School & University.
- "Dallas County Checks Bus Drivers For Felony Records", January 29, 1986 Education USA Newsline.
- "School Bus Driver Training and Bus Safety" by the Alaska State Legislature House Research Agency.

VII.....Minutes from House Transportation, House State Affairs, and House Finance Committees

VIII.....Statutes and Regulations

Offered: 1/29/86
Referred: State Affairs

Original sponsors: Jenkins, Larson, Hurley, et al

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE BILL NO. 409 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to training and licensing of school bus drivers; and providing for an effective date."

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

* Section 1. AS 14.07.020(a) is amended by adding a new paragraph to read:

(14) establish, in coordination with the Department of Public Safety, a school bus driver training course.

* Sec. 2. AS 28.15.041(b) is amended to read:

(b) A person may not drive a [SCHOOL BUS TRANSPORTING SCHOOL CHILDREN, OR A BUS TRANSPORTING SCHOOL-AGE CHILDREN OR ANOTHER] motor vehicle when in use for the transportation of persons for compensation until the person has applied for and has been issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has had at least one year of driving experience, and the department is satisfied as to the applicant's good character, competence and fitness to be licensed; nor may the department issue the license until proper application has been made and all required driving, written, and physical examinations have been successfully completed. A license issued under this subsection expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee.

* Sec. 3. AS 28.15 is amended by adding a new section to read:

Sec. 28.15.046. LICENSING OF SCHOOL BUS DRIVERS. (a) In addition to the requirements of AS 28.15.041(a), a person may not drive a school bus transporting school children, or a bus transporting school-age children until the person has applied for and has been issued a license for that purpose under this section.

(b) The department may not issue a license under this section unless the applicant

(1) is at least 19 years of age;

(2) has had a license to operate a motor vehicle at least one year before the date of application;

(3) has successfully completed all required driving, written, and physical examinations;

(4) has submitted information sufficient to complete a background check consisting of a fingerprint check of national criminal records and state criminal records of the state or states in which the applicant has resided for the past two years;

(5) has completed a state approved school bus driver training course established under AS 14.07.020(a)(14) or has for the previous two years been licensed by the state to operate a school bus.

(c) The department may not issue a license under this section to an applicant who has been convicted of any of the following offenses within 20 years of the time of application:

(1) sexual abuse of a minor in any degree (AS 11.41.434 - 11.41.440);

(2) sexual assault in any degree (AS 11.41.410 or 11.41.-420);

(3) incest (AS 11.41.450);

(4) unlawful exploitation of a minor (AS 11.41.455);

(5) contributing to the delinquency of a minor

(AS 11.51.130);

(6) a felony involving possession of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);

(7) a felony or misdemeanor involving distribution of a controlled or imitation controlled substance (AS 11.71 or AS 11.73);

(8) promoting prostitution in the first or second degree (AS 11.66.110 or 11.66.120).

(d) The department may not issue a license to an applicant who has been convicted of driving while intoxicated (AS 28.30.030) within two years of the time of application or to an applicant who has two or more convictions for driving while intoxicated within 10 years of the time of application.

(e) For purposes of determining whether an applicant has been convicted of an offense listed under (c) or (d) of this section, a conviction under prior state law or in another jurisdiction of an offense having elements substantially similar to those of the offenses listed in (c) or (d) of this section is considered a conviction.

(f) Costs of conducting the background check required under (b)(4) of this section shall be paid by the applicant. A license issued under this section expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee.

* Sec. 4. This Act takes effect September 1, 1987.

Alaska State Legislature

BOX V
JUNEAU, ALASKA 99811
(907) 465-4453/4530

2201 ROOSEVELT DRIVE
ANCHORAGE, ALASKA 99503
(907) 248-4234

MEMBER
HOUSE RESOURCES COMMITTEE
MEMBER
HOUSE STATE AFFAIRS COMMITTEE

Representative Roger Jenkins
DISTRICT 11

OUTLINE OF CSHB 409(TRSP)

"An Act relating to licensing of school bus drivers; and providing for an effective date."

I. Background of bill

The children, whose parents have entrusted the state to educate, must have school bus drivers of good character who are educated in safety.

Committee Substitute for House Bill No. 409 (Transportation) would set minimum requirements for school bus drivers. The bill would require the applicants to satisfy the Department of Public Safety that they are of good character and are competent and fit to be licensed to drive school age children.

CSHB 409 (TRSP) takes the existing Alaska State Department of Public Safety regulations [13 AAC 08.005-.060] and implements them into statute. In addition the bill adds the following:

1. The applicant must complete a state approved school bus driver training course. [Section 3, subsection (b)(5), page 2, lines 17-19.]

2. A school bus driver training course would be established under the Department of Education (AS 14.07.020(a)(14)) in coordination with the Department of Public Safety. [Section 1, page 1, lines 9-12.]

3. The applicant must supply the Department of Public Safety with sufficient information to complete a national criminal records check and a background check within the state or states which he or she has resided for at least the past 2 years. [Section 3, subsection (b)(4), page 2, lines 13-16.] [See also: 13 AAC 08.015(2)]

4. The applicant must not have been convicted of a felony or misdemeanor involving distribution of a controlled or imitation controlled substance. [Section 3, subsection (c)(7), page 3, lines 4-5.] [See also: 13 AAC 08.010(5).]

5. The applicant must not have been convicted of a felony involving possession of a controlled or imitation controlled

substance. [Section 3, subsection (c)(6), page 3, lines 2-3.]

6. The applicant must not have been convicted of driving while intoxicated within two years or must not have been convicted of multiple DWI's. [Section 3, subsection (d), page 3, lines 8-12.]

7. The applicant must bear the cost of background checks. [Section 3, subsection (f), page 3, lines 18-23.]

II. Sectional Analysis

Section 1 establishes a school bus driver training course under the Department of Education and requires that department to establish the course in coordination with the Department of Public Safety. AS 14.07.020(a), copy enclosed, is the statute delineating the duties of the Department of Education.

Section 2 deletes the existing authority of the Department of Public Safety to regulate licensing of school bus drivers.

Section 3 adds a new section governing licensing of school bus drivers. It sets forth specific licensing requirements and lists specific criminal convictions that would prevent licensing.

(a) requires school bus license before driving school bus allowed.

(b) requirements before issuing license; applicant must: be of minimum age (19), have had a valid license for at least one year before date of application, have passed driving, written, and physical examinations, have submitted information for national and state background checks, and has completed driver training course.

(c) listing of criminal offenses for which license can be denied. (Taken from 13 AAC 08.010(5).)

(d) DWI section.

(e) relating to state or out-of-state convictions.

(f) applicant pays for background checks.

Section 4 effective date section.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

P.O. BOX 20
JUNEAU, ALASKA 99802-0020

DIVISION OF MOTOR VEHICLES

PHONE: (907)465-2650

January 29, 1986

The Honorable Fette Cato
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: CS HB 409 (Transportation)

Dear Representative Cato:

At the hearing yesterday you asked for confirmation in writing of the procedure to be followed by DMV concerning the licensing of school bus drivers pending the results of a fingerprint search.

If the applicant has satisfactorily completed the requirements for issuance of a school bus license, including submission of fingerprints, we will issue that person the license. If the results of the fingerprint search reflect the person is ineligible due to a conviction outlined in AS 28.15.046(c) or (d), the school bus license will be cancelled with notice being sent to the licensee, and the school district where the person is driving. This is the procedure currently being used (we began notifying school districts in May, 1985), and it has not created any problems. This is also the procedure used if the licensee is convicted of an unqualifying offense during the school year. The authority for cancelling the school bus license is AS 28.15.161.

The above procedure will work more smoothly than issuing a temporary permit pending outcome of the fingerprint search. From past experience, FBI fingerprint searches were conducted until October 1, 1981, the number of permits required to be cancelled will be very minimal. Also, we have little control over the time period necessary to conduct the search, and by use of the above procedure we will not be required to issue a new temporary permit if the search results are not received by the date the first temporary expires.

I would be happy to discuss this procedure with you if you have any further questions.

Sincerely,

Bill Brown
Chief of Driver Services

BB:ns
cc: Representative Shultz
bcc: Representative Jenkins

12-L8LH

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/27/86

REQUEST

Bill/Resolution No. : CSHB 409 (Trans)
Title : Training and Licensing School Bus Drivers

Sponsor : Jenkins
Requestor : House Finance Committee
Date of Request : 2/27/86

FISCAL DETAIL

Agency Affected : Education
BRU : Education, Finance and Support Services

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		0	0	0	0	0

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

The Governor's budget includes $24 million for pupil transportation. The cost of the school bus driver training program can be absorbed in the budget appropriation for pupil transportation.

Prepared by : Al Adams, Chair APA
Division : House Finance Committee
Phone : 465-3706
Date : 2/27/86

Approved by Commissioner : _____ Date : _____
Agency : _____

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Note: *Endorsed by Finance cmte. Appears in H. Journal Supp. 78

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS HB 409 (Trans.)
Title : An Act relating to training and licensing of school bus drivers.

Sponsor : Jenkins
Requestor : House Transportation
Date of Request : 1-28-86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Motor Vehicles

Components : Driver Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL			8.8	9.2	9.7	10.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	8.8	9.2	9.7	10.2
CAPITAL						
REVENUE	0	0	8.8	9.2	9.7	10.2

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	8.8	9.2	9.7	10.2
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	8.8	9.2	9.7	10.2

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This legislation requires fingerprint search of FBI files on each original school bus driver applicant. The FBI charges $12.00 per search. DMV will receive approximately 733 original applications in FY88. DMV will be required to pay the FBI for the searches, however, the applicant is required to cover this cost. (cont')

Prepared by : Bill Brown BB — Phone : 465-2650
Division : Motor Vehicles — Date : 1-21-86

Approved by Commissioner : [signature] — Date : 1/28/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 409 (Trans)

ANALYSIS (cont')

At time of application each applicant will be required to pay $12.00 (in addition to license fee), which will be deposited in the general fund. 733 applicants x $12.00 per search = $8,800. A 5% growth factor was used for FY89 and subsequent years.

INFORMATION

For the fiscal note dated 5-1-85, an estimate of the number of original school bus applicants was used. During 1985, statistics were compiled to obtain the actual number. This fiscal note is based on actual number of applicants in calendar year 1985, with a 5% growth factor.

1/20/86

ALASKA DEPARTMENT OF EDUCATION
PUPIL TRANSPORTATION
FUNDING REQUIRED FOR SCHOOL BUS DRIVER TRAINING PROGRAM
HB 409

CODE	EXPENDITURE CATEGORY	FY-87 AMOUNT	FY-88 AMOUNT	FY-89 AMOUNT	FY-90 AMOUNT	FY-91 AMOUNT
100	Personal Services Full-time position FY-87; Part-time position thereafter	$ 39,996	$ 30,862	$ 32,216	$ 33,827	$ 35,518
200	Travel					
	Conduct Instructor Workshops	$ 12,720	$ 8,480	$ 8,480	$ 8,480	$ 8,480
	Conduct Local District Workshops	3,000	3,000	2,000	2,000	2,000
	Conduct Div. Motor Vehicle Workshops	5,500	2,500	2,000	2,000	2,000
	Subtotal	$ 21,200	$ 13,980	$ 12,480	$ 12,480	$ 12,480
300	Contractual					
	Conduct Workshops	$ 14,400	$ 9,600	$ 9,600	$ 9,600	$ 9,600
	Develop Manuals	5,000				
	Develop Video	5,000				
	Print Manuals	5,000	4,000	3,000	3,000	3,000
	Telephone	500	500	500	500	500
	Bus Rental for Workshops	3,000	2,000	2,000	2,000	2,000
	Data Processing	9,000	4,500	4,500	4,500	4,500
	Subtotal	$ 41,900	$ 20,600	$ 19,600	$ 19,600	$ 19,600
400	Supplies	$ 4,000	$ 3,000	$ 3,000	$ 3,000	$ 3,000
500	Equipment					
	Office Furniture	$ 1,400				
	TOTALS	$ 108,496	$ 68,442	$ 67,296	$ 68,907	$ 70,598

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF EDUCATION

GOLDBELT PLACE
801 WEST 10TH STREET
POUCH F
JUNEAU, ALASKA 99811

OFFICE OF THE COMMISSIONER

January 27, 1986

MEMORANDUM

TO: The Honorable Roger Jenkins
Alaska State Legislature
House of Representatives

FROM: Harold Raynolds, Jr., Commissioner
Department of Education

SUBJECT: HB 409 - School Bus Driver Training

Enclosed per your request is information concerning the school bus driver training program that the Department of Education would administer pursuant to Section 2 (b) (6) of House Bill 409.

Enclosure

cc: Romayne Kareen

1/27/86

HB 409
Section 2 (b) (6)

SUMMARY OF PROPOSED SCHOOL BUS DRIVER TRAINING PROGRAM

1. Standardization of School Bus Driver Training

The Department of Education will develop a recommended school bus driver training program. This program will include guidelines for classroom curriculum as well as behind-the-wheel techniques and topics. This recommended program will be made available to districts as the foundation for local training plans.

Local districts will then be required to develop school bus driver training plans and submit them to the Department of Education (DOE) for approval. Working from the DOE model curriculum, local districts and their private contractors can adjust their training programs to reflect the needs of their particular area. For example, a plan from Anchorage would place more emphasis on inner city driving than would a plan from Dillingham. Successful completion of a DOE approved training plan will become a requirement for receiving a school bus driver's license.

2. Certification of School Bus Driver Instructors

In addition to the developement of a model driver training program, the DOE will design and operate a certification program for school bus driver instructors. Persons responsible for the instruction of school bus drivers will be required to gain certification through this instructors' class. The DOE will offer this program 2-3 times per year after the initial training of the driver instructors in the state. Instructors will be taught topics such as class presentation skills, class preparation, and use of AV materials, in addition to the DOE recommended driver training curriculum.

3. Increased Licensing Requirements

Requirements for school bus driver licensing will be changed to reflect the state emphasis on proper training. Prior to issuance of a school bus driver's license, the Division of Motor Vehicles will require proof that:.

a. The applicant successfully completed a DOE approved school bus driver training class; and

b. The class completed was taught by a DOE certified driver instructor.

In addition, prior to license renewal, an applicant must show proof of having received a required amount of inservice or refresher training.

The Department of Education will work with the Division of Motor Vehicles in establishing procedures for verification and documentation of approved training plans and instructor certification.

4. Program Activities

Contingent upon available funding, the Department of Education will accomplish the following activities:

a. Manuals will be developed for school bus drivers and school bus driver training instructors.

b. Workshops will be conducted to train school bus drivers in safe driving practices, and to train driver training instructors in teaching techniques.

c. Workshops will be conducted to assist school district administrators in identifying school bus driver training needs, and development of annual training plans for meeting local needs.

d. Workshops will be conducted for driver licensing examiners in how to give effective road tests in school buses to evaluate driver performance.

e. Training materials such as booklets, video cassettes, and films will be developed or purchased

f. Reporting forms and procedures to certify that training requirements were met will be developed.

g. Inservice training of school bus drivers will be conducted.

h. On-site monitoring and review of training programs will be conducted.

5. Examples of Subject Matter for Workshops to Train School Bus Driver Training Instructors and School Bus Drivers

a. Subject matter for the two above categories will overlap, and will include, but not be limited to, the following:

(1) Student Loading and Unloading Procedures
(2) Student Rider Procedures
(3) Safety and Emergency Procedures
(4) First Aid
(5) Defensive Driving
(6) Driving Skills

(7) Pre-Trip Inspection
(8) The Exceptional Child
(9) Student Management
(10) Driver's Role and Responsibilities
(11) State Rules and Regulations
(12) District Rules and Regulations
(13) Bus Components
(14) Field Trips
(15) Public Relations

b. In addition to the above, the curriculum for the Driver Training Instructor will include the following:

(1) Setting up a Classroom
(2) Proper Classroom Procedures
(3) Instructor Qualities
(4) Lesson Planning
(5) Four Step Instruction Process: preparation; presentation; application; evaluation
(6) Teaching Techniques:
  (a) creating positive teaching environment
  (b) motivating students to learn
  (c) provide learning resources
  (d) guiding students on subject matter
(7) Practice Teaching
(8) Proper and Effective Use of Teaching Aids

DRAFT

FIFTH DRAFT

ANCHORAGE, ALASKA

MASTER PLAN
FOR SCHOOL BUS
DRIVER TRAINING IN
ALASKA

APRIL 30, 1985

DRAFT

I. OPENING STATEMENT

The school bus industry is the largest transportation system in the world today. In order to understand its magnitude, we must visualize 400 thousand buses transporting 23 million students a total of 3 billion miles a year. Not only is it the largest system in the world, but statistics reveal it also to be the safest. Nationwide, pupil transportation is reported to be 7 times safer than the family car.

Research throughout the State of Alaska revealed a significant disparity of training requirements at the respective local levels ranging from practically nothing to those in excess of 40 hours. The obvious need for conformity of school bus driver training on a statewide basis became very apparent following that research.

A classic example of a disaster arising from non-conformity happened in Martinez, California in 1976 when a driver, untrained on a particular type of bus that had not been inspected by state authorities because of the pending sale of that bus, embarked on a field trip to another city. Because of a series of events contributing directly to driver error, the trip ended tragically on an off ramp with 29 student fatalities. The personal loss and suffering felt by so many, in this and many other school bus accidents involving injuries and fatalities, is magnified by the fact they could have been prevented by proper training and follow-up procedures.

In order to maintain the integrity of a system with a safety record second to none, there must be a formal, structured program of driver training

DRAFT

combined with a monitoring system that will ensure compliance throughout the state.

The growth and increasing population of Alaska intensified the demands on all concerned to establish a school bus transportation system which incorporates the ultimate in safe and efficient safety practices. As the business of transporting children becomes more professional and visible with all its related problems, more precise guidelines have been and continue to be established. Responsibilities of states, local districts, contractors, administrators, supervisors, and school bus drivers are becoming greater and greater. In our modern society, it appears that safe school bus transportation awareness is fast becoming more acute.

Although the burden of providing this safe transportation is the responsibility of everyone involved with the program, the State Department of Education has the primary responsibility for the formulation, direction and overall administration of the program.

II. GOALS AND OBJECTIVES

The ultimate goal is the assurance that all instructors and drivers will receive the same quality education necessary for optimum safety, efficiency and ultimate cost effectiveness.

To accomplish this goal, there must be designed, financed, implemented, administered, and monitored an ongoing comprehensive training and reporting program for all school bus related personnel in the State of Alaska. This would ensure that the State Department, School Districts, and local

contractors would be in compliance with a program designed for the protection and safety of all concerned.

Programs shall be designed for school bus driver trainer instructors, certified school bus driver trainers, certified school bus drivers and state licensing examiners.

Although a quality program for all is the ultimate goal, the diversification of the State of Alaska has to be taken into consideration. Therefore, in order not to handicap a district or contractor with an unreasonable program that may be unsuited to their size or respective areas and unique conditions, the Transportation Director of the local school district will be responsible for designing a school bus driver training program using material and information out of the approved training manual adopted by the Department of Education. Using the 40 hour recommendation as a yardstick to have properly trained drivers meet local requirements, programs can then be designed utilizing local expertise with training emphasis being directed to specific needs relative to that particular area of the state.

These respective training programs and/or all subsequent updates or revisions, shall be submitted to the State Transportation Director for approval by July 1, prior to the opening of school in that district.

No drivers will be certified by the Division of Motor Vehicles until notification of acceptance and approval of the training program for that

DRAFT

related area is received from the State Transportation Director.

Each training program will be limited to the life of the transportation contract in each respective area and none will exceed the life of that contract.

Because of inherent difficulties in designing programs for Alaska, with its size and unique situations, implementation of these training programs, approval of appropriate administrative authority, and providing for budgetary procedures, a realistic outlook should involve a multi-year plan.

III. PROGRAM NEEDS ASSESSMENT

A. Develop or obtain curriculum and all related training aids to fit the following categories with the corresponding time frames and subject matter:

1. CATEGORIES — TIME FRAME

CERTIFIED SCHOOL BUS DRIVER TRAINER.....80 hrs.

CLASSROOM.....40 hrs.

BEHIND-THE-WHEEL.....40 hrs.

CERTIFIED SCHOOL BUS DRIVER.....40 hrs.

CLASSROOM.....20 hrs.

BEHIND-THE-WHEEL.....20 hrs.

STATE LICENSING EXAMINERS.....8 hrs.

DRAFT

2. SUBJECT MATTER

a. SCHOOL BUS DRIVER TRAINER/SCHOOL BUS DRIVER

1) The subject matter for the two above categories will overlap, include, but not be limited to the following:

a) State Rules and Regulations

b) District Rules and Regulations

c) Student Management

d) Public Relations

e) Driver's Role and Responsibilities

f) Student Rider Procedure

g) Loading and Unloading

h) Safety and Emergency Procedures

i) Pre-Trip Inspection

j) Bus Components

k) Field Trips

l) First Aid

m) The Exceptional Child

n) Defensive Driving

o) Driving Skills

2) In addition to the above, the curriculum for the Driver Trainer will include the following:

a) Setting up a Classroom

b) Proper Classroom Procedures

c) Instructor Qualities

DRAFT

d) Lesson Planning

e) Four Step Instruction Process:

1] Preparation

2] Presentation

3] Application

4] Evaluation

f) Teaching Techniques:

1] Creating Positive Teaching Environment

2] Motivating Students to Learn

3] Provide Learning Resources

4] Guiding Students on Subject Matter

g) Practice Teaching

h) Proper and Effective Use of Teaching Aids

b. STATE LICENSING EXAMINERS

1) Hold a one day workshop to cover the following topics:

a) Explanation of the overall school bus driver Training program.

b) A behind-the-wheel segment to demonstrate the driving skills being taught in the program.

c) Coordinate any new requirements or testing procedures from the D.P.S. or possible future changes or revisions.

B. State Department of Education Pupil Transportation Director be authorized to certify and/or choose school bus driver trainer instructors from qualified authorities throughout the nation because of their many years of experience, education, and expertise in all aspects of the school bus industry and related subject matter.

C. The State Pupil Transportation Director shall be supplied with:

1. A list of school bus driver trainers to be certified upon the satisfactory completion of the required authorized programs. This affidavit shall be signed and attested to by the participating Driver Trainer Instructor(s).

2. A list of the School Bus Drivers, subsequent to the satisfactory completion of the required authorized training programs and prior to the application of the certified driver's license, shall be supplied with appropriate affidavit signed by the Driver Trainer(s).

D. The 20 hours behind-the-wheel time frame may be waived if the applicant can furnish proof or produce credentials verifying the satisfactory completion of a comparable training program or if the applicant's past driving experience, education and knowledge in the field of pupil transportation becomes evident to the driver trainer.

After an appropriate behind-the-wheel session of at least 2 hours for verification, a Training Waiver Certificate signed by the Certified Driver Trainer attesting to the qualifications and ability of the applicant may be issued for presentation to the D.M.V.

E. Prepare a training program for the State Licensing Examiners that would make them cognizant of training procedures and program content putting them in a position to question the legitimacy of either affidavit. The State Licensing Examiners would serve as an excellent check and balance of the driver training program.

F. Provide that a certified school bus driver's license shall be renewed every 2 years and:

1. Require 10 hours of in-service training per year in order to remain current in such subjects as:

   a. Classroom Instruction

   b. Behind-the-wheel Training

   c. Safety Road Check

   d. Safety Meetings

   e. "Roadeo" Competition

   f. State Conferences

   g. Job-Related Courses

2. Require an appropriate affidavit accompany the school bus driver and reflect the required 20 hours of in-service training when applying for license renewal.

G. Require a year-end report showing all training received by each certified school bus driver be supplied to the state pupil transportation director.

H. Design the appropriate form and establish reporting procedures for the necessary data to be provided to the State Department of Education Pupil Transportation Director. Examples:

1. List of all employees in their proper categories, showing subject matter, type, and amount of training received
2. State Licensing Examiners in-service
3. Copies of all Certified Training Affidavits and Certified Training Waiver Affidavits.
4. Proper and comprehensive accident reporting becomes a larger priority. The statistical data gleaned from this material could provide excellent subject matter for in-service training.

I. Utilize when possible, because of their strategic location throughout the state, Community Colleges and Extension Rural Education Facilities as sites for regional instruction or in-service training to minimize travel for rural personnel.

J. Develop video tape programming for certain types of training.

K. Design an on-site monitoring system to compliment the regularly established reporting procedure.

L. Establish a dollar value for budgetary purposes with immediate attention being given to the writing, study and evaluation of all the proposed programs.

M. Provide for adequate personnel for proper administration of the program.

N. Prepare, print and distribute the desired and related material.

IV. MULTI-YEAR PLAN FOR ACCOMPLISHMENT

Obviously a program of this magnitude will need an adequate amount of time to phase in the appropriate segments as they are developed and as budgetary consideration will allow.

The following listing will indicate the priorities for incorporating the different aspects of the total program and will no doubt encompass a multi-year time frame.

PHASE I PLANNING - BUDGETING

A. Hold a meeting with Director of Management, Law, and Finance and the Commissioner of Education to discuss goals and objectives of the Pupil Transportation training proposal as the first step toward a State approved program.

B. Prepare package for the Department of Education for the following considerations:

1. Approval of the program

2. Budgetary appropriations

3. Recommendations to include the appropriate language in the Department of Education Regulations that would assure a State mandated, regulated, and monitored school bus driver training program and related services.

4. Recommendations to include the appropriate language in the Department of Education Regulations that would provide for State Certification for School Bus Driver Trainers and School Bus Drivers.

PHASE II CURRICULUM - REPORTING

A. Prepare curriculum and establish visual aids needed for driver training program.

B. Print and distribute materials to local districts along with guidelines for the preparation for approval of their respective training programs.

C. Design, print, and distribute all forms to all related agencies needed for required reporting.

D. Determine and prepare curriculum and material needs for the driver trainer instructors workshop.

PHASE III IMPLEMENTATION - EVALUATION

A. Establish necessary workshops to acquaint contractor and district personnel with programs, forms, procedures, etc.

DRAFT

B. Establish workshops with D.M.V. personnel for program coordination.

C. Establish and begin annual workshop to qualify driver trainers.

D. Begin driver training program on local level.

E. Evaluate program for efficiency of training and reporting procedures.

PHASE IV RESTRUCTURE - REORGANIZE

Alter, change, redesign, or upgrade any portion of the program as needed or required.

VI. CLOSING STATEMENT

This plan has identified a need, spelled out the process to rectify that need, and provided for an ongoing program with room to fluctuate as the business it regulates varies according to the educational requirements of the community.

One of the major endeavors of the plan was to alleviate the discrepancies regarding school bus driver training while allowing a good measure of local control of respective school districts.

The concepts of permitting school districts, in conjunction with the local contractors, to submit their own training programs for approval is

totally new, but has a tremendous amount of merit. Factors such as attitudes, public relations, and cooperation will be greatly enhanced and possibly the programs submitted will even be more stringent than one developed on a state level, because of the flexibility to stress the proper emphasis where needed.

The adoption of this plan by the State Department of Education will fulfill their responsibility to formulate and administer a school bus driver training program and pave the way for future developments and progress.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CS HB 409 (Trans)

Neutral

February 3, 1986

CS HB 409 (Trans) An Act relating to the training and licensing of school bus drivers.

This bill does not make any drastic changes in the licensing of school bus drivers. The major concern of school bus contractors and school bus drivers was taken care of in the committee substitute.

Present law indicates a school bus permit will not be issued until "the department is satisfied as to the applicant's good character, competence, and fitness to be licensed....." Thus, the department adopted regulations which specify who cannot be licensed. This bill takes the discretion away from the department and specifies in statute who cannot be licensed. This bill adds one criminal offense that is not in the regulations which disqualify an applicant, however, the department's regulations are much stricter in regard to driving offenses.

The cost mentioned in proposed section 28.15.046(f) is currently $12.00 for a fingerprint search of the national criminal records as required in AS 28.15.046(b)(4). Individual states do not charge for a fingerprint search for another state, as is required in AS 28.15.046(b)(4) if the applicant has resided outside Alaska within the two years prior to application.

Recommend Section 2 of the bill be repealed. Licensing of taxi drivers is presently handled at the local government level and the department would prefer to leave the control at the local level.

ROBERT J. SUNDBERG
Commissioner

POSITION PAPER OF THE DEPARTMENT OF EDUCATION

FOURTEENTH ALASKA LEGISLATURE
House Bill 409
March 7, 1986

The Department supports this bill.

for Harold Raynolds, Jr.
Commissioner

MEMORANDUM State of Alaska

TO: The Honorable Roger Jenkins
House of Representatives
Alaska State Legislature

DATE: March 10, 1986

FILE NO.:

THRU: Steve Hole
for Marshall L. Lind, Commissioner
Department of Education

TELEPHONE NO.: 465-2800

SUBJECT: CSHB 409

FROM: Romayne Kareen, Administrator RK
Pupil Transportation Services
Department of Education

Per your request, following is information regarding CSHB 409.

CSHB 409 requires school bus drivers to complete a state-approved school bus driver training program before being licensed by the Department of Public Safety to transport school children in school buses. Currently a driver need only pass a written and performance test in order to be issued a school bus driver permit.

The following are reasons for the department's support of this bill:

1. Adequate training of school bus drivers is essential in order to assure the safety of school children who ride buses to and from school.

2. Current training programs of school districts and bus contractors throughout the state range from approximately four hours to 40 hours for beginning drivers.

3. Training offered by school districts and bus contractors is inconsistent due to lack of statutory or regulatory requirements for content and amount of training.

4. During 1984, 45 pupils were killed nationwide in accidents involving school buses. Approximately ten were passengers on school buses and 35 were pedestrians either approaching or leaving the school bus loading zone. More than half of the pupil pedestrians were struck by the school bus which they were entering or leaving.

5. In Alaska, three pupils were fatally struck by school buses in the last three years.

6. During 1984, the Department appointed a committee of school district representatives and bus contractors to develop a master plan for school bus driver training needs in the state. A summary of the plan is attached. The plan is ready for implementation contingent upon available funding.

Attachment

cc: Larry Huxel
Steve Hole
Mary Hakala

1/27/86

HB 409
Section 2 (b) (6)

SUMMARY OF PROPOSED SCHOOL BUS DRIVER TRAINING PROGRAM

1. Standardization of School Bus Driver Training

The Department of Education will develop a recommended school bus driver training program. This program will include guidelines for classroom curriculum as well as behind-the-wheel techniques and topics. This recommended program will be made available to districts as the foundation for local training plans.

Local districts will then be required to develop school bus driver training plans and submit them to the Department of Education (DOE) for approval. Working from the DOE model curriculum, local districts and their private contractors can adjust their training programs to reflect the needs of their particular area. For example, a plan from Anchorage would place more emphasis on inner city driving than would a plan from Dillingham. Successful completion of a DOE approved training plan will become a requirement for receiving a school bus driver's license.

2. Certification of School Bus Driver Instructors

In addition to the developement of a model driver training program, the DOE will design and operate a certification program for school bus driver instructors. Persons responsible for the instruction of school bus drivers will be required to gain certification through this instructors' class. The DOE will offer this program 2-3 times per year after the initial training of the driver instructors in the state. Instructors will be taught topics such as class presentation skills, class preparation, and use of AV materials, in addition to the DOE recommended driver training curriculum.

3. Increased Licensing Requirements

Requirements for school bus driver licensing will be changed to reflect the state emphasis on proper training. Prior to issuance of a school bus driver's license, the Division of Motor Vehicles will require proof that:

a. The applicant successfully completed a DOE approved school bus driver training class; and

b. The class completed was taught by a DOE certified driver instructor.

In addition, prior to license renewal, an applicant must show proof of having received a required amount of inservice or refresher training.

The Department of Education will work with the Division of Motor Vehicles in establishing procedures for verification and documentation of approved training plans and instructor certification.

4. Program Activities

Contingent upon available funding, the Department of Education will accomplish the following activities:

a. Manuals will be developed for school bus drivers and school bus driver training instructors.

b. Workshops will be conducted to train school bus drivers in safe driving practices, and to train driver training instructors in teaching techniques.

c. Workshops will be conducted to assist school district administrators in identifying school bus driver training needs, and development of annual training plans for meeting local needs.

d. Workshops will be conducted for driver licensing examiners in how to give effective road tests in school buses to evaluate driver performance.

e. Training materials such as booklets, video cassettes, and films will be developed or purchased.

f. Reporting forms and procedures to certify that training requirements were met will be developed.

g. Inservice training of school bus drivers will be conducted.

h. On-site monitoring and review of training programs will be conducted.

5. Examples of Subject Matter for Workshops to Train School Bus Driver Training Instructors and School Bus Drivers

a. Subject matter for the two above categories will overlap, and will include, but not be limited to, the following:

(1) Student Loading and Unloading Procedures
(2) Student Rider Procedures
(3) Safety and Emergency Procedures
(4) First Aid
(5) Defensive Driving
(6) Driving Skills

(7) Pre-Trip Inspection
(8) The Exceptional Child
(9) Student Management
(10) Driver's Role and Responsibilities
(11) State Rules and Regulations
(12) District Rules and Regulations
(13) Bus Components
(14) Field Trips
(15) Public Relations

b. In addition to the above, the curriculum for the Driver Training Instructor will include the following:

(1) Setting up a Classroom
(2) Proper Classroom Procedures
(3) Instructor Qualities
(4) Lesson Planning
(5) Four Step Instruction Process: preparation; presentation; application; evaluation
(6) Teaching Techniques:
  (a) creating positive teaching environment
  (b) motivating students to learn
  (c) provide learning resources
  (d) guiding students on subject matter
(7) Practice Teaching
(8) Proper and Effective Use of Teaching Aids

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BOARD REPORT

Pouch F, Juneau, Alaska 99811
More Information: Harry Gamble 465-2821

FOR IMMEDIATE RELEASE
February 6, 1986

Here is the action from the State Board of Education meeting February 3 and 4 in Juneau. The Board:

*Approved a resolution supporting Governor Bill Sheffield's debt containment legislation, HB 520.

*Supported the following legislation: CSSB 240, which would increase the penalty for illegally passing a school bus; Executive Order 62, which would transfer fire service training responsibilities from the Department of Education to the Division of Public Safety; SB 230, which would increase from two to three years the requirement for teacher tenure, and would permit schools to dismiss teachers because of loss of funds; SB 104, which would increase from three to five years the maximum duration of pupil transportation contracts; SB 8, which would encourage school districts to offer curriculum in personal safety; SB 381, which would establish a forward funding provision for funding public schools; HB 526, which would provide funding to the Alaska State Museum for preservation of important artifacts of Alaska culture; and HB 409, which would provide for training and licensing of school bus drivers.

*Opposed the following legislation: SB 319, which would establish a separate unit within the Department of Education, with a governing board, to provide statewide services to severely handicapped students; CSHB 174, which would require teachers to be trained in first aid and emergency procedures.

*Voted to take no position on: HB 480, which would prohibit the use of corporal punishment in school districts as a form of discipline; and SCR 10, which would request that the State Board request local school boards to require the study of Alaska History including ramifications of the Alaska Native Claims Settlement Act (ANCSA). In taking no position on these two measures, the Board noted that most local school districts already have established policies regarding corporal punishment and that nearly all school districts either require Alaska history, including the ramifications of ANCSA, or they provide such classes as an elective.

The Board also:

*Accepted the Alaska Schools of the Future plan, for which Governor Sheffield provided $1.5 million in his FY 1987 operating budget request.

*Sent the following regulation for public comment: 4 AAC 06.27 (a)(b)(c), would be repealed and replaced with the

Gramm - Rudman - Hollings
Dictates Balanced Budget in 5 yrs
Don't have self-responsibility.

FEB 1 8 1986

LAIDLAW
TRANSIT, INC.

1040 EAST FIRST AVENUE, P.O. BOX 105020, ANCHORAGE, ALASKA 99510, (907) 276-7823

February 11, 1986

Representative Jenkins
P.O. Box V
Juneau, Alaska 99811

Dear Representative Jenkins;

Laidlaw Transit, Inc. is a school bus contractor working for the Anchorage School District and the Kenai Borough School District. We employee approximately 220 bus drivers and bus attendants in those two districts.

We wholeheartedly support House Bill No. 409, "An Act relating to training and licensing of school bus drivers; and providing for an effective date".

Sincerely,

Christine M. Flegel

Christine M. Flegel
Safety, training & personnel
Laidlaw Transit, Inc.
Anchorage, Alaska

Pupil Transportation Systems

6631 East 9th Avenue Anchorage, Alaska 99504 (907) 333-5708

Feb. 24, 1986

Rep. Pat Pourchot
Pouch V
Juneau, Alaska 99811

Re: CSHB 409

Finally, after many years of struggles and frustrations, a bill supporting school bus driver training is proceeding through the legislature.

This long awaited and much needed legislation would benefit not only related State Departments, but all communities that transport school children, everyone else connected with pupil transportation, and also the other taxpayers of the state.

By providing the fiscal means, establishing Statute language, and incorporating the training program, this bill would fill the void now present regarding pupil transportation. At the present time there is no Statute language requiring any training program for school bus drivers, no State authorized training program of any kind, and no monitoring system reflecting the quality of personnel being employed, or any assurance they are receiving even minimum instruction.

Aside from the legal void that puts the State Department of Education and the taxpayers in a vulnerable position during any litigation involving pupil transportation, CSHB 409 would also ensure that reputable people are being hired and are receiving a standardized program of instruction preparing them for a most difficult task.

Therefore, I respectfully request your support for CSHB 409.

Sincerely;

Cecil Whitehurst

Cecil Whitehurst

cc: Rep. Albert P. Adams, Chairman, House Finance Committee
Rep. Roger Jenkins, Sponsor of CSHB 409

KENAI PENINSULA BOROUGH SCHOOL DISTRICT

148 North Binkley Street • Soldotna, AK 99669 • Phone 907/262-5846

FEB 26 198

February 24, 1986

House Finance Committee
Pouch V
Juneau, AK 99811

Dear Representatives:

As a member of the Alaska School Bus Safety Committee and Transportation Coordinator for our school district, I would like to speak, through this letter, in **support of HB 409.**

As the bill eliminates some of the discretion of the Department of Public Safety, it also mandates that individuals will be of good character before a bus driver's license is issued.

Thank you for your representation and support.

Sincerely,

Penny Little

Penny Little
Transportation Coordinator

cc: Roger Jenkins

COMMITTEE REPORT

HOUSE

1/29

(7)

4/29/35

FURTHER: STATE AFFAIRS

Date: 1-28-86

The Committee on TRANSPORTATION has had HB 409

"An Act relating to licensing of school bus drivers; and providing for an effective date."

under consideration and recommends:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HB 409 (TRSP) [ ] same title [X] new title

and recommends cs pass

[ ] AND attaches a "Letter of Intent" [X] ~~New~~ Fiscal Note 2 S Eff 78

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Bette Ates

Dick Slutt

Walt Furnarez

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Adelheid Herrmann No Rec

A.U. MARROU Do Not Pass
(ONEROUS BUREAUCRACY)

Mike Ramos NO Rec

Bette Ates
CHAIRMAN

HOUSE
COMMITTEE REPORT

2/5 Rules

(7)
Date referred: 1/29/86

FURTHER REFERRALS:

DATE: 2/3/86

The STATE AFFAIRS Committee has considered HB 409

"An Act relating to licensing of school bus drivers; and providing for an effective date.

and recommends:

[ ] do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[✓] replace with C.S.H.B. 409 (Jrsp) [ ] same title [✓] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches:
[ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[ ] zero fiscal note

SIGNING DO PASS:

Katie Hurley
Mike Hardwick
Roger Jenkins
Bobby Cate
Ron A. Parker

SIGNING OTHER RECOMMENDATIONS:

Allen McDonald DO PASS

Katie Hurley
Chairman

HOUSE
COMMITTEE REPORT

Today's Date 2/3

(11)

Date referred: 2/5/86

(Finance added 2/5)

FURTHER REFERRALS: Rules

DATE: 2-28-86

The FINANCE Committee has considered HB 409

"An Act relating to licensing of school bus drivers; and providing for an effective date."

and recommends:

[ ] -do pass

[ ] do not pass

[ ] do pass with attached amendment(s)

[ ] no recommendation

[X] replace with CS HB 409 (TRAN) [ ] same title [✓] new title

and recommends do pass

[ ] further referral to the _____ Committee

and attaches: [ ] letter of intent
[ ] first fiscal note
[ ] new fiscal note
[X] zero fiscal notes (New)

{ Finance wants it known that it endorses the zero fiscal note #2 which appears in House Supplement #7.

SIGNING DO PASS:

Albert S. Lewis
Ronald D. Jones
Pat Pounds
Steve Rhea
D'Front
Dolores Bibby
Jean Cash
Mike Symmonds

SIGNING OTHER RECOMMENDATIONS:

Albert S. Lewis
Chairman

12/13/85

ACCIDENT FACTS

1985 EDITION

National Safety Council

School bus accidents, 1984

School bus transportation accidents killed about 100 persons in 1984, including 45 pupils, 5 bus drivers and 50 other persons.

Of the pupils killed, about 10 were passengers on school buses and 35 were pedestrians either approaching or leaving a loading zone. More than half of the pupil pedestrian victims were struck by the school bus which they were entering or leaving.

Injuries in school bus related accidents totalled about 8,400 of which 5,500 were students.

The table on page 91 shows certain details of the injury and property damage accidents which occurred in 1984. Types of school bus accidents not itemized include an estimated 400 pedestrian, 100 bicycle, and 10 railroad accidents. About eight out of ten accidents involved property damage with no injuries.

Characteristics of school bus transportation

Interpretation of school bus accident data is complicated by the many variations between state operations, by lack of standard definitions of terms, and by lack of comparable reporting by states.

The state totals in the table on page 91 are shown as reported by the states. The U.S. totals are National Safety Council estimates developed by inflating the total from reporting states to compensate for the portion from missing states. State figures are weighted based on the number of pupils transported in that state. Procedures for estimating all U.S. totals on this page and in the table on page 91 were revised for the 1985 edition of *Accident Facts* and are not comparable to estimates from previous editions.

Terms and reporting classifications

Vehicles. Included are regular school buses and other nonfamily-owned vehicles used in transporting pupils.

Annual bus mileage. Total mileage includes deadheading (traveling with no pupil passengers) and extracurricular activity trips. Data from seven states indicate that deadheading may average about 14 per cent of total mileage, ranging from practically none in some states, up to one fourth of the total bus mileage in others, depending on arrangements for driver and bus storage. Extracurricular mileage, based on 18 states, is indicated to be about 9 per cent of total mileage, also with a wide range among states. Such mileage includes athletic and field trips, shuttle service, and so on.

Pupils transported daily. A pupil is counted only once for each day transported, although usually two one-way trips or more are made daily.

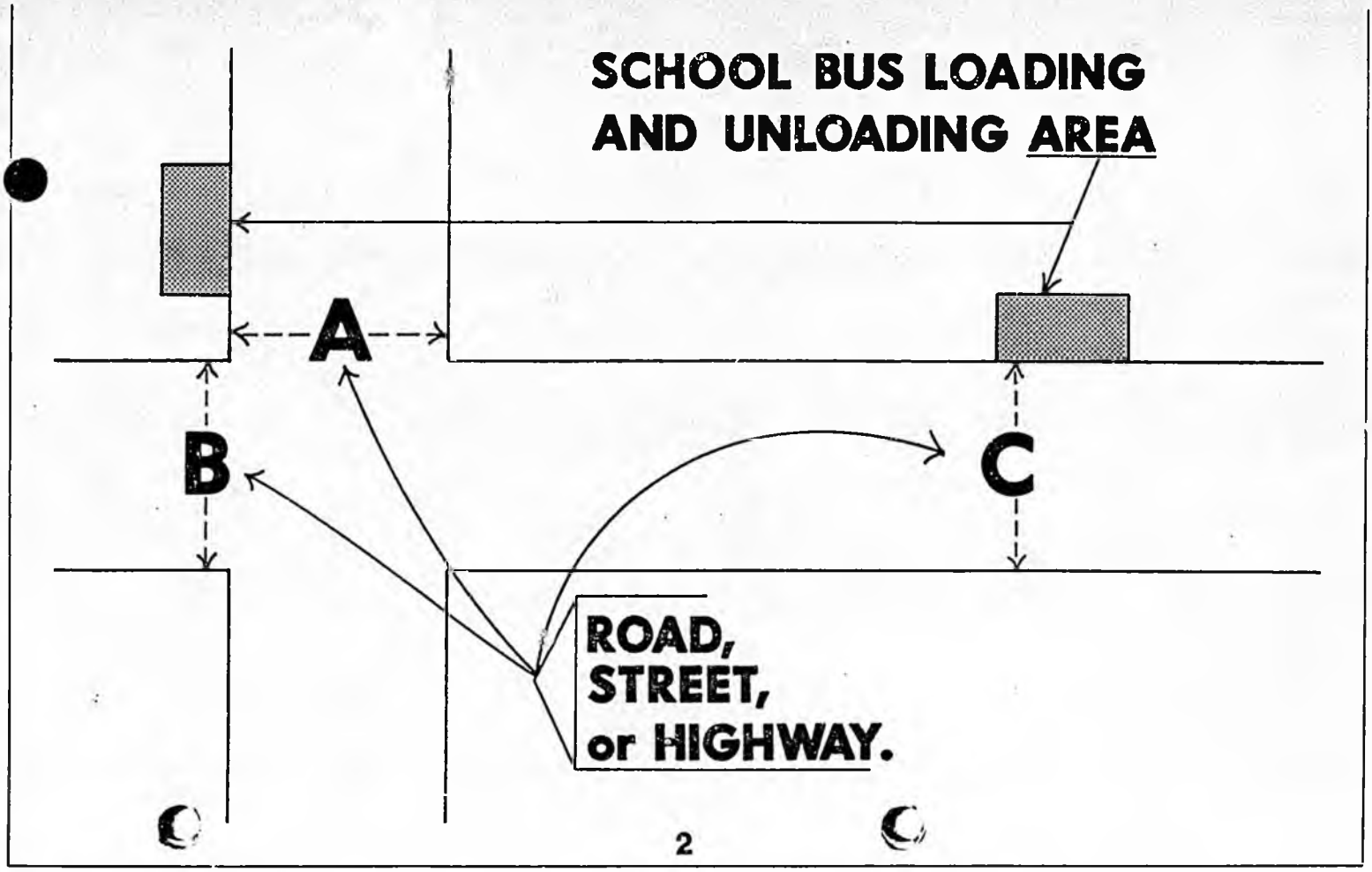
Pupil passenger miles and average bus occupancy. Total pupil passenger miles cannot be computed directly from total bus mileage and pupils transported. Reports indicate average bus occupancy as upwards of 35 pupils, but it may rise or fall several times on a single route trip, as a bus in some instances may serve several schools along the route. Average occupancy for all bus mileage, including deadheading, may be only about 40 per cent of capacity. The National Safety Council estimate of total pupil passenger miles for 1984 is 78.3 billion.

Route trip. A route trip may represent (1) a one-way trip from the point where the first pupil boards the bus to the point where the last pupil leaves it, (2) a round trip, or (3) several separate trips ending at the same school(s). Miles per route trip reported for 16 states ranged from 18 to 76, averaging 33 miles. Pupils carried per route trip ranged from 13 to 79, averaging 54 pupils. Route trips per bus ranged from 1 to 4, averaging 2.2 trips daily.

SCHOOL BUS
LOADING & UNLOADING
SURVEY

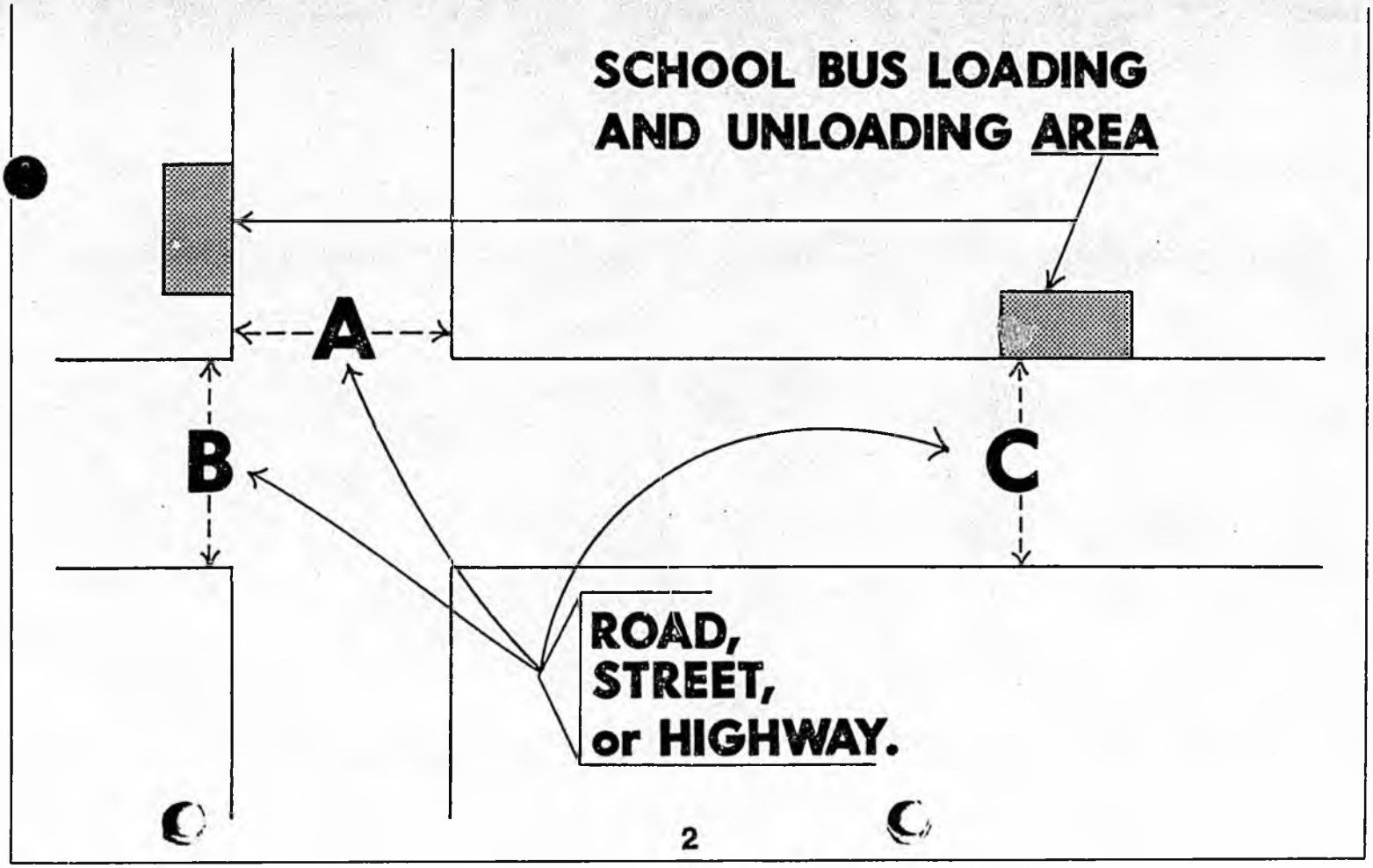
CALENDAR YEAR 1984 SCHOOL YEAR 84-85

The National School Bus Loading and Unloading Survey is a collection of fatality accident records provided by the state agencies responsible for school transportation safety and/or accident records. Only those fatality accidents involving school children in or around the loading or unloading areas of a school bus are included in this survey. On-board fatalities are excluded, as are pedestrian-type fatalities that occur when the school bus is not in the near vicinity at the time of the accident.



50 States and Washington, D.C. surveyed

	1981	1982	1983	1984
Number reporting fatalities.....	19	17	24	22
Number reporting no fatalities.....	31	33	25	26
Number not reporting	1	1	2	3



2

50 States and Washington, D.C. surveyed

	1981	1982	1983	1984
Number reporting fatalities.....	19	17	24	22
Number reporting no fatalities.....	31	33	25	26
Number not reporting	1	1	2	3

School Children Killed by School Bus

- **Childs position when killed**

	1981	1982	1983	1984
Front of Bus	19	12	15	15
Back of Bus	7	5	8	6
Total	26	17	23	21

- **School Children Killed by Vehicle Passing School Bus**

	1981	1982	1983	1984
Total	11	11	8	7
No Information	0	0	0	2
Total Children Killed	37	28	31	30

- (school bus & other vehicle)

Light Condition	1981	1982	1983	1984
Dawn	0	1	2	1
Dusk	0	0	0	0
Daylight	36	27	28	27
Dark	1	0	1	0
Unknown	0	0	0	2
Total	37	28	31	30

School Bus Size	1981	1982	1983		1984
Type I (Large Bus)	37	27	31	TYPE A	11
Type II (Small Bus)	0	1	0	TYPE B	1
Unknown	0	0	0	TYPE C	7
Total	37	28	31	TYPE D	4
				UNK.	7
				TOTAL	30

Sex of Child

	1981	1982	1983	1984
Female	20	11	14	19
Male	17	17	16	9
No Information	0	0	1	2
Total	37	28	31	30

School Children Killed

	1981	1982	1983	1984
Going to School	9	6	6	5
Activity Trip	0	0	0	0
Coming Home	28	22	25	21
No Information	0	0	0	4
Total	37	28	31	30

Place Pupil Was Killed

	1981	1982	1983	1984
Loading & Unloading Area..	2	2	6	15
Schooi Ground	0	0	1	1
Road,Street or Highway.....	35	26	24	12
No Information	0	0	0	2
Total.....	37	28	31	30

Age of Pupil Killed

	1981	1982	1983	1984
5 Years Old or Under	12	7	8	3
6 Years Old.....	7	4	5	8
7 Years Old.....	7	4	4	5
8 Years Old.....	3	5	4	3
9 Years Old.....	3	2	4	0
10-17 Years Old.....	5	6	5	8
No Information.....	0	0	1	3
Total.....	37	28	31	30

Area Accident Occurred

	1981	1982	1983	1984
Urban	16	15	15	11
Rural	21	13	16	15
No Information	0	0	0	4
Total	37	28	31	30

Weather Conditions	1981	1982	1983	1984
Clear	31	26	26	22
Cloudy	5	1	2	2
Rain	1	0	0	0
Snow/Sleet/Ice	0	1	1	2
Fog	0	0	2	1
Unknown	0	0	0	3
Total	37	28	31	30

DAY OF THE WEEK FATALITY OCCURRED

1984 (Only)

MONDAY	3
TUESDAY	1
WEDNESDAY	4
THURSDAY	7
FRIDAY	9
SATURDAY	0
SUNDAY	0
UNKNOWN	6

MONTH FATAL ACCIDENT OCCURRED

	1981	1982	1983	1984
JANUARY	4	4	1	4
FEBRUARY	3	3	4	4
MARCH	7	1	4	5
APRIL	5	2	3	2
MAY	3	0	4	5
JUNE	0	0	0	1
JULY	0	0	0	0
AUGUST	0	2	0	0
SEPTEMBER	1	2	1	3
OCTOBER	4	7	6	1
NOVEMBER	5	3	5	1
DECEMBER	2	1	2	2
NO INFORMATION	3	3	1	2
TOTAL	37	28	31	30

ACCIDENT SUMMARY REPORT

1. The driver of a vehicle passes through the stop arm and alternately flashing red lights of a school bus that was stopped to discharge students at a regularly scheduled stop. The fatality occurred as the student was crossing in front of the school bus. (7 yr. old female)

2. The students exited the bus and crossed the street in front of the bus. The driver was distracted a moment, looked in the mirrors (including the crossover mirror) and saw nothing. The driver started the bus forward. The child was underneath the bus, in front of the left front wheel. The bus moved approximately 18 inches with the left front wheel passing over the child. (6 yr. old female)

3. Three children exited the bus, two going around the front and one going around the rear. The child going around the rear slipped or fell under the right rear wheel and was run over. (8 yr. old male)

4. Child slipped or fell and was run over by the right rear wheel. (5 yr. old female)

5. The school bus was stopped at a loading area and the ignition wires began to spark and smoke; thus, the engine would not start. The bus driver went to call for another bus at a nearby residence. The bus started rolling down a slight negative grade. The students started jumping out of the entrance. The victim jumped as the bus swerved to the right off the shoulder and the right wheels ran over the victim. (7 yr. old female)

6. At a regular stop on the bus route one boy and two girls exited the bus. One girl usually crosses the street in front of the bus and the other two children stay on the side of the street which they exit the bus from. The driver became involved in a conversation with the mother of the boy concerning the child's behavior on the bus. When ready to leave the stop the driver shut off the amber and red flashing light system, checked the mirrors and proceeded forward. The driver felt a bump and several cars were blowing their horns. The driver then stopped the bus and saw the child lying in the roadway. The bus was noisy with the 14 or 15 remaining passengers and the driver stated that the crossover mirror moves out of adjustment all the time. (6 yr. old female)

7. Three students exited the bus at a regular stop. The driver observed the students begin to talk on the sidewalk and after waiting an undetermined amount of time, shut off the warning lights and checked all the mirrors (including the crossover mirror). The driver then moved the bus forward not knowing that the incident took place until looking in the rearview mirror. The child had been struck by the front of the bus. (5 yr. old female)

8. Oncoming vehicle was unable to stop for a child that was being unloaded from a school bus. (5-9 yr. old female)

9. Child was struck by a dump truck loaded with 25 tons of lime as child departed the bus.

10. Child was struck by an out of control pick up truck while waiting in front of house for the bus to arrive.

11. Child darted between school buses parked in the school drive into the path of an approaching school bus.

12. Child was struck by an approaching auto while waiting in front of her house for the bus to arrive.

13. A student departed the bus. The student dropped a book - the bus driver did not see the student and started the bus in motion. The student was struck by the front of the bus. (15 yr. old female)

14. The student exited the bus, darted across the front of the bus and was struck by a passing school bus. (10 yr. old male)

15. One bus was stopped for another (oncoming) school bus discharging passengers. When the stop arm of the bus discharging passengers was pulled in the driver of the other bus started forward. The driver then felt a bump and stopped the bus. The bus had hit a student who had exited one bus and then crossed in front of both busses. (10 yr. old male)

16. A child was struck by the right rear wheel of a school bus. (7 yr. old male)

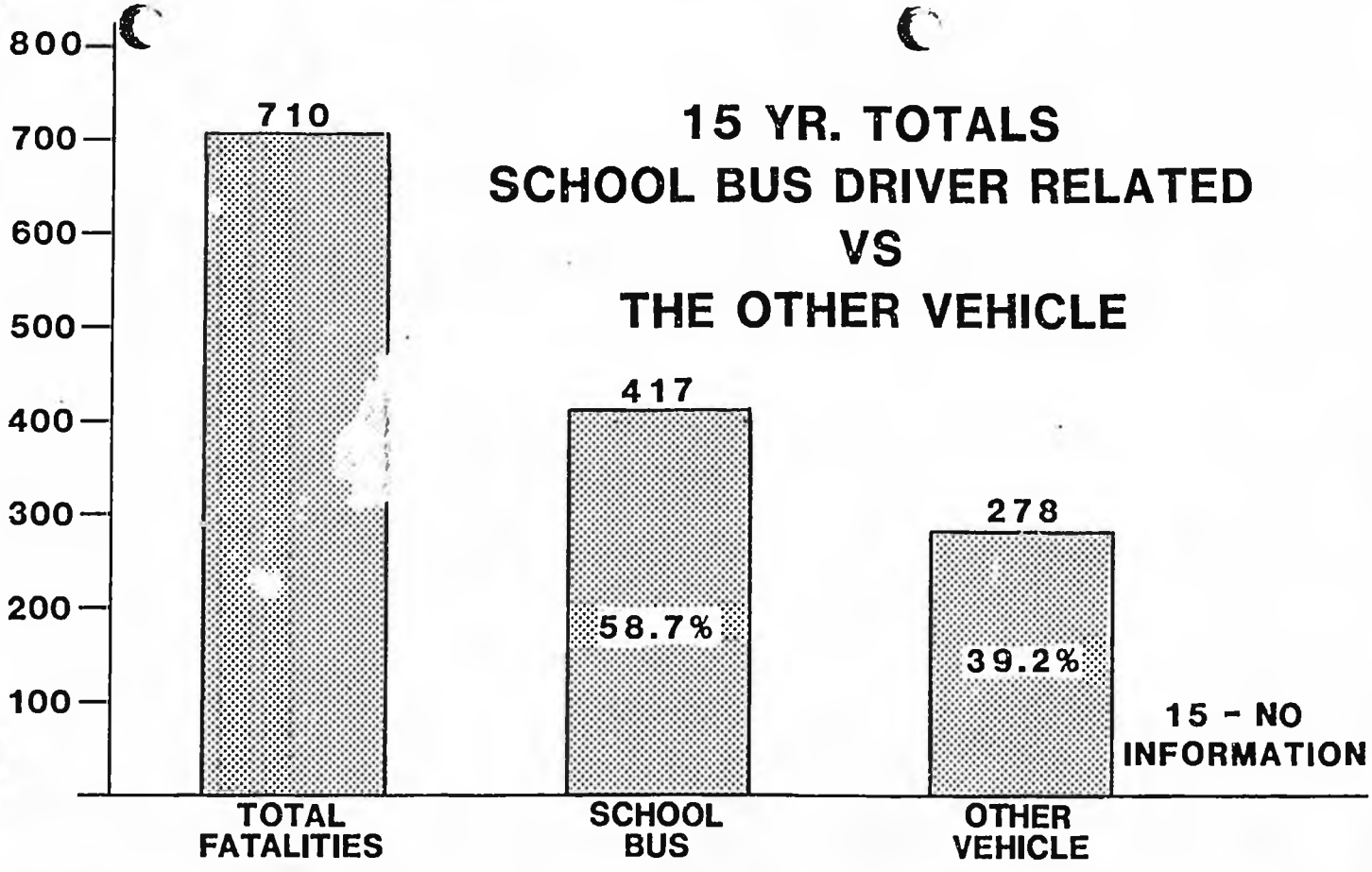
17. 23 students were discharged at a five-way intersection. The Driver who was facing a stop sign, was distracted by traffic approaching from the left. The student, near the front of the bus, was waiting for an older sister to disembark. The sister, who was already on the other side of the street, called to the student at the same moment the driver closed the door, started forward and turned right. The student was knocked down by the front of the bus and run over by the right rear dual wheels. (6 yr. old female)

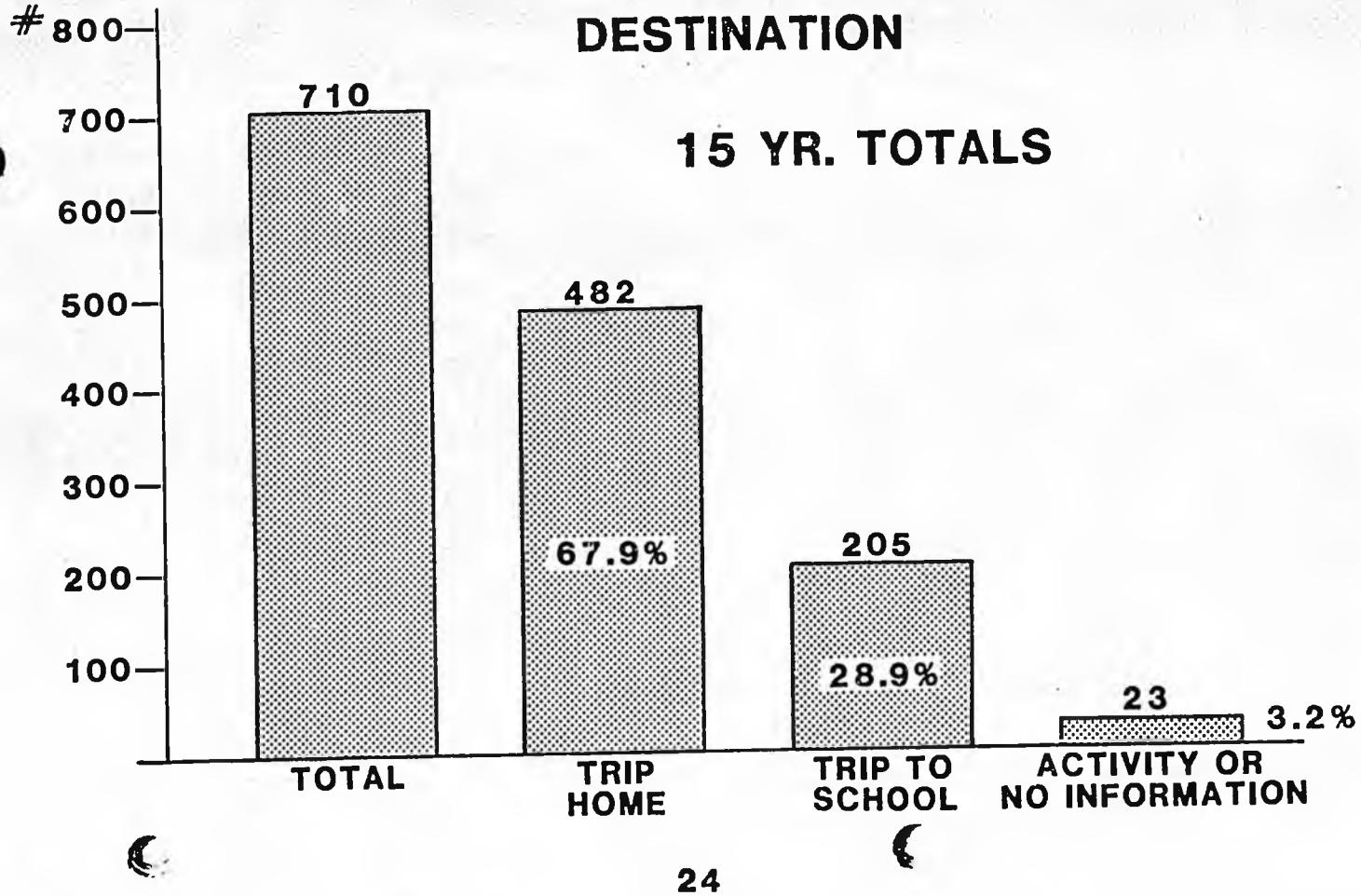
18. School bus was eastbound, stopped and let off 4 students. The bus continued east about 10 feet and turned onto a north-south road. The bus ran over a pedestrian at the intersection of the two roads. (5 yr. old female)

19. In both accidents the students got off the bus and walked around in front. The school bus driver did not see the children in front of the bus and ran over them. (5 yr. old male/6 yr. old female)

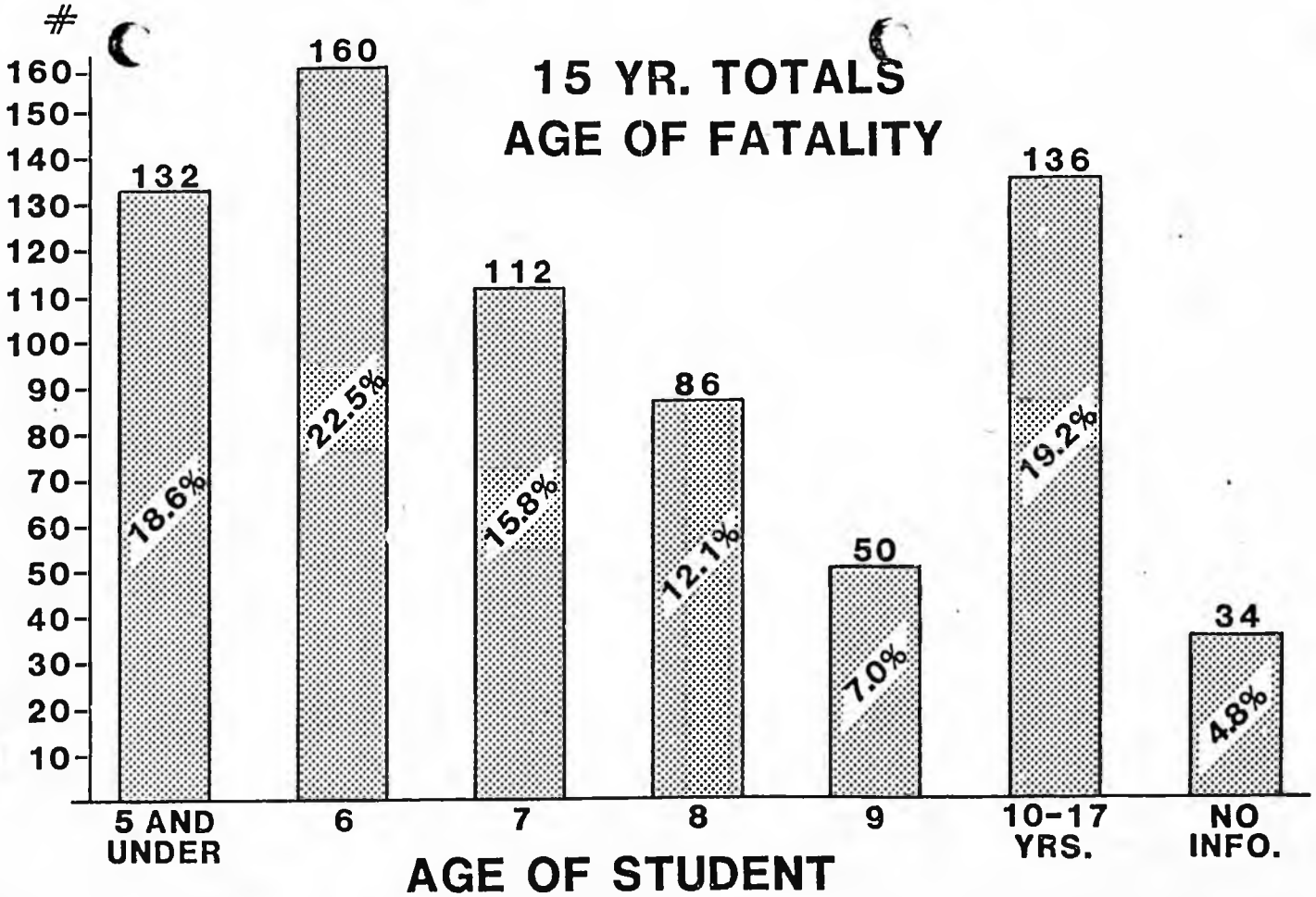
20. The student was at the bus stop and was hit by a passing automobile. The school bus was not at the stop at the time of the accident. (13 yr. old male)

THE ABOVE SUMMARY REPORTS WERE THOSE THAT HAD SUFFICIENT INFORMATION REPORTED TO INCLUDE IN THIS REPORT. THERE ARE ALSO AN OVERALL TYPICAL REPRESENTATION OF THE FATALITY ACCIDENTS WHICH OCCURRED.




DESTINATION
15 YR. TOTALS
#
800
700
600
500
400
300
200
100
710
482
67.9%
205
28.9%
23
3.2%
TOTAL
TRIP HOME
TRIP TO SCHOOL
ACTIVITY OR NO INFORMATION

24


#
15 YR. TOTALS
AGE OF FATALITY
160
150
140
130
120
110
100
90
80
70
60
50
40
30
20
10
132
18.6%
160
22.5%
112
15.8%
86
12.1%
50
7.0%
136
19.2%
34
4.8%
5 AND UNDER
6
7
8
9
10-17 YRS.
NO INFO.
AGE OF STUDENT

25

SUMMARY

- *490 fatalities occurred to students 5, 6, 7 & 8 yrs. of age, or 69.0% of total.*
- *Students departing bus on way home involved in 67.9% of all fatalities in the study.*
- *School bus related accidents outnumber those involving "the other vehicle"*
- *In the 80,-84 calendar years, the school bus was involved in 69.2% of the accidents or 108 of the 156 fatalities that occurred.*

This survey is provided annually to the school transportation industry in an effort to alert individuals and organizations of the dangers involved in loading and unloading school children. Fatalities continue to occur at the bus stop, caused by a variety of circumstances and errors on the part of the school bus driver or a passing motorist. It points out the continuing need for forceful, advanced instruction to school bus drivers, and the need to increase our efforts to thoroughly inform the driving public about the requirements of the school bus stop law.

Limited quantities of this document are available from the address provided below. Please feel free to reproduce and utilize the survey data as desired, as it is provided specifically for this purpose.

Kansas Department of Transportation
Bureau of Management Services
Safety Education Section
State Office Bldg., 7th Floor
Topeka, Kansas 66612-1568
(913) 296-3551

ENTER SCOPE PARAMETERS FOR SCHOOL BUS ACCIDENT REPORT.

BOROUGH CODE (OR "STATE" FOR STATEWIDE): | STATE

DATE SPAN: FROM (YYMMDD) | 830701 THRU (YYMMDD) | 840630

TIME SPAN: FROM (HHMM) | 0 THRU (HHMM) | 2400

INTERSECTION RELATED ONLY (X) |

OPTION: M - MAIN MENU; L - LEAVE HIGHWAY ACCIDENT SYSTEM |

MORE

07JUNE 1985 SCHOOL BUS ACCIDENT REPORT PAGE 2

NUMBER OF RECORDS BY ACCIDENT TYPE:

2	PEDESTRIAN
107	COLLISION WITH OTHER MOTOR VEHICLE
0	NON-COLLISION IN ROADWAY, OVERTURNING
0	COLLISION WITH RAILROAD TRAIN
0	COLLISION WITH PEDACYCLE
14	COLLISION WITH FIXED OBJECT
********	INFORMATION NOT AVAILABLE FOR ON-BOARD ACCIDENTS
1	OTHER ACCIDENTS
124	TOTAL OF ACCIDENTS BY TYPE

NUMBER OF ACCIDENTS BY SEVERITY:

1	WITH FATALITIES
10	WITH INJURIES BUT NO FATALITIES
113	WITH PROPERTY DAMAGE ONLY
124	TOTAL OF ACCIDENTS BY SEVERITY

MORE

07JUNE 1985 SCHOOL BUS ACCIDENT REPORT PAGE 3

OTHER STATISTICS:

1	BUS DRIVER INJURIES
4	NON-DRIVER BUS OCCUPANT INJURIES
0	ACCIDENTS WITH OVER 5 NON-DRIVER BUS OCCUPANT FATALILTIES
0	TOTAL NON-DRIVER BUS OCCUPANT FATALITIES
1	HIGHEST TOTAL NUMBER OF FATALITIES IN A SINGLE ACCIDENT

PROGRAM EXECUTION STATISTICS:

230 SCHOOL BUS VEHICLE RECORDS FOUND
230 VEHICLE RECORDS READ
2619 OCCUPANT RECORDS READ
227 ACCIDENT RECORDS READ

SCOPE OF THIS REPORT:

AREA: STATEWIDE
DATE SPAN (DD-MM-YY): FROM 01-07-84 THRU 31-06-85
TIME OF DAY SPAN (HHMM): FROM 0000 THRU 2400

MORE

NUMBER OF RECORDS BY ACCIDENT TYPE:

2	PEDESTRIAN
75	COLLISION WITH OTHER MOTOR VEHICLE
0	NON-COLLISION IN ROADWAY, OVERTURNING
0	COLLISION WITH RAILROAD TRAIN
0	COLLISION WITH PEDACYCLE
18	COLLISION WITH FIXED OBJECT
********	INFORMATION NOT AVAILABLE FOR ON-BOARD ACCIDENTS
0	OTHER ACCIDENTS
95	TOTAL OF ACCIDENTS BY TYPE

NUMBER OF ACCIDENTS BY SEVERITY:

1	WITH FATALITIES
15	WITH INJURIES BUT NO FATALITIES
79	WITH PROPERTY DAMAGE ONLY
95	TOTAL OF ACCIDENTS BY SEVERITY

MORE

OTHER STATISTICS:

1	BUS DRIVER INJURIES
9	NON-DRIVER BUS OCCUPANT INJURIES
0	ACCIDENTS WITH OVER 5 NON-DRIVER BUS OCCUPANT FATALILTIES
0	TOTAL NON-DRIVER BUS OCCUPANT FATALITIES
1	HIGHEST TOTAL NUMBER OF FATALITIES IN A SINGLE ACCIDENT

PROGRAM EXECUTION STATISTICS:
---

180 SCHOOL BUS VEHICLE RECORDS FOUND
180 VEHICLE RECORDS READ
1979 OCCUPANT RECORDS READ
178 ACCIDENT RECORDS READ

Kids Need To Be Watched Too

A drop in passing vehicle-related fatalities is more than offset by a rise in school bus-caused fatalities.

By Roscoe Bernard

Whenever I learn of another child being killed by a school bus, I am tempted to emulate the often-quoted movie character Howard Beal, who in an agony of frustration, leaned from his window and shouted, "I'm mad as hell, and I'm not gonna take it anymore."

This seemingly facetious remark is not without merit because the number of children being killed by their own bus represents a terrible blight on an otherwise fantastic safety record. The blight can, in this writer's opinion, be substantially reduced if not totally eliminated.

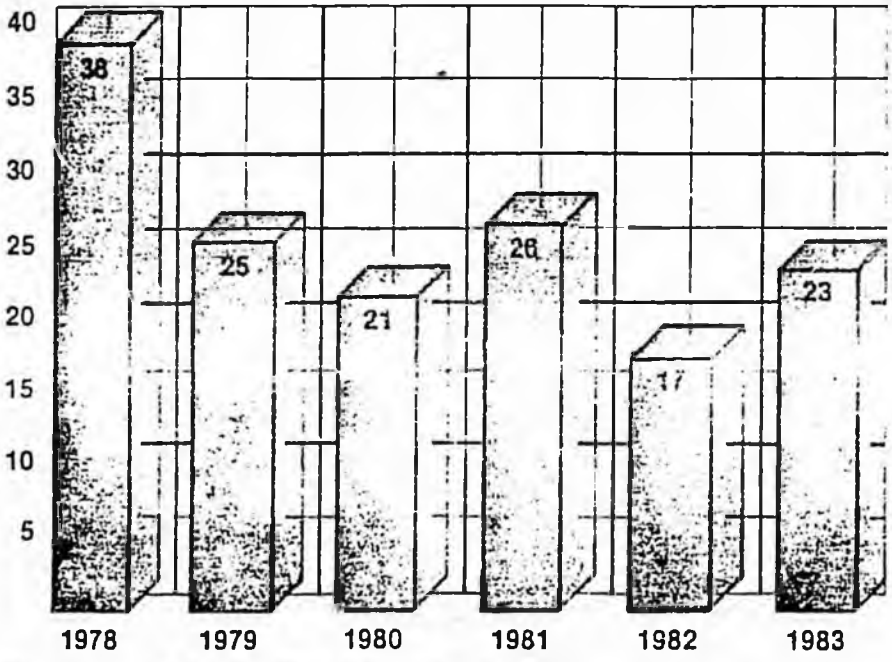
Although the school bus industry may point with pride to its overall safety record (National Safety Council Accident Facts, 1984 statistics show that the yellow school bus is the safest vehicle on the road), there is little pride in this one area. There is also no indication of appreciable improvement. Conversely, just when it seemed that there was a downward trend (see figure 1), the recently released School Bus Loading and Unloading Survey issued by the Kansas Department of Transportation reflects an alarming 35 percent increase over the preceding year.

The six year fatality average of 25 is relatively close to the average number killed by the vehicles passing a stopped school bus, i.e., 33, but the latter reflects a downward trend over the last few years (see graph 2).

We must address the question of why, in 1983-1984, our school bus drivers killed nearly three times as many children as did drivers of other vehicles in loading and unloading situations. Such statistics refute the argument that we have little control over those who jeopardize safety by passing a stopped school bus.

In recent years there has been a major push by individual companies, school districts, and state and federal organizations to increase public awareness. Thousands of dollars and countless man hours have gone into this effort and there, fortunately, is no indication that interest is abating. The market is presently saturated with safety devices ranging from crossing gates to radar screens, and experiments with strobe lights and signaling devices are on-going. Many states have either passed new legislation to deal with passing violations or have revised and strengthened existing laws already in place. In short, there has been a great deal of emphasis in this particular area, and it appears that progress is being made. Although it's probably premature to predict a trend, there has been a steady decline in this particular type of fatality. Its total elimination, however, is unrealistic for the simple reason that we don't have complete control. In some instances we have no control at all, and drivers are very often frus-

GRAPH I
SCHOOL CHILDREN KILLED BY SCHOOL BUS



are possible. It is far more important that we are absolutely certain we're not going to run over an unsuspecting child than it is to concern ourselves with the momentary delay to a motorist. There should never be any question.

Finally, it was suggested that the driver has the additional responsibility to those whose name is on the paycheck, i.e., the owner-operator or board of education. The inevitable suggestion that schedules must be met at all costs was made. Unfortunately, this is more truth than fiction: so long as we place anything before safety, nothing will change. I submit that the time of decisions is long overdue: the safety of children must never be compromised.

Reviewing the situation

It seems to me that we are continually looking at the situation in retrospect. Webster defines "retrospect" as a review or meditation of past events. In view of the record, we need to do more than meditate, and we must dwell on the future rather than the past. We can no longer accept the premise that these are unfortunate but unavoidable accidents, and they are going to happen regardless of what or anything we can do.

At the risk of sounding like a complete monster, let me suggest that in addition to letters of sympathy to distraught bus drivers, we should consider a letter or reprimand as well. To date, rarely, if ever, has there been any stigma attached to such an unfortunate tragedy other than the personal trauma and psychological burden that will never be erased.

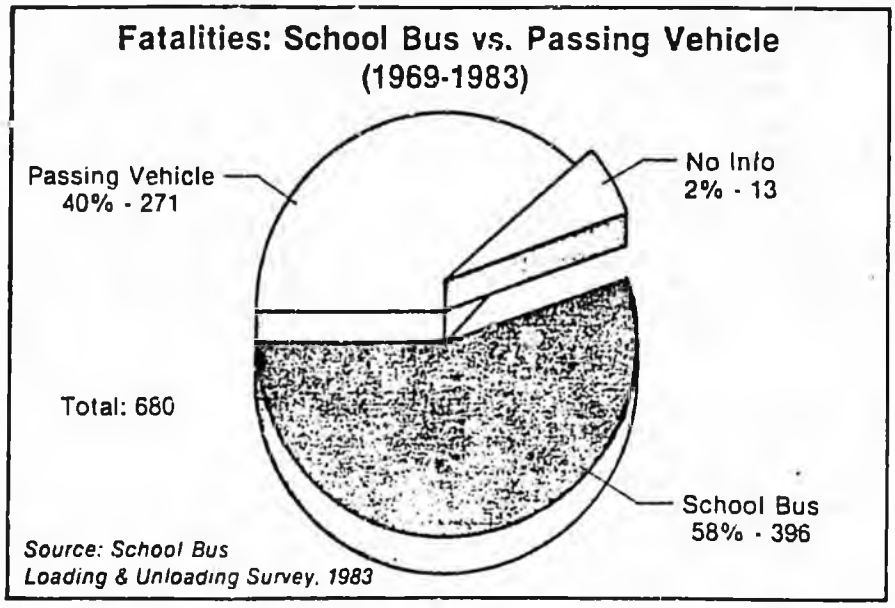
The burden of responsibility rests squarely on the shoulders of the child who is, of course, no longer available to plead his case. What defense do we have anyway? After all, he's only a six-year-old who is supposed to know better than to ever bend down in front of a vehicle to pick up some dropped papers. And then too, everyone who has ever driven a school bus or is remotely associated with school bus transportation knows that the beleagured school bus driver has too many responsibilities and distractions already. They can't be held responsible, right? WRONG — if they cannot be then who can? Although nothing will ever bring back the child or ease the pain of driver and parents, we should not fail to use every means at our disposal to draw attention to such senseless tragedies.

It's an accepted fact that the rear and sides of school buses are oftentimes difficult, if not impossible, to observe, but just as it is true with lights, stop arms and cross arms, a great deal of time and money has been spent perfecting mirrors that make it relatively easy to observe the area in front of a conventional school bus. Many states and districts now require a double set of mirrors on both right and left fenders which, if properly adjusted, enable the driver to clearly observe any object in front of the vehicle as well as along both sides.

One major bus body builder (American Transportation Corporation) has gone a step further in designing the new generation Patriot which noticeably enhances the driver's line of vision. It represents a substantial improvement in an area that has long plagued school bus operations and may well be a significant step in the right direction.

Many districts are becoming increasingly concerned, but unfortunately their heightened interest is frequently too late or too little.

I was disappointed when I read a recent article in the *Kansas City Star*, January 10, 1985, outlining a four-part safety program in the school district where a six-year-old was killed by her bus. The well-meaning district has focused its program on teaching school children about the possible dangers when they are near school buses, and the children will be taught from the manual the district has prepared. In addition, they will encourage children to take the manuals home and go over them with their parents. Possibly the most significant aspect of the entire plan is the involvement of the drivers, who will visit kindergarten through sixth grade classrooms to discuss safety. It has not, however, gone nearly far enough. Although my personal knowledge of this particular operation tells me that no effort will be too great insofaras ensuring that a similar tragedy will never occur, there is a decided void in the overall program. Everything they are doing is commendable, but they need to go much further. Drivers as well as children, parents and teachers, need to be heavily involved because they have the ultimate control. And what of school and transportation officials and board members? Where does their responsibility begin and end? School bus fatalities are everyone's responsibility. With total involvement this statistic can be eliminated.



trated by their inability to protect their children.

The reverse is true with children being killed by their own school bus drivers. With the possible exception of child unpredictability, our drivers *do* have absolute control. They need *never* run over a child who is in the process of loading or unloading. They *are* capable of *complete control* because they alone control the movement of the vehicle.

A continuing tragedy

The unremarkable aspect of this particular brand of genocide (it's systematic if not deliberate) is that findings continue to reveal identical patterns: "Child dropped item in front of bus and was in the process of picking it up when struck by the bus." Or, "Student struck by the rear wheels of the bus after departing on trip home." Or, "Student crossing in front of stopped bus and bent over to pick up some dropped papers."

The tragic statements go on, year after year. The only change involves the item being retrieved: A construction paper Christmas tree, Valentine, Easter bunny, or a bright orange pumpkin. These are signs of the season — the dangerous season between late August and early June. They clearly tell us that kids are kids, and they need to be watched over and protected by supposedly mature, intelligent adults.

This writer believes such an assumption is reasonable or else maturity would occur at a much earlier age. Nearly 80 percent of all children killed by their own bus or passing motorists are under 10 years of age. Such statistics cause some to conclude that children should not be exposed to traffic before they have had the maturity to cope with it.

At one time or another we have all witnessed a child's excitement or rampant emotion during special times likes Halloween, Christmas or Easter. They really do not need the additional emphasis to let us know that they're kids; they're already supercharged and unpredictable — but given this extra shot of adrenaline it's small wonder that they often act without benefit of thought or reason. The seasonal aspect should tell us nothing more than that we should redouble our awareness during these special times.

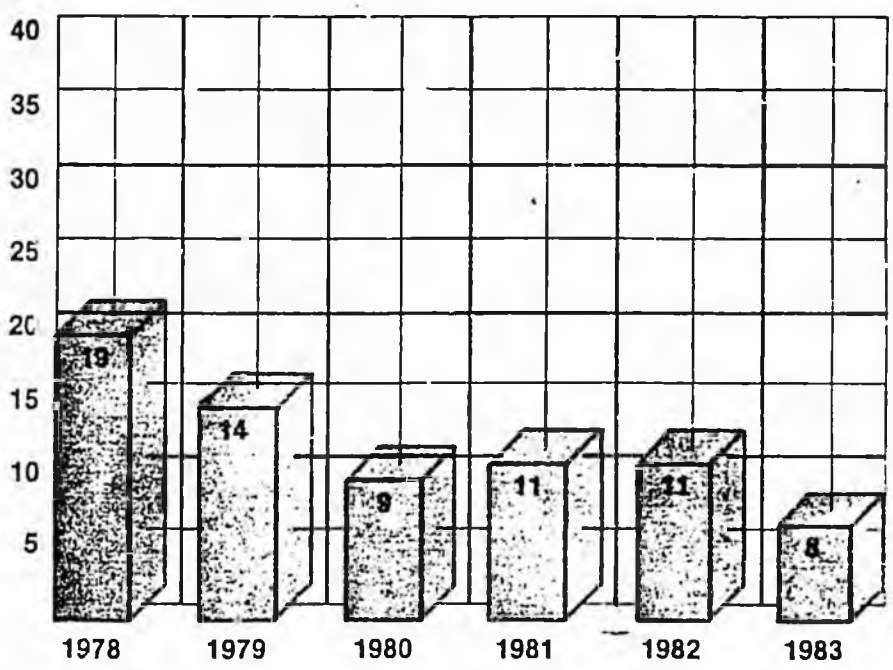
Brainstorming for solutions

During a recent brainstorming session fellow staff members discussed the impractical aspects of my contention that it is altogether possible to erase this statistic.

Among the several arguments presented was the suggestion that school bus drivers could not realistically be expected to always count and keep track of each child entering or leaving the bus. It was pointed out that in many instances, primarily in heavily populated urban areas, there are frequent bus stops during which numerous children load and unload. These children frequently disperse rapidly and go in many different directions. In like manner, when loading, they sometimes approach the bus in the same fashion. Additionally, these large stops are very often concentrated in the high density areas typified by trailer courts and public housing developments. These areas are often-times associated with depressed conditions and numerous pre-school children around the bus stops. Unfortunately, a subsequent decline in parental supervision and insistence on basic rules and regulations associated with proper loading and unloading procedures is frequently noted.

Although the forgoing is unfortunate, it should be all the more reason why drivers should never fail to count and record the exact number and location of all children and, under no circumstances, move until each is personally accounted for.

GRAPH II
SCHOOL CHILDREN KILLED
BY VEHICLE PASSING SCHOOL BUS



Another very valid argument presented was the suggestion that such accounting would be difficult at times because of additional stress placed upon already harassed drivers in heavy traffic conditions. Any additional delays can only add to already dangerous situations involving waiting motorists and passing violations. Here again I submit that this is all the more reason why there should be accurate accounting for every child.

Insofaras community relations, a great deal may be said for keeping everyone happy, or reasonably so, but at what cost? Misplaced values

Safe Passage

Driver training is the key

by Bill G. Loshbough

The good ol' days of handing a driver a set of keys, pointing him in the direction of the bus, and handing him a route sheet are gone. Districts must take an aggressive role in their pupil transportation programs. All too often, administrators ignore transportation until something serious happens and the lawsuits start, the community reacts and insurance costs escalate.

DRIVER training is one of the *most* critical areas of pupil transportation safety. Studies we have conducted in New Mexico indicate that there is a direct correlation between loss reduction and training and experience. We believe that a solid basic preemployment training program and an aggressive in-service training program—along with experience—will bring about a significant loss reduction.

Many times school officials question whether they can afford a driver training program. The answer is that you cannot afford *not* to have it. School districts have experienced, and will continue to experience, higher costs in fleet insurance. Districts must have a loss reduction program that not only includes an aggressive driver training program, but also includes a strong driver selection component, periodic evaluation, route supervision and vehicle maintenance. Districts should evaluate all accidents, regardless of severity, to determine how future incidents can be prevented. Tailor the program to meet those needs.

A comprehensive driver training program will also assist the district in protecting itself in lawsuits that may result from an accident or incident. The district must be in a position to show that they have done what is reasonable to provide their driver with adequate training.

The National School Transportation Association completed a survey in May, 1985, "School Bus Driver Licensing Procedures, Rules and Regulations." In the study, eleven states had no state law or policy requiring courses of instruction. Requirements ranged from seven hours to forty hours. Twenty states had no requirement for refresher courses. Several states do not have a requirement for a written or a road test at the end of the instruction. Nineteen states did not require trained instructors to teach the driver training course. This study points out that states have made significant progress in the area of driver training, but that we need to continue to expand and improve in this area.

Documentation

Another important aspect of the driver training program is documentation for the district's protection. Adequate training and certification of driver trainers is a must from a state or regional recognized program. In order to provide uniform, accurate training to drivers, the driver trainer should be given the tools to do the best job possible. Certification from a recognized program will assist the district in defending its program before the community or in the case of legal action.

Detailed records on each driver's training, including preemployment and in-service, are a *must*. These documents become invaluable in the case of a lawsuit or allegations by the community that a driver has not been properly trained.

Lesson plans used in each training session should be developed and maintained in order for the district and the driver trainer to document the training that drivers have received. These plans should include reference to all materials and training aids used in the program.

A file on all written and road tests should be maintained on all drivers, and should include periodic evaluations of drivers.

The driver training program should have generally standardized criteria (generally established by the state, but should have the flexibility to meet certain special needs of the local district).

The basic program should include, but not be limited to, state and local regulations and policies, general motor vehicle operating procedures, passenger management, familiarity with bus and equipment, procedures for loading/unloading children and actual driving tasks. This should be accomplished through classroom, behind-the-wheel and observation time.

Special education drivers need additional specialized training in the areas of the various exceptionalities and special procedures established by the district. Special education transportation aides should also receive this specialized train-

For Free data check 65 on Info card

ing so they have an understanding of the driver's role and responsibility.

Many outstanding driver training programs have been developed in the United States and Canada. I have had the opportunity to observe many of the programs in operation and will highlight a few.

In New Mexico, we have a 40-hour preemployment requirement which includes a minimum of six hours classroom, six hours behind-the-wheel, six hours observations, eight hours American Red Cross First Aid Course, eight hours National Safety Council Defensive Driving Course, and six hours additional behind-the-wheel or classroom, based on the evaluation of the driver.

New Mexico has conducted a one-week Pupil Transportation Institute since 1940. Drivers must attend the institute their first year of driving and then every three years in order to maintain their certification. The institute is held in late July/early August. The state provides funding to the districts for per diem and mileage, registration fees and a salary while the drivers are in attendance at the Institute. In addition, a minimum of eight hours per year must be spent in the local district on in-service training.

Detailed records on each driver's training are a must; these documents become invaluable in the case of a lawsuit or other allegations.

Volusia County, Florida, has an excellent training program for their drivers which includes a behind-the-wheel evaluation of each driver regardless of the number of years a driver has been employed. The behind-the-wheel evaluation instrument is one of the most comprehensive I have seen and gives a good evaluation tool to the district for determination of further training needed.

Safety Road-e-os

School Bus Safety Road-e-os are also an excellent training design that can be used to encourage competition among drivers. The National School Bus Safety Road-e-o booklet, which is printed by the National School Transportation Association, is an excellent resource.

Many training aids can be developed at low cost to the districts. Locally produced training aids are many times actually more effective than commercially produced, since drivers can relate to them. The use of videotapes and 35mm slides produced locally can be of great assistance. Transparencies, flip charts and posters can be developed at low cost to complement the training program. Numerous commercial films and slides are available that can be used effectively, but are more costly to the district. The National Safety Council has several low-cost training aids in the area of pupil transportation.

Driver training is a must regardless of the size of the school district, and it can be accomplished at relatively low cost by qualified instructors. A successful program will bring about a school transportation program that your community has confidence in. Remember, your school bus drivers can be your most visible public relations tool. ○

Loshbough is state transportation director for the New Mexico Department of Education. This article is based upon a presentation he made at ASBO's Las Vegas meeting in September, 1985.

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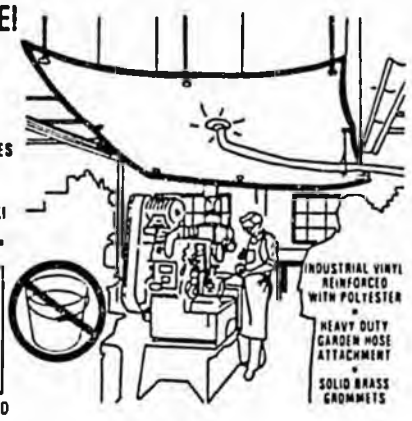

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Water Falls in the middle of the floor are not considered Fire Protection.

Keep the buckets out of sight - liability claims are there already.

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DALLAS COUNTY CHECKS BUS DRIVERS FOR FELONY RECORDS

DALLAS, Jan. 29, (ED-LINE)--Dallas County school officials began an investigation into the records of its 900 school bus drivers after it was revealed that a bus driver, charged last week with molesting a 13-year-old special education student who rode his bus, had four criminal convictions--including two for aggravated rape.

A spokesperson for the county schools agency, which provides bus service for the Dallas school district and five suburban school districts, said immediate termination will result if drivers have committed "any vicious crime, such as rape, incest or molestation, or a crime with a firearm."

A check of county records by THE DALLAS MORNING NEWS indicated that 32 of the 900 bus drivers identified by the county schools agency late last year had at least one felony conviction, ranging from murder and attempted murder to aggravated rape and sex abuse. The study was based on data obtained from the county district clerk's office.

At least nine school bus drivers had one or more convictions for driving while intoxicated, according to the newspaper. The paper said computer records disclosed felony convictions that included two murders, two attempted murders, three aggravated robberies, a sex abuse case, an aggravated rape, 15 thefts, five burglaries and five cases involving delivery of a controlled substance.

The Dallas County schools provide transportation for about 43,000 students in six districts--Dallas, Irving, Coppell, Lancaster, Cedar Hill and DeSoto.

CAMPUS NOTEBOOK: JAN. 29, 1986

* College students at public four-year institutions paid an average of 7 percent more to go to school last fall. Tuition, fees, room and board for undergraduates increased to an average of $4,587 from $4,284 in the fall of 1984. The figures come from a survey by the American Assn. of State Colleges and Universities and the National Assn. of State Universities and Land Grant Colleges. Survey respondents said the increases were necessary because of inflation and inadequate state funding. Texas reported the highest increase in tuition and fees for state residents, rising 57 percent from $446 to $701. Non-state residents' tuition and fees increased 162 percent from the previous year to $3,764. Previously, Texas had the lowest in-state tuition and fee rates of any state. (STUDENT CHARGES AT PUBLIC INSTITUTIONS: ANNUAL SURVEY 1985-86; AASCU Publications, One Dupont Circle, Suite 700, Washington DC 20036; $5)

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

November 14, 1985

MEMORANDUM

TO: Representative Randy Phillips

FROM: Gretchen Kciser
Legislative Analyst

RE: School Bus Driver Training and Bus Safety
Research Request 86-009

You requested this agency to conduct a fifty state survey on school bus safety. Specifically, we were asked to obtain information about the following:

- requirements for a school bus driver license;
- state or local district reqirements for school bus driver training;
- state school bus driver manuals;
- special rules or regulations that school bus drivers are required to observe;
- programs in use regarding school bus safety equipment; and
- pending or proposed legislation concerning the above issues.

Table 1 provides a summary of the responses received from 40 states as well as the current school bus driver and safety practices in Alaska. Typically, state departments of education have general responsibilities for school transportation, while local school districts administer specific policies and practices. A number of states mentioned that they followed the national school transportation guidelines in Standard No. 17 (Pupil Transportation Safety) of the Federal Highway Safety Program Manual. The national standard provides minimum requirements for safe student transportation, including the identification, operation and maintenance of school buses; training of personnel; and administration of pupil transportation programs.

Requirements for School Bus Driver License

All states require school bus drivers to possess either a regular driver's or chauffeur's license. In addition, many require a school bus driver certificate which is issued by a state agency or local school district every one to four years. Written exams which test the driver's knowledge about state laws and regulations governing school buses are common. Behind-the-wheel road tests are also commonly required in order to be licensed to drive a school bus. Alaska requires a regular driver's license as well as written and road tests for prospective school bus drivers.

Most states indicated a minimum age requirement of 18 years. Thirteen of the 41 states for which we have information also place a maximum age limitation--typically 65 or 70 years--on school bus drivers. Alaska requires a minimum age of 19 and has no upper age limit for school bus drivers.

The majority of the states which responded to our survey, including Alaska, require an initial physical examination and periodic examinations thereafter, most commonly every one or two years. States usually provide a fairly extensive medical form to be completed by a licensed physician. States commonly require an assurance of the individual's ability to perform physical activity attendant with normal and emergency school bus operations.

Other requirements for licensing noted during the survey include: a) driving record checks (18 states); b) criminal record checks (10 states); c) required years of driving experience (6 states); d) first aid certificates (4 states); and e) character references (2 states). Alaska school bus driver regulations specify that a prospective school bus driver have a good driving record and at least one year driving experience.

School Bus Driver Training

Pre-service and in-service training programs vary among the states which responded to our survey. Eighteen states indicated that they have a mandatory state instruction program for school bus drivers. On the other hand, 12 states (including Alaska) do not have a state requirement regarding school bus driver training. Those states which do not have a required state training program generally train and certify local instructors and/or approve training developed by local school districts. A few states, including Alaska, rely on local training programs with no mention of state assistance or certification.

The Alaska Department of Education, in conjunction with the Alaska School Bus Driver Training Committee, has drafted a master plan for a statewide driver training program. The department has submitted a $233,000 FY 87 budget request to the governor in order to implement this master plan.[1] Under the draft plan, Alaska would require 40 hours of pre-service training (20 hours classroom and 20 hours behind-the-wheel) an. 0 hours annual in-service training. Of the states surveyed, California and Louisiana are the only states which currently require 40 hours of pre-service training (Florida will require this level of training in 1986). Eight other states surveyed require 20 to 30 hours of pre-service training of school bus drivers. States commonly require annual in-service training, although the amount of annual training varies between 3 and 16 hours.

School Bus Driver Manuals

Twenty-nine states surveyed, including Alaska, have state school bus driver manuals.[2] These manuals vary in format and length, but typically contain information on the following subjects:

- rules and regulations applicable to school bus drivers;
- driver responsibilities to school district and pupils;
- recommended driver practices regarding vehicle maintenance;
- proper operation of bus in typical traffic situations;
- basic first aid; and
- emergency procedures.

The current Alaska School Bus Driver Manual (revised in 1981) addresses all of the above subjects (Attachment A). Alaska's manual, however, is currently under revision and will place greater emphasis on emergency procedures, first aid and the transport of exceptional children.

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[1]The draft master plan also includes a school bus inspection program developed by the Alaska School Bus Inspection Committee.

[2]Most states provided copies of these school bus driver manuals which are available to you at your request.

Special Rules and Regulations Applicable to School Bus Drivers

The states surveyed generally have a standard set of operating rules and procedures which school bus drivers must observe. These rules and regulations address the following general areas:

- driver's daily pre-trip inspection of bus interior and exterior;
- activation of bus warning lights before stopping the bus to load and unload pupils;
- proper off-road positioning of bus when loading and unloading pupils;
- stopping before railroad crossings;
- maximum speed limits on local and interstate roads;
- leaving driver seat only after setting the brake, turning off the ignition and removing the key;
- pupils seated and not in the stair well while bus is in motion;
- refueling bus when pupils are not present;
- limitations on backing the bus, particularly on school grounds;
- limitations on the number of hours of driving in a 24-hour period;
- wearing driver seat belt;
- no smoking or drinking on the bus; and
- reporting all accidents to school officials.

Chapter 4 of the Alaska School Bus Drivers Manual lists 30 rules and regulations in effect in Alaska (see Attachment A). It should be noted, however, that local school districts may promulgate additional regulations pertinent to local driving conditions.

Safety Equipment Pilot Programs

Eleven states surveyed, including Alaska, indicated that they were experimenting with various safety equipment. The most common equipment under testing (9 states) is the safety sensor--an electronic device which detects the presence of a child or object outside the bus.

Safety sensors are mounted on the front or rear of the bus exterior to monitor bus drivers' "blind spots" (Attachment B). The Alaska Department of Education is sponsoring a safety sensor pilot during the 1985-1986 school year. Thirteen safety sensors were purchased (at a cost of $250 each) and are being installed on school buses throughout the state.[3]

Other safety devices under testing by various states include:

- strobe lights on stop arm signals (replacements for standard flashing red lights);
- retroflective markings on bus exterior;
- strobe lights on top of bus (these are currently required by many states);
- additional exterior mirrors;
- roof escape hatches; and
- automatic tire chains or traction device.

Alaska experimented with strobe lights on stop arms on 17 buses statewide during the period October 1983 through May 1984. A survey of the school bus drivers indicated that the number of passing violations were reduced after installation of the strobe.

Georgia, South Carolina and Tennessee indicated that another safety device--a crossing gate--is required equipment on school buses in their states. The crossing gate (or "walk arm"), which is a metal bar attached to the front of the bus, swings forward to a 90-degree angle, thereby directing pupils away from the front of the bus as they cross. They are designed to eliminate dangerous situations which occur when small children cross directly in front of the bus and outside the driver's view.

Related Legislation

Twelve of the 41 states surveyed mentioned recent and pending legislative action on school bus bills. There are two bills before the Alaska Legislature: Committee Substitute for House Bill 240 (citation for vehicles passing a stopped bus) and House Bill 409 (requiring State-approved training for school bus drivers). Idaho also has a bill before

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[3]Romayne Kareen, Administrator of Pupil Transportation, Alaska Department of Education, personal communication, November 1, 1985.

its legislature regarding citation of vehicles which pass stopped school buses. Arizona has a pending bill which would update various pupil transportation statutes.

Ohio and West Virginia have legislation pending which would require safety sensors and strobe lights on bus roofs, respectively. A safety-related measure requiring semi-annual school bus inspections will be proposed in the Minnesota legislature.

Five states (Louisiana, Massachusetts, New Hampshire, New Jersey and Vermont) mentioned seat belt bills which are either pending or have recently been defeated in their legislatures.

* * * * *

We received considerable information in the responses from various states. We can provide this material to you at your request. Also, please contact us if you have any questions.

GK

Attachments

TABLE 1

SURVEY OF THE STATES: SCHOOL BUS DRIVER REQUIREMENTS, SAFETY PROGRAMS AND RELATED LEGISLATION

STATE	REQUIREMENTS FOR SCHOOL BUS DRIVER LICENSE	REQUIREMENTS FOR SCHOOL BUS DRIVER TRAINING	DRIVER MANUAL	SAFETY EQUIPMENT PILOT PROGRAMS	LEGISLATION
Alabama	Regular license; special license annually; written & road tests; TB exam every 3 years.	12 hrs state pre-service instruction; 6 hrs in-service annually.	Yes	Experimenting with strobe light on stop arm.	No
Alaska	Regular license for at least one year; annual DPS permit; written & road tests; annual physical exam; minimum age 19; good driving record.	No state requirements; 0-40 hrs local training; proposed 1987 implementation of 40 hrs pre-svc & 10 hrs in-svc training.	Yes	Pilot programs for safety sensor and strobe light on stop arm.	Yes (HB 240: citation of vehicle passing bus; HB 409: State tra ing progra
Arizona	Chauffeur's license; annual physical exam; clean driving record; 65 maximum age; written & road tests; fingerprint check.	12 hrs state pre-service instruction; 8 hrs in-svc every 2 years; 8 hrs first aid course.	Yes	None	Yes (update of bus statutues)
Arkansas	Regular license; 2-yr bus driver certificate; phys. exam every 2 yrs; written & road tests; clean driving record within 5 yrs.	State-prescribed pre-service and in-service training taught locally.	No	None	No
California	Regular license; bus driver certificate every 4 yrs; phys. exam every 2 yrs; minimum age 18; over 65; annual phys. exam; written & road testsrfor certificate renewal.	40 hrs pre-service training (20 classroom/20 road) by state-certified instructors; 10 hrs in service annually; first aid exam.	Yes	None	No
Connecticut	Regular license; age 18-70; annual phys. exam; annual road & written tests; fingerprinting & no criminal record	7 hrs pre-service and 3 hrs in-svc annually by state-certificed instructors.	No	None	No

TABLE 1 (CONTINUED)

SURVEY OF THE STATES: SCHOOL BUS DRIVER REQUIREMENTS, SAFETY PROGRAMS AND RELATED LEGISLATION

STATE	REQUIREMENTS FOR SCHOOL BUS DRIVER LICENSE	REQUIREMENTS FOR SCHOOL BUS DRIVER TRAINING	DRIVER MANUAL	SAFETY EQUIPMENT PILOT PROGRAMS	RELATED LEGISLATION
Florida	Chauffeur's license; annual bus driver license; phys. exam; written & road test at age 65; 6-month license.	Admn. rule in 1986 will require 40 hrs pre-service and 8 hrs in-service annually.	Yes	None	No
Georgia	Regular license; Class 3 license; annual physical exam; 65 maximum age.	6 hrs pre-svc classroom instruction; 6 hrs road training without pupils; 6 hrs road training with pupils; state requirement; developed locally.	Yes	Crossing gate required since 6/83	No
Idaho	Chauffeur's license; minimum age 18; physical exam; driving test.	10 hrs state pre-service instruction; 8 hrs in-svc annually.	Yes	None	Yes (citation of vehicle passing stopped bus)
Illinois	Regular license; annual permit; minimum age 21; annual physical exam; written & road tests; no criminal record within 5 yrs; no more than 2 traffic violations within 1 yr.	Variable local classroom training before superintendent issues school bus driver permit.	Yes	None	No
Indiana	Chauffeur's license; state bus driver certificate	20 hrs state pre-service classroom instruction; additional local training as desired.	No	2 school districts piloting safety sensors.	No
Iowa	Chauffeur's license; bus driver permit; annual phys. exam; age 18-69.	Voluntary 18 hrs pre-service classroom instruction provided locally	Yes	One test of safety sensors.	No
Louisiana	Chauffeur's license; bus driver certificate; road & written tests; driver & criminal record checks; phys. & psychological exams; age 21-55.	40 hrs state pre-service (30 classroom/10 road); 8 hrs in-service annually.	Yes	None	Yes (seat belt bill defeated)

TABLE 1 (CONTINUED)

SURVEY OF THE STATES: SCHOOL BUS DRIVER REQUIREMENTS, SAFETY PROGRAMS AND RELATED LEGISLATION

STATE	REQUIREMENTS FOR SCHOOL BUS DRIVER LICENSE	REQUIREMENTS FOR SCHOOL BUS DRIVER TRAINING	DRIVER MANUAL	SAFETY EQUIPMENT PILOT PROGRAMS	RELATED LEGISLATION
Maine	Class 2 license; annual permit; minimum age 18; road test; physical exam.	No state requirement; local training requirements.	No	None	No
Massachusetts	Regular license for 3 yrs; minimum age 18; annual physical exam.	State pre-service and in-service training annually.	Yes	None	Yes (stop arms, standees, seat belts, licensing)
Michigan	Chauffeur's license; class 3 endorsement; annual road test; written test; annual phys. exam; minimum age 18; good driving record (less than 7 points.)	State-approved pre-service training; local in-service instruction.	No	None	No
Minnesota	Regular license with bus endorsement; road & written tests; minimum age 18; phys. exam every 2 yrs; criminal & driving record checks; renewal every 4yrs.	No state requirement; local training requirements vary.	No	None	Will propose bill to require semi-annual bus inspections.
Mississippi	Regular license with annual bus endorsement; age 17-70; physical exam.	16 hrs pre-service training developed locally and taught by state-approved instructors.	No	Pilots with bus strobes, mirrors and safety sensors	No
Missouri	Chauffeur's license; minimum age 21; written & road tests.	Voluntary state training maybe required by local district; state-certified instructors.	Yes	None	No
Montana	Chauffeur's license; 5 yrs driving experience; phys. exam; first aid certificate.	Voluntary state training program used by about 1/2 of the school districts.	No	None	No

TABLE 1 (CONTINUED)

SURVEY OF THE STATES: SCHOOL BUS DRIVER REQUIREMENTS, SAFETY PROGRAMS AND RELATED LEGISLATION

STATE	REQUIREMENTS FOR SCHOOL BUS DRIVER LICENSE	REQUIREMENTS FOR SCHOOL BUS DRIVER TRAINING	DRIVER MANUAL	SAFETY EQUIPMENT PILOT PROGRAMS	RELATED LEGISLATION
Nebraska	Regular license; bus driver permit; annual phys. exam; age 18-65; annual written & road tests; good driving record check.	10 hrs state-approved training.	No	None	No
Nevada	Class II license every 4 yrs; phys. exam every 2 yrs; annual written exam.	20 hrs state pre-svc (10 hrs classroom/10 hrs road) & annual refresher course.	No	None	No
New Hampshire	Regular license; bus driver certificate; minimum age 18; English-speaking written test; criminal & driving record check.	State-approved training: 8 hrs pre-service road & classroom instruction; 6 hrs in-service annually.	Yes	None	Yes (two 1985 seat belt bills defeated)
New Jersey	Regular license; certificate every 2 yrs; 3 yrs driving experience; minimum age 18; physical exam; written & road tests; driving record check.	No state requirement; state assistance to local districts offering training.	Yes	None	Yes (seat belt)
New York	Regular license; phys. exam every 2 yrs; no driving record (3 yrs) or criminal record (5 yrs); written & road tests every 2 yrs; 3 yr employment check; annual driving record check; age 21-65.	2 hrs state pre-svc classroom instruction; 2 hrs twice a year in-service training; additional local training optional.	Yes	None	No
Ohio	Chauffeur's license; annual bus certificate; minimum age 18; physical exam; written & road tests; annual driving record check.	20 hrs state pre-svc (12 hrs classroom/8 hrs road); 2 hrs annual in-service training; some local districts require more.	Yes	None	Yes (require safety sensors)

TABLE 1 (CONTINUED)

SURVEY OF THE STATES: SCHOOL BUS DRIVER REQUIREMENTS, SAFETY PROGRAMS AND RELATED LEGISLATION

STATE	REQUIREMENTS FOR SCHOOL BUS DRIVER LICENSE	REQUIREMENTS FOR SCHOOL BUS DRIVER TRAINING	DRIVER MANUAL	SAFETY EQUIPMENT PILOT PROGRAMS	RELATED LEGISLATION
Oklahoma	Chauffeur's license; 5-yr certificate; annual phys. exam; minimum age 18; clear driving record for 3 yrs; at age 64 1-yr certificate.	5-day (25 hrs) state pre-service workshop; local in-service training each semester.	Yes	None	No
Oregon	Chauffeur's license; age 18-70; physical exam; road test; criminal & driving record checks; first aid certificate.	20 hrs state pre-svc training (10 hrs classroom/10 hrs road); refresher course every 4 years.	Yes	Experimenting with safety sensors and retroflective markings.	No
Pennsylvania	Regular license; bus license; annual phys. exam; minimum age 18; road & written tests.	State-approved local pre-svc: 7 hrs classroom/3 hrs road; in-service: 10 hrs every 4 years.	Yes	Pilot study with safety sensors.	No
Rhode Island	Chauffeur's license; 1 yr driving experience; age 18-65; annual physical exam; driving record checks; character references.	State-approved pre-service training: 9 hrs classroom/ 1 hr road; 3 hrs in-svc annually for renewal.	No	None	No
South Carolina	Regular license; bus certificate; age 16-65; no accidents or violations; initial phys. exam; written test.	State training.	Yes	Walk arm (crossing gate) required on 1985 buses.	No
South Dakota	Regular license; bus license; bus certificate every 3 yrs; annual phys. exam; minimum age 18; road & written tests.	No state requirement; about 1/3 drivers attend annual seminars sponsored under federal funding.	Yes	None	No
Tennessee	Special chauffeur's license; 5 yrs driving experience; maximum age 70; annual phys exam; over 55 semi-annual physical exam.	20 hrs state pre-service classroom instruction; districts may require more training.	Yes	Crossing gate required; safety sensors, steering stabilizers, and p.a. systems being tested	No

TABLE 1 (CONTINUED)

SURVEY OF THE STATES: SCHOOL BUS DRIVER REQUIREMENTS, SAFETY PROGRAMS AND RELATED LEGISLATION

STATE	REQUIREMENTS FOR SCHOOL BUS DRIVER LICENSE	REQUIREMENTS FOR SCHOOL BUS DRIVER TRAINING	DRIVER MANUAL	SAFETY EQUIPMENT PILOT PROGRAMS	RELATED LEGISLATION
Texas	Chauffeur's license; 3-yr bus certificate; annual phys. exam; minimum age 18.	20 hrs state pre-service classroom training (plus road experience); 8 hrs refresher training.	Yes	None	No
Utah	Regular license, S1 license; written & road tests.	24-hr state course; 8 hrs in-service training locally; 8 hrs first aid training every 4 years.	Yes	Experimenting with automatic traction device and school bus alert system.	No
Vermont	Regular license; minimum age 18 written & road tests every 4 yrs; physical exam.	8 hrs State pre-svc classroom training; 8 hrs in-service training every 4 years; local district may require more training.	Yes	Bus inspections required 3 times a year.	Yes (seat belt bill which no progress)
Virginia	Regular license; written & road tests; phys. exam; two character references; age 17-70; driving & criminal record checks.	Local classroom and road training by state-educated instructors; 4 hrs in-svc each year; districts may require first aid course.	Local manuals	None	No
Washington	Regular license with 1-2 yrs driving experience; bus certificate every 4 yrs; annual phys. exam; minimum age 18; first aid certificate every 3 yrs; criminal & driving record checks.	Local training by state-educated instructors; generally pre-service and in-service training.	Yes	None	No

TABLE 1 (CONTINUED)

SURVEY OF THE STATES: SCHOOL BUS DRIVER REQUIREMENTS, SAFETY PROGRAMS AND RELATED LEGISLATION

STATE	REQUIREMENTS FOR SCHOOL BUS DRIVER LICENSE	REQUIREMENTS FOR SCHOOL BUS DRIVER TRAINING	DRIVER MANUAL	SAFETY EQUIPMENT PILOT PROGRAMS	RELATED LEGISLATION
West Virginia	Chauffeur's license; bus certificate; age 18-70; 1-yr driving experience; annual phys. exam; written test; driving record check; first aid certificate.	30 hrs state pre-service classroom instruction; district may require road training; 16 hrs in-svc training.	Yes	Experimenting with safety sensors, roof escape hatches and automatic tire chains; may require fiberglass lamination on seats and strobe on stop arm	Yes (requiring strobe lights on roof)
Wisconsin	Regular license, no criminal record for 5 years; written & road tests; phys. exam.	No state requirement; local district may require attendance at annual state workshops.	Yes	None	No
Wyoming	Class S license; minimum age 18; written & special road tests; annual physical exam.	No state requirement; many local districts have training programs.	Yes	Local districts testing safety sensors (state not involved).	No

Prepared by the House Research Agency, November 1985.

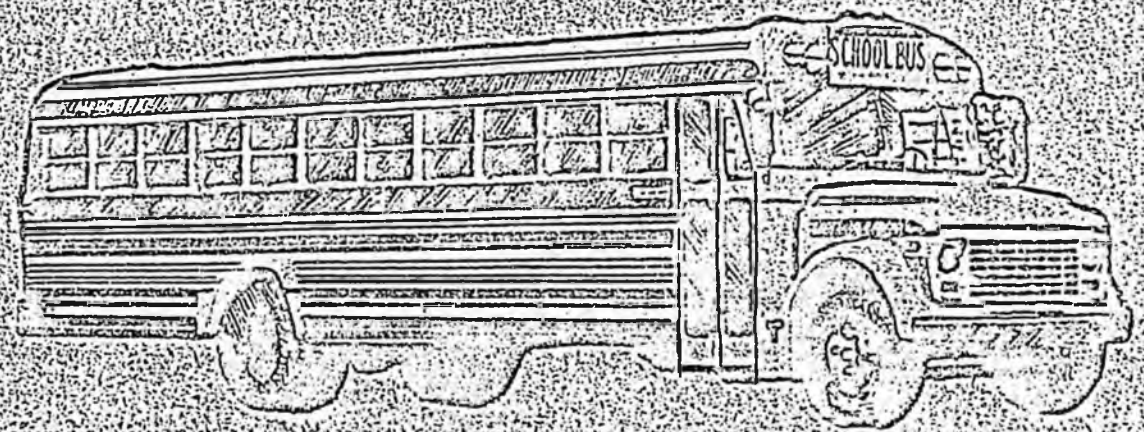
ATTACHMENT A
Alaska School Bus Drivers Manual
Revised 1981

Rules + Regs

#3

Alaska School Bus Drivers Manual

Revised 1981

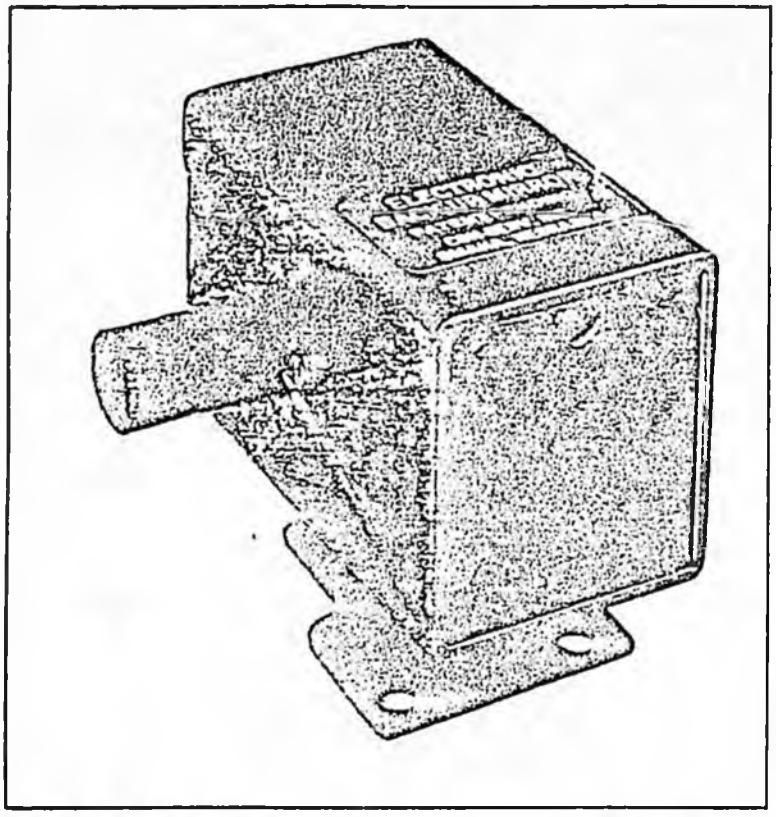


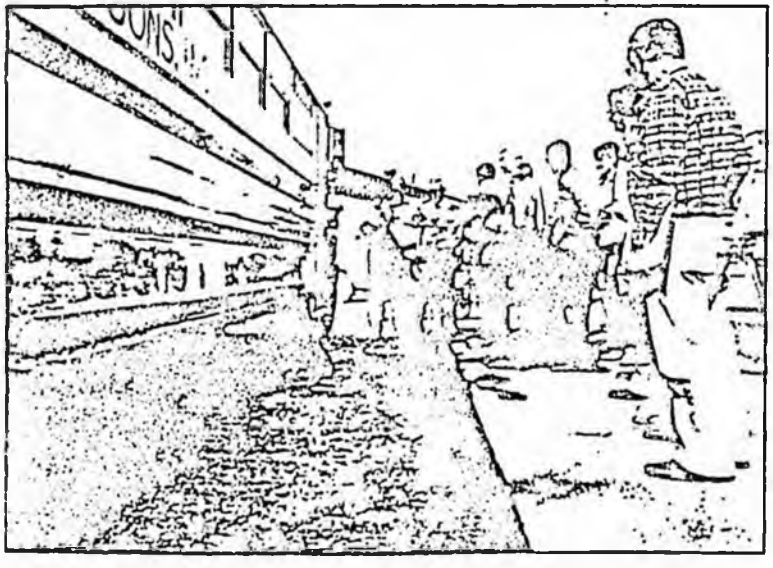
ATTACHMENT B
New Product Update

EXHIBIT X..

Con-Serv, Inc.

NEW PRODUCT UPDATE





As the bus moves forward, the Safety Sensor alerts the driver to the boy's presence. The Safety Sensor unit mounted for rear dual tires signals the driver and saves the boy from harm.

Introducing Con-Serv's New Safety Sensor™

Because of everyone's interest in pupil safety, Con-Serv, Inc. has introduced a revolutionary product — the Safety Sensor — a device that eliminates blind spots on any vehicle and is uniquely suited to school buses.

Many school bus operators have nightmares about student safety and property damage claims due to blind spots on a school bus.

For example:

A recent tragedy in the Midwest concerning a student being run over by a school bus sent chills and nausea through the community.

A 200-bus fleet in the Midwest reports $50,000 in property damage for just 14 months.

Extensive testing has proven blind spots can be eliminated. Savings in property damage, downtime, and litigation due to personal injuries more than justify the $225 for this modern radar-operated device.

Even the hazard of the rear dual tires on the entrance and exit side, where reportedly 3 out of 14 fatalities occur, can be eliminated. Tests have shown that this innovative new product can be positioned to give warning of a child near the rear or front of the bus.

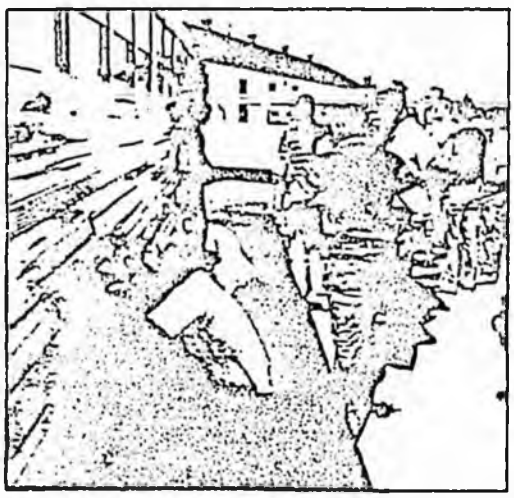
Sovereign Immunity Question Becomes A Growing Concern

Recent actions by courts and legislative bodies have left the issue of "sovereign immunity" in a state of ambiguity. School administrators and elected officials are very uncertain of their liability when entering into litigation. The courts have established precedent where school administrators and board members have been sued because the bus driver is considered an agent of that district.

When it comes to protecting young and handicapped children on school buses, the pivotal question is this: Have you done everything you can with the most up-to-date equipment to keep these children from getting hurt? In legal terminology it is a "state-of-the-art" question. Are you using the best available safety devices? The key to the defense of school boards and administrators is (1) the existence of sound transportation policies, (2) transportation personnel training and (3) use of "state-of-the-art" equipment.

The above is reprinted from "Safety Update/Handicapped Transportation" with the permission of William L. Bainbridge, Ph.D., Director, Public Priority Research Associates, Inc., Columbus, Ohio.

Safety Sensor was designed to eliminate "blind spots. Safety Sensor can reduce the staggering number of accidents that occur when bus drivers are unable to see students around their wheels.



Transportation superintendents at the Nebraska Transportation Conference inspect the Safety Sensor.

What is the Most Common Cause of School Bus Fatalities?

Most school bus fatalities have occurred at the loading and unloading point, rather than in moving accidents. On the average, for the past three years, 53 deaths per year were caused by the driver not seeing small children who stopped for various reasons around the wheels of the bus and were run over.

The above is an excerpt from "Safety Legislation Concerning School Buses", prepared for the 34th Annual Southeastern State Pupil Transportation Conference by the American Transportation Corporation, Conway, Arkansas.

Almost One Fourth of the Country Has Already Approved and/or Purchased the Safety Sensor

Eleven state approvals have been given to Con-Serv's Safety Sensor and numerous cities in each of those states have already placed orders. Units are being shipped to Nebraska, West Virginia, Virginia, Georgia, Florida, Texas, Tennessee, Arkansas, North Carolina, Ohio, and Oklahoma.

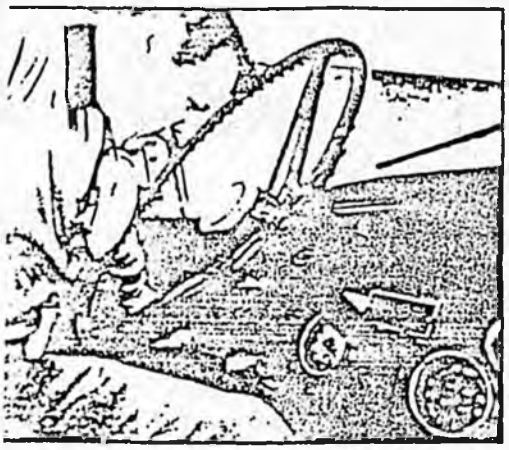
Many other states are now investigating the Safety Sensor's life-and property-protecting features.

Reactions to the Safety Sensor from Various Pupil Transportation Groups

Nebraska: "With a device like this, we should be able to eliminate our pupil fatalities!"

West Virginia: "This product should be mandatory on every school bus in the country."

Florida: "I really like the Safety Sensor and am going to put it on all my buses!



Jim Miner, Con-Serv s Quality Assurance Manager, points out the Safety Sensor's audio alarm and warning light.

Dean Bergman, Nebraska's State Director of School Transportation (center), discusses the Safety Sensor's many advantages with Con-Serv s representative, George Sturmon.

Principle of Operation

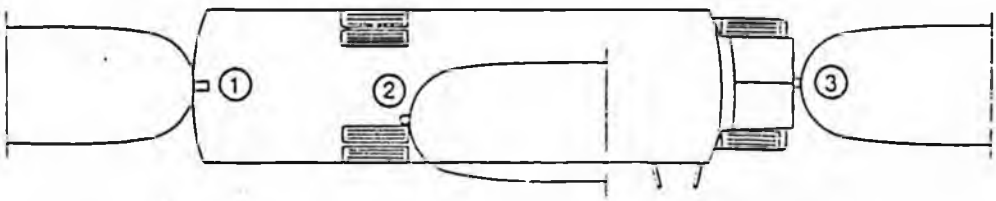
The Safety Sensor is a microwave radar device which uses the doppler shift principle to detect the presence of a moving target within the transceiver range. The unit is totally electronic and is composed of a transceiver, an antenna, an intermediate frequency amplifier and an audio alarm.

The Safety Sensor's transceiver is unaffected by magnetic fields. Its amplifier is designed to interface with any existing switch in order to activate the circuit during a chosen operation of the vehicle. ("Chosen operations" may include opening the bus door, turning on the parking lights, putting the vehicle in reverse, etc.) The amplifier drives the audio alarm and warning lights mounted in the vehicle cab.

Mud, dirt, ice or snow have no effect on the operation of Safety Sensor. Microwave radar penetrates and detects any moving or stationary object.

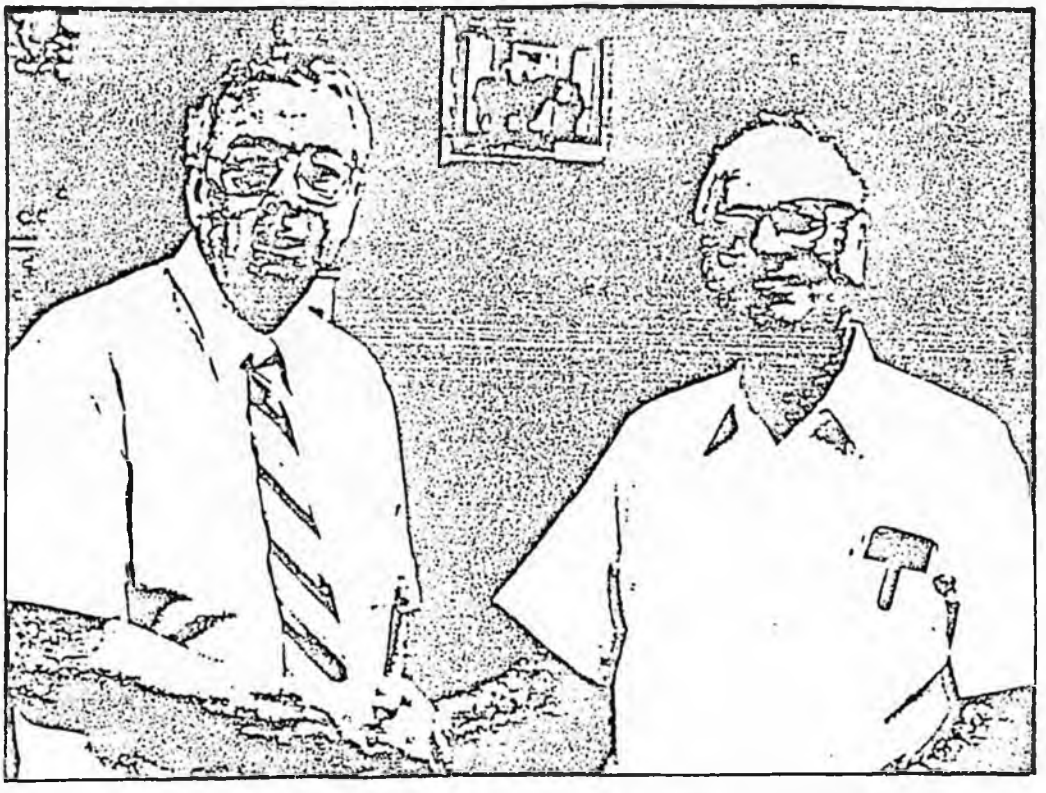
When a vehicle is placed in operation and is moving, the Safety Sensor will detect any stationary or moving object. Upon detection, a buzzer will activate and notify the operator that a hazard exists and and that he should apply his brake.

Placements of the Safety Sensor



The unit is activated when door opens and remains activated to detect any object or human until 10 seconds after door closes. This enables the driver to be warned of any human in the path of the wheels until he is well away from his original stationary position.

1. Safety Sensor placement for reverse travel
2. Safety Sensor placement to protect pupils from rear dual tires
3. Safety Sensor placement to protect small children crossing in front of bus



A. E. "Tony" Dombrowski, President of Con-Serv, Inc., and L. B. Billingsley, President of Billingsley Parts & Equipment, finalize their agreement.

Con-Serv, Inc. has appointed Billingsley Parts & Equipment to be Safety Sensor's national distributor. Safety Sensor is Con-Serv's new life- and property-protecting device, created especially for the school bus after-market.

For more information on the Safety Sensor, contact:

Billingsley
PARTS AND EQUIPMENT, INC
HUNTSVILLE, TEXAS 77340

Toll Free
1-800-231-2312 - U.S.
1-800-392-6496 - Texas

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Omaha, NE 68107
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HOUSE TRANSPORTATION
STANDING COMMITTEE
May 9, 1985
7:00 a.m.

Members Present: Representative Bette Cato, Chairman
Representative Mike Davis, Vice-Chairman
Representative Dick Shultz
Representative Marco Pignalberi

Members Absent: Representative Adelheid Herrmann
Representative Walt Furnace
Representative Andre Marrou

COMMITTEE CALENDAR

HB 409 "An Act relating to licensing of school bus drivers; and providing for an effective date." Original sponsor: Representative Roger Jenkins.

HB 413 "An Act providing for the issuance of general obligation bonds in the amount of $350,000,000 for the purpose of paying the cost of transportation projects; calling for a special election on the question; and providing for an effective date." Original sponsor: Representative Red Boucher.

WITNESS REGISTER

Representative Red Boucher
Alaska State Legislature
Pouch V
Juneau, AK 99811
Telephone: (907) 465-4931
Position Statement: As sponsor of HB 413, he urged that it do pass.

Representative Roger Jenkins
Alaska State Legislature
Pouch V
Juneau, AK 99811
Telephone: (907) 465-4530
Position Statement: As sponsor of HB 409, he urged that it do pass but he did not object to holding the bill in committee so that more work could be done on it.

Bill Brown
Division of Motor Vehicles

The Department of Public Safety
Pouch N
Juneau, AK 99811
Telephone: (907) 465-4335
Positior Statement: Testified on HB 409.

Chip Dennerlein
Municipality of Anchorage
Pouch 6-650
Anchorage, AK
Telephone: (907) 264-4960
Position Statement: Observer.

Mayor Tony Knowles
Municipality of Anchorage
Pouch 6-650
Anchorage, AK 99502 (Via Teleconference)
Telephone: (907) 4960
Position Statement: Strongly supported HB 413.

Saundra C. Hutchins, Chairman
The Alaska School Bus Safety Committee
P.O. Box AB
Palmer, AK 99645 (Via Teleconference)
Telephone: (907) 745-4822
Position Statement: Testified on HB 409.

Romayn Kareen
Pupil Transportation Officer
The Department of Education
Pouch F
Juneau, AK 99811
Telephone: (907) 465-2890
Position Statement: Testified on HB 409.

PREVIOUS ACTION

HB 409: Read the first time on 04/29/85 and referred to TRSP, SA and Rules; no previous committee action to record.

HB 413: Read the first time on 05/01/85 and referred to TRSP, Fin and Rules; no previous committee action to record. Today TRSP reported out with 2DP, 3NR.

ACTION NARRATIVE

TAPE #42 SIDE ONE
Recording
Number 005

Chairman Cato called the meeting to order at 7:19 and noted that there was not yet a

quorum. She started the meeting anyway so that Mayor Tony Knowles, who was under a time constraint, could testify via the Legislative Teleconference Network on HB 413, sponsored by Representative Red Boucher and entitled, "An Act providing for the issuance of general obligation bonds in the amount of $350,000,000 for the purpose of paying the cost of transportation projects; calling for a special election on the question; and providing for an effective date."

Let the record show the following members present: Representative Davis, Representative Pignalberi, and Representative Cato.

Number 015

Mayor Knowles: "Thank you, Representative Cato. Thank you for the opportunity to give testimony on House Bill Number 413. I would like to register with the committee the whole-hearted support of Anchorage in support of the bill sponsored by Representative Boucher and Cotten which would provide for the issuance of $350,000,000 worth of bonds for the transportation projects all across the state. Obviously, I can not speak to the needs of areas other than Anchorage, but I do note that within that bill that the projects listed, most of which are part of the state and federal highway system, are completely supported through a public process in Anchorage that I have never seen the likes of which in a town that is unique in its diversity, this is the one area of consensus, of the greatest consensus that I have seen--particularly in light of the falling revenues, I applaud Representatives Boucher, Cotten, and other supporters of this measure for coming up with a financing package. If there are other packages, obviously that can meet the financial requirements of the state that still require the completion of the projects, that too would be satisfactory to Anchorage. If it's an important enough project, then we are whole-heartedly in support. I can represent numerous public groups that have formally endorsed the specific bill as well as the Anchorage Assembly."

Number 059

Representative Cato: "Thank you, Mayor

indirectly considered as user's fees for the services and roads that Anchorage does provide? Therefore, to me it's still a disproportionate amount concerning the people having to get there. If they don't have any roads in their district to get to Anchorage, then Anchorage is going to have to suffer also."

Mayor Knowles: "Perhaps in response to your question, there is no city in the nation that through its own, that I am aware of, that through its own financial resources pays for the state and federal road system."

Number 482 — Representative Shultz commented that Anchorage isn't the only place which faces rapid growth. He mentioned that several communities in his district have an even higher rate of growth than Anchorage."

Number 494 — Representative Davis thanked the mayor for his comments. Representative Cato also thanked the mayor for his testimony.

Number 505 — Representative Cato then brought before the committee HB 409, sponsored by Representative Jenkins and entitled, "An Act relating to licensing of school bus drivers; and providing for an effective date." She asked Representative Jenkins to testify on his bill, but he deferred his testimony so that people on the teleconference network could testify. Representative Cato then asked Romayn Kareen of the Department of Education to testify on the bill.

Ms. Kareen thanked the committee for hearing the bill and Representative Jenkins for sponsoring HB 409. Ms. Kareen: "Regarding Section 2(b)(6) that requires drivers to complete a state-approved school bus driver training course. The Alaska School Bus Driver Training Committee is formulating the master plan for a state-wide, mandatory school bus driver training program. We hope to have the plan completed by July and ready for implementation fiscal year 87 and we will need an appropriation to complete that project and implement the master plan. I just want to know that the work was in process regarding the driver training program."

Number 544

Representative Cato then asked Saundra Hutchins of Mat-Su to testify.

Ms. Hutchins: "I am the Pupil Transportation Coordinator for the Mat-Su school district and I am here to offer testimony on behalf of the Alaska Association for Pupil Transportation which is the district administrator's association and the Alaska School Bus Safety Week Committee which is sponsored by the Department of Education representing school districts and contractors.

"...We support the specifics of the bill. Looking at section 28.15.046(b) and looking down at number (4) and number (5) together. We very much support the criminal and background check both nationally and a state check back through the years. We feel that we have a responsibility to our parents and to our community to hire people who drive school bus drivers that have a good moral background. We feel we have a responsibility to make sure that they are trained properly and competent and able to do the job. We are concerned about individuals who do have a background that is not suitable for contact with children and looking down at section (c), in the same section, and looking at items (1), (2), (3), (4), (5), and (6) and (7) which are interconnected with numbers (4) and (5). We feel that it is very important that we don't have people who don't have this kind of background.

"There are some specific problems with (4) and (5) which are more procedural than in concept. The bill, as I understand it, indicates that we would have, that we would not be able to license and use an individual to drive a school bus until the national and the two-year state background check is complete. In talking with Bill Brown in Juneau in the Department of Public Safety and with Mr. Dave Garrison who is the aide for Representative Jenkins, we understand that that national background check could take as much as seven weeks. Also, that the state two-year check could take the same length of time and certainly up to a month. If this were true and if we were not allowed to license or use an individual to drive a

school bus until that criminal check has been completed, we would, by necessity, have to begin the hiring process and the licensing process as early as the month of June and possibly the end of June in order to have individuals to drive in the last week of August which is when many of our school districts open.

"Procedurally, that is not possible. The school bus drivers support themselves in the summer by other jobs. Many of them fish. The day after the last day of school, most of them are gone. If we were to have to fall into the way the bill is now written, we might even have to put together and give a screen in the month of May when we still have these people aboard just to get the screen process done.

"What we would like to suggest is that the provision be made similar to that which worked for the present law relating to teachers. Is that they are certified by the state and they may be hired by the district pending a background check, a criminal background check which is very similar to what is being suggested here. We would like to suggest is that we be allowed to licensed and to use these people pending the criminal background check which would make it, procedurally, we would be able to handle. Otherwise, it is not unlikely that we would end up on the first day without everybody that we needed in those buses. We don't want people driving a bus who have this kind of a background. But, procedurally, I am not sure that it will for us as it is presently written. There is strong feeling among school district people and the contractors that procedurally this won't work as it is presently written.

"I'd like to move to section, let me see, the same section. Go down to number (d). And this has to do with not licensing an individual who has been convicted of DWI and within two years and not licensing him at all if he has had two or more within twenty years. I very strongly support this provision. It is a source of problem now. We often do not know when an individual has been convicted of a DWI. We may have a bus driver out there there who has gotten a DWI

ticket in a private vehicle and we can find out--we have a chance generally. Very strongly support this provision. There needs to be some method to ensure, procedurally, that we will know when these things will occur. We have the same problem with (4) and (5). There needs to be some procedure to assure that school districts will know when an individual does have a DWI because otherwise, the individual is not going to tell us. We have that problem now. We have people who do get DWI and you just, sometimes you find about it and you then you are able to act. Very strong support for number (d).

"We very much support number (6) going back. This particular provision has to do with a mandated school bus driver training course. The Department of Education over the last year has been working with a large committee which represents a cross-section of a school district administrators and contractors to develop a standardized school bus training program. The hope is that it will be mandated as a minimum guide for all districts. That plan is not developed--as I understand it, it is in the final draft and will be ready for the review process with district and administrators and with the Department of Education. It then must be approved by the state school board. We very much support that kind of training program. The problem with it here with this particular bill is that it is not ready. The other problem is that this bill would be effective in 1985. The driver training program is not in place and has not been reviewed. There's no fiscal note for it. And there will be some cause to get it started. We think that it is a very necessary thing to have a mandated program. If there is some way of keeping this provision in the bill and not allowing for a later date for implementation, we would very much support that. We support a mandated driver training program. We need to standardize a program across the state and we need to set the minimums and some very good work has been taking place in that area...This bill does not state who would be responsible for developing that driver program. This particular bill comes under Public Safety and I don't know if that

necessarily means that the Department of Public Safety would then be responsible for a driver training program for school bus drivers. That may not be true. We would like to see the Department of Education charged with that responsibility because they are closer to this area than is the Department of Public Safety."

Number 651

Representative Cato: "In the position paper, you might be interested in this fact: we have considered deleting that number (6) from Robert Sundberg it says in regard to AS 28.15.046(b)(6)--this will require the state to have an approved school bus driver training course. The Department of Education is currently working on a master plan to include, so they are well aware of what you're doing. It does not appear that it will be complete by the effective date of this bill. Without such a program, no school bus driver permits could be issued. Each contractor presently has a training board program; however, they are not state approved. What was the completion date that you thought perhaps that if things went well, that you would be able to have the plan in place for a state-approved driver's training school?"

Ms. Hutchins: "Looking at the status and talking with Ms. Kareen, that probably they will have that in place as even as the fall. However, there's no fiscal note for it yet. So that would mean, at least a year before it could be implemented."

Ms. Kareen: "There will be an appropriation required for implementation for this driver training program to get it coordinated, to get the materials to sell it, to conduct work shops for instructors to go back to the respective areas and to train the school bus drivers, to conduct workshops for school districts, and we will have to develop a local plan for their own area for the required school bus driver training needs in their respective areas. So it will take at least a year to get it off the ground in an appropriation required for that. If we had monies in our FY 87 budget, we could begin working July 1, 1986 and could have the workshops conducted etcetera I would think by June 30, 1987."

Number 680

Representative Cato thanked the teleconference participants for their contribution. Ms. Hutchins thanked Representative Jenkins for sponsoring the bill.

Representative Cato then called to the table Bill Brown of the Department of Public Safety, Division of Motor Vehicles.

Mr. Brown: "This basically does two things as far as changing from the present system. We do a background check at this time; however, it's strictly of Alaska arrests. We, therefore, find out of an arrest in another state only if that person has been arrested up here also and therefore the record from the other state has been forwarded to Alaska. The two changes is, number 1, it requires the check to be made before the license is issued and, number 2, it requires..._a national check_."

CHANGE TAPE #42 TO SIDE TWO

Number 003

Mr. Brown described the current system of criminal checks and the issuance of school bus driver permits. Discussion then ensued on this topic.

Mr. Brown: "There's a couple concerns. One of them, I just hit on today: on subsection (e) on page three, on lines 12-14 where it refers to 'listed under (c) of this section,' it should also include, "under (c) or (d) of this section' if (d) is not added there. You can only count DWI's within Alaska. If (d) is added to that subsection (e), we could also count DWI's that occur in another in another state because (d) is very specific. It refers to DWI under an Alaska statute. Possibly, the statute section would not have to appear on lines 7 of page 3 and just refer to convictions of driving while intoxicated."

"...Another concern, of course, that we have is in regards to and it was expressed by Ms. Hutchins is is the time period that it takes to get a result of a fingerprint search--possibly, is something that the department would have to work on. In our position paper we indicated that it would be a three week lag. In my opinion, that's a minimum

at this specific time. It's the mail process that's the delay and not the computer process in Anchorage."

Number 069

Representative Pignalberi expressed his concern of how this bill affects school bus drivers and the contractors. Representative Cato expressed her belief that the bill does not go far enough and that it should apply to janitors and other people who are around school children. She asked Representative Jenkins if he could work on this bill during interim so that it would encompass this issue. Representative Jenkins did not object to this and said that he would work on this during interim. Representative Cato announced, then, that HB 409 would be held in committee.

Number 241

Representative Pignalberi moved to pass out of committee HB 413, "An Act providing for the issuance of general obligation bonds in the amount of $350,000,000 for the purpose of paying the cost of transportation projects; calling for a special election on the question; and providing for an effective date." Representative Cato repeated his motion and asked if there were any objections. Being none, so ordered.

Representative Cato asked if there was further business to be brought before the committee. Being none, she adjourned the meeting at 8:11.

HOUSE TRANSPORTATION COMMITTEE
January 22, 1986
7:00 a.m.

Members present:

Rep. Bette Cato, Chairman
Rep. Mike Davis, Vice-Chairman
Rep. Richard Shultz
Rep. Marco Pignalberi
Rep. Adelheid Herrmann
Rep. Andre Marrou
Rep. Walt Furnace

COMMITTEE CALENDAR:

HB 409 "An Act relating to licensing of school bus drivers; and providing for an effective date."

WITNESS REGISTER:

Rep. Roger Jenkins
P.O. Box V
Juneau, Alaska 99811
Position: Witness and Sponsor - In favor of the bill

Bill Brown
Division of Motor Vehicles
Department of Public Safety
P.O. Box N
Juneau, Alaska 99811
Phone: 465-2650
Position: Witness - In favor of the bill

Romayne Kareen, Administrator
School Transportation Program
Department of Education
P.O. Box F
Juneau, Alaska 99811
Phone: 465-2890
Position: Witness - In favor of the bill

Sandra C. Hutchins, Chairman
The Alaska School Bus Safety Committee
P.O. Box AB
Palmer, Alaska 99645
Phone: 745-4822
Position: Witness - In favor of the bill

PREVIOUS ACTION

ACTION NARRATIVE

TAPE ONE SIDE ONE
Number 000

The House Transportation Committee was called to order by Rep. Cato at 7:04 with the following members present: Rep. Shultz, Rep. Herrmann, Rep. Furnace.

Rep. Cato addressed HB 409 and reminded the committee to review the minutes from 05/09/86 when the bill was first heard and introduced Rep. Jenkins, the sponsor.

Number 040

Rep. Marrou joined the committee.

Rep. Jenkins testified that HB 409 would set minimum requirements for school bus drivers and puts the State Department of Public Safety regulations into law as well as add the following:

(1) Applicants must complete a state approved school bus driver training course.
(2) Applicants must supply the Department of Public Safety with sufficient information to complete national criminal records checks.
(3) The applicant must successfully complete a background check within the state or states which he or she has resided for at least the past 2 years.
(4) The applicant must not have been convicted of a felony or misdemeanor involving distribution of a controlled or imitation controlled substance.
(5) The applicant must not have been convicted of a felony or misdemeanor involving distribution of a controlled or imitation controlled substance.
(6) The applicant must not have been convicted of driving while intoxicated within two years or must not have been convicted of multiple DWI's.
(7) The applicant must bare the cost of background checks.

Rep. Pignalberi joined the Committee.

Rep. Jenkins reviewed a fiscal note and the sectional analysis from Legal Services.

Number 183

Rep. Cato suggested that Sec. 28.15.046 section b, number 6, be deleted by mutual consent of all members present due to a lack of an educational program at present.

Rep. Jenkins agreed.

Rep. Marrou questioned whether there are presently any problems which this bill is based upon.

Rep. Jenkins said he knows of 2 major accidents in the Eagle River area.

Rep. Marrou questioned whether those accidents would have been prevented by this bill.

Rep. Jenkins said he thinks so.

Rep. Marrou questioned whether such a small fiscal note is accurate. He also refuted having 20 years for the lenghth of time which persons with various criminal records can receive a license.

Rep. Jenkins said the numbers in the bill all came from the current Public Safety Regulations.

Number 302

Rep. Pignalberi said the title is too narrow for the scope of the bill since it applies to all commercial vehicles and compared it to HB 133 which passed into law last year.

Rep. Jenkins said the major difference between the bills is that HB 409 specifies age 19 rather than 21.

Rep. Pignalberi asked about the applicant's cost of obtaining a background check and asked if teachers are required to have a background check as well.

Rep. Jenkins said that other witnesses present were more informed this information.

Number 372

Bill Brown of Division of Motor Vehicles approached the committee and answered questions that the committee had previously asked. He specifically addressed the serverity of the 20 years penalty for two or more DWI's or other criminal offenses.

Number 441

Rep. Cato inquired into the difference between last year's and the more recent fiscal note.

Bill Brown said the first one was based on pure estimation because they did not have a database when devised and the newer note is based on actual numbers which have been tallied since the first note was written.

Number 453

Rep. Shultz asked, "Have you run this by the school bus contractors...how would a contractor that lives at Grizzly Lake, for example, have a training program?"

Bill Brown replied that he assumed the training program details would be handled by the Department of Education.

Rep. Shultz asked if the applicants did have to go to Anchorage for the training program, who would pay.

Bill Brown said he would like the Dept. of Education to answer that. He said he did not get input from any of the contractors.

Rep. Schultz said the committee should solicit input on this legislation from the bus contractors.

Number 492

Rep. Marrou stated that he objects to the fiscal notes because they seem arbitrarily constrewed.

Bill Brown said the purpose of the fiscal note is to cover the background check because the Dept. of Public Safety will have to write checks in their name to the F.B.I. and applicants will write their $12 check to the department: in effect, the fiscal note would just finance these transactions.

Rep. Marrou said this bill would not cost Alaska any money and therefore should not have a fiscal note.

Number 534

Rep. Pignalberi inquired as to the cost to the applicant.

Bill Brown said the applicants would need to pay the $12 plus an annual $2 school bus license which they are already paying at present.

Rep. Pignalberi asked for a reiteration on the time-lapse problem in procuring a background check.

Bill Brown said if the person has stayed in Alaska for the last 2 years, the search should only take 2 to 3 weeks but if the person resided out of the state within the last 2 years, the search has to be made south and it takes 6 or 7 weeks to get results. Additionally, it takes another week for the Dept. of Public Safety to process the application.

Rep. Pignalberi asked, "Do you have the authority to give them an interim license and let them work pending completion of the background check?"

Bill Brown told the committee they would have to amend this bill to allow that.

Number 572

Rep. Cato asked the committee and sponsor to consider an amendment that would allow the Department of Public Safety to issue temporary licenses until the background check has been completed.

Rep. Furnace objected to the temporary license amendment because he feels 3 weeks is reasonable time for an Alaskan to wait and 2 months is reasonable for a nonresident.

Rep. Marrou agreed with Rep. Furnace.

Rep. Cato asked if there is a motion to amend.

Rep. Pignalberi asked if the committee could work on the bill after the meeting.

Rep. Cato said the committee does not have to pass the bill today.

Number 606

Rep. Pignalberi declared a possible conflict of interest because he provides consulting services to a company that bids and does not now have bus contracts in the municipality of Anchorage.

Rep. Cato said that she thought the relationship was too remote.

Number 610

Sandra Hutchinson introduced herself and voiced her support for HB 409 and specified, "On page two of HB 409, line 5, ...talking about a clarification if the one year period is for licensing... We would support a clarification that specifies that the applicant for school bus license must have been licensed as an Alaskan driver for the one year immediately proceeding....

"On line number 9 and looking at number 4 and number 5 together, we're talking again about the background check: the national background check, the state of Alaska background check and the out-of-state check. This area is a real concern both to the contractors and to the school districts. It has been a concern and a problem for some time. The problem is that you get drivers who have a criminal, even a criminal action in process, you don't know about it or they've had previous criminal actions and convictions and you don't know about it. They could pick

up DWI's and you don't know about it. It has created problems in both the district operations and the contractor operations and particularly in the high growth areas. We support a background check: national, state and out-of-state, we think it's very important. The problem is with the timing and we would like to see the out-of-state background check moved up to number 4 to fall into the same provisions as the national background check. We read the bill to indicate that you must have successfully completed a state background check, an out-of-state background check, and apply for the national background check to be issued a pending lisense until the national background check has cleared. What we'd like to do is move the out-of-state background check to the same provision as the national because of the time frames. It is extremely long. The people who are being licensed as school bus drivers, maybe half of them are from other states. The real problem would be that many of the contractors would not be able to staff school buses with drivers in time, unless you start licensing in June. And because school bus driving is a seasonable work, they work during the winter, they drive school bus and when May comes you have an exodus. They're finding summer work to supplement their winter work. School bus driving is part-time, it does not provide full-time employment and therefore these people often work in the summer. So starting in June to do your training and background check is a real problem. We would like to request consideration of moving the requirement for the out-of-state background check to the same provision as the national background check which will give us a little more time.

"Number 6 is one of the most critical parts of this bill as (indiscernable) ask for reconsideration of your amendment. I have been with the school district ten years. I have been chairman of the state committee and the association for three. I've been in pupil transportation all of that time. I cannot remember a time when school bus driver training has not been an issue both to the contractors and the districts and we are not separated on this issue. We need a uniform mandatory training program. Training in the districts starts at little to nothing to expensive programs. Depending on what districts require or how well they monitor their programs of the contractors. The districts get the kind of program based on what they ask for and how well they make sure it happens. We do not have a uniform program. We do not have a mandatory program. At least two years ago, the Department of Education appointed a committee of districts and contractors to sit down and develop a uniform mandatory program that would work for small districts and large districts. At the time this bill came up, it was not complete. It has been completed over the summer. The department of Education did provide in their budget to

implement the program. It was sent to the Governor and it was cut in the Governor's office. Along with that program, was a school bus inspection program. It was a combination program where they utilized the same personnel to save money. So we lost the funding for both programs. At least two years ago the state also appointed an inspection committee to address the school bus inspection problems. Also again a committee of school district and contractors. The conference committee substitute bill 133, did not address school bus safety problems. We need a mandatory program for school bus training that program has been developed it is being prepared in final draft for the state school board.

"I would like to refer you now for the specifics of that program to Romayne Kareen who is here as the Transportation Officer for the state. It has full support and participation of contractors and school districts over a two year period. The program provides for training of an instructor from each of the districts or from each of the contractors. It provides for the basic minimums of a program. The school district and the contractor then have the option to put together a program that fits their district, meeting the basic minimums. They do that on site, they don't have to go to Anchorage. The program provided for an instructor that would go to their district and to the contractor to prepare, to train for them their own instructor, someone qualified in their own district to carry on from year to year. The fiscal note that was attached to that program was very small."

SIDE TWO
Number 000

Rep. Cato asked if the committee did not delete section 6, if there would be time in the hiring of bus drivers for them to have already had the training course prior to being hired.

Sandra Hutchinson replied that the program provides for phasing in and it only applies to new contracts.
She said, "...We really would suggest that number 6 be amended to designate the Dept. of Education as the agency to develop and implement and to monitor a mandatory driver training program, that there be a fiscal note attached, and that the provisions of the training program provide for new training for new people and for a much lesser refresher course for incoming drivers. There is time to put that in effect even for districts that do not have ongoing contracts however the program would apply as far as a mandatory program to districts with new contracts because it needs to be included in that contract that you would give your contractor. Otherwise it's something that your ongoing contractor would not be required to fill because

there is a cost to the district and to the contractor and there is a gearing up for it so there is a phase in of that situation. You don't go out and suddenly require everybody to do it because everybody's not prepared. But in a period of time and most of the contracts turn over in a five year period and we're not all on the same schedule, every year there's a few contracts. I think we had nine contracts come up this year. So there's a phase-over, in a period of five years everybody would be on it."

Rep. Pignalberi asked Sandra Hutchins if it would be acceptable to her if the committee reinstated a provision like section 6 but which would approve private driver training programs rather than create a "little bureaucracy in that department to establish and administer a driver training program."

Sandra Hutchins replied, "I think under the present program this could be done because the state would simply set the minimums and then the district submits their own program from the contractor. The contractor actually has his own program. He submits it to the district for approval and it goes to the state. So that would not preclude a private (indiscernable)."

Number 087

Rep. Marrou agreed with Rep. Pignalberi. He said that she made a "good case" for setting up private driving schools or the Mat-Su school district seting up a driving school. He noted that none of the other school districts in the state were present.

Sandra Hutchins said she was not representing Mat-Su. She said this issue has been researched and is the development of several district's work. She said the problem is that many districts do not require training and half the fatality statistics for students are caused by the driver which directly relates to training. She included, "The recommendations from the National Traffic Safety Administration to the National Highway Traffic Association, that agency which promulgates the rules for safety regarding school buses, was that rather than seat belts, money needs to be spent on driver training that provides for proper training of the drivers when transporting students because that's where the problems are. What we have is little or no training to considerable amounts of training and some of the districts like mine require it. We monitor it and we make sure the training happens, it's not happening: and that's the issue.

Number 130

She continued, "In response to the question of the bureaucracy:... in a sense, it all is. We're simply moving it from one state agency to another which we feel more appropriately is assigned.

Number

Rep. Pignalberi asked if there was a way to shift the emphasis away from state government.

Sandra Hutchins replied, "I think if you look at the program you'll see that the only thing that the state government will be doing here is (1) to require the mandatory program and to issue the basic minimums, (2) approve those programs (which are) set up by districts through your contractor that it does meet the basic minimums and (3) to provide a trainer to train those areas where they do not have access to the facilities and to the expertise.."

Number 170

Rep. Davis joined the committee.

Rep. Shultz asked how many times fatalities have occured in the state in the last decade.

Sandra Hutchins said once last year to her knowledge and referred him to Romayne Kareen. She said that statewide half of fatalities are caused by the driver, the other half are caused by motorists who pass when buses stop.

Rep. Shultz asked how Alaska compared to the rest of the states statistically with accidents and fatalities.

Sandra Hutchins replied that she believed it was a good record but again referred him to Romayne Kareen.

Number 205

Rep. Schultz asked if she could credit the good safety record to the concientious and concerned contractors.

Sandra Hutchinson agreed and said the reason that we don't have more children killed by the bus drivers is because we do have some training programs.

Rep. Marrou said he agrees with Rep. Shultz. He said that since school bus driving is essentially run on a district or private enterprise level, it is logical to keep it that way.

Rep. Cato explained that the school districts are funded by the state in full.

Rep. Herrman inquired if indeed all of the contractors support school bus training.

Sandra Hutchins said that contractors did and testified this last spring.

Rep. Davis asked for information specifying which districts currently don't train. He expressed concern for backup drivers having training and licensing in the case of absenses.

Sandra Hutchins replied that she didn't have that information with her. She also said that the contractors always have backup drivers available who go through licensing and full training.

Number 356

Rep. Cato instructed the committee staff to work with Rep. Jenkin's staff and bring this bill up the following week. She introduced Romayne Kareen.

Romayne Kareen responded to previous questions:

To Rep. Shultz she said there have been three fatalities in Alaska in the last three years involving school buses.

To Rep. Pignalberi she said that school bus drivers contract for lengths which vary from 3 to 5 years.

To Rep. Marrou and Rep. Pignalberi, regarding private enterprise, she said it wasn't the intent of the department's request for an appropriation to establish a bureaucracy and the department could contract with private industry to work closely with the department.

Number 405

Rep. Pignalberi asked how many employees are presently in the school district transportation administrator's office. He also asked if there is presently a standard for driver's training.

Romayne Kareen replied that she is the only one in that office and that there is only a federal standard, standard 17 that highly recommends 40 hours of training. However, the state of Alaska has not adopted standard 17. She added that at this point they have a "master plan" for a required program but they are not financially "geared up" to implement this plan.

Rep. Pignalberi asked that if section 6 were passed in some form, if the school districts would be left on there own to

work out the mechanics of a problem, either through a contractor or through their own means.

Romayne Kareen agreed and said that the program would begin in the development phase in July 1, 1986, pending an appropriation, and the implementation would begin July 1, 1987.

Rep. Pignalberi was concerned that the program budget impact would be larger than fiscal note showed. He suggested putting legislative intent language in the bill to ask the Department of Education "to go as far as they can with the master plan and come in for funding next year."

Number 454

Romayne Kareen listed the fiscal note figures and what they included. The fiscal note would be delivered to the committee legislators later in the day.

Rep. Cato asked Rep. Pignalberi to work with the sponsor and the Department of Education and Sandra Hutchins to change the bill so it can be scheduled next week.

Romayne Kareen said at that time she would bring some contractors to testify at that time.

Number 608

Rep. Cato adjourned the meeting at 8:20.

HOUSE TRANSPORTATION COMMITTEE
January 28, 1986
7:00 a.m.

Members present:

Rep. Bette Cato
Rep. Mike Davis
Rep. Dick Shultz
Rep. Adelheid Herrmann
Rep. Andre Marrou
Rep. Walt Furnace

COMMITTEE CALENDAR:

CS HB 409 "An Act relating to training and licensing of school bus drivers; and providing for an effective date."

WITNESS REGISTER:

Loretta Nistler
Alaska Motor Coaches
P.O. Box 988
Delta Junction, Alaska 99737
Position: Witness - in favor of the bill

Tom Hyatt
President, Alaska School Transportation Association
P.O. Box 770350
Eagle River, Alaska 99577
Phone: 694-2921
Position: Witness - in favor of the bill

Bob Shefchik
Transportation Coordinator
North Star Borough School District
578 Canoso Road
North Pole, Alaska 99705
Phone: 488-6550
Position: Witness - in favor of the bill

Steve Kalmes
Director Transportation Services for
Anchorage School District
3500 Tudor Road
Anchorage, Alaska
Phone: 563-3022
Position: Witness - in favor of the bill

Don Swain
Director of Personnel Safety Training for
Transportation and Marketing Services
1224 27th Street
Fairbanks, Alaska 99701
Phone: 456-1598
Position: Witness - in favor of the bill

Lola May Field
Laidlaw Transit
P.O. Box 2560
Soldotna, Alaska 99669
Position: Witness - in favor of the bill

Christine Flegel
1040 E. 1st Avenue
Anchorage, Alaska
Phone: 276-7823
Position: Observer

Henry Hammond
1040 E. 1st Avenue
Anchorage, Alaska
Phone: 276-7823
Position: Observer

PREVIOUS ACTION:

HB 409:	DATE	PAGE	ACTION
	04/29/85 (H)	1159	READ THE FIRST TIME WITH REFERRAL(S)

ACTION NARRATIVE

TAPE ONE SIDE ONE

(A mix up with the tape begins the recording at 056. Numbers 000 to 056 are the completion of the meeting, which were actually taped over the beginning in error.)

Rep. Cato called the meeting to order at 7:00 a.m. with Rep. Marrou, Rep. Shultz, Rep. Furnace, Rep. Herrmann present.

Rep. Cato suggested that a motion be made to adopt the CS.

Number 056

Rep. Marrou objected to the adoption of the CS based on his

understanding that the fiscal note in committee does not apply to the CS and in his opinion, a driver training is not needed.

All present voted to adopt the CS except Rep. Marrou.

Rep. Cato described the four changes the CS has brought to HB 409:

(1) A section has been added to allow the Department of Education to develop, implement and monitor a mandatory driver training program.

(2) The out-of-state criminal check has been added to the section which covers that national background check in order to allow the Department of Safety to issue a temporary license pending investigation of the national and out-of-state check.

(3) A technical amendment was needed to include "driving while intoxicated" for purposed of determining whether an applicant has been convicted of an offense of this section.

(4) The effective date was changed to September 1, 1987, as the Department of Education would begin the development phase of the training course in July 1, 1986 pending an appropriation and would be implementing this program in 1987.

Rep. Davis joined the committee at 7:07.

Rep. Davis moved that the committee delete the words "and 5" from page 3, line 19.

There were no objections to that motion.

Number 134

Rep. Jenkins, the sponsor, spoke generally on behalf of the bill and the recent committee substitute of the bill.

Bob Shefchik testified from Fairbanks in favor of the bill.

Loretta Nistler testified from Delta Junction in favor of the bill.

Rep. Davis voiced his concern for the impact of this bill on smaller school districts.

Number 287

Lola May Field testified from Soldotna in favor of the bill.

Number 317

Don Swain testified from Fairbanks in favor of the bill.

Rep. Davis said that he would telecopy the CS to Fairbanks for Don Swain to look at.

Bill Brown clarified the subject of background checks for Don Swain.

Rep. Herrmann asked how far the $104,000 in the fiscal note would go.

Tom Hyatt testified from Anchorage in favor of the bill.

Number 445

Steve Kalmes testified from Anchorage in favor of the bill.

Rep. Davis asked how much an average school bus driver earns.

Steve Kalmes said between $8 and $12 per hour.

Rep. Davis asked if there is a particularly high turnover due to the pay.

Steve Kalmes said he saw more of a problem with the time lapses due to background checks and training.

TAPE ONE SIDE TWO

Number 000

Rep. Cato explained to Steve Kalmes that the CS would take care of his concern by providing for temporary licensing.

Rep. Davis requested Legislative Information to telecopy Steve Kalmes a copy of the CS.

Rep. Herrmann asked Mr. Hyatt if all the school bus contractors in the state are members of his organization.

Tom Hyatt said most of them are.

Number 062

Romayne Kareen testified in favor of the bill and volunteered to answer questions.

Rep. Davis asked if the fiscal note applied with the CS as it did the original bill.

Romayne said the driver training portion of the bill hasn't changed and the Department of Education's note was still accurate.

Rep. Davis asked where the temporary license costs would be counted.

Number 118

Rep. Furnace asked if the committee should view the two most recent fiscal notes to get the whole fiscal impact: one from Dept. of Public Safety and the most recent from Dept. of Education.

Romayne Kareen clarified that the Public Safety fiscal note balance was zero.

Number 142

Rep. Marrou said the fiscal note from the Dept. of Education is obsolete and does not apply to the CS.

Romayne Kareen restated that the same program has been brought forth to the CS and, therefore, the same fiscal note applies.

Rep. Marrou said the CS establishes a school bus driver training course but the original bill specifies a "state approved" training course.

Rep. Davis expressed his interpretation of the bill.

Number 215

Rep. Cato said she agreed with Rep. Davis.

Rep. Herrmann asked Romayne Kareen for clarification on contractor requirements pertaining to this bill.

Number 278

Rep. Shultz asked Bill Brown if the Division of Motor Vehicles could include in their regulations the temporary licensing procedure.

Rep. Cato said the committee will request a written commitment from the Dept. of Public Safety that they will adopt a temporary licensing procedure.

Romayne Kareen asked why the bill referenced the Dept. of Public Safety rather than the Dept. of Education.

Ronda Cargill clarified that the Dept. of Education is to oversee and coordinate the Dept. of Public Safety's shared role in regard to the bill's program.

Number 349

Rep. Marrou voiced his opposition to the "excessive" times stipulated in HB 409 and CS HB 409 in regard to DWI's and child molesters.

Rep. Marrou moved that the 20 years be changed to 10 on page 2, line 22 1/2, and on page 3, line 11 1/2, change 20 years to 5 years.

Rep. Davis objected to the motion.

Rep. Jenkins added that he derived these numbers for years from the Division of Motor Vehicle regulations.

Number 425

Rep. Shultz requested that the motion be divided into two parts.

Rep. Marrou restated the motion: page 2, line 22 1/2, change 20 years to 10 years.

Rep. Davis, Rep. Furnace, Rep. Herrmann and Rep. Cato objected to the motion. Rep. Marrou and Rep. Shultz voted yes. The motion was denied.

Rep. Marrou moved that page 3, line 11 1/2, change 20 years to five years.

Bill Brown clarified, " The current regulation in regards to the second DWI is permanent (license forfeiture) for school bus drivers".

Rep. Shultz said, "twenty years is about as close to permanent as you can get".

Every representative voted no on the second motion except Rep. Marrou.

Rep. Shultz moved that page 3, line 11 1/2, be changed from 20 years to 10 years.

This amendment was passed by Rep. Cato, Rep. Shultz, Rep. Herrmann, and Rep. Davis voting yes.

Rep. Shultz moved that CS 409 with the amendment be moved out of committee with individual recommendations.

HOUSE STATE AFFAIRS
STANDING COMMITTEE
February 3, 1986
3:00 p.m.

Members Present:

Rep. Katie Hurley, Chair
Rep. Bette Cato
Rep. Virginia Collins
Rep. Roger Jenkins

COMMITTEE CALENDAR

CSHB 409 (Transportation):

An Act relating to training and licensing of school bus drivers.

Campaign Financing Work Session

WITNESS REGISTER:

Bill Brown, Chief
Driver Services
Division of Motor Vehicles
P.O. Box 20
Juneau, AK 99802
Phone: 465-4335
Position Statement: Available to answer questions on CSHB 409.

Romayne Kareen
Pupil Transportation Officer
Department of Education
Pouch F
Juneau, AK 99811
Phone: 465-2865
Position Statement: Available to answer questions on CSHB 409.

Theda Pittman, Director
Alaska Public Offices Commission
610 "C" Street, Suite 211
Anchorage, AK 99501
Phone: 276-4176
Position Statement: Comments on proposed campaign finance legislation.

PREVIOUS ACTION

HB 409

04/29/85	(HO	1159	Read the first time - referrals
01/29/86	(H)	1916	TRSP RPT CS new title
			3DP 1NR 1DNP
			2 fiscal notes HSE SUPPL 78
			State Affairs, Finance, Rules

ACTION NARRATIVE

TAPE 72 SIDE ONE
Number 000

The House State Affairs Committee meeting was called to order at 3:00 p.m. Members present were Rep. Hurley, Chair, and Reps. Cato, Collins, and Jenkins.

Number 015

Chair Hurley brought CSHB 409 (Transportation) before the committee for consideration.

Number 020

Rep. Jenkins, sponsor of the bill, thanked Chair Hurley for her prompt scheduling of the bill and stated that it has had three hearings in House Transportation Committee resulting in a good committee substitute.

Rep. Jenkins said that the legislation takes existing Alaska State Department of Public Safety regulations and implements them into statute and adds provisions for a bus driver training course, national criminal records check, and state background check. In addition, CSHB 409 states that individuals cannot be licensed if they have been convicted of certain felonies and misdemeanors.

Rep. Jenkins concluded by stating that the bill has wide support from school districts and school bus contractors.

Number 225

Rep. Cato stated that the bill received close scrutiny in the Transportation Committee and she feels it is a good bill.

Number 236

Chair Hurley announced that Bill Brown from the Department of Public Safety and Romayne Kareen from the Department of Education were available to answer questions if needed.

Number 260

Rep. Cato moved that CSHB 409 (Transportation) be passed out of committee with individual recommendations. There being no objections, the motion carried.

Number 323

Chair Hurley brought before the committee the subject of proposed campaign finance legislation. She stated that Theda Pittman, Director of the Alaska Public Offices Commission, was connected by teleconference to offer comments and answer questions should the need arise during discussion.

Chair Hurley said that it was not the committee's intent to take a negative stand on the Senate's legislation. In addition, she stated that the committee has a very rough draft before them to consider and discuss some policy decisions.

Number 358

Senator Bill Ray relayed information from the Senate State Affairs Committee. He stated that the committee had met today with the Attorney General and the Committee's legal counsel. A disagreement over several points involving penalties and enforcement resulted in a meeting being scheduled to work on a compromise.

Number 406

Chair Hurley thanked Senator Ray for his comments and asked him to tell Senator Abood that the House State Affairs Committee has no desire to compete with the Senate's legislation and is only considering a working draft to speed up the process due to the shortness of the session.

Number 445

The committee discussed contribution limits for political action groups.

Number 681

Rep. Boucher asked the chair if it would be possible to obtain information on the increased cost of campaigns.

Number 703

Ms. Pittman reported that her office had figures on campaign expenses and that in 1972 it cost $331.00 to

purchase what now costs $1,000. In addition she gave comparative figures for the average cost of running for the House and Senate in 1976 and 1982.

Number 832

Chair Hurley asked Ms. Pittman's opinion of SB 356, Sec. 15.14.350 regarding confidentiality of investigations.

Number 850

Ms. Pittman responded that she feels that the language overlooks what generally happens when an individual files a complaint. She stated that it is difficult to maintain confidentiality when the person filing the complaint often takes the matter to the press at the same time that they file with her office.

TAPE 72 SIDE TWO
Number 120

Chair Hurley stated that the committee will follow up on this issue and determine if language can be drafted which would address this concern.

Number 138

The committee discussed the reporting of expenditures.

Number 312

Chair Hurley stated that the committee will not consider the sections on violations and enforcement until the Senate has held their meeting to discuss these issues.

Number 489

Ms. Pittman announced that the next meeting of the Alaska Public Offices Commission is scheduled for February 27 and 28, 1986 in Anchorage.

Number 497

Chair Hurley thanked Ms. Pittman for her participation and stated that the committee would continue to work on various aspects of campaign finance legislation but postpone further discussion until the Senate State Affairs Committee has made some decisions regarding their bill.

Number 526

The meeting was adjourned at 4:15 p.m.

HOUSE FINANCE COMMITTEE
February 28, 1986
1:30 p.m.

(Tape HFC 86-19, Side 1, #000-end)

CALL TO ORDER

Chairman Adams called the meeting of the House Finance Committee to order at 1:30 p.m.

PRESENT

All members of the Committee were present except Representatives Duncan, Ringstad and Uehling. ALSO PRESENT: Representative Jenkins; Commissioner Nordale, Department of Revenue; Bruce Botelho, Deputy Commissioner, Taxation, Department of Revenue; Dorothy Jones, Mayor, Mat-Su Borough; Robert Van Hook, Tax Counsel, SOHIO Alaska Petroleum Company; and Jim Palmer, Associate Director, Government Affairs, SOHIO Alaska Petroleum Company.

SUMMARY INFORMATION

HB 409 An Act relating to licensing of school bus drivers; and providing for an effective date.

Transportation Committee Substitute reported out of committee with a "do pass" recommendation and two zero fiscal notes.

HB 502 An Act relating to disclosure of state tax assessments of the Department of Revenue.

Bill HELD in committee. Scheduled for further hearing on Monday, March 2.

HB 409

HB 409 - An Act relating to licensing of school bus drivers; and providing for an effective date.

Chairman Adams informed members the bill would require the Department of Education to train school bus drivers. He said the Department had been in the process of gearing up for this training for some time and the bill would also require school bus drivers to be licensed. Chairman Adams said in order to get a license a person would have to submit to a fingerprint check, which the applicant must pay for, and a person convicted of various felonies would be prohibited from getting a school bus driver's license. According to Chairman Adams, Department of Education had requested over $100,000 to train bus drivers, and even though the bill would not go into effect until the 1987 school year, they wished to start training this coming fiscal

year. At the suggestion of Representative Larson, Education Subcommittee Chairman, a zero fiscal note was prepared by Chairman Adams. He indicated that intent language would be added in the Department's budget to require the department to pay for the training with part of the $24 million they are requesting for pupil transportation.

REPRESENTATIVE JENKINS, SPONSOR OF THE BILL, informed members the bill had received hearings in several committees and was widely supported by school districts, school bus contractors and many individuals. He said the bill received community-wide support as well and encouraged its approval. He summarized the bill and changes made by the Transportation Committee.

DOROTHY JONES, MAYOR, MAT-SU BOROUGH, informed members they support CS HB 409 (Transportation) and urge its passage. Ms. Jones said parents like to have the feeling when their child gets on the bus they are entrusting them to a school district where safety is paramount. She encouraged the Committee to support the bill.

Representative Rieger MOVED to report out of committee CS HB 409 (Transportation) along with two zero fiscal notes dated 2/27/86 and 1/28/86. There being NO OBJECTION, it was so ordered and CS HB 409 (Transportation) was reported out of committee with a "do pass" recommendation and two zero fiscal notes.

HB 502

HB 502 - An Act relating to the disclosure of state tax assessments of the Department of Revenue.

COMMISSIONER NORDALE, DEPARTMENT OF REVENUE, referenced the Finance Committee Substitute work draft for HB 502, providing members with copies of suggested amendment changes (Attachment 1). Commissioner Nordale felt the bill would provide an excellent procedure to enable the Department of Revenue and the Legislature to establish, what she felt, the appropriate relationship with regard to the oversight of taxation matters, development of legislation, and conveyance of information necessary for informed decisions by the Legislature. According to Commissioner Nordale, the Department of Revenue had worked with members of the Committee to develop a bill which would address a number of issues and it was her feeling the Committee Substitute was the best draft obtainable at the time. She noted the procedure established in the bill was closely patterned after the federal procedure establishing the relationship between the U.S. Department of Treasury, IRS and Congress. Commissioner Nordale said due to the fact state tax laws are patterned closely after federal law, seeking federal basis for the procedure offers the Department precedential value.

Commissioner Nordale referenced the proposed amendments discussing each one briefly. She said their amendment number one, would insert on page 2, line 21 a new subsection 2, dealing with confidentiality of information. She noted their concern that all employees of the Legislature be covered by the requirement of confidentiality. Additionally, the Department recommended the deletion on page 4, line 4 of the language which would read "but the committee may not designate an employee or agent who has responsibility for a different investigations of the same taxpayer or third party". She said their reading of the proposed language is that it implies the Legislature could not adequately screen its own employees and the language suggested constriction on the Legislature to employ individuals who are not appropriate.

Amendment number 3, to insert at page 4, line 23 after "receipt", the word "safekeeping", would provide a mechanism for retaining confidential information as confidential according to Commissioner Nordale. She said it is a word used in agreements between the State of Alaska, Department of Revenue, and U.S. Internal Revenue Service and is frequently used in statute. The last amendment, to insert at page 4, line 26 a new subsection (k) to read: " (k) Nothing in this section permits the disclosure to the legislature of confidential information provided by the Internal Revenue Service under exchange agreements with the department" was specifically asked for by the IRS for inclusion in the bill. Commissioner Nordale encouraged the adoption of the new subsection to avoid any jeopardy of exchange agreements between the Department and Internal Revenue Service. There was discussion concerning the proposed amendments.

ROBERT VAN HOOK, TAX COUNSEL, SOHIO ALASKA PETROLEUM COMPANY, provided members with testimony outlining reasons for their opposition to HB 502 (Copy of testimony is on file).
He said HB 502 would empower a legislative panel to perform functions properly delegated to the Department of Revenue and would increase the likelihood of litigation. Mr. Van Hook said despite sanctions against disclosure of confidential information, SOHIO expressed concern that unauthorized disclosure of confidential information would result and such disclosure would cause material competitive prejudice.

Representative Szymanski questioned the effects of the bill on SOHIO regarding the tax audit process. Mr. Van Hook said the scope of the review is not identified at any time. He said they read the bill to say information could be submitted as soon as they file a return. He said there are no limitations outlined in the legislation as to what powers are included in the oversight function. He said federal law is more specific. There was discussion concerning SOHIO's internal controls for maintaining confidential information in-house.

Representative Cotten discussed SOHIO's concern that a Legislative panel could exceed permissible oversight functions, raising new issues and performing a secondary review of proposed audit settlements essentially performing an executive branch function. Mr. Van Hook discussed the concern in relationship to proposed settlements and settlement agreements. There was discussion concerning language contained in sections 2 and 3 dealing with disclosure and legislative immunity.

Representative Pourchot referred to SOHIO's proposal that HB 502 provide for notice to the taxpayer that the taxpayer's records have been requested and which records had been turned over to the legislative committee. He asked if there was a problem with this type of inclusion feeling it a reasonable request. Commissioner Nordale said they would discourage consideration of the amendment as the general practice is to avoid specific identity with respect to information so long as it does not diminish the real information which is necessary. Representative Pourchot did not see the notice having to be made prior to receipt of information by the Committee except in a case where information was being requested for a specific taxpayer. There was further discussion concerning types of information necessary for review.

(Tape Change, Side 2)

Representative Cotten MOVED AND ASKED UNANIMOUS CONSENT that the Committee adopt the Committee Substitute work draft dated 2/27/86 for HB 502. There being NO OBJECTION, it was so ordered.

Representative Binkley expressed his support of HB 502 noting the authority to review assessments is powerful and the Legislature needs to be careful as to assigning the authority to Legislative Committees. He MOVED to delete on page 3, line 24 after "may" the words "with the written concurrence of the speaker of the House of Representatives or the president of the Senate" and insert the words "by simple resolution" and on page 3, line 29, delete the word "request" and insert "resolution". There was discussion concerning the effects of the amendment in relationship to a committee of the legislature.

RECESS

Chairman Adams called a recess at 2:25 p.m. He recalled the meeting to order at 2:27 p.m. informing members he would continue to accept motions and conceptual motions with the intent the subcommittee would meet, incorporate said motions into a new draft Committee Substitute, and bring the bill before the Committee on Monday, March 3.

Representative Cotten MOVED AND ASKED UNANIMOUS CONSENT to adopt amendments number one through four as presented by the Department of Revenue and contained in Attachment 1. There being NO OBJECTION, it was so ordered.

Representative Pourchot MOVED to adopt a "conceptual amendment" to be contained on page three, line 29 which would state "notification shall be provided to a particular taxpayer when tax return information for that taxpayer has been requested". There being NO OBJECTION, it was so ordered.

ADJOURNMENT

The meeting adjourned at 2:30 p.m.

(Tape HFC 86-19, Side 1)
(Tape HFC 86-19, Side 2, #000-#194)

(8) who is required under ch. 20 of this title to furnish proof of financial responsibility and who has not done so. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Stated in Commercial Fisheries Entry Comm'n v. Apokedak, Sup. Ct. Op. No. 2011 (File No. 4464), 606 P.2d 1255 (1980).

Collateral references. — 5 Am. Jur., Automobiles, § 151.

Sec. 28.15.041. Classification of drivers' licenses. (a) The commissioner shall provide by regulation for the classification of drivers' licenses. The regulations shall specify license classifications which are reasonably necessary for the safe operation of the various types, sizes and combinations of motor vehicles. The regulations shall also establish medical standards, standards of driving conduct and proficiency, and other standards governing the issuance, renewal, or denial of these licenses. The department may examine each applicant to determine his qualifications according to the class of license applied for, and upon issuing a driver's license the department shall indicate on the license the classification for which an applicant for a license has qualified by examination. The regulations and any subsequent modifications under this section become effective only if approved by a concurrent resolution adopted by a majority vote of each house of the legislature.

(b) No person may drive a school bus transporting school children, or a bus transporting school-age children or another motor vehicle when in use for the transportation of persons for compensation until he has applied for and has been issued a license for that purpose under (a) of this section. The department may not issue a license under this subsection unless the applicant is at least 19 years of age, has had at least one year of driving experience, and the department is satisfied as to the applicant's good character, competence and fitness to be licensed; nor may the department issue the license until proper application has been made and all required driving, written, and physical examinations have been successfully completed. A license issued under this subsection expires on September 1 of the year following issuance. Application for renewal may be made by submitting to the department the results of a current physical examination and paying the required fee. (§ 19 ch 178 SLA 1978)

Sec. 28.15.051. Instruction permit, temporary driver's license and special driver's permit. (a) Except as provided in (b) of this section, a person who is at least 14 years of age may apply to the

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Chapter 07. Administration of Public Schools.

Article
1. Department of Education (§§ 14.07.020, 14.07.058)

Article 1. Department of Education.

Section
20. Duties of the department
58. Alaska School Activities Association

Sec. 14.07.020. Duties of the department. (a) The department shall

(1) exercise general supervision over the public schools of the state except the University of Alaska;

(2) study the conditions and needs of the public schools of the state and adopt or recommend plans for the improvement of the public schools;

(3) provide advisory and consultative services to all public school governing bodies and personnel;

(4) prescribe by regulation a minimum course of study for the public schools;

(5) establish, in coordination with the Department of Health and Social Services, a program for the continuing education of children who are held in detention facilities in the state during the period of detention;

(6) accredit those public schools which meet accreditation standards prescribed by regulation by the department; these regulations shall be adopted by the department and presented to the legislature during the first 10 days of any regular session, and become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house;

(7) prescribe by regulation, after consultation with the state fire marshal and the state sanitarian, standards in addition to the requirements of AS 18.15.145 that will assure healthful and safe conditions in the public and private schools of the state including a requirement of physical examinations and immunizations in pre-elementary schools; the standards for private schools may not be more stringent than those for public schools;

(8) exercise general supervision over pre-elementary schools that receive direct state or federal funding;

(9) provide accredited elementary and secondary correspondence study programs available to any Alaskan through a centralized office of correspondence study;

(10) accredit private schools which request accreditation and which meet accreditation standards prescribed by regulation by the depart-

ment; nothing in this paragraph authorizes the department to require religious or other private schools to be licensed;

(11) review plans for construction of new public elementary and secondary schools and for additions to and major rehabilitation of existing public elementary and secondary schools and, in accordance with regulations adopted by the department, determine and approve the extent of eligibility for state aid of a school construction project begun after July 1, 1978; for the purposes of this paragraph, "plans" include educational specifications, schematic designs, and final contract documents;

(12) provide educational opportunities in the areas of vocational education and training, basic education, and fire-service training to individuals over 16 years of age who are no longer attending school;

(13) administer the grants awarded under AS 14.11.020.

(b) In this section "pre-elementary school" means a school for children ages three through five years if the school's primary function is educational. (§ 1 ch 98 SLA 1966; am § 2 ch 69 SLA 1971; am § 6 ch 104 SLA 1971; am § 1 ch 190 SLA 1975; am § 6 ch 50 SLA 1977; am §§ 1-3 ch 126 SLA 1978; am § 10 ch 147 SLA 1978; am § 1 ch 86 SLA 1979; am § 24 ch 59 SLA 1982; am §§ 1, 2 ch 92 SLA 1982; am § 2 ch 11 SLA 1984; am § 1 ch 32 SLA 1984)

Effect of amendments. — The first 1984 amendment designated the previously undesignated introductory language as subsection (a) and added subsection (b). The 1984 amendment also, in subsection (a), substituted "state fire marshal and the state sanitarian" for "Department of Health and Social Services" and inserted "including a requirement of physical examinations and immunizations in pre-elementary schools" in paragraph (7); in paragraph (8), deleted "In cooperation with the Department of Health and Social Services" at the beginning and substituted "pre-elementary schools that receive direct state or federal funding" for "public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080(4); pre-elementary schools in this paragraph means schools for children ages three through five years when the school's primary function is educational"; and, in paragraph (10), deleted "elementary and secondary" following "accredit private" and added "nothing in this paragraph authorizes the department to require religious or other private schools to be licensed" at the end.

The second 1984 amendment inserted "in addition to the requirements of AS 18.15.145" in paragraph (7).

Sec. 14.07.058. Alaska School Activities Association. (a) There is created within the Department of Education the Alaska School Activities Association.

(b) The purposes of the association are to provide for the efficient governing of interscholastic activities through the promotion of those activities and other interschool contests or programs sanctioned by the association and to assist in the promotion of those other activities and interests as it may from time to time elect.

13 AAC 06.060. PERIODIC INSPECTION REQUIRED. Annulled under AS 44.62.320, passed 5/26/76.

13 AAC 06.070. OFFICIAL INSPECTION STATIONS. Annulled under AS 44.62.320, passed 5/26/76.

13 AAC 06.080. DISPLAY OF CERTIFICATE OF INSPECTION. Annulled under AS 44.62.320, passed 5/26/76.

13 AAC 06.090. PROHIBITED PRACTICES. (a) No person may perform repairs or adjustments upon a vehicle that are not in accord with acceptable or customary repair practices or not in accordance with the provisions of this title or applicable statutes.

(b) No person may willfully conceal or misrepresent the identity or condition of a vehicle, nor make a false or misleading statement or present false evidence in connection with the inspection, repair, or adjustment of a vehicle.

(c) Annulled under AS 44.62.320, passed 5/26/76.

(d) Annulled under AS 44.62.320, passed 5/26/76.

(e) Annulled under AS 44.62.320, passed 5/26/76.

(f) No police officer or other person authorized by the department to conduct inspections under this chapter may order, direct, recommend, or influence the repair or adjustment of a vehicle or its equipment by a particular person, or perform repair or adjustment at a roadside inspection area for compensation, nor may a person solicit in any manner, at a roadside inspection area or upon a surrounding or an adjacent highway, any repair or adjustment business for compensation. (Eff. 12/31/69, Reg. 31; am 7/5/75, Reg. 54)

Authority: AS 28.05.030
AS 28.35.230

Editor's Note: The penalty for violation of traffic regulations is provided by statute. Re: AS 28.35.230.

CHAPTER 08.
DRIVER LICENSING AND SAFETY RESPONSIBILITY

Article

1. School Bus Driver Permit (13 AAC 08.005–13 AAC 08.060)
2. Safety Responsibility (13 AAC 08.075–13 AAC 08.110)
3. Classified Driver's Licenses (13 AAC 08.140–13 AAC 08.160)
4. Traffic Violations Demerit Point System (13 AAC 08.210–13 AAC 08.290)
5. Standards for Licensing of Drivers (13 AAC 08.310–13 AAC 08.400)
6. Mandatory Auto Insurance (13 AAC 08.410–13 AAC 08.440)

ARTICLE 1.
SCHOOL BUS DRIVER PERMIT

Section

05. Application of regulations
10. Denial of permit
15. Application requirements
20. Examination of applicants
25. Medical standards
30. Permit to be carried and exhibited
35. Restricted permit
40. Cancellation of permit
45. Suspension or revocation of permit
50. Period of suspension or revocation
55. Re-examination
60. Definitions

13 AAC 08.005. APPLICATION OF REGULATIONS. 13 AAC 08.005 – 13 AAC 08.060 apply to a person who operates a school bus when it is transporting a child, other than his own, to or from school or a school activity. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.010. DENIAL OF PERMIT. (a) A school bus driver permit may not be issued to an applicant who

(1) has been convicted with such frequency of serious traffic offenses as to indicate a disregard for traffic laws and the safety of others;

(2) has not been licensed to operate a motor vehicle for at least one year before the date of application;

(3) is not at the time of application validly licensed to operate a motor vehicle in Alaska or does not have a valid unlimited Alaska driver's license in his possession;

(4) has not attained the age of 19;

(5) has been convicted of any of the following offenses within 20 years of the time of application: sexual abuse of a minor; sexual assault; incest; unlawful exploitation of a minor; contributing to the delinquency of a minor; felony offense involving distribution of prohibited drugs; or promoting prostitution in the first or second degree.

(b) Repealed 5/2/81.
(Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)
Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.015. APPLICATION REQUIREMENTS. Applicants for an original school bus driver permit shall, at the time of application, furnish the following to the examiner in order for the application to be accepted:

(1) a completed health history on a form prescribed by the Department of Public Safety;

(2) two sets of applicant fingerprint cards.
(Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)
Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.020. EXAMINATION OF APPLICANTS. (a) The school bus driver's written examination may not be administered to an applicant more than twice during any 12 consecutive months, and a one-week waiting period is required between the two tests allowed. A score of 80 is required to pass, and the test shall be comprised of questions concerning

(1) traffic laws and regulations; and

(2) school bus drivers' operating regulations promulgated by the Department of Education.

(b) The driving examination shall be administered in the type of equipment which the applicant is to operate, and the equipment shall be furnished by the applicant or his employer. The driving examination may not be administered to an applicant more than twice during any 12 consecutive months, and a one-week waiting period is required between the two tests allowed. A score of less than 31 is required to pass, and the examination shall consist of at least the following maneuvers:

(1) with engine off, starting engine and moving into the rest of the required maneuvers;

(2) two right-hand turns and two left-hand turns;

(3) where practical and possible, a railroad crossing stop;

(4) the use of special lighting and other special equipment required by regulation;

(5) movement through intersections controlled by signs or signals, unless such signs or signals are not available in the area of the examination;

(6) simulated loading and unloading of children.

(c) Where it is impractical for the department to administer the driving test, and upon agreement with the employer or other person acceptable to the department, the driving examination may be administered by the employer or other person acceptable to the department who shall certify to the proficiency of the applicant's driving skills by signing the examination form as the "examiner." Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.025. MEDICAL STANDARDS. (a) A school bus driver permit may not be issued to a person who does not meet the following minimum standards as certified by a medical doctor, a physician's assistant licensed by the State Medical Board, or an advanced nurse practitioner licensed by the Board of Nursing, on the form required in 13 AAC 08.015(1):

(1) the person must be free of communicable disease at the time of examination;

(2) the person must have a chest X-ray or "skin test" that shows the person to be free of tuberculosis;

(3) the person's visual acuity may not be less than 20/30 in one eye and 20/200 in the other eye, either with or without corrective lenses;

(4) the person may not have monocular vision;

(5) the person may not have a history of fainting spells, dizziness, convulsions, epilepsy, or cardiac ailment during the 12 consecutive months immediately preceding the examination;

(6) the person must have normal use of both hands, arms, and feet;

(7) the person may not have a physical disability that would prevent safe operation of a school bus under all driving conditions;

(8) the person may not presently be under treatment for excessive use of alcohol or drugs.

(b) Except as provided in (c) of this section, a renewal of a school bus driver permit may not be granted unless the requirements of (a)(1) – (8) of this section are met.

(c) When a person has a "skin test" that does not show the person to be free of tuberculosis, a chest X-ray is not required under (a)(2) of this section if within 18 months before the skin test the person had a chest X-ray that showed him to be free of tuberculosis. Nothing in this section, however, prevents the person conducting the examination from concluding that the X-ray is necessary for diagnostic purposes and requiring that an X-ray be taken.

(d) A report of an examination performed under this section by a physician's assistant or an advanced nurse practitioner must be signed by that person, and include the name of the collaborating physician. (Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78; am 8/12/82, Reg. 83)

Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.030. PERMIT TO BE CARRIED AND EXHIBITED. A driver of a school bus shall have in his immediate possession his school bus driver permit and his driver's license when operating a school bus transporting a child to or from school or a school activity and shall, upon the request of a police officer, display and temporarily give to the police officer for examination his school bus driver permit. (Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)

Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.035. RESTRICTED PERMIT. A school bus driver permit shall, depending upon the type of vehicle in which the driving examination was given, be restricted as follows:

(1) if the examination was given in a school bus with a manufacturer's rated capacity of less than 24, the permit shall be restricted on its face to "15 passengers or less";

(2) if the examination was given in a school bus with a manufacturer's rated capacity of 24 or more, the permit shall be unrestricted and allows operation of any school bus. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.040. CANCELLATION OF PERMIT. The department will, in its discretion, cancel a school bus driver permit for the following:

(1) unintentional, erroneous information or improper application;

(2) repealed 5/2/81.

(Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)

Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.045. SUSPENSION OR REVOCATION OF PERMIT. (a) A school bus driver permit will, in the department's discretion, be suspended by the department for

(1) driving a school bus in violation of the permit restrictions;

(2) conviction of a traffic offense which results in a limitation being placed on the driver's license, except an offense which requires revocation under (b) of this section;

(3) conviction of an offense which results in suspension or revocation of the driver's license, unless suspension or revocation is for a conviction of an offense which requires revocation under (b) of this section.

(b) A school bus driver permit will be revoked for

(1) conviction of driving while intoxicated;

(2) conviction of reckless driving;

(3) conviction of a third offense of driving in violation of permit restrictions;

(4) any reason that would be grounds for denial under 13 AAC 08.010;

(5) knowingly making a false statement or concealing a material fact or otherwise committing a fraud in an application for a permit;

(6) repealed 5/2/81.
(Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)
Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.050. PERIOD OF SUSPENSION OR REVOCATION. (a) The period of suspension of a school bus driver permit is as follows:

(1) violation of permit restrictions – first offense 30 days, second offense six months;

(2) for the duration of a limitation placed on the driver's license as provided by 13 AAC 08.045(a)(2);

(3) for the duration of the suspension or revocation of the driver's license as provided by 13 AAC 08.045(a)(3).

(b) the period of revocation of a school bus driver permit is as follows:

(1) one year for first conviction of driving while intoxicated or reckless driving, and permanent revocation for conviction of a second offense or the first offense if it occurred while driving a school bus;

(2) one year for third offense of driving in violation of permit restrictions;

(3) until applicant is eligible for reissuance if it is for a reason which would be grounds for denial under 13 AAC 08.010;

(4) one year for knowingly making a misrepresentation in an application for a permit;

(5) repealed 5/2/81.
(Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)
Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.055. RE-EXAMINATION. Upon written request of a police officer, the Department of Education, or the employer of a school bus driver, the department will, in its discretion, upon giving 10 days' notice to the school bus driver, require him to submit to a part or all of the examination requirements. After examination the department will, in its discretion, if the school bus driver did not satisfactorily pass examination, revoke his permit until the examination is passed. Refusal or neglect to submit to re-examination will result in revocation of the permit until the examination is satisfactorily completed. (Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)
Authority: AS 28.05.011
AS 28.15.041

13 AAC 08.060. DEFINITIONS. In 13 AAC 08.005 – 13 AAC 08.060, unless context requires otherwise

(1) "convicted with such frequency of serious traffic offenses" means one conviction of driving while intoxicated or reckless driving during the 12 months immediately before application, or four convictions for any other violation of traffic law or regulations while driving a motor vehicle during the 24 months immediately before application, or two or more convictions for driving while intoxicated or reckless driving at any time before application;

(2) repealed 5/2/81;

(3) repealed 5/2/81;

(4) "permit" means a school bus driver permit issued by the department;

(5) "unlimited Alaska driver's license" means an Alaska driver's license which is not limited under the provisions of AS 28.15.201;

(6) "department" means Alaska Department of Public Safety. (Eff. 12/31/69, Reg. 31; am 5/2/81, Reg. 78)
Authority: AS 28.05.011
AS 28.15.041

Editor's Note: The regulations of the Department of Education governing the operation of school buses may be found in 4 AAC 01.100 – 4 AAC 01.104.

ARTICLE 2.
SAFETY RESPONSIBILITY

Section
75. (Repealed)
80. Application of regulations
85. Reports required
90. Security deposit
95. Release from liability
100. Agreement for payment of damages
105. Form of notice
110. Proof of financial responsibility for the future

13 AAC 08.075. DECLARATION OF INTENT. Repealed 1/26/79.

13 AAC 08.080. APPLICATION OF REGULATIONS. 13 AAC 08.080 – 13 AAC 08.110 apply to

(45) "safety zone" means the area of space officially set apart within a roadway for the exclusive use of pedestrians, and which is protected or marked by signs which are plainly visible at the time it is used as a safety zone;

(46) "school bus" means every motor vehicle that complies with the color and identification requirements set forth in the edition of Minimum Standards for School Buses and Minimum Standards for Alaska School Buses, which is in effect on the effective date of this section, and is used to transport children to or from school or in connection with school activities; it does not include buses operated by common carriers for the urban transportation of school children;

(47) "semitrailer" means a vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property, drawn by a motor vehicle, and constructed so that part of its weight rests upon or is carried by another vehicle;

(48) "sidewalk" means that portion of a street between the curblines or the lateral lines of a roadway and the adjacent property lines, and intended for use by pedestrians;

(49) "snowmobile" means a motor vehicle designed to travel over ice or snow, and supported in part by skis, belts, cleats, or low-pressure tires;

(50) "solid rubber tire" means a tire of rubber or other resilient material which does not depend upon compressed air for the support of the load;

(51) "specially constructed vehicle" means vehicle required to be registered under A 28.10, which is not originally constructed unde a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and which is not materially altered from its original construction;

(52) "special mobile equipment" means a vehicle which is not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including but not limited to ditch digging apparatus, well boring apparatus, construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifers, earthmoving carryalls and scrapers, power shovels and drag lines, and self-propelled cranes and earthmoving equipment; it does not include house trailers, mobile homes, off-highway vehicles, dump trucks, truck-mounted transit mixers, cranes, or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(53) "stand" or "standing" means the halting of a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in receiving or discharging passengers,

(54) "stop" or "stopping" means a complete cessation from movement, or the halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal;

(55) "street" means a highway as defined in AS 28;

(56) "through highway" means a highway or portion of highway on which vehicular traffic has preferential right-of-way, the entrances to which vehicular traffic from intersecting highways is required by law to yield the right-of-way to vehicles on the highway in obedience to a stop sign, yield sign or other official traffic-control device;

(57) "tow car" means a motor vehicle which is equipped for towing vehicles by means of a crane, hoist, tow bar, tow line or dolly, and is used primarily for towing or otherwise rendering assistance to other vehicles;

(58) "trailer" means a vehicle, with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle; it includes semitrailers and pole trailers;

(59) "transporter" means a person in the business of delivering vehicles which are required

13 AAC 04.097. SPECIAL SCHOOL BUS LIGHTING EQUIPMENT. (a) A school bus must, in addition to other equipment and distinctive markings required by this chapter, be equipped with signal lights mounted as high and as widely spaced laterally as practicable, which must display to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. The lights must be visible at 500 feet in normal sunlight. The alternately flashing red lights must be illuminated by the driver of the school bus when, but only when, the bus is stopped for the purpose of receiving or discharging school children, except that the lights may not be illuminated in

(1) a designated school bus loading or unloading area where the bus is entirely off the roadway and a child being received into or discharged from the bus is not required to cross the roadway; or

(2) an intersection or other place where traffic is controlled by a traffic-control signal or by a police officer.

(b) A school bus must be equipped with yellow signal lights mounted near each of the four red lights required in (a) of this section and at the same level but closer to the vertical centerline of the bus. These lights must display two alternately flashing yellow lights visible to the front and rear of the bus for a distance of at least 500 feet in normal sunlight. The yellow flashing lights must be illuminated by the school bus driver at least 100 feet, but not more than 500 feet, before every stop at which the alternately flashing red lights are illuminated, at which time the alternately flashing yellow lights authorized by this section must be turned off.

(c) Every school bus must have indicator lights readily visible to the driver of the bus, which automatically indicate to the driver of the bus when any of the alternately flashing lights authorized by this section are illuminated. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

Editor's Note: This section is based partially on the former 13 AAC 04.090(b) and 150(c)–(e).

13 AAC 04.247. COLOR AND SPECIAL EQUIPMENT ON SCHOOL BUSES. (a) Every school bus used for pupil transportation must be painted National School Bus Chrome Yellow (National Bureau of Standards Color #1305). No other vehicle may display this color. A bus originally painted and used as a school bus which is no longer used as a school bus must be painted a color other than National School Bus Chrome Yellow before it may be driven on a highway or vehicular way or area.

(b) When transporting a school child to or from a school activity, a school bus must display signs as follows:

(1) the words "SCHOOL BUS" in black letters at least eight inches in height on a contrasting background, plainly visible to the front and rear; and

(2) the words "UNLAWFUL TO PASS WHEN RED LIGHTS FLASH" in black letters at least four inches but not more than six inches in height on a white background on the rear of the bus.

(c) A school bus with a manufacturer's rated capacity of 24 or more students must be equipped with a stop arm mounted on the left side of the vehicle. The lights on the stop arm must be automatically activated with the red flashing lights required by sec. 97(a) of this chapter. The stop arm must be at least 17 inches high at the side opposite the hinge and, when fully extended, extend 19 inches from the bus. The word "STOP" must be displayed on the stop arm in white letters on a red background, and two alternately flashing red lights must be mounted, one above the other, on the left side of the arm, which must flash and be visible to the front and rear when the arm is fully extended.

(d) The signs required by (b) of this section may not be displayed nor may the stop arm required by (c) of this section be extended on a school bus during times it is being used to transport persons not under the supervision of a school. (Eff. 6/28/79, Reg. 70)

Authority: AS 28.05.011

Editor's Note: This section is based in part on 13 AAC 04.150.

HB

436

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

May 2, 1986

TO: All Committee Members

FROM: Committee Staff

RE: CS HB 436 (Rules), "An Act requiring a properly equipped and staffed caboose on certain trains."

CS HB 436 would require a caboose on trains that exceed 1,000 feet in length, excluding 1) a train made of only locomotives and passenger coaches; 2) a train 1,825 feet in length composed of flat cars or trailers or containers on flat cars, on which toxic materials are carried in the first 1000 feet of the train; 3)or when an emergency situation prevents compliance.

A defective car may be entrained behind the caboose and moved to the nearest repair point if necessary.

Each violation of this section is punishable by a find of not less than $500 or more than $1000.

The Alaska Railroad does not view this as a safety issue, but more as a collective bargaining issue. The railroad would like this to be a matter of contract negotiations rather than a legislatively mandated decision.

On the other hand, the United Transportation Union believes that there is a geniune issue of safety involved and for this reason should be legislatively mandated.

The backup information in the committee packets takes up each of these positions.

The committee staff has a drafted committee substitute which modifies the exceptions to include trains with baggage cars, increases the length of flat cars with containers or trailers to 2500 feet in length and provides that if the railroad and the appropriate collective bargaining unit do not include provisions relating to cabooses on trains in their agreements, then cabooses are not necessary.

Offered: 4/2/86
Referred: Rules

Original sponsors: Cato, Hurley,
Koponen, et al.

IN THE HOUSE BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 436 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring a properly equipped and staffed caboose on certain trains."

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

* Section 1. AS 42.30 is amended by adding new sections to read:

ARTICLE 6. CABOOSE REQUIRED.

Sec. 42.30.250. CABOOSE REQUIRED. (a) A train that exceeds 1,000 feet in length including locomotives shall have a properly maintained and equipped caboose, that is staffed by a qualified train conductor or brakeman, attached as the rear car while the train is moving over tracks outside a yard or terminal.

(b) This section applies to a railroad that transports goods or passengers for a fee.

Sec. 42.30.260. EXCEPTIONS. (a) AS 42.30.250 does not apply

(1) to a train composed only of locomotives and passenger coaches;

(2) to a train not exceeding 1,825 feet in length, including locomotives, composed only of trailer on flat car equipment or container on flat car equipment provided that any hazardous or toxic materials on the train are located in the first 1,000 feet of the train as measured from the lead locomotive; or

(3) if an emergency occurs in route that prevents compliance with that section.

(b) Notwithstanding AS 42.30.250, a defective car that cannot be entrained except behind the caboose may be attached as the rear car on

a train and moved to the nearest terminal where it can be repaired.

Sec. 42.30.270. PENALTY. Violation of AS 42.30.250 is an offense punishable by a fine of not less than $500 and not more than $1,000. Each violation is a separate offense.

Introduced: 5/9/85
Referred: State Affairs
and Transppotation

IN THE HOUSE BY CATO

HOUSE BILL NO. 436

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act requiring a properly equipped and staffed caboose on certain trains."

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

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(1) to a train composed only of locomotives and passenger coaches; or

(2) if an emergency occurs in route that prevents compliance with that section.

(b) Notwithstanding AS 42.30.250, a defective car that cannot be entrained except behind the caboose may be attached as the rear car on a train and moved to the nearest terminal where it can be repaired.

Sec. 42.30.270. PENALTY. Violation of AS 42.30.250 is an offense punishable by a fine of not less than $500 and not more than $1,000. Each violation is a separate offense.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation Committee 3/6/86, 7:00 am
House State Affairs Committee 2/14/86, 3:00 pm
House Rules Committee 4/1/86, 8:01 am

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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JUNEAU, ALASKA 99811
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May 6, 1986

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: CS for HB 436

Dear Mr. Call:

I would like to call your attention to two typographical errors in our bill review letter to you dated May 2, 1986.

On page 1 and elsewhere in our letter, the bill under review is referred to as HB 436. The more accurate identification of the bill reviewed is CS for HB 436. (A copy of CS for HB 436, the bill we reviewed in our May 2 letter, is attached.)

On page 2, approximately nine lines up from the bottom, a reference is made to HB 341. The intended reference here should have been to CS for HB 436.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Jack B. McGee
Assistant Attorney General

JBM:ebc
Enclosure

Offered: 4/2/86
Referred: Rules

Original sponsors: Cato, Hurley,
Koponen, et al.

IN THE HOUSE BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 436 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring a properly equipped and staffed caboose on certain trains."

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

* Section 1. AS 42.30 is amended by adding new sections to read:

ARTICLE 6. CABOOSE REQUIRED.

Sec. 42.30.250. CABOOSE REQUIRED. (a) A train that exceeds 1,000 feet in length including locomotives shall have a properly maintained and equipped caboose, that is staffed by a qualified train conductor or brakeman, attached as the rear car while the train is moving over tracks outside a yard or terminal.

(b) This section applies to a railroad that transports goods or passengers for a fee.

Sec. 42.30.260. EXCEPTIONS. (a) AS 42.30.250 does not apply

(1) to a train composed only of locomotives and passenger coaches;

(2) to a train not exceeding 1,825 feet in length, including locomotives, composed only of trailer on flat car equipment or container on flat car equipment provided that any hazardous or toxic materials on the train are located in the first 1,000 feet of the train as measured from the lead locomotive; or

(3) if an emergency occurs in route that prevents compliance with that section.

(b) Notwithstanding AS 42.30.250, a defective car that cannot be entrained except behind the caboose may be attached as the rear car on

a train and moved to the nearest terminal where it can be repaired.

Sec. 42.30.270. PENALTY. Violation of AS 42.30.250 is an offense punishable by a fine of not less than $500 and not more than $1,000. Each violation is a separate offense.

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 338-6284

819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

May 2, 1986

Dixie Hudish
AFL-CIO Legislative
Representative

TESTIMONY ON CS HB 436 "Caboose Bill"

Mr. Chairman, members of the Committee:

For the record, my name is Dixie Hudish and I'm here representing the Alaska State AFL-CIO.

The Alaska State AFL-CIO wishes to go on record in support of CSHB 436.

This bill which requires the Alaska Railroad to properly equip and staff a caboose on certain trains, is essentially and unequivocably a safety issue. The Alaska Railroad management, in their previous testimony before the House State Affairs and Transportation Committees, would have us believe otherwise, as they state the Alaska Railroad Corporation has already been directed by the Legislature to provide a safe railroad operation. We contend it is one thing to direct the Alaska Railroad to run a safe operation and it is another thing to legislate safe operations..

The Alaska Railroad management also contends that the legislature should not be interfering with how they run the railroad. Let me assure you that when the Alaska Railroad Coproration Act was established, the residents of Alaska did not "give up" their legilative ability to regulate rail safety. Uppermost, we should keep in mind

that the Alaska Railroad is owned by the State and the right to regulate rail safety is the State of Alaska's responsibility. The State should do no less than to insure not only the safety of its employees but of the public.

Many of you have heard that modern technology now provides various automated devices that are supposed to reduce the risk of operating cabooseless trains, yet all these devices cannot replace the manned caboose, as was clearly pointed out by a Federal Judge in Nebraska in a court decision issued in May, 1985. Judge Urbom concluded in his decision that there is ample evidence that a crew member at the end of a train may see a safety threat that the electronic detector cannot see. The State had shown that detectors are fallible, that in the past they have failed to detect problems that the caboose crew was able to discover before they led to derailments and that the retention of the manned caboose plays a real role in the detection of equipment defects before they can cause derailments.

With increased transportation of hazardous and toxic materials on the Alaska Railroad, the safety of the public demands the stiffest assurance of rail safety on our trains. As we all know, it only takes one derailment incident involving hazardous and toxic materials to affect an entire community. The AFL-CIO is not saying that keeping cabooses on trains will insure no accidents. We are saying, that requiring cabooses on certain trains over 1,825 feet in length, with insurance that hazardous and toxic materials will be carried up front on the first 1,000 feet of the train, will certainly decrease the possibility of an incident.

Further, the Alaska Railroad management pointed out in their previous testimony before the House State Affairs Committee, that eliminating cabooses would be an exonomic saving factor. I would like to reply by quoting Craig Stoskopf, Safety Representative for the United Transportation Union in his letter to the Anchorage Daily Times, as I couldn't say it better. As quoted,

> "an employee spotting trouble carly can mean the difference between an incident and disaster costing millions of dollars and loss of life. Any short term cost savings would be instantly nullified in such a disaster."

We do not believe it is worth the dollars in labor costs to the Alaska Railroad to compromise the safety of the public and the train crew involved.

With this, the Alaska State AFL-CIO urges the Senate Transportation Committee to support CSHB 436.

Thank you

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Dave Rogers
ATTNY

Pouch V
Juneau, Alaska 99811

May 2, 1986

TO: Senator Coghill

FROM; EZ

Today the committee will hear CSHB 436 (Rules), the caboose bill. We will hear from Rep. Cato, the Railroad and the United Transportation Union. The Railroad will testify via teleconference.

(Hear from Cato first, then the Railroad , then the Union.)
****

AFter the testimony explain why you feel it should be a collective bargaining issue and draw the committee's attention to the committee substitute.

Paul Fischer will probably be amenable to moving the CS before the committee.

Buddy Grau 12 years-ARR
Ray Pinder 36 years-ARR
R. Palmer 33 years ARR
Gerald Maloney - 1947
Int. V. Pres - I.T.U.
Merel Franck (30 years Mg-Dispatcher) 49 years
Dixie Hudish AFL CIO

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 2, 1986

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: Legal Review of HB 436

Dear Mr. Call:

You have requested our review of HB 436 with particular reference to § 1207(a)(4) of the Alaska Railroad Transfer Act (45 U.S.C. § 1201 et seq.).

Proposed Sec. 42.30.250(a) of this bill requires any train operating in Alaska that is more than 1000 feet long to have "a properly maintained and equipped caboose" attached as the rear car and staffed by a train conductor or a brakeman. This requirement does not apply to trains operating inside a railroad yard or terminal area. 1/

Since the only trains now operating in Alaska are those of the Alaska Railroad Corporation, our review of this bill must begin with a brief discussion of the practical effect of this bill on the Alaska Railroad and then an analysis of § 1207(a)(4) of the Alaska Railroad Transfer Act as it relates to this effect.

Except for passenger trains, it is our understanding that the Alaska Railroad presently operates only one train, the

---

1/ Other exceptions to this requirement include 1) trains exclusively composed of passenger coaches, 2) trains exclusively composed of flat cars carrying trailers or containers, provided such trains do not exceed 1825 feet in length and provided that any hazardous or toxic material are located in the first 1000 feet of the train, and 3) an emergency that prevents compliance with this requirement. See Sec. 42.30.260 of the bill.

Arctic Fox, without a caboose. This train operates with a crew of two persons, both of whom are required to be in the locomotive unit of the train. 2/ Should this bill become law, the Arctic Fox would fall within the criteria of Sec 42.30.250 and would be required to operate with a caboose. This would mean at least one additional crew member for this train, i.e., a train conductor or a brakeman. The practical effect of HB 436 on the Alaska Railroad thus would be to specify a minimum number of crew members that must be employed in the operation of one of its trains. And herein lies a legal difficulty. § 1207(a)(4) of the Alaska Railroad Transfer Act (ARTA) exempts the Alaska Railroad from any "requirement of any state or local law which specifies the minimum number of crew members needed to operate a train." § 1207(a)(4) of ARTA reads as follows:

> The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

On its face, § 1207(a)(4) appears to conflict with HB 341. If in fact this is the case, it is clear that the federal law must prevail. 3/

Now as to whether there is a real conflict here, it might be argued that § 1204(a)(4) should be interpreted to refer only to state or local laws in existence at the time of the passage of ARTA and is not meant to include state laws that might be passed after the effective date of ARTA. 4/ Such an interpretation, if correct, would remove the possibility of a conflict with ARTA.

2/ This factual data is taken from the position paper submitted by the Alaska Railroad on HB 436 dated February 14, 1986.

3/ Article VI, § 2 of the U.S. Constitution (the Supremacy Clause) requires that when a state and federal law conflict, the state law must yield to the federal law. See Tarbles case, 80 U.S. 397 (1872).

4/ There is of course a vast difference in meaning between "any state or local law" and "any existing state or local law."

There are, however, two major difficulties with the view that § 1204(a)(4) refers only to "existing" state laws. The first is that this is not what § 1204(a)(4) says; its text is clear and unambiguous. There is no particular mystery or complexity surrounding the concept of "existing laws." If this concept had been the one intended by Congress, it surely would have used the word "existing" in the section. That Congress obviously did not leads one to the reasonable judgment that they did not intend to limit the prohibition of § 1204(a)(4) to existing state laws. This being the case, established canons of statutory interpretation do not comfortably permit one to read the word "existing" into § 1207(a)(4). See, 2A, N Singer, Sutherland Statutory Construction (4th ed. 1984), §§ 4601, 46.01; Also see Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983). Accordingly, it is our opinion that a court construing § 1207(a)(4) of ARTA would rely on its plain meaning and would interpret the phrase "any law" to encompass both existing state laws and state laws enacted after the passage of ARTA.

Secondly, it is difficult to make much sense of the meaning of § 1207(a)(4) if it is to be read to refer only to existing state laws. Such an interpretation would mean that if there were any such state laws in existence at the time of the passage of ARTA, a state legislature, at some time after the effective date of ARTA, could simply repeal and then reenact the law thereby avoiding the § 1207(a)(4) prohibition. Since a law is never presumed to codify unreasonableness or futility, an interpretation leading to such a result is not likely to be readily accepted by a court. See 2A, N. Singer, Sutherland Statutory Construction, (4th ed. 1984), § 45.12; Also see Markham v. Cabell, 326 U.S. 404 (1945) and Glover v. Marine Banks of Beaver Dam, 345 N.W.2nd 449 (Wisc. 1984).

In summary, it is our opinion that HB 436, should it be enacted into law, would more likely than not be found to conflict with § 1207(a)(4) of ARTA.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Jack B. McGee
Jack B. McGee
Assistant Attorney General

JBM:bap

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 2, 1986

SUBJECT: Requiring cabooses on certain trains (CSHB 436(Rules))

TO: Representative Bette Cato

FROM: Tamara Brandt Cook TBC
Director
Division of Legal Services

You have asked whether CSHB 436(Rules) requiring a properly equipped and staffed caboose on a train conflicts with 45 USC 1207(a)(4) (Alaska Railroad Transfer Act) which provides

> The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

Since CSHB 436(Rules) requires that a caboose be used on a train and that it be staffed by a train conductor or brakeman, an argument could be made that this constitutes a specification of the minimum number of crew members in violation of the federal law. However, I believe that the better interpretation would be that CSHB 436(Rules) does not violate the federal law because it does not directly specify a minimum number of total crew members on a train, but only that, whatever the number of crew members may be, one conductor or brakeman staff the caboose.

This interpretation is supported by the history behind enactment of 45 USC 1207(a)(4). That provision was intended to avoid a law in Alaska that very specifically established minimum crew sizes for trains and that was repealed under chapter 40, SLA 1983. Before its repeal AS 23.10.420 provided

> (a) No person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate a train or engine, outside of

yard limits, regardless of the form of energy used for propulsion, unless it meets the following requirements:

(1) a passenger train shall have at least a minimum passenger crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, one brakeman, and one flagman;

(2) a freight train shall have at least a minimum freight crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two brakemen;

(3) a light engine without cars shall have at least a minimum light engine crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), and one conductor.

(b) Except for hostling movements and duties as negotiated for each railroad company, no person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate an engine or locomotive, regardless of the form of energy used for propulsion, for switching cars or in transfer movements, unless every engine or locomotive is manned by a minimum crew consisting of one locomotive engineer, one conductor, and one brakeman.

(c) In this section "engine" includes connected, multiple units under single control

(d) A person who violates a provision of this section may be fined up to $500 upon conviction. Each violation constitutes a separate offense.

Since CSHB 436(Rules), while it contains a requirement regarding the staffing of trains, does not specify a minimum number of crew members like former AS 23.10.420 did and because the federal law prohibits the state from applying a law that ". . .specifies the minimum number of crew members . . ." but does not directly prohibit the state from enacting laws establishing other requirements regarding the staffing of trains, I believe that CSHB 436(Rules) could withstand a challenge if enacted. However, at the very best CSHB 436(Rules) would be open to a challenge under the federal law and it cannot be determined with certainty what the outcome to such a challenge would be.

TBC:mkr
m5/061

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OF COUNSEL
ERIC OLSON
DAVID J. WALSH

January 30, 1986

HAND-DELIVERED

Clinton Gray
Legislative Representative
UNITED TRANSPORTATION UNION

Re: Alaska Caboose Legislation

Dear Mr. Gray:

The State Legislature is currently considering Senate Bill 313 and House Bill 436, which provide for a properly equipped and staffed caboose on freight trains over 1,000 feet in length. The bill is a public safety measure. Four other states have passed legislation requiring cabooses on freight trains, they are Virginia, Oregon, Montana, and Nebraska. I understand also that many states are adopting regulations or considering legislation on this same issue. While this legislation is not a "jobs" bill, it may effect the minimum number of crew members required to be employed for the operation of a train. Accordingly, you have asked whether this state enactment would be prohibited under the Alaska Railroad Transfer Act. For the reasons set out below, it is my opinion that the Alaska caboose legislation now proposed does not violate, and is not prohibited by, the Alaska Railroad Transfer Act (ARTA).

ARTA at 45 U.S.C. §120-7(a)(4) provides that:

> (a)(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any state or local law which has specified the minimum number of crew members which must be employed in connection with the operation of such trains.

The question of whether this federal law prohibits Alaska from regulating its own railroad can be approached in a number of ways. I will begin with a review of the legislative history.

When construing the statute, the court will examine the language of the statute first. However, after reviewing the language of the statute itself, the court will then refer to the legislative history to gain insight that may be helpful in determining the statute's meaning. City and Borough of Sitka v. IBEW, 653 P.2d 332 (Alaska 1982). The wording of 45 U.S.C. §1207(a)(4) can be construed as prohibiting the State from enacting any legislation which impacts the number of crew members employed in connection with the operation of trains. However, the legislative history indicates that the legislative intent, was to exempt the Alaska Railroad only from "existing" laws.

At the time of the Alaska Railroad Transfer Act, Alaska law strictly regulated the minimum crews necessary for passenger trains, freight trains, light engines, etc. AS 23.10.420. ARTA clearly exempted the state-owned railroad from that law. But, did ARTA also exempt the Alaska Railroad from any future enactments? The legislative history provides clear guidance. A report of the Committee of Commerce, Signs and Transportation states as follows:

> Section 8 of the bill governs the application of various federal and state laws to the state-owned railroad after its transfer to the state. . . . In general the Committee believes that in the future this state-owned railroad should be treated like all other railroads subject to federal and state laws. . . . Third, the Committee believes it would be inappropriate for the federal government to dictate to the state how it should set up and operate the railroad beyond what generally applies to all rail carriers under existing laws. Report of Committee on Commerce, Signs and Transportation, S.Rep. No. 97-479, 97th Cong. 2d Ses. Calendar No. 862EG10-12, 20 (1982).

Emphasis added. The legislative history speaks specifically to "existing laws." The history notes that "in the future" the Alaska Railroad should be like other railroads. This is a clear indication that Congress, when enacting ARTA, intended to deal only with the laws that were on the books at the time, and did not intend to prohibit the State from future regulation of its wholly owned railroad.

Another rule of statutory construction is that statutes relating to the same subject matter should be read together as a

whole so that the total regulatory scheme is preserved. Nash v. State Commercial Fisheries, 679 P.2d 477 (Alaska 1984). In addition, federal statutes must be construed consistently with one another. Get Oil Out v. Exxon Corp., 586 F.2d 726 (9th Cir. 1978). These statutory guidelines mean that §1207(a)(4) of ARTA must be viewed in the context of other federal regulations concerning railroads. Federal law generally allows states to enact caboose legislation. Federal law in Alaska should be no different.

ARTA makes the state-owned railroad subject to the Interstate Commerce Commission and the federal Railroad Safety Act. 45 U.S.C. §421, et seq. The federal Railroad Safety Act states at 45 U.S.C. §434:

> A state may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time the secretary has adopted a rule, regulation, order, or standard covering the subject matter of such state requirements. A state may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard and when not incompatible with any federal law, rule, regulation, order, or standard and when not creating an undue burden on commerce. (Emphasis added.)

In Burlington Northern Railroad Co. v. State of Nebraska, C.B. 83-L423 (F.D.N.D., May 10, 1985), the court stated that because the Interstate Commerce Commission has not provided any guidance or any statutes regarding cabooses and the manning of cabooses, states are free to legislate in that area until the time that the Commission does regulate that area. Thus, in order for ARTA to be consistent with federal law, Alaska must be considered as having the right to pass safety measures concerning cabooses.

Even if Congress intended to exempt the state-owned railroad from future laws on crew size, it could not have intended that the state-owned railroad be exempt from state safety laws. In determining this kind of legislative intent the pre-enactment history is relevant, including the statutes in effect at the time that ARTA was passed. 2A Singer, N.J. Sutherland's Statutory Construction §48.03 (1984). In Section 1207(a)(4) and in the

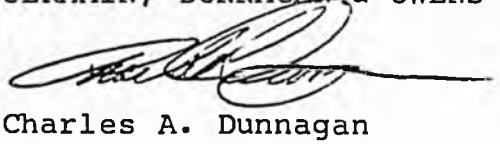
legislative history, there is no indication that the purpose was specifically to prevent featherbedding. However, looking at the law in effect at the time ARTA was passed, and discussing the matter with persons knowledgable in the industry, it is clear that the law required more employees than was necessary. Clearly, Section 1207(a)(4) was enacted to prevent featherbedding. Since the Alaska caboose legislation is a bona fide safety measure and not a featherbedding measure, then it will not be in conflict with Section 1207(a)(4), regardless of the fact that it has some impact on railroad manning. In this regard, it is instructive to note that the court in the North Dakota case found that the caboose legislation was reasonably related to the protection of the health and safety of the citizens of the state. Burlington Northern, supra at 7.

In researching this question, we have examined a number of other issues. I will not discuss in depth the work that we have done. However, we do not believe that Section 1207(a)(4) is a violation by Congress of Alaska's Tenth Amendment rights. See, Garcia v. San Antonio Metro Transit Authority, 105 S. Ct. 1005 (1985). In addition, it does not appear that Congress is prohibited from addressing Alaska's law on minimum sizes of crewmen in a bill that does not address that problem with regard to the other states in the Union. See generally, State of South Carolina v. Katzenbach, 383 U.S. 301 (1966), where the Supreme Court upheld the Voting Rights Act of 1965 that was imposed on three particular states.

If you have any questions or if I can be of any further assistance, don't hesitate to contact me at your convenience.

Sincerely,

JERMAIN, DUNNAGAN & OWENS



Charles A. Dunnagan

CAD/bh

Cook
4/30/86

Original sponsors: Cato, Hurley,
Kopanen, et al

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 436 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring a properly equipped and staffed caboose on certain trains."

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

* Section 1. AS 42.30 is amended by adding new sections to read:

ARTICLE 6. CABOOSE REQUIRED.

Sec. 42.30.400. CABOOSE REQUIRED. (a) A train that exceeds 1,000 feet in length including locomotives shall have a properly maintained and equipped caboose, that is staffed by a qualified train conductor or brakeman, attached as the rear car while the train is moving over tracks outside a yard or terminal.

(b) This section applies to a railroad that transports goods or passengers for a fee.

Sec. 42.30.410. EXCEPTIONS. (a) AS 42.30.400 does not apply

(1) to a train composed only of locomotives, passenger coaches, and baggage cars;

(2) to a train not exceeding 2,500 feet in length, including locomotives, composed only of trailer on flat car equipment or container on flat car equipment provided that any hazardous or toxic materials on the train are located in the first 1,000 feet of the train as measured from the lead locomotive;

(3) if an emergency occurs in route that prevents compliance with that section; or

(4) unless a collective bargaining agreement between the railroad and an appropriate bargaining unit contains a provision

requiring compliance with AS 42.30.400.

(b) Notwithstanding AS 42.30.400, a defective car that cannot be entrained except behind the caboose may be attached as the rear car on a train and moved to the nearest terminal where it can be repaired.

Sec. 42.30.420. PENALTY. Violation of AS 42.30.400 is an offense punishable by a fine of not less than $500 and not more than $1,000. Each violation is a separate offense.

as defined in then Collective Bargaining agreement -

Offered: 4/2/86
Referred: Rules

Original sponsors: Cato, Hurley, Koponen, et al.

WAIVE 5 DAY Rule —

IN THE HOUSE BY THE RULES COMMITTEE

CS FOR HOUSE BILL NO. 436 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

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Sec. 42.30.250. CABOOSE REQUIRED. (a) A train that exceeds 1,000 feet in length including locomotives shall have a properly maintained and equipped caboose, that is staffed by a qualified train conductor or brakeman, attached as the rear car while the train is moving over tracks outside a yard or terminal.

(b) This section applies to a railroad that transports goods or passengers for a fee.

Sec. 42.30.260. EXCEPTIONS. (a) AS 42.30.250 does not apply

(1) to a train composed only of locomotives and passenger coaches;

(2) to a train not exceeding 1,825 2000 feet in length, including locomotives, composed only of trailer on flat car equipment or container on flat car equipment provided that any hazardous or toxic materials on the train are located in the first 1,000 feet of the train as measured from the lead locomotive; or

(3) if an emergency occurs in route that prevents compliance with that section.

(b) Notwithstanding AS 42.30.250, a defective car that cannot be entrained except behind the caboose may be attached as the rear car on

a train and moved to the nearest terminal where it can be repaired.

Sec. 42.30.270. PENALTY. Violation of AS 42.30.250 is an offense punishable by a fine of not less than $500 and not more than $1,000. Each violation is a separate offense.

Cook
4/30/86

Original sponsors: Cato, Hurley,
Koponen, et al

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 436 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring a properly equipped and staffed caboose on certain trains."

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(b) This section applies to a railroad that transports goods or passengers for a fee.

Sec. 42.30.260. EXCEPTIONS. (a) AS 42.30.250 does not apply

(1) to a train composed only of locomotives, baggage cars and passenger coaches;

(2) to a train not exceeding ~~1,825~~ 2500 feet in length, including locomotives, composed only of trailer on flat car equipment or container on flat car equipment provided that any hazardous or toxic materials on the train are located in the first 1,000 feet of the train as measured from the lead locomotive;

(3) if an emergency occurs in route that prevents compliance with that section; or

(4) unless a collective bargaining agreement between the railroad and an appropriate bargaining unit contains a provision

requiring compliance with AS 42.30.250.

(b) Notwithstanding AS 42.30.250, a defective car that cannot be entrained except behind the caboose may be attached as the rear car on a train and moved to the nearest terminal where it can be repaired.

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ALASKA RAILROAD CORPORATION

P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

FACT SHEET

March 6, 1986

Contact: Vivian Hamilton
265-2675

HISTORY OF CABOOSES

Cabooses date back to the beginnings of railroading and served as a traveling office for the conductor. From the caboose the conductor and crewman could monitor the train's performance and apply the hand brakes when the engineer's whistle sounded. The entire crew often ate and slept in the caboose at terminals away from home. Today cabooses are less necessary. Computerization has replaced most of the conductor's paperwork duties. New technologies provide automatic detection systems for train problems and automatic braking systems are used in favor of hand brakes. Crews rarely have to sleep in cabooses anymore.

NATIONWIDE RAIL INDUSTRY TRENDS

In 1982 the national United Transportation Union (UTU), which represents trainmen, enginemen and conductors, and the nation's railroads agreed upon rules that called for the eventual elimination of cabooses on trains. As a result, most of the nation's biggest railroads have dropped cabooses from roughly one-fourth of their long distance freight trains. The 1982 agreement provided that railroads no longer have to purchase new cabooses or refurbish existing cabooses. Once its useful life has ended, a caboose need not be replaced. A more recent 1985 agreement has

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sped the elimination of cabooses. Apparently frustrated with these negotiated agreements, and rebelling at the notion of losing cabooses, UTU has repeatedly taken its case to legislatures. Yet some 25 states have rejected the implementation of a caboose law; only four states currently require a caboose on freight trains, (only two adopted since the negotiated 1982 agreements.)

CABOOSES AT THE ALASKA RAILROAD CORPORATION

The Alaska Railroad Corporation has never eliminated a caboose from an existing freight train or commodity service. A new service begun in May 1985, the Arctic FOX (Freight Overnight Express), is a cabooseless train. Because the FOX is a short, fast, daily train which carries trailers and containers on flat cars, the union and Railroad managers agree that it does not require a caboose. Assigned with only two engines and entirely new equipment, the service also has no intermediate switching needs. Only a two-person crew is required.

Type of freight hauled, age of equipment, switching needs, and length of the train are key points in determining train makeup and crew assignments. Cabooses will be needed on most freight trains until new technologies such as wayside detectors are available to help reveal any train malfunctions.

MAJOR POINTS OF THE PROPOSED BILL

House Bill 436, as proposed, would require a manned caboose on all freight trains over 1,000 feet in length, including locomo-

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tives. This would apply to nearly all ARRC freight trains. A fine would be imposed for violations.

WHY THE ARRC OPPOSES HB 436

By requiring cabooses on all freight trains, this legislation would effectively limit the Railroad's ability to introduce innovative operations for a safer, more efficient enterprise. Legislative intervention in matters of ARRC management would also contradict a previous legislative directive that the Railroad "carry out its responsibilities on a self-sustaining basis" and "provide for the prudent operation of the Railroad." The ARRC has been operating according to sound business management practices and will continue to do so without additional legislation.

Mandatory caboose legislation would also undermine the bargaining process between unions and railroads, which have already addressed and resolved the caboose issue. If either side may use legislative processes to overturn agreements, contract negotiations will become virtually meaningless.

IS SAFETY AT STAKE?

The ARRC is already directed by the Legislature, the Federal Railway Administration and a host of other regulatory and occupational safety provisions to provide for safe rail operations. Additionally, the collective bargaining and arbitration process protects legitimate safety concerns while permitting railroads to implement more cost-effective technologies.

CABOOSELESS OPERATIONS - A MODERN DAY NECESSITY FOR RAILROADS

(6)

Summary

1. The historical purpose for the caboose has been eliminated by modern day technology.

The caboose has become a relic of a bygone era of railroading. Most major mainlines are now equipped with centralized traffic control, eliminating the need for a flagman on a halted train to walk back to flag following trains. In a centralized traffic control system, a dispatcher in an office often hundreds of miles away operates switches automatically and signals activated by the train itself warn off those behind it. It has been a long time since brakemen had to go over the tops of cars to set hand brakes on individual cars. The engineer controls air brakes on the entire train. Lighted electronic end-of-train devices mark the end of the train and electronic trackside detectors monitor overheated journal bearings and dragging equipment, a chore once performed visually by crewmen from the caboose. Finally, the use of cabooses by train crews as a home away from home where they bunked and ate their meals also belongs to a long gone era. Today, crews are provided with lodging and meals by the railroad.

2. A comprehensive study of the need for cabooses for safety purposes by a Presidential Emergency Board in 1982 stated:

"...cabooses may be eliminated in each class of service without undermining safety and operational considerations."

The Federal Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.) was enacted by Congress to establish uniform railroad safety standards for the benefit of the public and railroad employees. The Act was designed to eliminate a hodgepodge of conflicting local railroad regulations which were a burden on interstate commerce and a burden to the pocketbooks of consumers. The Federal Railroad Administration, the agency responsible for administering the Federal Railroad Safety Act, has never determined that occupied cabooses contribute to safety.

3. The use of cabooses has historically been an item for labor/management negotiations.

The United Transportation Union reached a national agreement with the railroads on October 15, 1982 which specifically permitted and recognized the right of railroads to eliminate cabooses subject to certain guidelines. Today, elimination of cabooses continues to be negotiated or arbitrated pursuant to the National Agreement.

4. Cabooses are a financial burden to deregulated railroads.

Continued operation and maintenance of obsolete cabooses constitutes a costly and unnecessary waste of limited resources. If railroads and the jobs they provide are to survive in the highly competitive transportation market, they must eliminate wasteful spending of capital which inevitably is translated to higher shipping rates.

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45 USC 1207 a 4 (Portion of the Alaska Railroad Transfer Act)

§ 1207. State operation

(a) Laws, authorities, etc., applicable to State-owned railroad with status as rail carrier engaged in interstate and foreign commerce

(1) After the date of transfer to the State pursuant to section 1203 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of Title 49, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this chapter shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 1203 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of Title 49, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209–236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 431(c) of this title).

Portion prohibiting the State of Alaska from requiring a minimum number of personnel on trains

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6)(A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of Title 26. Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of Title 26, but not obligations within the meaning of section 103(b)(2) of Title 26.

(B) Nothing in this chapter shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of Title 49, shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 6362(b) of Title 42 shall not apply to actions of the Commission under this subsection.

(c) Eligibility for participation in Federal railroad assistance programs

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of Title 49.

(d) Laws and regulations applicable to National Forest and Park lands; covered lands; limitations on Federal actions

After the date of transfer to the state pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

(Pub.L. 97–468, Title VI, § 608, Jan. 14, 1983, 96 Stat. 2573.)

References in Text. The antitrust laws, referred to in subsec. (a)(1), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is Title I of Pub.L. 93–445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (section 231 et seq.) of chapter 9 of this title. Such Title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, c. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, c. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act, may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (section 215 et seq.) and subchapter III (section 228a et seq.), respectively, of chapter 9 of this title. For complete classification of this Act to the Code, see section 231t of this title and Tables volume.

The Railroad Retirement Tax Act, referred to in subsec. (a)(1), is Act Aug. 16, 1954, c. 736, §§ 3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, which is classified generally

What's the real issue? Who should decide?

Point

by Frank G. Turpin

THE NOSTALGIC PICTURE of a brightly painted caboose tagging along behind a meandering freight train is part of the colorful tradition of railroading in Alaska and elsewhere. This historical perspective regarding cabooses has created through the years a very strong emotional reaction among railroaders, the general public, and now, most recently, from Alaska's legislators.

The status of the caboose has been debated in nearly 30 states in the last several years with only two states actually passing legislation requiring cabooses. Now it is Alaska's turn to look at the issue. The argument is a classic struggle between railroad companies who wish to modernize and improve system efficiencies and railroad unions who are seeking to protect jobs.

The proposed legislation being discussed in Juneau, HB 436, would require a manned caboose to accompany freight trains longer than 1,000 feet. The issue has been introduced under the label of "safety," but the real argument probably revolves around three separate questions:

1. Who should decide when to assign cabooses? The unions? The legislature? Or the Alaska Railroad management?

2. Is the railroad union leadership using safety as a guise for job protection?

3. Is the Alaska Railroad operating a safe and efficient system without a mandatory boose law?

BEFORE EXPLORING these questions it is important to state for the record that the Alaska Railroad does not plan to eliminate cabooses from its train operations in the near future. Until the railroad can install modern, automated equipment and invest in the detection devices that would allow elimination of cabooses, the railroad will continue to use them.

The technology and modernization that would be required to transform the Alaska railroad to a total "cabooseless" system is many dollars and years away from us right now. The railroad has never eliminated a caboose from an existing freight train. We believe, however, that it is inappropriate for a state legislature to interfere in what is essentially and historically a management or collective bargaining issue.

Currently the Alaska railroad operates only one train, the Arctic Fox, without a caboose. It has never had a caboose. The 10 to 15 car configuration and new, modern equipment deployed in this train allow for safe and efficient operation. This is a new service, providing fast trailer and container service between Anchorage and Fairbanks and expanding the number of total railroad jobs available. It has been accident-free since its inception last summer. Because the articulated flat cars are each 160 feet long, even this new train service would require a caboose if the proposed legislation is passed.

Despite much rhetoric from union spokespeople, safety and cabooses are not irrevocably linked as they insist. A recent National Railway Labor Conference study determined there was no significant difference from a safety standpoint whether a train was operated with or without a caboose. The accident frequency rate per million train miles for trains with cabooses was 5.19, while the frequency rate per million train miles for cabooseless operations was slightly better at 5.15. The bottom line is that a caboose is not essential for safety, or for its other traditional functions, such as administrative duties and lodging, with the advent of modern railroad technology.

UNTIL THIS modern technology is added to the Alaska Railroad, inspections are made by crew members either from their vantage point in the locomotive when they meet opposing trains or on the ground during an inspection known as a "roll by."

A "roll by" requires a crew member to leave the locomotive and stand at trackside to visually inspect the train as it is slowly pulled forward. After the train has passed the crewman completely, he crosses the tracks to inspect the opposite side of the train as it is backed up. He then returns to the locomotive. At least five of these inspections are performed on all freight trains traveling between Anchorage and Fairbanks.

Daily, all trains are inspected by railroad employees living and working along the tracks. Known as "maintenance of way" personnel, these employees are stationed about every 30 miles along the line.

The caboose legislation is essentially asking legislators to act on an issue that has already been resolved nationally in agreements between the union and the railroads. In 1982 both factions agreed to the eventual elimination of cabooses nationwide. Therefore, this kind of legislation is not needed, a conclusion reached by 26 other states when they rejected this effort by the national union to nullify the negotiated agreements through implementation of mandatory caboose laws. If passed, HB 436 would seriously restrict the future improvement, efficiency and productivity of the Alaska Railroad Corporation.

I FIRMLY BELIEVE that the caboose issue is a matter to be resolved by safety-conscious railroad managers on a train-by-train basis as they evalute train configurations, work assignments, and the availability of new technologies. The Alaska Railroad's safety record is excellent and we constantly seek ways to improve our performance. In fact, we are currently rated by the Federal Railroad Administration as the second safest in a class of 24 similar sized railroads nationwide.

I can assure you that the management and the employees of the Alaska Railroad Corporation are proud to work in Alaska and pledge that the Alaska railroad will continue to provide safe, efficient transportation for all Alaskans.

Frank G. Turpin is President and Chief Executive Officer of the Alaska Railroad.

When it comes to safety, technology can't replace experience

Counterpoint

by Clinton W. Gray

POSE THE QUESTION, "What is a railroad caboose?" to any Alaskan in the state, and you will find that the number of different answers you will hear is directly related to the number of times that you ask the question.

Try it on yourself. What does "caboose" mean to you?

Is a caboose the little red car on the end of the train that was (and still is) the featured character in the first book that you were able to read on your own as a child?

Is it merely the last car on a railroad train going across the road crossing? Is it the one car on that train that you are interested in enough to watch for, knowing that when it is clear of the crossing, you can now continue on with your business or trip?

Is the caboose (as one 9-year-old stated) "where the man stays and comes out and yells at us to quit playing on the track?"

Or is the caboose still the home-away-from-home for that "quaint" and unusual breed of men that work on those mysterious trains that come and go in the night carrying their equally mysterious cargo?

The answer to me, and to many others, is easy. It is easy for virtually hundreds of reasons. The purpose of a caboose is to protect against hazards associated with train derailments, shifted cargo, burning wheel bearings, right-of-way fires, highway-rail crossing accidents and many other mishaps.

There is ample evidence recorded to illustrate that each of these threats to the public and operating employees' safety is real and occurs with some degree of regularity. In my opinion, manned cabooses, used in conjuction with other safety devices, are the best means currently available to minimize the potentially disastrous effects of many of these safety threats.

SOME CRITICS of the present legislation to retain cabooses, including the Alaska Railroad Corporation, contend that electronic monitoring devices adequately detect failed equipment, fires and other safety threats without a manned caboose. First, I'd like to point out that the Alaska Railroad has few of these devices, and to my knowledge they are not planning to install additional devices in the near future. As important, the Outside railroads that have these monitoring devices have discovered they are not failsafe. It is recorded that trainmen have found that you can actually have a burning box car pass over a "hot box detector" without activating it. Moreover, these alternatives do not and cannot meet every need that is currently met by a manned caboose.

I will acknowledge that there is less need now for a manned caboose in certain situations, and I support the use of all available mechanical monitoring devices. But there is ample evidenece that a crew member at the end of a train can see a safety threat that electronic devices cannot detect and that retention of manned cabooses still plays an essential role in the early detection of equipment defects and other problems before they can cause derailments or other damages.

The Alaska Railroad management has testified that the caboose is a collective bargaining issue that should be negotiated. There would only be management and labor at the bargaining table. Unfortunately, no one would be there to represent the Alaskan public.

The Alaska Railroad has also testified that they already must comply with many federal safety regulations. While this general statement is not particularly relevant to the caboose issue, I nevertheless would like to point out that railroad safety legislation was a result of unnecessary accidents or worse yet, deaths of railroad employees or members of the public. I would hope that the Alaska legislature does not intend to play Russian roulette with whether unrelated safety regulations, new technology or no technology, could provide a safe rail system in Alaska. We should not forget the recent lessons of the Crown Point Alaska gas leak or the tragic space shuttle Challenger disaster.

THE CABOOSE is the single most important safety feature on a train, and a train needs all of its safety features, particularly in Alaska where long trains often carrying hazardous materials are transported through varied terrain and under many adverse conditions in highly populated and remote areas. It is simply not possible to replace with one or more machines, the eyes, ears, nose, voice and brain of an experienced employee who can see views of a moving train that cannot be seen from any other position, and who can detect and respond to a variety of problems at a moment's notice.

For these reasons, the Alaska legislature in its wisdom has the right and the obligation to take every reasonable step to guarantee that cabooses will continue to be used under appropriate circumstances to protect the safety of the general public and of our train crews. It is not enough to simply leave it to the Alaska Railroad Corporation to do the "right thing."

Clinton W. Gray worked as a conductor for 12 years on the Alaska Railroad and is Legislative Representative for the United Transportation Union Local 1626.

Editori

The obsolete caboose

THE FIRST QUESTION raised by the derailment of an Alaska Railroad coal train yesterday was, "Did it have a caboose?"

The answer is "yes."

That question and answer are pertinent because the House at Juneau voted approval on Monday of a bill that would require cabooses on most freight trains for safety reasons.

The records of the Alaska Railroad show that every freight train that has had a derailment — and there have been a half dozen or so since the state took over the railroad a year ago — has had a caboose. Conversely, the record shows that no freight train without a caboose has ever had an accident of any sort.

That last statement, although factual, has only limited significance because the railroad has only one train — the Arctic Fox — that operates without a caboose. However, railroads Outside have long records of operations without cabooses.

The national record for all railroads show there have been about the same number of accidents with cabooses as without. That means the presence of a caboose has nothing to do with the occurrence of accidents.

THE LEGISLATION requiring cabooses has the strong support of the United Transportation Union. It has approved the Alaska operations of the Arctic Fox, but now seeks to retain cabooses on all other trains. While the union claims the caboose will assure public safety, there is no factual basis to support it.

Railroad management contends economics and technology have made the caboose obsolete. The cars cost $80,000 each and weigh 27 tons. They are being replaced by a machine, known as an end-of-train device, that blinks a red light to warn following trains.

The original purpose of cabooses was to provide living quarters for train crews in the old days of long distance runs. Crews would be away from home for four or five days, or even more. The caboose was their rolling hotel.

With passage of time, operating speeds have increased, transit time decreased. The runs are shorter and crew time on duty is less.

WHEN THE STATE took over the railroad, the legislature forbade any state law that specified the number of crew members a train must have. In 1982 the UTU agreed to the elimination of cabooses under certain conditions. In 1985 it agreed to expedite their removal.

Those agreements showed the union's willingness to live with the newest trends and technology, as they did when coaling stations and water tanks were eliminated when steam locomotives were replaced by diesels.

The state has made it public policy to allow the railroad corporation to operate as a private enterprise, free of politics insofar as possible. The House is violating that policy by passing this bill, which would inject politics into railroad management.

To serve Alaskans best, the railroad must be allowed to operate like a railroad, not a political plaything.

Trainman says caboose unsafe, unnecessary

Letters to the editor

Dear Editor:

I recently retired from the Alaska Railroad after 35 years of service. At the time of retirement, I occupied the number one position on the conductor's seniority roster. From 1951 through 1974, I performed service as a brakeman conductor. I also served as vice-chairman of the grievance committee, as safety representative, and alternate legislative representative for the Brotherhood of Railroad Trainmen (predecessor organization to the United Transportation Union (UTU)), and had 30 years continuous membership in the Brotherhood of Railroad Trainmen and UTU combined.

Since 1974, I have held the positions of relief yardmaster, trainmaster, and retired as superintendent of transportation.

My entire railroad career of 35 years was spent as an operating employee, trainman, and/or officer. During that time, I have worked and ridden in wooden cabooses with coal stoves and oil lamps and in "new" steel cabooses with oil stoves and electric lights. They all, every one, have been hot and dusty in the summer, cold and odorous in the winter, and always noisy, uncomfortable and downright dangerous when moving.

The lookout function, which the UTU has alleged as most critical, has in this day and age of longer and faster trains become ineffective. The historic limitations of darkness, rain, blowing, swirling snow, and/or dust, plus track curvature which generally result in the inability of either the head end (engine) crew or the rear end (caboose) crew to see much more than a few cars ahead of the caboose or behind the engines, are further diminished by train length, with the majority of the train in the middle not being observed at all, or if observed, not clearly so. Therefore, railroad standard operating rules still require that roll-by (wayside) inspections be made by the train's crew and also require all other employees on the wayside (along the track) or on other trains, to likewise inspect each passing train.

The moving roll-by (wayside) inspection has proven to be, by far, the most reliable and effective manner of train inspection. The implication made by the UTU that train operation is safer with a manned caboose on the rear is just not so!

It is also notable that while no injuries to the public, communities, or families, etc., have occurred as a result of derailments on the ARR over the past five years, there were during that five-year period a total of seven personal lost-time injuries sustained by brakemen or conductors, either riding in or getting on or off a caboose.

One could easily conclude, and rightly so, that not only has "The Little Red Caboose" (which most people regard fondly as a reminiscent symbol of railroading) outlived its usefulness, but has in fact, become a negative factor in regard to railroad train safety.

The benefits of its continued use in almost all situations is not commensurate with the risk of injury to which its occupants are exposed nor with the expense of its operation and maintenance.

Robert W. Davison

Lake Havasu City, Ariz.

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March 14, 1986

The Honorable Representative Cato
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Cato:

I am writing of behalf of the United Transportation Union, Local 1826 regarding proposed amendments to HB436, An Act requiring a properly equipped and staffed caboose on certain trains. My clients have asked me to advise you that they intend to propose, through Representative Pignalberi and the House Rules Committee, the following amendments:

1) Line 12, after "property", add the words maintained and. This section would then read:

> "(1) A train that exceeds 1,000 feet in length including locomotives shall have a properly maintained and equipped caboose...."

This amendment should help assure that cabooses are used for their full useful lives and are not taken out of service prematurely due to lack of normal preventive maintenance.

2) An additional exception in 42.30.260 offered in the spirit of compromise which effectively would exempt the "FOX" from the requirements of 42.30.250 to read as follows:

> "3) to a train composed exclusively of TOFC (Trailer on Flat Car)/COFC (Container on Flat Car) equipment not exceeding 1825 feet in length including locomotives, provided that hazardous or toxic materials are located in the first 1,000 feet of the train as measured from the lead locomotive."

If you have any questions or comments, please give me a call.

Thanks.

Yours truly,

David Rogers

Wagstaff, Pope, and Rogers
UTU Proposed amendments to Original Bill

Dept. of Transportation & Public Facilities

Position Paper

BILL NO: HB 436 and SB 313

APPROVED: R. J. Knapp
Commissioner

TITLE: An Act requiring a properly equipped and staffed caboose on certain trains.

DATE: March 3, 1986

Although not an issue of direct concern to the Department of Transportation and Public Facilities (DOT&PF), it is appropriate to provide certain comments given the DOT&PF Commissioner's role on the Board of Directors of the Alaska Railroad Corporation (ARRC). However, it is important that these comments not be construed as the official position of the ARRC regarding HB 436. ARRC management should be contacted separately to solicit their formal views on this matter.

The central question underlying this legislation is whether to mandate by statute the use of cabooses for certain types of trains, with little regard for technological improvements and variety in train consists that may have a direct bearing on the need for cabooses. Evidence from the rail industry and at the Alaska Railroad suggests this sort of non-discretionary arrangement is unwarranted and may add unnecessary costs to train operations. More detailed information regarding these issues can be found in the ARRC's Position Paper on HB 436, dated February 14, 1986.

Another concern is DOT&PF's perception that this type of legislation may be inconsistent with the spirit and intent of the state Alaska Railroad Corporation Act (ARCA), which established the ARRC as an independent, public corporation to own and operate the Alaska Railroad under state ownership. ARCA sets out explicit direction regarding goals and objectives for operation and management of the Alaska Railroad, and provides broad powers for the ARRC Board of Directors to oversee and manage these responsibilities. Included are the requirements to provide "safe, efficient, and economical transportation," to "be exclusively responsible for the management of the financial and legal obligations of the Alaska Railroad," and to "carry out its responsibilities on a self-sustaining basis." HB 436 appears to run counter to this approach by attempting to limit management's ability to meet these different goals. This is unfortunate coming so soon following passage of ARCA, and the apparent absence of evidence that ARRC management has failed to meet its statutory responsibilities.

In summary, DOT&PF is unaware of any real evidence that suggests this legislation is warranted, and respectfully submits that HB 436 contradicts the spirit and intent of ARCA by unnecessarily attempting to legislate decisions reserved for management.

For further infor[illegible]0.

HB

552

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 24, 1986

MEMORANDUM

TO: Representative Rick Uehling

ATTN: David Cobb

FROM: Mary Jennings MJ
Legislative Analyst

RE: Speed Limits in Other States
Research Request 86-113

You requested information regarding regulations and policies in other states which guide how speed limits are set, specifically, in parks, schools, and neighborhoods with children. You requested we examine policies in Arizona, California, Connecticut, Massachusetts, New York, Oregon, and Virginia.

Conclusions

Arizona, California, Massachusetts, Oregon, Virginia, and Washington have statutes that set speed limits in business, residential, and school areas.[1] In Connecticut and New York, the speed limit for state highways in these areas is set by the State Department of Transportation (DOT). Oregon was the only state that had a statute specifically applying to state highways in parks.

Arizona. According to statute, the speed limit for state highways in business or residential districts is 25 miles per hour (mph) and in school zones with children present the limit is 15 mph. Local authorities set the limits for roads within their jurisdiction, but cannot raise or lower speed limits by increments of more than 10 mph.

California. Speed limits are addressed in the California Vehicle Code. For state highways in residential or business districts the speed limit

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[1]For various state definitions of these areas see Attachment A.

is 25 mph and the limit in school zones with children present is 25 mph. Local authorities may determine a different speed for roads in their jurisdiction under procedures set forth in the Vehicle Code.

Connecticut. In Connecticut, the DOT has the authority to set speed limits on state highways in residential, business, and school areas. Roads under the jurisdiction of local authorities must have speed limits approved by the DOT.

Oregon. For state highways in residential and business districts and state roads in parks and beaches, Oregon statute sets the speed limit at 25 mph. In school zones with children present the limit is 20 mph. The Oregon State Speed Control Board approves speed limits set by local authorities for roads under local jurisdiction.

Masschusetts. According to statute, the speed limit for state highways inside a residential or business district is 30 mph. In a school zone, the limit is 20 mph. Roads under the jurisdiction of local authorities must have speed limits approved by the DOT and the Registry of Motor Vehicles.

New York. The DOT sets speed limits for state highways in business, residential, and school areas. Roads under the jurisdiction of local authorities must have speed limits approved by the DOT.

Virginia. According to statute, the speed limit for state highways in business or residential districts is 25 mph. In schools zones with children present, the limit is 25 mph. Speed limits for roads under the jurisdiction of local authorities are set by the local authorities.

Washington. The Standard Speed Statute in Washington sets a limit of 25 mph for state highways in cities or towns. In school zones with children present, the limit is 20 mph. Speed limits for roads under the jurisdiction of local authority must be approved by the State Maintenance Engineer of the DOT.

I have attached pertinent statutes from California, Connecticut, Massachusetts, and Virginia. For your interest, I have also attached pertinent statutes from Indiana, Hawaii, Louisiana, and Pennsylvania. I hope you find this information useful. If you have any questions or if we can be of further assistance, please contact our office.

MJ

Attachments

Attachment A

Definitions from various states of business, residential and school areas.

Business

The California Vehicle Code defines business district as, "that portion of highway and the property contiguous thereto (a) upon one side of which highway, for distance of 600 feet, 50 percent or more of the contiguous property fronting thereon is occupied by buildings in use for business, or (b) upon both sides of which highway, collectively, for a distance of 300 feet, 50 percent or more of the contiguous property fronting thereon is so occupied. A business district may be longer than the distances specified in this section if the above ratio of buildings in use for business to the length of the highway exists."

Residential

The California Vehicle Code defines residence district as, "that portion of highway and the property contiguous thereto, other than a business district (a) upon one side of which highway, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 13 or more separate dwelling houses or business structures, or (b) upon both sides of which highway, collectively, within a distance of a quarter of a mile, the contiguous property fronting thereon is occupied by 16 or more separate dwelling houses or business structures. A residence district may be longer that one-quarter of a mile if the above ratio of separate dwelling houses or business structures to length of the highway exists."

Massachusetts statute defines residential area as, "a thickly settled district."

Oregon statute defines a residential area as, "highway that has solid residential type dwellings for 300 feet on both sides of the highway."

School Zone

Virginia statute defines school zone as, "between portable signs, tilt-over signs, or fixed blinding signs placed in or along any highway bearing the word 'school' or 'school crossing'."

The California Vehicle Code defines school zone as, "When passing a school building or the grounds thereof, contiguous to a highway and posted with a standard 'SCHOOL' warning sign, while children are going to or leaving the school either during school hours or during the noon recess period...when passing any school grounds which are not separated from the highway by fence, gate or other physical barrier while the grounds are in use by children and the highway is posted with a standard 'SCHOOL' warning sign."

Attachment B

Statutes pertaining to the setting of speed limits.

California Vehicle Code 1984

movement, in which event notice as applicable to such additional traffic lane shall be given by any official traffic control device.

(c) When right- or left-hand turns are prohibited at an intersection notice of such prohibition shall be given by erection of a sign.

(d) When official traffic control devices are placed as required in subdivisions (b) or (c), it shall be unlawful for any driver of a vehicle to disobey the directions of such official traffic control devices.

Amended Ch. 481, Stats. 1963. Effective September 20, 1963.
Amended Ch. 545, Stats. 1974. Effective January 1, 1975.

U-Turn in Business District

22102. No person in a business district shall make a U-turn, except at an intersection, or on a divided highway where an opening has been provided in accordance with Section 21651.

Amended Ch. 1318, Stats. 1961. Effective September 15, 1961.
Amended Ch. 622, Stats. 1970. Effective November 23, 1970.

U-Turn in Residence District

22103. No person in a residence district shall make a U-turn when any other vehicle is approaching from either direction within 200 feet, except at an intersection when the approaching vehicle is controlled by an official traffic control device.

Amended Ch. 255, Stats. 1963. Effective September 20, 1963.
Amended Ch. 622, Stats. 1970. Effective November 3, 1970.

Turning Near Fire Stations

22104. No person shall make a U-turn in front of the driveway entrance or approaches to a fire station. No person shall use the driveway entrance or approaches to a fire station for the purpose of turning a vehicle so as to proceed in the opposite direction.

Amended Ch. 622, Stats. 1970. Effective November 23, 1970.

Unobstructed View Necessary for U-Turn

22105. No person shall make a U-turn upon any highway where the driver of such vehicle does not have an unobstructed view for 200 feet in both directions along the highway and of any traffic thereon.

Amended Ch. 622, Stats. 1970. Effective November 23, 1970.
Amended Ch. 64, Stats. 1972. Effective March 7, 1973.

Starting Parked Vehicles or Backing

22106. No person shall start a vehicle stopped, standing, or parked on a highway, nor shall any person back a vehicle on a highway until such movement can be made with reasonable safety.

Turning Movements and Required Signals

22107. No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement.

Amended Ch. 1996, Stats. 1959. Effective September 18, 1959.

Duration of Signal

22108. Any signal of intention to turn right or left shall be given continuously during the last 100 feet traveled by the vehicle before turning.

Signal When Stopping

22109. No person shall stop or suddenly decrease the speed of a vehicle on a highway without first giving an appropriate signal in the manner provided in this chapter to the driver of any vehicle immediately to the rear when there is opportunity to give the signal.

Method of Signaling

22110. The signals required by this chapter shall be given either by means of the hand and arm or by a signal lamp, but when the body or load on any vehicle or combination of vehicles projects 24 inches or more to the left of the center of the steering wheel so that a hand and arm signal would not be visible both to the front and rear of such vehicle or combination of vehicles, or under any condition when a hand and arm signal would not be visible both to the front and rear of the vehicle or vehicles, then the vehicle or vehicles shall be equipped with, and signals shall be given by, a signal lamp, except that implements of husbandry need not be equipped with signal lamps, but drivers of implements of husbandry shall give a hand and arm signal when required by this chapter.

Amended Ch. 118, Stats. 1961. Effective September 15, 1961.
Amended Ch. 1012, Stats. 1965. Effective September 17, 1965.
Amended Ch. 859, Stats. 1967. Effective November 8, 1967.

Hand Signals

22111. All required signals given by hand and arm shall be given from the left side of a vehicle in the following manner:

(a) Left turn—hand and arm extended horizontally beyond the side of the vehicle.

(b) Right turn—hand and arm extended upward beyond the side of the vehicle, except that a bicyclist may extend the right hand and arm horizontally to the right side of the bicycle.

(c) Stop or sudden decrease of speed signal—hand and arm extended downward beyond the side of the vehicle.

Amended Ch. 153, Stats. 1963. Effective September 20, 1963.
Amended Ch. 751, Stats. 1976. Effective January 1, 1977.

Schoolbus Signal

22112. The driver of a schoolbus shall operate the flashing red signal lamps required on the schoolbus at all times when children are unloading from the schoolbus to cross a highway or private road or when the schoolbus is stopped for the purpose of loading children who must cross a highway or private road to board the schoolbus, except that the signal lamps shall not be operated at any place where traffic is controlled by a traffic officer or official traffic control signal. The schoolbus signal lamps shall not be operated at any other time.

Amended Ch. 533, Stats. 1977. Effective January 1, 1978.
Amended Ch. 813, Stats. 1981. Effective January 1, 1982.

Local Authorities

22113. This chapter does not prevent local authorities, by ordinance, from prohibiting the making of any turning movement by any vehicle at any intersection or between any designated intersections.

CHAPTER 7. SPEED LAWS

Article 1. Generally

Temporary Maximum Speed Limit

22348. (a) Notwithstanding Section 22349, 22356, or any other provision of this chapter ( )[1], no person shall drive a vehicle upon a highway at a speed greater than 55 miles per hour.

(b) Any person who ( )[2] *drives* a vehicle upon a highway at a speed greater than 100 miles per hour is guilty of an infraction punishable, as follows:

(1) Upon a first conviction of a violation of this subdivision, by a fine of not to exceed five hundred dollars ($500). The court may also suspend the privilege of the person to operate a motor vehicle for a period not to exceed 30 days pursuant to Section 13200.5.

(2) Upon a conviction under this subdivision of an offense which occurred within three years of a prior offense resulting in a conviction of an offense under this subdivision, by a fine of not to exceed five hundred dollars ($500). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to subdivision (a) of Section 13355.

(3) Upon a conviction under this subdivision of an offense which occurred within five years of two or more prior offenses resulting in convictions of offenses under this subdivision, by a fine of not to exceed five hundred dollars ($500). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to subdivision (b) of Section 13355.

(c) Any vehicle subject to Section ( )[2] 22406 shall be driven in a lane designated pursuant to Section 21655, or if no lane has been *so* designated, in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb. When overtaking and passing another vehicle proceeding in the same direction, ( )[4] *the* drivers shall use either the designated lane, the lane to the immediate left of the right-hand lane, or the right-hand lane for traffic as permitted under ( )[3] this code. If, however, specific lane or lanes have not been designated on a divided highway having four or more clearly marked lanes for traffic in one direction, any such vehicle may also be driven in the lane to the immediate left of ( )[4] *the* right-hand lane, unless otherwise prohibited under ( )[5] this code. This subdivision ( )[6] *does* not apply to a driver who is preparing for a left- or right-hand turn or who is in the process of entering into or exiting from a highway or to a driver who ( )[6] *is required* necessarily *to* drive in a lane other than the right-hand lane to continue on his intended route.

(d) This section shall remain in effect 120 days from the date that the 55-mile-per-hour national maximum speed limit, as specified in Section 154 of Title 23 of the United States Code, is repealed.

Added Ch. 1218, Stats. 1973. Operative January 1, 1974.
Amended Ch. 153, Stats. 1975. Effective June 28, 1975 by terms of an urgency clause.
Amended Ch. 217, Stats. 1978. Effective June 8, 1978 by terms of an urgency clause.
Amended Ch. 980, Stats. 1983. Effective January 1, 1984.
Amended Ch. 276, Stats. 1984. Effective January 1, 1985.
The 1984 amendment added the italicized material and at the point(s) indicated deleted the following:
[1] "to the contrary"
[2] "violates subdivision (a) by driving"
[3] "to the provisions of"
[4] "such"
[5] "shall"
[6] "must"

Basic Speed Law

22350. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property.

Amended Ch. 252, Stats. 1963. Effective September 20, 1963.

Speed Law Violations

22351. (a) The speed of any vehicle upon a highway not in excess of the limits specified in Section 22352 or established as authorized in this code is lawful unless clearly proved to be in violation of the basic speed law.

(b) The speed of any vehicle upon a highway in excess of the prima facie speed limits in Section 22352 or established as authorized in this code is prima facie unlawful unless the defendant establishes by competent evidence that the speed in excess of said limits did not constitute a violation of the basic speed law at the time, place and under the conditions then existing.

Prima Facie Speed Limits

22352. The prima facie limits are as follows and the same shall be applicable unless changed as authorized in this code and, if so changed, only when signs have been erected giving notice thereof:

(a) Fifteen miles per hour:

(1) When traversing a railway grade crossing, if during the last 100 feet of the approach to the crossing the driver does not have a clear and unobstructed view of the crossing and of any traffic on the railway for a distance of 400 feet in both directions along such railway. This subdivision does not apply in the case of any railway grade crossing where a human flagman is on duty or a clearly visible electrical or mechanical railway crossing signal device is installed but does not then indicate the immediate approach of a railway train or car.

(2) When traversing any intersection of highways if during the last 100 feet of his approach to the intersection the driver does not have a clear and unobstructed view of the intersection and of any traffic upon all of the highways entering the intersection for a distance of 100 feet along all such highways, except at an intersection protected by stop signs or yield right-of-way signs or controlled by official traffic control signals.

(3) On any alley.

(b) Twenty-five miles per hour:

(1) On any highway other than a state highway, in any business or residence district unless a different speed is determined by local authority under procedures set forth in this code.

(2) When passing a school building or the grounds thereof, contiguous to a highway and posted with a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period. Such prima facie limit shall also apply when passing any school grounds which are not separated from the highway by a fence, gate or other physical barrier while the grounds are in use by children and the highway is posted with a standard "SCHOOL" warning sign.

Amended Ch. 1996, Stats. 1959. 1959. Effective September 18, 1959. Supersedes Ch. 11.
Amended Ch. 530, Stats. 1961. Effective September 15, 1961.
Amended Ch. 409, Stats. 1963. Effective September 20, 1963. Supersedes Ch. 397.
Amended Ch. 813, Stats. 1981. Effective January 1, 1982.

Decrease of State Highway Limits

22354. Whenever the Department of Transportation determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than reasonable or safe upon any portion of a state highway where the limit of 65 miles is applicable, the department may determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30 or 25 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie speed limit shall be effective when appropriate signs giving notice thereof are erected upon the highway.

Amended Ch. 11, Stats. 1959. Effective September 18, 1959.
Amended Ch. 545, Stats. 1974. Effective January 1, 1975.

Variable Speed Limits

22355. Whenever the Department of Transportation determines upon the basis of an engineering and traffic survey that the safe and orderly movement of traffic upon any state highway which is a freeway will be facilitated by the establishment of variable speed limits, the department may erect, regulate, and control signs upon the state highway which is a freeway, or any portion thereof, which signs shall be so designed as to permit display of different speed limits at various times of the day or night. Such signs need not conform to the standards and specifications established by regulations of the Department of Transportation pursuant to Section 21400, but shall be of sufficient size and clarity to give adequate notice of the applicable speed limit. The speed limit upon the freeway at a particular time and place shall be that which is then and there displayed upon such sign.

Amended Ch. 11, Stats. 1959. Effective September 18, 1959.
Amended Ch. 78, Stats. 1973. Effective January 1, 1974.

Increase of Freeway Limit

22356. Whenever the Department of Transportation, after consultation with the Department of the California Highway Patrol, determines upon the basis of an engineering and traffic survey on existing freeway segments, or upon the basis of ( )[1] *appropriate* design standards and projected traffic volumes in the case of newly constructed freeway segments, that a speed greater than 65 miles per hour would facilitate the orderly movement of vehicular traffic and would be reasonable and safe upon any state highway, or portion thereof, which is a freeway with full control of access and without crossings at grade otherwise subject to a maximum speed limit of 65 miles per hour, the ( )[2] *Department of Transportation, with the approval of the Department of the California Highway Patrol,* may declare a higher maximum speed of 70 miles per hour, and shall cause appropriate signs to be erected giving notice thereof.

No person shall drive a vehicle upon ( )[3] *that* highway at a speed greater than 70 miles per hour.

Repealed Ch. 11, Stats. 1959. Effective September 18, 1959.
Added Ch. 1735, Stats. 1963. Effective September 20, 1963.
Amended Ch. 78, Stats. 1967. Effective November 8, 1967.
Amended Ch. 632, Stats. 1969. Effective November 10, 1969. Supersedes Ch. 91 and Ch. 138.
Amended Ch. 545, Stats. 1975. Effective January 1, 1975.
Amended Ch. 579, Stats. 1984. Effective January 1, 1985.
The 1984 amendment added the italicized material and at the point(s) indicated deleted the following:
[1] "approaching"
[2] "Secretary of the Business and Transportation Agency"
[3] "such"

Increase of Local Limits

22357. Whenever a local authority determines upon the basis of an engineering and traffic survey that a speed greater than 25 miles per hour would facilitate the orderly movement of vehicular traffic and would be reasonable and safe upon any street other than a state highway otherwise subject to a prima facie limit of 25 miles per hour, the local authority may by ordinance determine and declare a prima facie speed limit of 30, 35, 40, 45, 50, 55, or 60 miles per hour or a maximum speed limit of 65 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe. The declared prima facie or maximum speed limit shall be effective when appropriate signs giving notice thereof are erected upon the street and shall not thereafter be revised except upon the basis of an engineering and traffic survey. The provisions of this section shall not apply in respect to any 25-mile-per-hour prima facie limit which is applicable when passing a school building or the grounds thereof.

Amended Ch. 11, Stats. 1959. Effective September 18, 1959.
Amended Ch. 631, Stats. 1969. Effective November 10, 1969.

Decrease of Local Limits

22358. Whenever a local authority determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than is reasonable or safe upon any portion of any street other than a state highway where the limit of 65 miles per hour is applicable, the local authority may by ordinance determine and declare a prima facie speed limit of 60, 55, 50, 45, 40, 35, 30 or 25 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared prima facie limit shall be effective when appropriate signs giving notice thereof are erected upon the street.

Amended Ch. 11, Stats. 1959. Effective September 18, 1959.

Decrease on Narrow Street

22358.3. Whenever a local authority determines upon the basis of an engineering and traffic survey that the prima facie speed limit of 25 miles per hour in a business or residence district or in a public park on any street having a roadway not exceeding 25 feet in width, other than a state highway, is more than is reasonable or safe, the local authority may, by ordinance or

resolution determine and declare a prima facie speed limit of 20 or 15 miles per hour, whichever is found most appropriate and is reasonable and safe. The declared prima facie limit shall be effective when appropriate signs giving notice thereof are erected upon the street.

Added Ch. 1614, Stats. 1965. Effective September 17, 1965.
Amended Ch. 1095, Stats. 1972. Effective March 7, 1973. Supersedes Ch. 372.

Decrease of Local Limits Near Schools

22358.4. Whenever a local authority determines upon the basis of an engineering and traffic survey that the prima facie speed limit of 25 miles per hour established by paragraph (2) or subdivision (b) of Section 22352 is more than is reasonable or safe, the local authority may, by ordinance or resolution, determine and declare a prima facie speed limit of 20 or 15 miles per hour, whichever is justified as the appropriate speed limit by such survey. No such ordinance or resolution shall be effective until appropriate signs giving notice thereof are erected upon the highway nor, in the case of a state highway, until such ordinance is approved by the Department of Transportation and such signs are erected upon the highway.

Added Ch. 102, Stats. 1974. Effective January 1, 1975.

Downward Speed Zoning

22358.5. It is the intent of the Legislature that physical conditions such as width, curvature, grade and surface conditions, or any other condition readily apparent to a driver, in the absence of other factors, would not require special downward speed zoning, as the basic rule of Section 22350 is sufficient regulation as to such conditions.

Added Ch. 11, Stats. 1959. Effective September 18, 1959.

Boundary Line Streets

22359. With respect to boundary line streets and highways where portions thereof are within different jurisdictions, no ordinance adopted under Sections 22357 and 22358 shall be effective as to any such portion until all authorities having jurisdiction of the portions of the street concerned have approved the same. This section shall not apply in the case of boundary line streets consisting of separate roadways within different jurisdictions.

Amended Ch. 209, Stats. 1963. Effective April 29, 1963.

Linking Districts on Local Highways

22360. Whenever a local authority determines upon the basis of an engineering and traffic survey that the limit of 65 miles per hour is more than is reasonable or safe upon any portion of a highway other than a state highway for a distance of not exceeding 2,000 feet in length between districts, either business or residence, the local authority may determine and declare a reasonable and safe prima facie limit thereon lower than 65 miles per hour, but not less than 25 miles per hour, which declared prima facie speed limit shall be effective when appropriate signs giving notice thereof are erected upon said street or highway.

Amended Ch. 11, Stats. 1959. Effective September 18, 1959.

Multiple-Lane Highways

22361. On multiple-lane highways with two or more separate roadways different prima facie speed limits may be established for different roadways under any of the procedures specified in Sections 22354 to 22359, inclusive.

Amended Ch. 209, Stats. 1963. Effective April 29, 1963.

Speed Limit Where Persons at Work

22362. It is prima facie a violation of the basic speed law for any person to operate a vehicle in excess of the posted speed limit upon any portion of a highway where officers or employees of the agency having jurisdiction of the same, or any contractor of the agency or his employees, are at work on the roadway or within the right-of-way so close thereto as to be endangered by passing traffic. This section applies only when appropriate signs,

indicating the limits of the restricted zone, and the speed limit applicable therein, are placed by such agency within 400 feet of each end of such zone. The signs shall display the figures indicating the applicable limit, which shall not be less than 25 miles per hour, and shall indicate the purpose of the speed restriction. Nothing in this section shall be deemed to relieve any operator of a vehicle from complying with the basic speed law.

Amended Ch. 515, Stats. 1970. Effective November 23, 1970.

Restrictions Because of Snow or Ice Conditions

22363. Notwithstanding any speed limit that may be in effect upon the highway, the Department of Transportation in respect to state highways, or a local authority with respect to highways under its jurisdiction, may determine and declare a prima facie speed limit of 40, 35, 30, or 25 miles per hour, whichever is found most appropriate and is reasonable and safe based on the prevailing snow or ice conditions upon such highway or any portion thereof. Signs may be placed and removed as snow or ice conditions vary.

Amended Ch. 515, Stats. 1970. Effective November 23, 1970.
Amended Ch. 545, Stats. 1974. Effective January 1, 1975.

Lane Speed Limits

22364. Whenever the Department of Transportation determines, upon the basis of an engineering and traffic survey, that the safe and orderly movement of traffic upon any state highway will be facilitated by the establishment of different speed limits for the various lanes of traffic, the department may place signs upon the state highway, or any portion thereof. The signs shall designate the speed limits for each of the lanes of traffic.

Added Ch. 1542, Stats. 1965. Effective September 17, 1965.
Amended Ch. 545, Stats. 1974. Effective January 1, 1975.
Amended Ch. 681, Stats. 1982. Effective January 1, 1983.

Article 2. Other Speed Laws

Minimum Speed Law

22400. (a) No person shall drive upon a highway at such a slow speed as to impede or block the normal and reasonable movement of traffic, unless the reduced speed is necessary for safe operation, because of a grade, or in compliance with law.

No person shall bring a vehicle to a complete stop upon a highway so as to impede or block the normal and reasonable movement of traffic unless the stop is necessary for safe operation or in compliance with law.

(b) Whenever the Department of Transportation determines on the basis of an engineering and traffic survey that slow speeds on any part of a state highway consistently impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit below which no person shall drive a vehicle, except when necessary for safe operation or in compliance with law, when appropriate signs giving notice thereof are erected along the part of the highway for which a minimum speed limit is established.

Subdivision (b) of this section shall apply only to vehicles subject to registration.

Amended Ch. 1304, Stats. 1959. Effective September 18, 1959.
Amended Ch. 545, Stats. 1974. Effective January 1, 1975.
Amended Ch. 364, Stats. 1979. Effective January 1, 1980.

Traffic Signals

22401. Local authorities in timing traffic signals may so regulate the timing thereof as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speed otherwise applicable under this code.

Bridges and Structures

22402. The Department of Transportation may, in the manner provided in Section 22404 determine the maximum speed, not less than five miles per hour, which can be maintained with safety to any bridge, elevated structure, tube, or tunnel on a state highway. Said department may also make a determination with reference to any other highway upon receiving a request therefor from the board of supervisors or road commissioner of the county, the governing body of the local authority having jurisdiction over the bridge, elevated structure, tube, or tunnel.

Amended Ch. 545, Stats. 1974. Effective January 1, 1975.

Local Bridges and Structures

22403. Any local authority may, in the manner provided in Section 22404, determine the maximum speed, not less than five miles per hour, which can be maintained with safety to any bridge, elevated structure, tube, or tunnel under its jurisdiction, or may request the Department of Transportation to make such determination.

Amended Ch. 545, Stats. 1974. Effective January 1, 1975.

Revision of Speed Limit on Bridges and Structures

22404. The Department of Transportation or local authority making a determination of the maximum safe speed upon a bridge, elevated structure, tube, or tunnel shall first make an engineering investigation and shall hold a public hearing.

Notice of the time and place of the public hearing shall be posted upon the bridge, elevated structure, tube, or tunnel at least five days before the date fixed for the hearing. Upon the basis of the investigation and all evidence presented at the hearing, the department or local authority shall determine by order in writing the maximum speed which can be maintained with safety to the bridge, elevated structure, tube or tunnel. Thereupon, the authority having jurisdiction over the bridge, elevated structure, tube, or tunnel shall erect and maintain suitable signs specifying the maximum speed so determined at a distance of not more than 500 feet from each end of the bridge, elevated structure, tube, tunnel, or any approach thereto.

Amended Ch. 545, Stats. 1974. Effective January 1, 1975.

Violations on Bridges and Structures

22405. (a) No person shall drive a vehicle on any bridge, elevated structure, tube, or tunnel constituting a part of a highway, at a speed which is greater than the maximum speed which can be maintained with safety to such structure.

(b) Upon the trial of any person charged with a violation of this section with respect to a sign erected under Section 22404, proof of the determination of the maximum speed by the Department of Transportation or local authority and the erection and maintenance of the speed signs shall constitute prima facie evidence of the maximum speed which can be maintained with safety to the bridge, elevated structure, tube, or tunnel.

Amended Ch. 545, Stats. 1974. Effective January 1, 1975.

Maximum Speed for Designated Vehicles

22406. No person shall drive any of the following vehicles on a highway at a speed in excess of 55 miles per hour:

(a) A motortruck or truck tractor having three or more axles or any motortruck or truck tractor drawing any other vehicle.
(b) A passenger vehicle or bus drawing any other vehicle.
(c) A schoolbus transporting any school pupil.
(d) A farm labor vehicle when transporting passengers.
(e) A vehicle transporting explosives.

Amended Ch. 2134, Stats. 1959. Effective September 18, 1959.
Amended Ch. 62, Stats. 1961. Effective September 15, 1961.
Amended Ch. 376, Stats. 1963. Effective September 20, 1963.
Repealed and added Ch. 78, Stats. 1967. Effective November 8, 1967.
Amended Ch. 678, Stats. 1980. Effective January 1, 1981.

Decreasing Truck Speed Limit

22407. Whenever the Department of Transportation or local authority determines upon the basis of engineering studies and a traffic survey that the speed of 55 miles per hour is more than is reasonable or safe for vehicles mentioned in subdivision (a) of Section 22406 which have a manufacturer's gross vehicle weight rating of 10,000 pounds or more, in descending a grade upon any portion of a highway, the department or local authority, with respect to highways under their respective jurisdiction, may determine and declare a speed limit of 50, 45, 40, 35, 30, 25 or 20 miles per hour, whichever is found most appropriate to facilitate the orderly movement of traffic and is reasonable and safe, which declared speed limit shall be effective for such vehicles when appropriate signs giving notice thereof are erected upon the highway.

Amended Ch. 1210, Stats. 1965. Effective September 17, 1965. Supersedes Ch. 184.
Amended Ch. 78, Stats. 1967. Effective November 8, 1967.
Amended Ch. 82, Stats. 1973. Effective January 1, 1974.

Solid Tire

22409. No person shall operate any vehicle equipped with any solid tire when such vehicle has a gross weight as set forth in the following table at any speed in excess of the speed set forth opposite such gross weight:

When gross weight of vehicle and load is:	Maximum speed in miles per hour:
10,000 lbs. or more but less than 16,000 lbs.	25
16,000 lbs. or more but less than 22,000 lbs.	15
22,000 lbs. or more	12

Metal Tires

22410. No person shall operate any vehicle equipped with any metal tire in contact with the surface of the highway at a speed in excess of six miles per hour.

Decreasing Speed Limit on Grades

22413. Whenever a local authority determines upon the basis of an engineering and traffic survey that the prima facie limit of 25 miles per hour is more than is reasonable and safe on any portion of a street having a grade in excess of 10 percent, the local authority may by ordinance determine and declare a maximum limit of 20 or 15 miles per hour, whichever is found most appropriate and is reasonable and safe. The declared maximum speed shall be effective when appropriate signs giving notice thereof are erected upon the street.

Added Ch. 318, Stats. 1959.

Chapter 8. Special Stops Required

Stop Requirements

22450. The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection, or railroad grade crossing shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection.

If there is no limit line or crosswalk, the driver shall stop at the entrance to the intersecting roadway or railroad grade crossing.

Amended Ch. 364, Stats. 1969. Effective November 10, 1969.

Stops for Train Signals

22451. (a) The driver of any vehicle approaching a railroad grade crossing shall stop not less than 15 feet from the nearest rail and shall not proceed until he can do so safely, whenever the following conditions exist:

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prima facie evidence that such speed is not reasonable, but the fact that the speed of a vehicle is lower than such limits shall not relieve the operator from the duty to decrease speed when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(b) Any person who operates a motor vehicle at a greater rate of speed than is reasonable, other than speeding, as provided for in section 14-219, shall commit the infraction of traveling unreasonably fast.

(P.A. 75-577, S. 7, 126; P.A. 77-103; 77-340, S. 4; P.A. 84-429, S. 65.)

History: P.A. 77-103 clarified proviso re effective date of speed limits; P.A. 77-340 replaced first reference to parking areas for ten or more cars with parking areas as defined in Sec. 14-219a and specified infraction in Subsec. (b) as infraction "of traveling unreasonably fast"; P.A. 84-429 made technical changes for statutory consistency.

See chapter 881b.

Cited. 181 C. 515, 516, 519.
Cited. 38 CS 426, 431, 434, 435, 445. Cited. 39 CS 313, 314.

Sec. 14-219. Speeding. Absolute limits. (a) No person shall operate any motor vehicle (1) upon any highway, road or any parking area for ten cars or more, at such a rate of speed as to endanger the life of any occupant of such motor vehicle, but not the life of any other person than such an occupant; or (2) at a rate of speed greater than fifty-five miles per hour upon any highway.

(b) Any person who operates a motor vehicle (1) on a multiple lane, limited access highway at a rate of speed greater than fifty-five miles per hour but not greater than seventy miles per hour or (2) on any other highway at a rate of speed greater than fifty-five miles per hour but not greater than sixty miles per hour, shall commit an infraction, provided any such person operating a truck, as defined in section 14-260n, shall have committed a violation and shall be fined not less than one hundred dollars nor more than one hundred fifty dollars.

(c) Any person who violates any provision of subdivision (1) of subsection (a) of this section or who operates a motor vehicle (1) on a multiple lane, limited access highway at a rate of speed greater than seventy miles per hour or (2) on any other highway at a rate of speed greater than sixty miles per hour shall be fined not less than one hundred dollars nor more than one hundred fifty dollars, provided any such person operating a truck, as defined in section 14-260n, shall be fined not less than one hundred fifty dollars nor more than two hundred dollars.

(d) No person shall be subject to prosecution for a violation of both subsection (a) of this section and subsection (a) of section 14-222 because of the same offense.

(1949 Rev., S. 2407; 1961, P.A. 379, S. 2; 517, S. 15; 1963, P.A. 289; 595; February, 1965, P.A. 92; P.A. 73-253, S. 1; P.A. 75-577, 6, 126; P.A. 79-609, S. 1; P.A. 80-276, S. 1, 6; P.A. 84-372, S. 5, 9.)

History: 1961 acts amended Subsec. (a) to add parking areas for ten cars or more and deleted exception for Merritt Parkway from first sentence of Subsec. (b); 1963 acts established maximum speed limits in Subsec. (a)(2) and added roads of specially chartered municipal associations; 1965 act added district roads to Subsec. (a); P.A. 73-253 prohibited operation of vehicle at greater than reasonable speed on school property; P.A. 75-577 deleted provisions of Subsec. (a) re operation at greater than reasonable speed, deleted Subsec. (b) re determination of speed limits and relettered former Subsec. (c) as Subsec. (b); P.A. 79-609 reduced speed limit from seventy to fifty-five miles per hour with limit being generally applicable, special limit provisions were deleted; P.A. 80-276 inserted new Subsec. (b) re offenses deemed infractions and expanded Subsec. (c) re speeding offenses and replaced one hundred dollar maximum fine with one hundred dollar minimum fine and one hundred fifty dollar maximum fine; P.A. 84-372 established higher penalties for person operating a truck.

Mass.

Massachusetts

more than two feet above the road at a distance of thirty feet from the vehicle, except that such a spot light may be used for the purpose of reading signs, and as an auxiliary light in cases of necessity when the other lights required by law fail to operate.

No person, except a duly authorized person driving an emergency fire vehicle, shall operate a motor vehicle equipped with metal studded tires upon a public way between May the first and November the first; provided, however, the registrar may authorize the use of such tires before November the first, if weather conditions require the use thereof. Whoever violates the provisions of this paragraph shall be punished by a fine of not more than fifty dollars.

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§16A. Stopped motor vehicles.

No person shall cause, suffer, allow or permit the unnecessary operation of the engine of a motor vehicle while said vehicle is stopped for a foreseeable period of time in excess of five minutes. This section shall not apply to (a) vehicles being serviced, provided that operation of the engine is essential to the proper repair thereof, or (b) vehicles engaged in the delivery or acceptance of goods, wares, or merchandise for which engine assisted power is necessary and substitute alternate means cannot be made available, or (c) vehicles engaged in an operation for which the engine power is necessary for an associate power need other than movement and substitute alternate power means cannot be made available provided that such operation does not cause or contribute to a condition of air pollution. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars for the first offense, nor more than five hundred dollars for each succeeding offense.

§17. Speed limits.

No person operating a motor vehicle on any way shall run it at a rate of speed greater than is reasonable and proper, having regard to traffic and the use of the way and the safety of the public. Unless a way is otherwise posted in accordance with the provisions of section eighteen, it shall be prima facie evidence of a rate of speed greater

than is reasonable and proper as aforesaid (1) if a motor vehicle is operated on a divided highway outside a thickly settled or business district at a rate of speed exceeding fifty miles per hour for a distance of a quarter of a mile, or (2) on any other way outside a thickly settled or business district at a rate of speed exceeding forty miles per hour for a distance of a quarter of a mile, or (3) inside a thickly settled or business district at a rate of speed exceeding thirty miles per hour for a distance of one-eighth of a mile, or (4) within a school zone established in conformance with standards of the department of public works at a rate of speed exceeding twenty miles per hour. Operation of a motor vehicle at a speed in excess of fifteen miles per hour within one-tenth of a mile of a vehicle used in hawking or peddling merchandise and which displays flashing amber lights shall likewise be prima facie evidence of a rate of speed greater than is reasonable and proper. If a speed limit has been duly established upon any way, in accordance with the provisions of said section, operation of a motor vehicle at a rate of speed in excess of such limit shall be prima facie evidence that such speed is greater than is reasonable and proper; but, notwithstanding such establishment of a speed limit, every person operating a motor vehicle shall decrease the speed of the same when a special hazard exists with respect to pedestrians or other traffic, or by reason of weather or highway conditions. Except on a limited access highway, no person shall operate a school bus at a rate of speed exceeding forty miles per hour, while actually engaged in carrying school children. *(Chgd. eff. 6/17/78; L. 1978, chap. 171).*

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§18. Special regulations as to speed.

The city council, the traffic and parking commission of the city of Boston, the selectmen, park commissioners, a traffic commission or traffic director, or the department, on ways within their control, may make special regulations as to the speed of motor vehicles and as to the use of such vehicles upon particular ways, and may prohibit the use of such vehicles altogether on certain ways; provided, that except in the case of a speed regulation no such special regulation shall be effective unless it shall have been published in one or more newspapers, if there be any, published in the town in which the way is situated otherwise in one or more newspapers published in the county in which the town is situated; nor until after the department, and in the case of a speed regulation the department and the registrar, acting jointly, *(Chgd. by L.1984, chap. 84, eff. 9/13/84.)*

Virginia

ATTACHMENT A

§ 46.1-193. Maximum and minimum speed limits. — The maximum and minimum speed limits on highways of this State shall be as hereinafter prescribed.

(1) Maximum limits.

(a) Fifty-five miles per hour on the Interstate System of Highways or other limited access highways with divided roadways.

(b) Fifty-five miles per hour on nonlimited access highways having four or more lanes and on all State primary highways.

(c) Fifty-five miles per hour on highways not included in (a) or (b) if the vehicle is a passenger motor vehicle, passenger bus, United States post office bus, pickup or panel truck or a motorcycle; and forty-five miles per hour on such highways if the vehicle is a truck, road tractor, ~~tractor truck~~, or combination of vehicles designed to transport property, or is a motor vehicle being used to tow a vehicle designed for self-propulsion, or a house trailer.

(d) Thirty-five miles per hour or the minimum speed allowable, whichever is greater, on any highway other than an interstate highway, if the vehicle is being used as a school bus carrying children, and forty-five miles per hour on interstate highways; provided, however, that for any such vehicle which neither takes on nor discharges children between its point of origin and point of destination, the speed limit shall be forty-five miles per hour.

(e) Forty-five miles per hour on any highway if the vehicle or combination of vehicles is operating under a special permit issued by the State Highway and Transportation Commission in accordance with §§ 46.1-330 and 46.1-343. The State Highway and Transportation Commission may, however, prescribe a speed limit of less than forty-five miles per hour on any permit issued in accordance with §§ 46.1-330 and 46.1-343.

(f) Twenty-five miles per hour between portable signs, tilt-over signs, or fixed blinking signs placed in or along any highway bearing the word "school" or "school crossing." Such word or words shall indicate that school children are present in the vicinity. Any signs erected under this section shall be placed not more than six hundred feet from the limits of the school property or crossing in the vicinity of the school, which is used by children going to and from the school; provided that "school crossing" signs may be placed in any location if the Department of Highways and Transportation or the council of the city or town or the board of supervisors of a county maintaining its own system of secondary roads approves the said crossing for such signs. If the portion of the highway to be posted is within the limits of a city or town, such portable signs shall be furnished and delivered by such city or town. If the portion of highway to be posted is outside the limits of a city or town such portable signs shall be furnished and delivered by the State Highways and Transportation Department. It shall be the duty of the principal or chief administrative officer of each school or some responsible person designated by the school board, preferably not a classroom teacher, to place such portable signs in the highway at a point not more than six hundred feet from the limits of the school property and remove such signs when their presence is no longer required by this subsection. Such portable signs, tilt-over signs, or fixed blinking signs shall be placed in a position plainly visible to vehicular traffic approaching from either direction but shall not be placed so as to obstruct the roadway. Such portable signs, tilt-over signs, or blinking signals shall be in a position, or be turned on, for thirty minutes preceding regular school hours and for thirty minutes thereafter and during such other times as the presence of children on such school property or going to and from school reasonably requires a special warning to motorists. Provided, however, that the governing body of any city or town may, if the portion of the highway to be posted is within the limits of such city or town, increase or decrease the speed limit provided in this subsection only after justification for such increase or decrease has been shown by an

engineering and traffic investigation, and provided further that no such increase or decrease in speed limit shall be effective unless such increased or decreased speed limit is conspicuously posted upon the portable signs, tilt-over signs, or fixed blinking signs required by this subsection.

(g) Twenty-five miles per hour on highways in a business or residential district, except upon interstate or other limited access highways with divided roadways.

(h) Thirty-five miles per hour on highways in any city or town, except upon interstate or other limited access highways with divided roadways and except in business or residence districts.

(i) Notwithstanding the provisions of subdivisions (a), (b) and (c) of this subsection, the speed limits for passenger motor vehicles while towing utility, camping or boat trailers not exceeding an actual gross weight of twenty-five hundred pounds shall be the same as that for passenger motor vehicles.

(2) Minimum speed limits.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Whenever the State Highway and Transportation Commissioner or local authorities within their respective jurisdictions determine on the basis of a traffic engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the Commissioner or such local authority may determine and declare a minimum speed limit to be set forth on signs posted on such highway below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

(3) Notwithstanding the foregoing provisions, the State Highway and Transportation Commissioner or other authority having jurisdiction over highways may decrease the speed limits set forth in subsections (1) (a) through (1) (c) of this section and may increase or decrease the speed limits set forth in subsections (1) (f) through (1) (h) of this section on any highway under its jurisdiction; and may establish differentiated speed limits for daytime and nighttime by decreasing for nighttime driving the speed limits set forth in subsections (1) (a) through (1) (c) of this section and by increasing for daytime or decreasing for nighttime the speed limits set forth in subsections (1) (f) through (1) (h) of this section on any highway under its jurisdiction. Such increased or decreased speed limits and such differentiated speed limits for daytime and nighttime driving shall be effective only when prescribed after a traffic engineering and traffic investigation and when indicated upon the highway by signs; provided, the increased or decreased speed limits over highways under the control of the State Highway and Transportation Commissioner shall be effective only when prescribed in writing by the Highway and Transportation Commissioner and kept on file in the Central Office of the Department of Highways and Transportation.

Any person violating this section shall be guilty of a traffic infraction and upon conviction shall be punished as provided in § 46.1-16.01. (Code 1950, § 46-212; 1950, p. 881; 1952, c. 666; 1954, c. 244; 1956, c. 364; 1958, c. 541; 1960, c. 153; 1962, c. 307; 1964, cc. 118, 408; 1966, c. 85; 1968, c. 641; 1972, cc. 89, 546, 553, 608; 1974, c. 528; 1977, c. 577; 1978, c. 605; 1980, c. 347.)

Cross references. — For definition of business district, see § 46.1-1 (1). For definition of residence district, see § 46.1-1 (24). As to additional penalty when violation occurs while transporting explosives or inflammable gas or liquid, see § 46.1-424.

This section applies to United States employee. — The provisions of this section, fixing the speed limit for automobiles on public highways, must be obeyed by a United States employee while engaged in transporting United States mail in a United States owned automo-

Indiana

139. Reckless driving — IC 9-4-1-56.1

A person operating a vehicle who recklessly:

(1) drives at such an unreasonably high rate of speed, or at such an unreasonably low rate of speed, under the circumstances, as to endanger the safety or the property of others, or as to block the proper flow of traffic;

(2) passes another vehicle from the rear while on a slope or on a curve where vision is obstructed for a distance of less than five hundred (500) feet ahead;

(3) drives in and out of a line of traffic, except as otherwise permitted; or

(4) speeds up or refuses to give one-half (1/2) of the roadway to a driver overtaking and desiring to pass;

commits a Class B misdemeanor; and, if the offense results in damage to the property of another person, the court shall recommend the suspension of the current driving license of the person for a fixed period of not less than thirty (30) days nor more than one (1) year.

140. Failure to dim headlights — IC 9-4-1-56.2

A person operating a vehicle who fails to dim bright or blinding lights when meeting another vehicle or pedestrian commits a Class B infraction.

141. Basic speed law — IC 9-4-1-57

(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so restricted as may be necessary to avoid colliding with any person, or vehicle or other conveyance on or near, or entering a highway in compliance with legal requirements and with the duty of all persons to use due care.

(b) Except when a special hazard exists that requires lower speed for compliance with subsection (a), the limits specified in this section or established as authorized by this section shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

(1) Thirty (30) miles per hour in any urban district.

(2) Fifty-five (55) miles per hour on the interstate defense network of dual highways and in other locations.

(c) The maximum speed limits set forth in this section may be altered as authorized in sections 58 and 61 of this chapter.

(d) The driver of every vehicle shall, consistent with the requirements in subsection (a), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(e) In addition to the other limitations in this section, in section 58, and in any oversize vehicle permit issued under IC 9-8-1 and IC 9-8-1.6, no vehicle that exceeds:

(1) a width of eight (8) feet, six (6) inches;

(2) a height of thirteen (13) feet, six (6) inches; or

(3) a length of eighty (80) feet;

may be operated at a speed greater than forty-five (45) miles per hour.

142. Speed; local authorities, adjustment of limits — IC 9-4-1-58

(a) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under this chapter is greater or less than reasonable and safe under the conditions found to exist on a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which:

1. decreases the limit within urban districts but not to less than twenty (20) miles per hour; or

2. increases the limit within an urban district but not to more than sixty (60) miles per hour during daytime and fifty (50) miles per hour during nighttime; or
3. decreases the limit outside an urban district, but not to less than thirty-five (35) miles per hour.

(b) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all local streets and shall declare a reasonable and safe maximum speed permitted under this chapter for an urban district.

(c) Any altered limit established as hereinabove authorized shall be effective at all times or during hours of darknes or at other times as may be determined when appropriate signs giving notice thereof are erected on such street or highway.

(d) Local authorities shall not have power to alter speed limits on any highway or extension thereof in the state highway system except that incorporated cities and towns may establish speed limits on state highways upon which a school is located: Provided, That such limit shall only be valid if (1) the limit is not less than twenty (20) miles per hour, (2) the limit is imposed only in the immediate vicinity of the school, (3) children are present, (4) if the speed zone is properly signed, and (5) the department of highways has been notified of the limit imposed, by registered or certified mail.

143. Minimum speed law—operating trucks on interstate IC 9-4-1-59

Sec. 59. (a) No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with the law. Any person who is driving at such slow speed and under such circumstances that three (3) or more other vehicles are blocked and can not pass on the left around this vehicle, shall give right-of-way to such vehicle by pulling off to the right of the right lane at the earliest reasonable opportunity and allowing the blocked vehicles to pass.

(b) Whenever the department of highways or local authorities within their respective jurisdictions determine, on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the respective department of highways or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law. A limit so determined and declared by appropriate resolution, regulation or ordinance becomes effective when appropriate sign or signals giving notice of the limit of speed are erected along such part of a highway.

(c) All vehicles that travel at a speed less than the established maximum shall travel in the right lanes to provide for better flow of traffic on interstate defense network of dual highways.

(d) No person shall operate a truck, truck tractor, road tractor, trailer, semitrailer or pole trailer on the interstate defense network of dual highways in any lane except the far right lane, provided that, such vehicles may use the left lane for the purpose of passing a slower moving vehicle, entering or leaving the highway, or where a special hazard exists that requires for safety reasons, the use of an alternate lane.

(e) No person shall operate a truck, truck tractor, road tractor, trailer, semitrailer or pole trailer on any interstate highway consisting of three (3) or more lanes in one (1) direction, in any lane other than the two (2) far right lanes, provided that such vehicles may use an alternate lane where necessary to enter or leave a highway or where a special hazard exists that requires, for safety reasons, the use of an alternate lane.

(f) For the purpose of enforcing this section, the term "trailer" as used in subsections (d) and (e) shall mean the combination of any motor vehicle towing another vehicle or trailer.

(g) The department of highways shall complete the placement of signs or signals on all appropriate roadways no later than January 1, 1975.

144. Speed; state highways; maximum limits IC 9-4-1-61

Whenever the department of highways shall determine on the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or on any part of the state highway system, the department of highways may determine and declare a reasonable and safe maximum limit thereon, which shall be effective when appropriate signs giving notice thereof are erected. Such a maximum speed limit may be declared to be effective at all times or at such times as are indicated on said signs; and differing limits may be established for differing times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted on appropriate fixed or variable signs.

145. Motorized bicycles (mopeds)—operation of IC 9-4-1-61.1

A motorized bicycle may not be operated by any person under the age of fifteen (15) years, and may not be operated on the interstate defense network of highways or on sidewalks.

146. Speed—form of summons IC 9-4-1-62

(a) In every charge of violation of any speed regulation in this act, the complaint or affidavit, and the summons, warrant or notice to appear, shall specify the speed at which the defendant is alleged to have driven, and the prima facie or fixed speed applicable within the district or at the location.

(b) The provisions of this act declaring or providing for fixed and prima facie speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of the damage alleged.

147. Driving left of center—when permitted IC 9-4-1-63

Upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

2. When the right half of a roadway is closed to traffic under construction or repair;

3. Upon a roadway divided into three (3) marked lanes for traffic under the rules applicable thereon; or

4. Upon a roadway designated and sign-posted for one-way traffic.

5. Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place under the conditions then existing shall be driven in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

148. Trucks; lane restrictions; state highways IC 9-4-1-64

(a) As used in this section, the term "truck" shall mean any motor vehicle designed, used or maintained primarily for the transportation of property. The term "truck" shall include any motor vehicle designed and used primarily for drawing another vehicle and so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn, and any motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

(b) The department of highways is hereby authorized and empowered to restrict, by rule or regulation, the operation of any truck to a certain lane or lanes

Hawaii

every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic, or by reason of weather or highway conditions. [L 1971, c 150, pt of §1; am L 1977, c 8, §1]

Amendment Note

L 1977 rephrased first sentence and substituted "curve" for "curb".

Case Notes

For conviction, there must be evidence that the speed was unreasonable under the actual and potential hazards and conditions then existing. 1 H. App. 403, 619 P.2d 1102.

§291C-102 Noncompliance with speed limit prohibited. (a) No person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit established by county ordinance.

(b) The director of transportation with respect to highways under his jurisdiction may place signs establishing maximum speed limits or minimum speed limits. Such signs shall be official signs and no person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit stated on such signs. [L 1971, c 150, pt of §1; am L 1984, c 273, §8]

Amendment Note

L 1984 amended section generally.

Case Notes

In prosecution under this section, prosecutor has burden of proving that speed limit was established in one of ways specified in this section. 57 H. 277, 554 P.2d 767.

§291C-103 Racing on highways. (a) Except as provided in section 291C-149, no person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, and no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

* * *

[am L 1984, c 273, §9]

Revision Note

Only the subsection amended is included in this Supplement.

Amendment Note

L 1984 amended subsection (a).

the forwarding court exercising jurisdiction shall immediately notify the Department of Public Safety thereof. Upon such notification and payment of an additional twenty-five dollars to the Department of Public Safety, the operator's license of the arrested person shall be renewed or reissued for the purpose of this Section. One-half of the additional fine imposed by this Section shall be forwarded by the Department of Public Safety to the forwarding court exercising jurisdiction, to be deposited in that court's criminal court fund and to be used in the same manner as the other sums deposited in said fund.

C. Repealed by Acts 1984, No. 763, § 1.

Added by Acts 1978, No. 301, § 2. Amended by Acts 1980, No. 779, § 1.

1980 Amendment: Added the "A." designating subsec. A, and in that subsection substituted "on" for "upon" before "his written", substituted "fee" for "fine" following "fifty dollar", and substituted "had" for "has" before "honored"; in subsec. B, substituted "dollars" for "dollar fine", and added "to be deposited in that court's criminal court fund and to be used in the same manner as the other sums deposited in said fund"; and added subsec. C.

1984 Legislation: Acts 1984, No. 763, § 1 repealed subsec. C which read: "C. The provisions of this Section shall not apply in Orleans Parish."

Library References
Automobiles ⇐144.1(1).
Bail ⇐40, 75.
C.J.S. Motor Vehicles §§ 164.16, 164.17.
C.J.S. Bail §§ 32, 81, 82.

§ 58. Reasonable and proper control of vehicles

It shall be unlawful for the driver of any vehicle to negligently fail to maintain reasonable and proper control of said vehicle while operating the vehicle on the public roads of this state.

Added by Acts 1972, No. 567, § 1.

Library References
Automobiles ⇐331.
C.J.S. Motor Vehicles § 641 et seq.

Notes of Decisions

Arrest 4
Construction and application 1
Guilty plea 2
Negligence 3
Validity ½

½. Validity

Person of ordinary reasonable intelligence can be expected to know what is "reasonable" and "proper" in control of his vehicle while operating it on public road in conforming his conduct thereto; therefore, this section proscribing failure to maintain reasonable and proper control of vehicle provided fair notice of prohibited conduct and was not unconstitutionally vague on theory that words "reasonable" and "proper" were vague and indefinite. State v. Jackson, Sup.1981, 404 So.2d 952.

1. Construction and application

Finding of negligence on part of driver of vehicle who was traveling at approximately 55 miles per hour in rainstorm and who subsequently pleaded guilty to failure to maintain reasonable and proper control of vehicle was not erroneous. Gregorie v. Hartford Acc. & Indem. Co., App.1977, 348 So.2d 186, writ denied 350 So.2d 1210, 1213.

2. Guilty plea

Although driver's guilty plea to failure to maintain reasonable and proper control of vehicle was not conclusive evidence of negligence, it was competent evidence of such negligence. Gregorie v. Hartford Acc. & Indem. Co., App. 1977, 348 So.2d 186, writ denied 350 So.2d 1210, 1213.

3. Negligence

Cab driver who violated at least two motorist's statutes in striking pedestrian, by failing to maintain control of vehicle and by driving on left side of roadway in marked no passing zone, was negligent, and such negligence was legal cause of pedestrian's injuries. Chiasson v. Whitney, App.1983, 427 So.2d 470, writ denied 433 So.2d 179, 180.

4. Arrest

Where arresting officer went to scene of accident and saw overturned vehicle, officer was informed by plaintiff's parents and sister that plaintiff was the owner and operator of vehicle, and that he had been operating vehicle when it went into the ditch, officer informed plaintiff's relatives that he needed to speak to plaintiff, but plaintiff never attempted to contact him, officer had probable cause to believe that plaintiff had committed the offense of failure to maintain

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control, and officer could not be held liable for false arrest. Richard v. State, Through Dept. of Public Safety, App.1 Cir.1983, 436 So.2d 1265, writ denied 441 So.2d 1223.

PART IV. TRAFFIC REGULATIONS

SUBPART A. SPEED RESTRICTIONS

Law Review Commentaries
Contributory negligence as a matter of law—auto collisions in smoke, fog and dust. 28 La.L. Rev. 674 (1968)

§ 61. Maximum speed limit

Text effective if Congress does not repeal penalties for violating the fifty-five mile-per-hour speed limit.

No person shall operate or drive a vehicle on any highway of this state in excess of fifty-five miles per hour; however, if national speed limits are increased to an amount in excess of fifty-five miles per hour, the secretary is authorized to increase the maximum speed limit provided in this Section to a speed limit not in excess of such national speed limit.

Amended by Acts 1964, No. 369, § 1; Acts 1974, No. 521, § 1; Acts 1977, No. 113, § 1, eff. June 22, 1977.

For text effective only if Congress repeals penalties for violating the fifty-five mile-per-hour speed limit, see § 61, post.

§ 61. Maximum speed limit

Text effective only if Congress repeals penalties for violating the fifty-five mile-per-hour speed limit.

A. No person shall operate or drive a vehicle on any highway of this state, excluding Interstate highways, in excess of fifty-five miles per hour; however, if national speed limits are increased to an amount in excess of fifty-five miles per hour, the secretary is authorized to increase the maximum speed limit provided in this Section to a speed limit not in excess of such national speed limit.

B. No person shall operate or drive a vehicle on any Interstate highways of this state in excess of sixty-five miles per hour.

Amended by Acts 1964, No. 369, § 1; Acts 1974, No. 521, § 1; Acts 1977, No. 113, § 1, eff. June 22, 1977; Acts 1982, No. 191, § 1, eff. Jan. 1, 1983, only if Congress has repealed penalties for violating 55 mile-per-hour speed limit (eff. date suspended until sixty days after 1984 Regular Session by H.C.R. No. 4 of 1983).

For text effective if Congress does not repeal penalties for violating the fifty-five mile-per-hour speed limit, see § 61, ante.

Effective Date—1982 Amendment

Section 2 of Acts 1982, No. 191 provided:

"This Act shall become effective on January 1, 1983, if, and only if, Congress has repealed penalties for violating the fifty-five mile-per-hour speed limit provided in Title 23, Section 154, of the United States Code."

'85 Supplement

Note 6

between 40 and 45 miles per hour, with her eyes closed, defendants failed to sustain burden of proof of excessive speed on part of motorcycle's operator. Freeman v. Liberty Mut. Ins. Co., App.1965, 175 So.2d 659.

7. Proximate cause

Evidence supported finding that driver of truck which collided with automobile and subsequently struck second automobile, the occupant of which had received medical and workmen's compensation benefits under plaintiff's policy and collision benefits under plaintiff's automobile liability policy, was driving at an excessive rate of speed prior to collision with the first automobile and that the excessive speed was a proximate cause of the second collision. Fidelity & Cas. Co. of New York v. Aetna Life & Cas. Co., App.1971, 244 So.2d 255.

Testimony of investigating officer and outbound motorist supported finding in personal injury action by passenger in inbound car that outbound motorist was not negligent in crossing inbound lane when reentering highway after stopping at roadside telephone booth, and that excessive speed of inbound car was sole proximate cause of collision. Necaise v. Norris, App. 1970, 242 So.2d 282.

Violation of a speed law does not render a motorist liable unless the infraction is a cause in fact of the accident. McDaniel v. Welsh, App. 1970, 234 So.2d 833.

8. Last clear chance

Where defendant motorist observed 12-year-old pedestrian running toward highway at distance of 300 feet and recognized pedestrian to be child and defendant did not sound horn or slow his vehicle, defendant could reasonably have taken action to stop or slow vehicle so as to permit pedestrian to cross safely, and last clear change doctrine was applicable even though 12-year-old pedestrian was contributorily negligent in running onto heavily traveled highway with but momentary hesitation. Tate v. Hill, App.1967, 197 So.2d 107, writ denied 250 La. 911, 199 So.2d 919.

Where operator of plaintiffs' automobile approached intersection from right at about 15 to 20 miles per hour and observed defendant's vehicle when it was 25 to 30 feet from intersection and immediately applies brakes but collided with right rear fender of defendant's vehicle, operator of plaintiffs' vehicle was engaged in exercise of reasonable care and accident was precipitated by gross negligence of operator of defendant's vehicle and doctrine of last clear chance was not applicable. Kevlin v. Demarest, App.1967, 196 So.2d 336.

In order to invoke doctrine of last clear chance it must be proved that person invoking doctrine was in position of peril of which he was unaware or from which he was unable to extricate himself, that person against whom doctrine is invoked actually discovered or was in position where he could have discovered such other person's peril and that person against whom doctrine is invoked could have avoided accident with exercise of reasonable care. Id.

The doctrine of last clear chance did not apply to a case wherein preceding driver was struck from behind after driving onto highway where visibility had been reduced to a few feet because of low-lying, dense smoke mixed with heavy fog. Walden v. Employers Liability Assur. Corp., App.1967, 195 So.2d 350.

9. Intersections

Evidence in action arising out of collision which occurred at blind intersection of two gravel roads in rural area established that driver of southbound truck and trailer which was struck by eastbound truck was negligent in entering intersection in front of approaching preferred motorist when it was not safe to do so. Ernst v. O'Bannion, App.1973, 278 So.2d 830, writ denied 281 So.2d 749.

Driver of truck which entered intersection at moderate speed on light which had been favorable from 75 to 100 feet before truck reached intersection was not negligent in not according right-of-way and opportunity of completing movement through intersection to automobile which entered intersection at higher rate of speed on unfavorable light where there was little difference in the time the two vehicles entered the intersection, notwithstanding that automobile traveled further into the intersection than truck prior to collision. Meek v. State Farm Mut. Auto. Ins. Co., App.1971, 244 So.2d 661.

Southbound motorist who collided with northbound motorist who was executing left turn at intersection was negligent in going too fast and failing to keep a proper lookout under evidence that prior to collision northbound motorist had been stopped and was signaling for a left turn, that yellow caution light was on at intersection where 25-m.p.h. speed limit was in effect, that automobile of southbound motorist who testified that he did not remember his speed at time of collision left 61 feet of skid marks and that substantial damage occurred to both automobiles indicating a severe impact. Nellon v. State Farm Mut. Auto. Ins. Co., App.1971, 244 So.2d 303.

In view of length of defendants' northbound tractor-trailer rig, slow rate of speed at which it must have entered intersection, and length of time it took to cross intersection, plaintiff, no matter what speed his westbound vehicle was traveling, should have seen trailer rig in time to avoid collision and having failed to see what he should have seen, his negligence was a proximate cause of accident precluding recovery. Thomas v. Lee, App.1970, 243 So.2d 536, writ denied 257 La. 991, 244 So.2d 860.

Evidence in intersection collision case was insufficient to establish that northbound motorist was speeding and thus contributorily negligent at time of collision with eastbound motorist who entered favored street after stopping at stop sign. Hill v. Main Ins. Co., App.1970, 242 So.2d 623.

10. Hills and curves

Evidence that motorist who collided with state trooper's vehicle while the two vehicles were attempting to negotiate a blind curve on a narrow gravel road was familiar with the road, that he entered the blind curve at 35 miles per hour driving well to his left on the narrow road, and that, when the collision occurred, the left portion of each of the two vehicles was beyond the center line sustained determination that the motorist was causally negligent and thus could not recover from parish which maintained the road. Teseno v. St. Landry Parish Police Jury, App. 1977, 343 So.2d 452.

Evidence sustained finding that truck driver's negligence in attempting to enter highway having 60 m.p.h. speed limit in a long, slow moving truck and trailer within 200 feet of curve in that highway was sole cause of accident in which driver of automobile swerved to avoid striking truck, left highway, skidded on wet grass and ultimately struck building. Hebert v. Hanover Ins. Co., App.1971, 244 So.2d 55.

16. Turning

Leading motorist, who was struck from behind in multiple-vehicle accident, was not negligent in stopping in inner lane of hour-lane highway, giving required signal for left turn at intersection with break in neutral ground designed to permit left turns. Henderson v. Ancona, App. 1967, 197 So.2d 150.

19. Radar

Where defendant raised no objections to admissibility of radar and speedometer evidence at trial for speeding, alleged error or irregularity at trial could not be reviewed by the Supreme Court. State v. Kennedy, Sup.1981, 398 So.2d 1082.

20. Failure to prosecute

One-year time limitation for commencement of misdemeanor trial after institution of prosecution was not interrupted by defendant's failure to appear as directed by arresting officer, inasmuch as she was a 16-year resident at same address, which address was reflected on driver's license seized by arresting officer, and her testimony that she was not long absent from her home in two years following the offense and that no efforts were made to serve a warrant on her went uncontradicted, thus, since the time allowed for institution of prosecution had run without interruption, she was entitled to have charges against her dismissed. City of Baton Rouge v. Wheat, Sup.1979, 377 So.2d 1234.

21. Review

Where pro se defendant failed to object to admissibility of radar and speedometer evidence claimed error relating to admission thereof was not before reviewing court. State v. Alford, Sup.1980, 384 So.2d 761.

22. Trial

Defendant who was tried on counts of driving while intoxicated, second offense, illegally carrying a weapon, resisting arrest, and speeding at same time without mention of consolidation, so that charges would be considered as if joined and total possible punishment, which would be sum of maximum possible for each charge, was greater than six months imprisonment, was entitled to a jury trial. State v. Thompson, App. 3 Cir.1984, 446 So.2d 557.

§ 62. Maximum speed limit; certain vehicles

Text of subsec. A effective if Congress does not repeal penalties for violating the fifty-five mile-per-hour speed limit. For text of subsec. A effective only if Congress does repeal penalties for violating the fifty-five mile-per-hour speed limit, see subsec. A, post.

A. No person shall operate any freight carrying vehicle upon the highways of this state at a speed in excess of fifty-five miles per hour; however, if national speed limits are increased to an amount in excess of fifty-five miles per hour, the secretary is authorized to increase the maximum speed limit provided in this Subsection to a speed limit not in excess of such national speed limit.

Amended by Acts 1970, No. 150, § 1; Acts 1974, No. 521, § 2; Acts 1977, No. 113, § 1, eff. June 22, 1977.

Text of subsec. A effective only if Congress repeals penalties for violating the fifty-five mile-per-hour speed limit. For text of subsec. A effective if Congress does not repeal penalties for violating the fifty-five mile-per-hour speed limit, see subsec. A, ante.

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A. (1) No person shall operate any freight carrying vehicle upon the highways of this state, excluding Interstate highways, at a speed in excess of fifty-five miles per hour; however, if national speed limits are increased to an amount in excess of fifty-five miles per hour, the secretary is authorized to increase the maximum speed limit provided in this Section to a speed limit not in excess of such national speed limit.

(2) No person shall operate any freight carrying vehicle upon the Interstate highways of this state at a speed in excess of sixty miles per hour.

Amended by Acts 1970, No. 150, § 1; Acts 1974, No. 521, § 2, Acts 1977, No. 113, § 1, eff. June 22, 1977; Acts 1982, No. 191, § 1, eff. Jan. 1, 1983 only if Congress has repealed penalties for violating the 55 mile-per-hour speed limit (eff. date suspended until sixty days after 1984 Session by H.C.R. No. 4 of 1983).

B. Forty-five miles per hour shall be the maximum speed at which a person shall be permitted to drive a vehicle which is towing a mobile home; however, when any such mobile home is not less than fifteen feet or more than thirty-two feet in length and is equipped with brakes or when such a mobile home is less than fifteen feet in length and is not equipped with brakes, a person may drive a vehicle towing any such mobile home at a speed not in excess of fifty-five miles per hour at any time between sunrise and sunset and not in excess of fifty miles per hour at any time between sunset and sunrise; however, if national speed limits are increased to an amount in excess of fifty-five miles per hour, the secretary is authorized to increase the maximum speed limit provided in this Subsection to a speed limit not in excess of such national speed limit.

Amended by Acts 1968, No. 181, § 1, Acts 1974, No. 521, § 2; Acts 1977, No. 113, § 1, eff. June 22, 1977.

[See main volume for text of C]

D. No person shall operate a school bus at a speed in excess of 55 miles per hour when transporting children, provided however, that the driver of a school bus transporting children under conditions which require frequent stops to receive and discharge such children shall not operate such school bus at a speed in excess of 35 miles per hour.

Amended by Acts 1966, No. 217, § 2.

Effective Date—1982 Amendment

Section 2 of Acts 1982, No. 191 (§ 1 of which amended subsec. A of this section) provided:

"This Act shall become effective on January 1, 1983, if, and only if, Congress has repealed penalties for violating the fifty-five mile-per-hour speed limit provided in Title 23, Section 154, of the United States Code."

Suspension of Acts 1982, No. 191, § 2

House Concurrent Resolution No. 4 of the 1983 Regular Session provided:

"WHEREAS, Act No. 191 of the 1982 Regular Session of the Legislature established a sixty-five mile per hour speed limit on Interstate highways in Louisiana; and

"WHEREAS, Section 2 of Act No. 191 of the 1982 Regular Session has the effective date of January 1, 1983; and

"WHEREAS, such effective date would apply if, and only if, Congress repeals the penalties for violating the fifty-five mile-per-hour speed limit provided in Title 23, Section 154, of the United States Code; and

"WHEREAS, Congress has not repealed these provisions; and

"WHEREAS, the present law is ineffective unless Congress repeals the penalties for violating the fifty-five mile-per-hour speed limit.

"THEREFORE, BE IT RESOLVED by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the effective date of Section 2 of Act No. 191 of the 1982 Regular Session is hereby suspended until sixty days after the 1984 Regular Session of the Legislature."

1982 Amendment: Designated the previous text of subsec. A as par. A(1); in par. A(1), added, "excluding Interstate highways," and substituted "Section" for "Subsection"; and added par. A(2).

Notes of Decisions

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3. Freight carrying vehicles—In general

In absence of evidence in action for wrongful death establishing legal speed limit on portion of highway on which pickup truck struck pedestrian, it would be concluded that 55-mile per hour speed of truck was within speed limit, in view of this section setting speed limit, for pickup trucks which do not exceed 6,000 pounds gross weight at 60 miles per hour. Demandre v. Robinson, App.1969, 220 So.2d 542.

4. —— Evidence, freight carrying vehicles

Where witnesses had only glimpse of vehicle before accident, little weight can be given to their estimates of speed. Scruggs v. McCraney, App.1970, 234 So.2d 262.

60 feet of skid marks before impact made it obvious that vehicle was traveling at high rate of speed. Id.

Evidence established that truck involved in collision with automobile that had entered highway from dirt road was traveling at speed in excess of rate of 50 miles per hour prescribed for that type of vehicle, as claimed by witness who watched truck go by about three-quarters of a mile before it came to the intersection. McQuillin v. Travelers Indem. Co., App.1965, 171 So.2d 691, writ denied 247 La. 623, 172 So.2d 703.

5. Intersections

In view of length of defendants' north-bound tractor-trailer rig, slow rate of speed at which it must have entered intersection, and length of time it took to cross intersection, plaintiff, no matter what speed his westbound vehicle was traveling, should have seen trailer rig in time to avoid collision and having failed to see what he should have seen, his negligence was a proximate cause of accident precluding recovery. Thomas v. Lee, App.1970, 243 So.2d 536, writ denied 257 La. 991, 244 So.2d 860.

14. Skidding

Evidence sustained finding that truck driver's negligence in attempting to enter highway having 60 m.p.h. speed limit in a long, slow moving truck and trailer within 200 feet of curve in that highway was sole cause of accident in which driver of automobile swerved to avoid striking truck, left highway, skidded on wet grass and ultimately struck building. Hebert v. Hanover Ins. Co., App.1971, 244 So.2d 55.

17. Motorcycles

In case in which motorcycle passenger testified that she estimated speed of motorcycle at between 40 and 45 miles per hour, with her eyes closed, defendants failed to sustain burden of proof of excessive speed on part of motorcycle operator. Freeman v. Liberty Mut. Ins. Co., App.1965, 175 So.2d 659.

18. Negligence

Evidence was sufficient to support determination that both motorists involved in intersectional automobile collision were negligent, one in driving at excessive speed and the second in not taking proper care in executing a left turn. Agency Rent-A-Car, Inc. v. Hamm, App.1981, 401 So.2d 1259.

§ 63. Establishing of speed zones

Acts 1972, No. 314, § 1 provides: "The Department of Highways is authorized, urged and requested to study the speed limits of the state system as presently existing and to adopt higher limits than the present statutory limits where safe to do so, and to consider the imposition of minimum limits on interstate highways."

Notes of Decisions

1. In general

In absence of evidence in action for wrongful death establishing legal speed limit on portion of highway on which pickup truck struck pedestrian, it would be concluded that 55-mile per hour speed of truck was within speed limit, in view of R.S. 32:62 setting speed limit for pickup trucks which do not exceed 6,000 pounds gross weight at 60 miles per hour. Demandre v. Robinson, App.1969, 220 So.2d 542.

§ 64. General speed law

[See main volume for text of A and B]

Text of subsec. C effective only if Congress repeals penalties for violating the fifty-five mile-per-hour speed limit.

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that driver of first automobile involved in collision had been negligent in engaging in passing maneuver at high rate of speed and that drivers of third and fourth vehicles involved were also guilty of negligence in driving too closely to vehicles in front of them at speeds of 50 to 60 miles an hour, but evidence established that driver of second vehicle, which was lead automobile of group of automobiles overtaken by first automobile, was not negligent. Felt v. Privy, 1951, 240 La. 966, 126 So.2d 330.

Evidence that motorist attempted to pass truck with which he collided while traveling at 35 to 45 miles per hour through an unincorporated village of 100 inhabitants and that there was a sign a quarter of a mile from the village limits stating that the speed limit was 45 miles per hour and no other sign showing any necessity for reduction of speed and that the weather condition was good and the road was straight and level, did not show that motorist's speed was illegal so as to preclude recovery for damages sustained on ground that motorist was guilty of contributory negligence. Federal Ins. Co. v. Employers' Liability Ins. Corporation, App. 1941, 4 So.2d 626.

Evidence showed bus driver at fault in attempting to pass car in curve at excessive speed. Griffen v. Teche Transfer Co., 1932, 19 La.App. 157, 140 So. 113.

15. Parking

Evidence established that defendant's loaded truck upon crossing levee near center of highway became uncontrollable and collided with vehicle in which plaintiff was sitting, while the vehicle was stopped on the side of the highway, as a result of negligence of the truck driver in failing to keep the truck under proper control and to drive at proper speed. McDaniell v. Hargrove, App. 1940, 197 So. 292.

Collision between truck and automobile, stopping on wrong side of road in darkness after steering gear was broken and lights extinguished when struck in rear by another truck, was due to negligence of driver of former truck in proceeding at excessive speed, rather than automobile driver's intervening negligence. Penton v. Fisher, App.1934, 155 So. 35.

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Where driver of plaintiff's truck when blinded by lights of approaching automobile was negligent in not reducing speed, contributory negligence barred recovery for damages sustained in collision with unlighted parked truck. Safety Tire Service v. Murov, 1932, 19 La. App. 663, 140 So. 870.

If automobile driver was prevented from seeing unlighted parked motor-truck because of contour of road until within 20 feet of it, he could not recover because of his excessive speed. Sexton v. Stiles, 1930, 15 La.App. 148, 130 So. 821.

16. Turning

Where defendant motorist left gasoline filling station on right hand side of street and made left turn on main street of village without signaling and his automobile was rammed on its right hand side by oncoming automobile which was traveling at a speed not in excess of 25 miles per hour, defendant was negligent and his negligence was proximate cause of collision and fact that two automobiles were parked in front of defendant's own as he began left turn did not excuse him from consequences of his carelessness. Zurich Fire Ins. Co. of N. Y. v. Thomas, App.1951, 49 So.2d 460.

Excessive speed of automobile, striking rear of car making left turn into highway, which driver entered after looking to right without seeing any car within 85 yards, was sole proximate cause of accident. Fontanille v. Ducote, App.1934, 155 So. 40.

17. Sudden emergency

A motorist who was traveling through unincorporated village at speed in excess of legal rate at time he struck pedestrian was negligent in his driving, but such negligence was not actionable, where it appeared that it was not a proximate cause of the accident, in view of fact that pedestrian jumped in front of automobile when it was only 10 or 15 feet away. Hopson v. Neighbors, App.1940, 197 So. 282.

18. Right of way

Even though defendant had the right-of-way at an intersection over the plaintiff's automobile he was not justified in entering the intersection in the path of plaintiff's automobile, since he lost the benefit of the right-of-way when he mistakenly decided that he could resume sufficient speed to cross the half of the road on which plaintiff's automobile was approaching in time for defendant to get out of the path thereof. Singley v. Thomas, App.1951, 49 So.2d 465.

Evidence established that fatal automobile collision at road intersection was result of deceased's fast or reckless driving, though he had right of way. Watson v. Mundinger, App.1932, 144 So. 620.

19. Radar

It is legal to check speed of automobiles by radar timing on only one street by school bounded by four streets without checking speed on the other three streets. Op.Atty.Gen., 1956-58, p. 547.

§ 62. Maximum speed limit; certain vehicles

A. No person shall operate any freight carrying vehicles upon the highways of this state at a speed in excess of 50 miles per hour;

B. No person shall drive a vehicle which is towing a house trailer at a speed in excess of 45 miles per hour;

C. No person pulling or towing upon any highway of this State, with another vehicle, any vehicle designed, equipped or intended to operate under its own power shall operate the towing vehicle at a speed in excess of 45 miles per hour;

D. No person shall operate a school bus at a speed in excess of 45 miles per hour when transporting children, provided however, that the driver of a school bus transporting children under conditions which

C. Rolling roadblocks shall be prohibited from operating on all Interstate highways in the state.

Added by Acts 1982, No. 191, § 1, eff. Jan. 1, 1983, only if Congress repeals the 55 mile-per-hour speed limit (eff. date suspended until sixty days after 1984 Regular Session by H.C.R. No. 4 of 1983).

Effective Date—Subsec. C

Section 2 of Acts 1982, No. 191 (§ 1 of which enacted subsec. C of this section) provided:

"This Act shall become effective on January 1, 1983, if, and only if, Congress has repealed penalties for violating the fifty-five mile-per-hour speed limit provided in Title 23, Section 154, of the United States Code."

Suspension of Acts 1982, No. 191, § 2

House Concurrent Resolution No. 4 of the 1983 Regular Session provided:

"WHEREAS, Act No. 191 of the 1982 Regular Session of the Legislature established a sixty-five mile per hour speed limit on Interstate highways in Louisiana; and

"WHEREAS, Section 2 of Act No. 191 of the 1982 Regular Session has the effective date of January 1, 1983; and

"WHEREAS, such effective date would apply if, and only if, Congress repeals the penalties for violating the fifty-five mile-per-hour speed limit provided in Title 23, Section 154, of the United States Code; and

"WHEREAS, Congress has not repealed these provisions; and

"WHEREAS, the present law is ineffective unless Congress repeals the penalties for violating the fifty-five mile-per-hour speed limit.

"THEREFORE, BE IT RESOLVED by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the effective date of Section 2 of Act No. 191 of the 1982 Regular Session is hereby suspended until sixty days after the 1984 Regular Session of the Legislature."

Acts 1972, No. 314, § 1 provides: "The Department of Highways is authorized, urged and requested to study the speed limits of the state system as presently existing and to adopt higher limits than the present statutory limits where safe to do so, and to consider the imposition of minimum limits on interstate highways."

1982 Amendment: Added subsec. C.

Law Review Commentaries

Last clear chance and the inattentive plaintiff in Louisiana. John Michael Cumberland, 12 Loyola L.Rev. (La.) 1 (1965-66).

Last clear chance doctrine in Louisiana—An analysis and critique. 27 La.L.Rev. (La.) 269 (1967).

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1. In general

Even though gore area and guardrail on highway did not meet standards that were existing at time of automobile accident, where both items met proper standards that were in existence at time highway was constructed, driver was speeding at time of accident, had blood alcohol level of .14 miligrams, driving pattern chosen by driver was in violation of this section and R.S. 32:61, 32:79, 32:82 regulating operation of motor vehicle, including improper lane change, and improper use of median, and of 88,000 vehicles which traversed that area every day there were only 24 accidents in that area in year immediately preceding driver's accident, gore area and guardrail did not create unreasonable risk of injury to driver. Usry v. Louisiana Dept. of Highways, App.1981, 402 So.2d 240, writ denied 404 So.2d 1259, reconsideration denied 406 So.2d 610, writ denied 406 So.2d 613

Where statistics as to number and types of accidents in area of highway in which fatal accident occurred indicated that signs, guardrails and gore area in existence at time of accident were adequate for motorist exercising ordinary care, and driver killed in accident was violating this section and R.S. 32:61, 32:79, 32:82 governing regulation of motor vehicle traffic at time of accident, wife of driver who was killed in accident failed to carry burden of establishing that hazardous conditions complained of, inadequate signs, defective guardrails, and gore area, were patently or obviously dangerous to reasonably careful and ordinarily prudent driver. Id.

Generally, a motorist may assume that a road is safe for travel even at night; but this rule does not apply where a motorist has actual knowledge of defect or hazard. Martin v. State, Through Dept. of Highways, App.1976, 322 So.2d 827.

This section prohibiting operation of motor vehicle upon highway at such slow speed as to impede normal and reasonable movement of traffic was inapplicable where preceding motorist had just entered highway from a controlled access ramp, was in process of accelerating and changing gears, was traveling at 15 to 20 miles per hour and one lane of dual lane bridge was unobstructed. Smiley v. Ellis, App.1974, 307 So.2d 150, application denied 310 So.2d 643.

The maximum speed limit of 65 miles per hour at point of collision was conditional under R.S. 32:64 providing that no person shall drive at speed greater than reasonable and prudent under the conditions and potential hazards existing, having due regard to the surface and width of highway and the weather. Beauregard v. Salmon, App.1967, 205 So.2d 634.

3. Negligence, in general

Evidence established that black man wearing dark clothing was lying motionless in middle of traffic lane on rural, unlighted highway at 3:50 a.m. on foggy night, and that truck driver was proceeding at safe speed and at safe distance behind other truck, relative to his speed, and thus, failed to establish that driver was negligent in failing to observe victim in time to avoid accident. Rayford v. Saia Motor Freight Lines, Inc., App. 1 Cir.1983, 442 So.2d 646, writ denied 444 So.2d 1242.

There was no manifest error in trial court's determination of gross negligence of driver of automobile which struck preceding vehicle from behind where there were 71 feet of skid marks left by this automobile, impact of collision propelled preceding vehicle into two vehicles which were immediately in front of it and where all other vehicles in vicinity were able to stop without causing collision. Andersen v. Craig, App. 1981, 401 So.2d 1022.

On-coming motorist, whose vehicle hydroplaned on water that had accumulated on unresurfaced portion of old highway and skidded into path of plaintiff's on-coming vehicle, was operating his vehicle in a negligent manner where he had traversed several miles over a portion of highway before the accident and was operating his vehicle at a speed greater than reasonable and prudent under the circumstances. Bush v. State, Through Dept. of Highways, App.1981, 395 So.2d 916, writ denied 399 So.2d 609.

Even if motorist had violated this section and R.S. 32:141, relating to obstruction of more than one-half of road bed, that did not automatically constitute negligence. Comeaux v. Sims, App. 1976, 328 So.2d 816.

Approach of police vehicle from opposite direction with blue flashing lights indicated to plaintiff truck driver that potentially dangerous situation existed so that plaintiff properly reduced his speed on overpass and was not negligent with respect to collision with following tank truck. Eubanks v. Brasseal, Sup.1975, 310 So.2d 550, on remand 318 So.2d 79.

Evidence that pickup truck driver was driving at approximately 45 miles per hour on wet rainy night when he apparently lost control of the truck, which bounced off a bridge railing and collided with oncoming automobile, sustained finding that driver of the pickup truck was negligent and that his negligence caused the accident, which resulted in automobile passenger's death. Wilson v. Pittman, App.1975, 307 So.2d 804.

Where road was straight and dry, visibility was unobstructed and following motorist had ample room in which to maneuver around preceding vehicle, if it were seen, following motorist was negligent in failing to observe preceding vehicle in time to avoid accident. Smiley v. Ellis, App.1974, 307 So.2d 150, application denied 310 So.2d 643.

Where semitrailer truck driver took no action to slow vehicle except to remove foot from accelerator upon noticing increasingly thickening layer of gravel on highway, low beam headlights provided visibility of only 50 to 60 feet, truck struck three-foot pile of gravel in roadway, and veered into opposite lane striking oncoming vehicle, truck driver was negligent. Tillman v. Canal Ins. Co., App.1974, 305 So.2d 602, writ denied 307 So.2d 630.

Driver of pickup truck was negligent in not taking necessary precautions to insure that 12-year-old child in rear of pickup truck was safely seated and in driving at excessive rate of speed in light of his knowledge that the child was seated on truck's tailgate and was liable for injuries sustained when child was thrown from the truck. Freeman v. Wilcox, App.1974, 303 So.2d 840, writ denied 307 So.2d 630.

Though defendant truck driver pled guilty to charge of prima facie speeding in connection

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to a bridge, evidence for bus company was insufficient to rebut prima facie case in favor of passenger. Fernandez v. Tri-State Transit Co. of Louisiana, App.1940, 194 So. 84.

In action against bus company for injuries sustained by passenger, evidence warranted conclusion that bus operator was operating bus in an illegal manner and was not free of negligence, at time of accident, in view of damage resulting when bus struck a bridge, and operator's knowledge concerning wet condition of highway, narrowness of bridge, and poor tread of tires on rear wheels of bus. Id.

That truck skidded on somewhat steep approach to bridge considered extremely hazardous to automobile traffic did not raise presumption that driver was negligent. Siren v. Montague, App.1932, 142 So. 100.

Burden was on defendant motorist sued for damages sustained in collision to establish defense that his automobile was uncontrollable only because floor of bridge was slick as result of rain. McNabb v. Dugas, App.1932, 142 So. 174.

§ 63. Establishing of speed zones

A. Whenever the department shall determine upon the basis of an engineering and traffic investigation that any maximum speed set forth in this Chapter is greater or less than is reasonable or safe under the conditions found to exist upon any highway of this state, or any part thereof, the department may determine and declare a reasonable and safe maximum speed limit thereat, which, when appropriate signs giving notice thereof are erected, shall be effective at all times or at such specific times as may be determined by the department.

B. Whenever the department determines on the basis of an engineering and traffic investigation that slow speeds on any highway of this state, or part thereof, consistently impede the normal and reasonable movement of traffic, the department may determine and declare a minimum speed limit thereat, below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law. Minimum speeds so determined shall become effective upon the erection of signs giving notice thereof. Acts 1962, No. 310, § 1.

Library references: Automobiles ⇐144, 168, 331; C.J.S. Motor Vehicles §§ 27, 29, 35, 200 et seq., 641 et seq.

History and Source of Law

Source:

Uniform Vehicle Code §§ 11-802, 11-804.

Law Review Commentaries

Admissibility in evidence of radar speed meter readings. 28 Tulane Law Rev. 308 (April 1954).

§ 64. General speed law

A. No person shall drive a vehicle on the highway within this state at a speed greater than is reasonable and prudent under the conditions and potential hazards then existing, having due regard for the traffic on, and the surface and width of, the highway, and the condition of the weather, and in no event at a speed in excess of the maximum speeds established by this Chapter or regulation of the department made pursuant thereto.

B. Except when a special hazard exists that requires lower speed for compliance with paragraph A of this section, no person shall operate or drive a motor vehicle upon the highways of this state at such a slow speed as to impede the normal and reasonable movement of traffic. Acts 1962, No. 310, § 1.

History and Source of Law

Source:

Acts 1938, No. 280, § 3.
Acts 1948, No. 502, §§ 4, 5.
R.S.1950, § 32:227.
Acts 1950, 2nd Ex.Sess., No. 3, § 1.

R.S.1950, § 32:227 provided:

"In addition to the specific speed limitations of this Chapter, no person shall operate any vehicle upon the highways of this state at other than a reasonable and proper speed under the circumstances, or at a speed endangering the persons or property of others.

"Whoever operates a vehicle in violation of the speed limitations of this Chapter shall be prima facie at fault and responsible for any accident proximately caused by such operation.

"In addition, whoever violates the speed limitations of R.S. 32:223, or the general speed limit of this Section while operating or driving a motor vehicle to which R.S. 32:223 applies, shall be fined not more than two hundred dollars or imprisoned for not more than ninety days, or both. A subsequent offense shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or imprisonment for not less than ten days nor more than six months or both.

"In addition, whoever violates the speed limitations of R.S. 32:225, 32:226, or the general speed limit of this section while operating or driving a motor vehicle to which R.S. 32:225 or R.S. 32:220 applies, shall for the first offense be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned for not less than thirty days nor more than six months, or both; a second offense shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars or imprisonment for not less than sixty days nor more than one year, or both, and in addition the Department of Public Safety shall forthwith revoke, for a period of not less than sixty days nor more than one year, the chauffeur's or driver's license, or both, of the person convicted of a second offense upon receiving satisfactory evidence of such conviction or of the entry of a plea of guilty and sentence thereon, or of the forfeiture of bail of any such person charged with a second offense; a third or subsequent offense shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars and imprisonment for not less than six months nor more than one year, and in addition the Department of Public Safety shall forthwith revoke, for a period of not less than sixty days nor more than one year, the chauffeur's or driver's license, or both, of the person convicted of a third or subsequent offense upon receiving satisfactory evidence of such conviction or of the entry of a plea of guilty and sentence thereon, or of the forfeiture of bail of any such person charged with a third or subsequent offense.

"No sentence imposed under the authority of this Section shall be suspended."

The general speed limitation, and presumption of fault, in R.S.1950, § 32:227, were based on Acts 1938, No. 280, § 3, rule 4. The penalty provisions were based on Acts 1948, No. 502, §§ 4, 5.

Pennsylvania

SUBCHAPTER F
SPEED RESTRICTIONS

Sec.
3361. Driving vehicle at safe speed.
3362. Maximum speed limits.
3363. Alteration of maximum limits.
3364. Minimum speed regulation.
3365. Special speed limitations.
3366. Charging speed violations.
3367. Racing on highways.
3368. Speed timing devices.

Cross References. Subchapter F is referred to in section 6109 of this title.

§ 3361. Driving vehicle at safe speed.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, nor at a speed greater than will permit the driver to bring his vehicle to a stop within the assured clear distance ahead. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

Cross References. Section 3361 is referred to in sections 1535, 3362, 3366 of this title.

§ 3362. Maximum speed limits.

(a) General rule.—Except when a special hazard exists that requires lower speed for compliance with section 3361 (relating to driving vehicle at safe speed), the limits specified in this subsection or established under this subchapter shall be maximum lawful speeds and no person shall drive a vehicle at a speed in excess of the following maximum limits:

(1) 35 miles per hour in any urban district.

(2) 55 miles per hour in other locations.

(3) Any other maximum speed limit established under this subchapter.

(b) **Posting of speed limit.**—No maximum speed limit established under subsection (a)(1) or (3) shall be effective unless posted on fixed or variable official traffic-control devices erected in accordance with regulations adopted by the department which regulations shall require posting at the beginning and end of each speed zone and at intervals not greater than one-half mile.

(c) **Penalty.**—Any person violating this section is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of $35. Any person exceeding the maximum speed limit by more than five miles per hour shall pay an additional fine of $2 per mile for each mile in excess of five miles per hour over the maximum speed limit.

Cross References. Section 3362 is referred to in section 1535 of this title.

§ 3363. Alteration of maximum limits.

The department or local authorities on highways under their respective jurisdictions, upon the basis of an engineering and traffic investigation, may determine that the maximum speed permitted under this subchapter is greater or less than is reasonable and safe under the conditions found to exist upon any such highway or part thereof and establish a reasonable and safe maximum limit. The maximum speed limit may be made effective at all times or at times indicated and may vary for different weather conditions and other factors bearing on safe speeds. No maximum speed greater than 55 miles per hour shall be established under this section.

§ 3364. Minimum speed regulation.

(a) **Impeding movement of traffic prohibited.**—Except when reduced speed is necessary for safe operation or in compliance with law, no person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic.

(b) **Slow moving vehicle to drive off roadway.**—Except when reduced speed is necessary for safe operation or in compliance with law, whenever any person drives a vehicle upon a roadway having width for not more than one lane of traffic in each direction at less than the maximum posted speed and at such a slow speed as to impede the normal and reasonable movement of traffic, the driver shall, at the first opportunity when and where it is reasonable and safe to do so and after giving appropriate signal, drive completely off the roadway and onto the berm or shoulder of the highway. The driver may return to the roadway after giving appropriate signal only when the movement can be made in safety and so as not to impede the normal and reasonable movement of traffic.

(c) **Establishment of minimum speed limits.**—At any other time when the department or local authorities under their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any highway or part of a highway impede the normal and reasonable movement of traffic, the department or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in com-

pliance with law. The minimum limit shall be effective when posted upon appropriate fixed or variable signs.

Cross References. Section 3364 is referred to in sections 4305, 6109 of this title.

§ 3365. Special speed limitations.

(a) Bridges and elevated structures.—

(1) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure when the structure is posted with signs as provided in this subsection.

(2) The department and local authorities on highways under their respective jurisdictions may conduct a traffic and engineering investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that the structure cannot safely withstand vehicles traveling at the speed otherwise permissible under this title, the department or local authority shall determine and declare the maximum speed of vehicles which the structure can safely withstand, and shall cause or permit official traffic-control devices stating the maximum speed to be erected and maintained before each end of the structure.

(3) Upon the trial of any person charged with a violation of this subsection, proof of the determination of the maximum speed by the department and the existence of the signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

(b) School zones.—When passing a school zone as defined and established under regulations of the department, no person shall drive a vehicle at a speed greater than 15 miles per hour. An official traffic-control device shall indicate the beginning and end of each school zone to traffic approaching in each direction. Establishment of a school zone, including its location and hours of operation, shall be approved by the department.

(c) Hazardous grades.—The department and local authorities on highways under their respective jurisdictions may conduct traffic and engineering investigations on grades which are considered hazardous. If the grade is determined to be hazardous, vehicles having a gross weight in excess of a determined safe weight may be further limited as to maximum speed and may be required to stop before proceeding downhill. The restrictions shall be indicated by official traffic-control devices erected and maintained according to regulations established by the department.

(d) Penalty.—Any person violating any provision of this section is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of $35. Any person exceeding a maximum speed limit established under this section by more than five miles per hour shall pay an additional fine of $2 per mile for each mile in excess of five miles per hour in excess of the maximum speed limit.

(Oct. 10, 1980, No.147, eff. imd.)

that more quickly accomplish the procedures established under such provisions.

(5) Any incorporated city may by ordinance require that the driver of a vehicle involved in an accident file with a designated city department a copy of any report required to be filed under ORS 811.725. All such reports shall be for the confidential use of the city department but subject to the same requirements for release of such reports as provided for the release of such reports by the division under ORS 802.220 and 802.240. [1983 c.338 §8; 1985 c.16 §7; 1985 c.171 §2; 1985 c.459 §2a]

801.045 Permissive use of private roadway. Nothing in the provisions of the vehicle code described in this section shall prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from prohibiting such use, or from requiring different or additional conditions than those specified or from otherwise regulating such use as may seem best to such owner. This section applies to the provisions of the vehicle code relating to abandoned vehicles, vehicle equipment, regulation of vehicle size, weight and load, the manner of operation of vehicles and use of roads by persons, animals and vehicles. [1983 c.338 §9]

801.050 Privilege of motorist to use highways. Subject to compliance with the motor vehicle law of this state, owners and operators of motor vehicles are granted the privilege of using the highways of this state. [1983 c.338 §10; 1985 c.16 §8]

801.055 Weight standards; Department of Transportation responsibility for weight determination. (1) References in the vehicle code to weights and measures refer to United States Standards thereof.

(2) For purposes of the vehicle code, the weights of vehicles, combinations of vehicles, parts of vehicles, wheels or axles shall be determined by the use of methods, procedures and devices established by the Department of Transportation by rule. The rules established in accordance with this subsection may include any or all of the following:

(a) Methods and procedures to determine weights when weighing devices or facilities are not convenient.

(b) Standards and certification procedures for weighing devices.

(c) Any other rules the department determines necessary or convenient for purposes of this subsection. [1983 c.338 §11; 1985 c.172 §1]

DEFINITIONS

801.100 Definitions generally. Except where the context requires otherwise, the definitions given in the vehicle code govern its construction. [1983 c.338 §12]

801.105 "Administrator." "Administrator" means the Administrator of the Motor Vehicles Division. [1983 c.338 §13]

801.110 "Alley." "Alley" means a street or highway primarily intended to provide access to the rear or side of lots or buildings in urban areas and not intended for through vehicular traffic. [1983 c.338 §14]

801.115 "Ambulance." "Ambulance" means any privately or publicly owned motor vehicle that is regularly provided or offered to be provided for the emergency transportation of persons suffering from illness, injury or disability. [1983 c.338 §15]

801.120 "Ambulatory disability." "Ambulatory disability" means a disability because of which a person:

(1) Is so severely physically and permanently disabled as to be unable to move from place to place without the aid of a wheelchair;

(2) Is not able to cross curbs because of paralysis or loss of function of the person's legs;

(3) Is missing one or both legs; or

(4) Has a permanently impaired or unsteady gait that makes it impossible or impractical to walk as a means of transportation. [1983 c.338 §16]

801.125 "Antique vehicle." "Antique vehicle" means a motor vehicle that is older than one-half the number of years between the current year and 1900 and that is maintained as a collector's item. [1983 c.338 §17]

801.130 "Assembled vehicle." "Assembled vehicle" means a vehicle:

(1) With a body that does not resemble any particular year model or make of vehicle;

(2) That is not a vehicle rebuilt by a manufacturer;

(3) That is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(4) That is not an antique vehicle, a vehicle of special interest, a reconstructed vehicle or a replica. [1983 c.338 §18; 1985 c.402 §3]

801.135 "Axle." "Axle" means any structure or structures, whether in one or more segments, of any vehicle, supported by wheels and on which the wheels rotate, so spaced longitudinally that the centers thereof are included between two

vertical parallel transverse planes 40 inches apart. [1983 c.338 §19]

801.140 "Balance trailer." "Balance trailer" means every trailer, other than a self-supporting trailer, pole trailer or semitrailer, designed so that its weight and that of its load is substantially balanced upon its axle or axles and so that it couples to the towing vehicle with a device other than a fifth wheel hitch. The definition in this section is based upon design features and, except as otherwise provided in this section, does not prohibit a balance trailer from fitting into another classification of trailer based on use. [1983 c.338 §20; 1985 c.16 §9]

801.145 "Bail." "Bail" means money or its equivalent deposited by a defendant to secure the defendant's appearance for a traffic offense. [1983 c.338 §21]

801.150 "Bicycle." "Bicycle" means a vehicle that:

(1) Is designed to be operated on the ground on wheels;

(2) Has a seat or saddle for use of the rider;

(3) Is designed to travel with not more than three wheels in contact with the ground;

(4) Is propelled exclusively by human power; and

(5) Has every wheel more than 14 inches in diameter or two tandem wheels either of which is more than 14 inches in diameter. [1983 c.338 §22]

801.155 "Bicycle lane." "Bicycle lane" means that part of the highway, adjacent to the roadway, designated by official signs or markings for use by persons riding bicycles except as otherwise specifically provided by law. [1983 c.338 §23]

801.160 "Bicycle path." "Bicycle path" means a public way, not part of a highway, that is designated by official signs or markings for use by persons riding bicycles except as otherwise specifically provided by law. [1983 c.338 §24]

801.165 "Bus trailer." "Bus trailer" means any trailer designed or used for carrying human beings. [1983 c.338 §25]

801.170 "Business district." "Business district" means the territory contiguous to a highway when 50 percent or more of the frontage thereon for a distance of 600 feet or more on one side, or 300 feet or more on both sides, is occupied by buildings used for business. [1983 c.338 §26]

801.175 "Canceled." "Canceled," with reference to driving privileges or vehicle registration or title, means that the driving privileges, registration or title are declared void and terminated and new driving privileges, registration or title may be obtained only as permitted by law. [1983 c.338 §27; 1985 c.16 §10]

801.180 "Camper." "Camper" means a structure that:

(1) Has a floor;

(2) Is designed to be mounted upon a motor vehicle;

(3) Is not permanently attached to a motor vehicle upon which it is mounted;

(4) Is designed to provide facilities for human habitation or for camping;

(5) Is six feet or more in overall length;

(6) Is five and one-half feet or more in height from floor to ceiling at any point; and

(7) Has no more than one axle designed to support a portion of the weight of the camper. [1983 c.338 §28]

801.185 "Certificate of title." "Certificate of title" means a document issued by any jurisdiction specifically as evidence of vehicle ownership. Oregon issues certificate of title under ORS 803.045. Titles for snowmobiles are issued as provided under ORS 807.370. Titles for mobile homes are issued as provided under ORS 820.500. [1983 c.338 §29; 1985 c.16 §11]

801.190 "Class I all-terrain vehicle." "Class I all-terrain vehicle" means a motorized, off-highway recreational vehicle 50 inches or less in width with a dry weight of 600 pounds or less that travels on three or more low pressure tires and has a saddle for the operator. [1985 c.459 §2]

801.195 "Combination of vehicles." "Combination of vehicles" means two or more vehicles coupled together. [1983 c.338 §31]

801.200 "Commercial bus." "Commercial bus" means every motor vehicle designed or used for carrying passengers and their personal baggage and express for compensation, except:

(1) Taxicabs that:

(a) Are passenger vehicles with a passenger seating capacity that does not exceed five;

(b) Carry passengers for hire where destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled or waiting time;

(c) Are operated under a current license or permit issued by a city, county or other unit of local government where a permit or license is required for the operation of a taxicab; and

(d) Transport persons or property, or both, between points in Oregon.

vehicle and ordinarily used for transporting long or irregular loads capable generally of sustaining themselves as beams between the towing vehicle and the trailer. The definition in this section is based on design features and, except as otherwise provided in this section, does not prohibit a pole trailer from fitting into another category of trailer based on use. [1983 c.338 §70]

801.395 "Police officer." "Police officer" includes a member of the Oregon State Police, a sheriff, a deputy sheriff or a city police officer. [1983 c.338 §71]

801.400 "Premises open to the public." "Premises open to the public" includes any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises. [1983 c.338 §72]

801.405 "Reconstructed vehicle." "Reconstructed vehicle" means either:

(1) A vehicle that:

(a) Has a body that resembles and primarily is a particular year model or make of vehicle;

(b) Is not a vehicle rebuilt by a manufacturer;

(c) Is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(d) Is not a replica; or

(2) A motor truck that has been rebuilt using a component kit if the manufacturer of the kit assigns a vehicle identification number and provides a manufacturer's certificate of origin for the kit. [1983 c.338 §75; 1985 c.402 §4]

801.410 "Registration" or "register." "Registration" or "register" means, when used in reference to vehicles, the recording of a vehicle as authorized for use within a jurisdiction and includes any documentation or devices issued as evidence of that authorization. This state registers vehicles as provided under ORS 803.350. [1983 c.338 §76]

801.415 "Registration plate." "Registration plate" means a plate issued by a jurisdiction as evidence of vehicle registration. This state issues registration plates under ORS 803.520. [1983 c.338 §78; 1985 c.16 §22]

801.420 "Registration weight." "Registration weight" means the loaded weight required to be declared and established as the maximum loaded weight at which certain vehicles will be operated on the highway. Vehicles for which registration weights must be declared and established and the procedures for establishing registration weights are described under ORS 803.430. [1983 c.338 §77; 1985 c.16 §21]

801.425 "Replica." "Replica," when used to refer to vehicles, means a vehicle with a body built to resemble and be a reproduction of another vehicle of a given year and given manufacturer. [1985 c.402 §2]

801.430 "Residence district." "Residence district" means the territory contiguous to a highway not comprising a business district when the frontage on one or both sides of the highway for a distance of 300 feet or more is mainly occupied by:

(1) Dwellings, churches, public parks within cities or other residential service facilities; or

(2) Dwellings and buildings used for business. [1983 c.338 §79]

801.435 "Revoked." "Revoked" with reference to driving privileges, vehicle registration or vehicle title means the termination thereof with new driving privileges or vehicle registration or vehicle title obtainable only as permitted by law. [1983 c.338 §80]

801.440 "Right of way." "Right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other. [1983 c.338 §81]

801.445 "Road authority." "Road authority" means the body authorized to exercise authority over a road, highway, street or alley under ORS 810.010. [1983 c.338 §82]

801.450 "Roadway." "Roadway" means the portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. In the event a highway includes two or more separate roadways the term "roadway" shall refer to any such roadway separately, but not to all such roadways collectively. [1983 c.338 §83]

801.455 "School activity vehicle." "School activity vehicle" means a vehicle, other than a school bus, that is used to transport students to or from authorized school activities and that is not described by any of the following:

(1) A vehicle under regulation of the Public Utility Commissioner of Oregon, the United States Department of Transportation or the Interstate Commerce Commission.

(2) A vehicle, commonly known as a private passenger car or private passenger van, that is used by the owner of the vehicle or a relative of

(e) The expense of erecting any sign under this subsection shall be borne by the road authority having jurisdiction over the highway.

(f) All signs erected under this subsection shall comply with ORS 810.200.

(g) A speed established under this subsection may be effective for not more than 120 days.

(h) If the board establishes an emergency temporary speed under this subsection, the board shall determine whether the board should permanently change the speed within 120 days after the speed becomes effective. The board shall use authority otherwise granted to the board under this section if the board determines to permanently establish the speed.

(i) The board may only establish a speed under this subsection upon the application of the road authority for the highway. [1983 c.338 §162; 1985 c.16 §51]

810.190 State Speed Control Board procedures. The State Speed Control Board is subject to the following procedures while exercising its authority under ORS 810.180 unless otherwise provided under ORS 810.180.

(1) If the change in speed is requested by the road authority for a highway, the road authority must make written application for the board to conduct an investigation with respect to speed on the highway under this section. An application required under this subsection must state the speed recommended for the highway or section of highway by the requesting road authority.

(2) The board may determine the speed to designate under its authority by making or causing to be made an engineering and traffic investigation with respect to the existing speed on the highway.

(3) The board may make the investigation required under this section or, when requested by the road authority, may allow the following:

(a) The road authority to make the investigation and make a report of the investigation to the board.

(b) A city to make the investigation with respect to any highway within its corporate limits that is under the jurisdiction of the commission or a county and report the results of the investigation to the board.

(4) The board shall allow any road authority that is requesting an investigation under this section to participate with the board in the investigation.

(5) The board:

(a) May change the existing speed on the highway if the investigation establishes to the satisfaction of the board that the existing designated speed is greater or less than reasonable or safe under the conditions at the area.

(b) Shall not make a final determination to change a speed under this section unless the board has provided due notice and opportunity for hearing to the road authority affected thereby.

(c) Shall give written notice to affected road authority of the board's determination concerning a designated speed under this section.

(6) An affected road authority may file written objections to any speed established by the board under this section. If the road authority files a written objection and requests a hearing not more than 10 days after signs establishing the speed are posted, the board shall hold a hearing to reconsider the speed after giving written notice of the hearing to the affected road authority. The hearing must be held more than five days after giving of the written notice. [1983 c.338 §163; 1985 c.16 §52]

(Traffic Control Devices)

810.200 Uniform standards for traffic control devices; uniform system of marking and signing highways. (1) The commission may exercise the following authority with respect to the marking, signing and use of traffic control devices in this state:

(a) The commission shall adopt a manual and specifications of uniform standards for traffic control devices consistent with the provisions of the vehicle code for use upon highways in this state.

(b) The commission is authorized to provide a uniform system of marking and signing highways within the boundaries of this state.

(c) The commission is authorized to determine the character or type of traffic control devices to be used in this state.

(2) The authority granted under this section is subject to all of the following:

(a) The system of marking and signing established under this section shall correlate with and, as far as possible, conform to the system adopted in other states. The commission may include in the system signs and signals that show internationally recognized and approved symbols.

(b) So far as practicable, all traffic control devices in this state shall be uniform as to type and location.

pedestrian has entered the roadway and is carrying a white cane or is accompanied by a dog guide. This paragraph applies notwithstanding any other provisions of the vehicle code relating to traffic control devices.

(2) This section is subject to the provisions and definitions relating to the rights of pedestrians who are blind or blind and deaf under ORS 814.110.

(3) The offense described in this section, failure to yield the right of way to a blind pedestrian, is a Class B traffic infraction. [1983 c.338 §549; 1985 c.16 §280]

811.040 Failure to yield to pedestrian proceeding under traffic control devices; penalty. (1) The driver of a vehicle commits the offense of failure to yield to a pedestrian proceeding under traffic control devices if the driver does not yield the right of way to a pedestrian who is:

(a) Proceeding under a pedestrian control signal under ORS 814.010.

(b) Lawfully within an intersection or crosswalk in accordance with any traffic control device in a manner that complies with ORS 814.010.

(2) The offense described in this section, failure to yield to a pedestrian proceeding under traffic control devices, is a Class B traffic infraction. [1983 c.338 §550; 1985 c.16 §281]

811.045 Failure to yield to pedestrian when making turn at stop light; penalty. (1) A person commits the offense of failure to yield to a pedestrian when making a turn at a stop light if the person is driving a vehicle that is making a turn at a red light permitted under ORS 811.335 and the person does not yield the right of way to pedestrians lawfully within an adjacent crosswalk.

(2) The offense described in this section, failure to yield to a pedestrian when making a turn at a stop light, is a Class B traffic infraction. [1983 c.338 §551]

811.050 Failure to yield to bicycle on bicycle lane. (1) A person commits the offense of failure of a motor vehicle operator to yield to a bicycle on a bicycle lane if the person is operating a motor vehicle and the person does not yield the right of way to a person operating a bicycle or moped upon a bicycle lane.

(2) This section does not require persons operating mopeds to yield the right of way to bicycles if the mopeds are operated on bicycle lanes in the manner permitted under ORS 811.440.

(3) The offense described in this section, failure of a motor vehicle operator to yield to a bicycle on a bicycle lane, is a Class B traffic infraction. [1983 c.338 §698; 1985 c.16 §336]

811.055 Failure to yield to bicyclist on sidewalk. (1) The driver of a motor vehicle commits the offense of failure to yield the right of way to a bicyclist on a sidewalk if the driver does not yield the right of way to any bicyclist on a sidewalk.

(2) The driver of a motor vehicle is not in violation of this section when a bicyclist is operating in violation of ORS 814.410. Nothing in this subsection relieves the driver of a motor vehicle from the duty to exercise due care.

(3) The offense described in this section, failure to yield the right of way to a bicyclist on a sidewalk, is a Class C traffic infraction. [1983 c.338 §702; 1985 c.16 §340]

SPEED

(Basic Rule)

811.100 Violation of basic speed rule; penalty. (1) A person commits the offense of violating the basic speed rule if the person drives a vehicle upon a highway at a speed greater than is reasonable and prudent, having due regard to all of the following:

(a) The traffic.

(b) The surface and width of the highway.

(c) The hazard at intersections.

(d) Weather.

(e) Visibility.

(f) Any other conditions then existing.

(2) The following apply to the offense described in this section:

(a) The offense is as applicable on an alley as on any other highway.

(b) Speeds that are prima facie evidence of violation of this section are established by ORS 811.105.

(c) This section and ORS 811.105 establish limitation on speeds that are in addition to maximum speeds established and subject to penalty as described in the following:

(A) A fuel conservation maximum speed limit under ORS 811.110.

(B) Maximum speeds for motor trucks and passenger transport vehicles under ORS 811.115.

(C) Maximum speeds on ocean shores under ORS 811.120.

(3) The offense described in this section, violating the basic speed rule, is a Class B traffic infraction. [1983 c.338 §563]

811.105 Speeds that are evidence of basic rule violation. Any speed in excess of any of the following designated speeds is prima facie evidence of violation of the basic speed rule under ORS 811.100:

(1) Any speed posted by authority granted under ORS 810.180.

(2) If no speed is posted, any speed in excess of one of the following designated speeds is prima facie evidence of violation of the basic speed rule:

(a) Fifteen miles per hour when driving on an alley.

(b) Twenty miles per hour in a business district.

(c) Twenty miles per hour when passing school grounds or a school crosswalk if:

(A) Children are present; and

(B) Notice of the grounds or crosswalk is indicated plainly by traffic control devices conforming to the requirements established under ORS 810.200 and posted under authority granted by ORS 810.210.

(d) Twenty-five miles per hour in any residence district or public park.

(e) Fifty-five miles per hour in locations not otherwise described in this section. [1983 c.338 §564; 1985 c.16 §288]

(Maximum Speeds)

811.110 Violation of fuel conservation maximum speed limit; penalty. (1) A person commits the offense of violation of the fuel conservation maximum speed limit if:

(a) A fuel conservation maximum speed limit is established under ORS 810.180; and

(b) The person operates a vehicle at a speed in excess of the fuel conservation maximum speed limit.

(2) The following apply to the offense described in this section:

(a) A fuel conservation maximum speed limit established under ORS 810.180 is not subject to the basic speed rule under ORS 811.100 except where a special hazard or condition exists that requires a lower speed for compliance with the basic speed rule.

(b) In no event shall the division suspend or revoke a person's driving privileges in this state solely on the grounds that the person has incurred one or more convictions of a violation of the fuel conservation maximum speed limit.

(3) The offense described in this section, violation of the fuel conservation maximum speed limit, is a Class C traffic infraction. [1983 c.338 §565]

811.115 Violation of maximum speed for trucks and passenger transport vehicles; penalty. (1) A person commits the offense of violation of the maximum speed for motor trucks and passenger transport vehicles if the person drives any of the following vehicles at a speed greater than fifty-five miles per hour on any highway:

(a) A motor truck with a registration weight of more than 8,000 pounds.

(b) A school bus.

(c) A school activity vehicle.

(d) A worker transport bus.

(e) A bus operated for transporting children to and from church or an activity or function authorized by a church.

(f) Any vehicle used in the transportation of persons for hire by a nonprofit entity as provided in ORS 767.025 (13).

(2) The following apply to this section:

(a) This section does not apply to ambulances.

(b) Notwithstanding any other provision of this section, the motor vehicles referred to in this section are subject to the provisions of the basic speed rule under ORS 811.100.

(3) The offense described in this section, violation of maximum speed for motor trucks and passenger transport vehicles, is a Class B traffic infraction. [1983 c.338 §566; 1985 c.420 §9]

811.120 Violation of maximum speed limit on ocean shore; penalty. (1) A person commits the offense of violating the maximum speed limit on the ocean shore if the person drives a vehicle or conveyance on any part of the ocean shore in this state at a speed greater than any of the following:

(a) Any maximum speed for ocean shores that is established and posted under ORS 810.180.

(b) If no speed is posted under ORS 810.180, 25 miles per hour.

(2) The following apply to this section:

(a) This section is subject to the provisions relating to ambulances and emergency vehicles under ORS 820.300 to 820.320.

Washington

Chapter 34.04 RCW
ADMINISTRATIVE PROCEDURE ACT

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RCW 34.04.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Agency" means any state board, commission, department, or officer, authorized by law to make rules or to adjudicate contested cases, except those in the legislative or judicial branches.

(2) "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.04.080, as now or hereafter amended, or (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of transportation or his designee where notice of such restrictions is given by official traffic control devices.

(3) "Contested case" means a proceeding before an agency in which an opportunity for a hearing before

SPEED RESTRICTIONS

46.61.400 Basic rule and maximum limits. (1) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the limits specified in this section or established as hereinafter authorized shall be maximum lawful speeds, and no person shall drive a vehicle on a highway at a speed in excess of such maximum limits.

(a) Twenty-five miles per hour on city and town streets;

(b) Fifty miles per hour on county roads;

(c) Sixty miles per hour on state highways.

The maximum speed limits set forth in this section may be altered as authorized in RCW 46.61.405, 46.61.410, and 46.61.415.

(3) The driver of every vehicle shall, consistent with the requirements of subsection (1) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions. [1965 ex.s. c 155 § 54; 1963 c 16 § 1. Formerly RCW 46.48.011.]

Rules of court: Monetary penalty schedule——JTIR 6.2.

Saving of existing orders, etc., establishing speed limits——1963 c 16: "This act shall not repeal or invalidate existing orders and resolutions of the state highway commission or existing resolutions and ordinances of local authorities establishing speed limits within their respective jurisdictions." [1963 c 16 § 7. Formerly RCW 46.48.016.] "This act" [1963 c 16], as amended, is codified as RCW 46.61.400 through 46.61.415, 46.61.425, and 46.61.440.

46.61.405 Decreases by secretary of transportation. Whenever the secretary of transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater than is reasonable or safe with respect to a state highway under the conditions found to exist at any intersection or upon any other part of the state highway system or at state ferry terminals, or that a general reduction of any maximum speed hereinbefore set forth would aid in the conservation of energy resources, the secretary may determine and declare a reasonable and safe lower maximum limit or a lower maximum limit which will reasonably conserve energy resources, for any state highway, the entire state highway system, or any portion thereof, which shall be effective when appropriate signs giving notice thereof are erected. The secretary may also fix and regulate the speed of vehicles on any state highway within the maximum speed limit allowed by this chapter for special occasions including, but not limited to, local parades and other special events. Any such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the said signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective (a) when posted upon appropriate fixed or variable signs or (b) if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of RCW 46.61.410, as now or hereafter amended. [1977 ex.s. c 151 § 34; 1974 ex.s. c 103 § 1; 1970 ex.s. c 100 § 2; 1967 c 25 § 1; 1963 c 16 § 2. Formerly RCW 46.48.012.]

Federal requirements——Severability——1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.410 Increases by secretary of transportation——Maximum speed limit for trucks——Auto stages——Signs and notices. (1) Subject to subsection (2) below the secretary may increase the maximum speed limit on any highway or portion thereof to not more than seventy miles per hour in accordance with the design speed thereof (taking into account all safety elements included therein), or whenever the secretary determines upon the basis of an engineering and traffic investigation that such greater speed is reasonable and safe under the circumstances existing on such part of the highway. The greater maximum limit so determined shall be effective, when appropriate signs giving notice thereof are erected, or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon said signs or in the case of auto stages, as indicated in said written notice; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs or if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective thirty days after written notice thereof is mailed in the manner provided in subsection (4) of this section.

(2) The maximum speed limit for vehicles over ten thousand pounds gross weight and vehicles in combination except auto stages shall not exceed sixty miles per hour and may be established at a lower limit by the secretary as provided in RCW 46.61.405, as now or hereafter amended.

(3) The word "trucks" used by the department on signs giving notice of maximum speed limits shall mean vehicles over ten thousand pounds gross weight and all vehicles in combination except auto stages.

(4) Whenever the secretary shall establish maximum speed limits for auto stages lower than the maximum limits for automobiles, the secretary shall cause to be mailed notice thereof to each auto transportation company holding a certificate of public convenience and necessity issued by the Washington utilities and transportation commission. The notice shall be mailed to the chief place of business within the state of Washington of each auto transportation company or if none then its chief place of business without the state of Washington. [1977 ex.s. c 151 § 35; 1974 ex.s. c 103 § 2; 1970 ex.s. c 100 § 1; 1969 ex.s. c 12 § 1; 1965 ex.s. c 155 § 55; 1963 c 16 § 3. Formerly RCW 46.48.013.]

Federal requirements——Severability——1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.415 When local authorities may alter maximum limits. (1) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.440 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which

(a) Decreases the limit at intersections; or

(b) Increases the limit but not to more than sixty miles per hour; or

(c) Decreases the limit but not to less than twenty miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under RCW 46.61.400(2) but shall not exceed sixty miles per hour.

(3) The secretary of transportation is authorized to establish speed limits on county roads and city and town streets as shall be necessary to conform with any federal requirements which are a prescribed condition for the allocation of federal funds to the state.

(4) Any altered limit established as hereinbefore authorized shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(5) Any alteration of maximum limits on state highways within incorporated cities or towns by local authorities shall not be effective until such alteration has been approved by the secretary of transportation. [1977 ex.s. c 151 § 36; 1974 ex.s. c 103 § 3; 1963 c 16 § 4. Formerly RCW 46.48.014.]

Federal requirements——Severability——1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.425 Minimum speed regulation——Passing slow moving vehicle. (1) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law: *Provided*, That a person following a vehicle driving at less than the legal maximum speed and desiring to pass such vehicle may exceed the speed limit, subject to the provisions of RCW 46.61.120 on highways having only one lane of traffic in each direction, at only such a speed and for only such a distance as is necessary to complete the pass with a reasonable margin of safety.

(2) Whenever the secretary of transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway unreasonably impede the normal movement of traffic, the secretary or such local authority may determine and declare a minimum speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected. No person shall drive a vehicle slower than such minimum speed limit except when necessary for safe operation or in compliance with law. [1977 ex.s. c 151 § 37; 1969 c 135 § 1; 1967 c 25 § 2; 1963 c 16 § 6. Formerly RCW 46.48.015.]

Rules of court: Monetary penalty schedule——JTIR 6.2.

Federal requirements——Severability——1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.427 Slow moving vehicle to pull off roadway. On a two-lane highway where passing is unsafe because of traffic in the opposite direction or other conditions, a slow moving vehicle, behind which five or more vehicles are formed in a line, shall turn off the roadway wherever sufficient area for a safe turn-out exists, in order to permit the vehicles following to proceed. As used in this section a slow moving vehicle is one which is proceeding at a rate of speed less than the normal flow of traffic at the particular time and place. [1973 c 88 § 1.]

46.61.428 Slow-moving vehicle permitted to drive on improved shoulders, when. (1) The state department of transportation and local authorities are authorized to determine those portions of any two-lane highways under their respective jurisdictions on which drivers of slow-moving vehicles may safely drive onto improved shoulders for the purpose of allowing overtaking vehicles to pass and may by appropriate signs indicate the beginning and end of such zones.

(2) Where signs are in place to define a driving-on-shoulder zone as set forth in subsection (1) of this section, the driver of a slow-moving vehicle may drive onto and along the shoulder within the zone but only for the purpose of allowing overtaking vehicles to pass and then shall return to the roadway.

(3) Signs erected to define a driving-on-shoulder zone take precedence over pavement markings for the purpose of allowing the movements described in subsection (2) of this section. [1984 c 7 § 71; 1977 ex.s. c 39 § 1.]

Severability——1984 c 7: See note following RCW 47.01.141.

46.61.430 Authority of secretary of transportation to fix speed limits on limited access facilities exclusive——Local regulations. Notwithstanding any law to the contrary or inconsistent herewith, the secretary of transportation shall have the power and the duty to fix and regulate the speed of vehicles within the maximum speed limit allowed by law for state highways, designated as limited access facilities, regardless of whether a portion of said highway is within the corporate limits of a city or town. No governing body or authority of such city or town or other political subdivision may have the power to pass or enforce any ordinance, rule, or regulation requiring a different rate of speed, and all such ordinances, rules, and regulations contrary to or inconsistent therewith now in force are void and of no effect. [1977 ex.s. c 151 § 38; 1974 ex.s. c 103 § 4; 1961 c 12 § 46-.48.041. Prior: 1955 c 177 § 5. Formerly RCW 46.48.041.]

Federal requirements——Severability——1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.435 Local authorities to provide "stop" or "yield" signs at intersections with increased speed highways——Designated as arterials. The governing body or authority of any such city or town or political subdivision shall place and maintain upon each and every highway intersecting a highway where an increased speed is permitted, as provided in this chapter, appropriate stop or yield signs, sufficient to be read at any time by any person upon approaching and entering the highway upon which such increased speed is permitted and such city street or such portion thereof as is subject to the increased speed shall be an arterial highway. [1975 c 62 § 33; 1961 c 12 § 46.48.046. Prior: 1951 c 28 § 4; prior: 1937 c 189 § 66, part; RRS § 6360–66, part; 1927 c 309 § 5, part; 1921 c 96 § 41, part; 1919 c 59 § 13, part; 1917 c 155 § 20, part; 1915 c 142 § 34, part; RRS § 6362–5, part. Formerly RCW 46.48.046.]

Severability——1975 c 62: See note following RCW 36.75.010.

Designation of city streets as arterials, stopping on entering: RCW 46.61.195.

Traffic control signals or devices upon city streets forming part of state highways: RCW 46.61.085.

46.61.440 Maximum speed limit when passing school or playground crosswalks. Subject to RCW 46.61.400(1), and except in those instances where a lower maximum lawful speed is provided by this chapter or otherwise, it shall be unlawful for the operator of any vehicle to operate the same at a speed in excess of twenty miles per hour when operating any vehicle upon a highway either inside or outside an incorporated city or town when passing any marked school or playground crosswalk when such marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs. The speed zone at the crosswalk shall extend three hundred feet in either direction from the marked crosswalk. [1975 c 62 § 34; 1963 c 16 § 5; 1961 c 12 § 46.48.023. Prior: 1951 c 28 § 9; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360–64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362–3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.023.]

Severability——1975 c 62: See note following RCW 36.75.010.

46.61.445 Due care required. Compliance with speed requirements of this chapter under the circumstances hereinabove set forth shall not relieve the operator of any vehicle from the further exercise of due care and caution as further circumstances shall require. [1961 c 12 § 46.48.025. Prior: 1951 c 28 § 11; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360–64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362–3, part; 1909 c 249 § 279, part; Rem. & Bal. 2531, part. Formerly RCW 46.48.025.]

Duty to use due care: RCW 46.61.400(1).

46.61.450 Maximum speed, weight, or size in traversing bridges, elevated structures, tunnels, underpasses——Posting limits. It shall be unlawful for any person to operate a vehicle or any combination of vehicles over any bridge or other elevated structure or through any tunnel or underpass constituting a part of any public highway at a rate of speed or with a gross weight or of a size which is greater at any time than the maximum speed or maximum weight or size which can be maintained or carried with safety over any such bridge or structure or through any such tunnel or underpass when such bridge, structure, tunnel, or underpass is sign posted as hereinafter provided. The secretary of transportation, if it be a bridge, structure, tunnel, or underpass upon a state highway, or the governing body or authorities of any county, city, or town, if it be upon roads or streets under their jurisdiction, may restrict the speed which may be maintained or the gross weight or size which may be operated upon or over any such bridge or elevated structure or through any such tunnel or underpass with safety thereto. The secretary or the governing body or authorities of any county, city, or town having jurisdiction shall determine and declare the maximum speed or maximum gross weight or size which such bridge, elevated structure, tunnel, or underpass can withstand or accommodate and shall cause suitable signs stating such maximum speed or maximum gross weight, or size, or either, to be erected and maintained on the right hand side of such highway, road, or street and at a distance of not less than one hundred feet from each end of such bridge, structure, tunnel, or underpass and on the approach thereto: *Provided*, That in the event that any such bridge, elevated structure, tunnel, or underpass is upon a city street designated by the transportation commission as forming a part of the route of any state highway through any such incorporated city or town the determination of any maximum speed or maximum gross weight or size which such bridge, elevated structure, tunnel, or underpass can withstand or accommodate shall not be enforceable at any speed, weight, or size less

than the maximum allowed by law, unless with the approval in writing of the secretary. Upon the trial of any person charged with a violation of this section, proof of either violation of maximum speed or maximum weight, or size, or either, and the distance and location of such signs as are required, shall constitute conclusive evidence of the maximum speed or maximum weight, or size, or either, which can be maintained or carried with safety over such bridge or elevated structure or through such tunnel or underpass. [1977 ex.s. c 151 § 39; 1961 c 12 § 46.48.080. Prior: 1937 c 189 § 70; RRS § 6360–70. Formerly RCW 46.48.080.]

Federal requirements——Severability——1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

46.61.455 Vehicles with solid or hollow cushion tires. It shall be unlawful to operate any vehicle equipped or partly equipped with solid rubber tires or hollow center cushion tires, or to operate any combination of vehicles any part of which is equipped or partly equipped with solid rubber tires or hollow center cushion tires, so long as solid rubber tires or hollow center cushion tires may be used under the provisions of this title, upon any public highway of this state at a greater rate of speed than ten miles per hour. [1961 c 12 § 46.48.110. Prior: 1947 c 200 § 11; 1937 c 189 § 73; Rem. Supp. 1947 § 6360–73. Formerly RCW 46.48.110.]

46.61.460 Special speed limitation on motor-driven cycle. No person shall operate any motor-driven cycle at any time mentioned in RCW 46.37.020 at a speed greater than thirty-five miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead. [1965 ex.s. c 155 § 57.]

46.61.465 Exceeding speed limit evidence of reckless driving. The unlawful operation of a vehicle in excess of the maximum lawful speeds provided in this chapter at the point of operation and under the circumstances described shall be prima facie evidence of the operation of a motor vehicle in a reckless manner by the operator thereof. [1961 c 12 § 46.48.026. Prior: 1951 c 28 § 12; 1949 c 196 § 6, part; 1947 c 200 § 8, part; 1937 c 189 § 64, part; Rem. Supp. 1949 § 6360–64, part; 1927 c 309 § 3, part; 1923 c 181 § 6, part; 1921 c 96 § 27, part; 1917 c 155 § 16, part; 1915 c 142 § 24, part; RRS § 6362–3, part; 1909 c 249 § 279, part; Rem. & Bal. § 2531, part. Formerly RCW 46.48.026.]

46.61.470 Speed traps defined, certain types permitted——Measured courses, speed measuring devices, timing from aircraft. (1) No evidence as to the speed of any vehicle operated upon a public highway by any person arrested for violation of any of the laws of this state regarding speed or of any orders, rules, or regulations of any city or town or other political subdivision relating thereto shall be admitted in evidence in any court at a subsequent trial of such person in case such evidence relates to or is based upon the maintenance or use of a speed trap except as provided in subsection (2) of this section. A "speed trap," within the meaning of this section, is a particular section of or distance on any public highway, the length of which has been or is measured off or otherwise designated or determined, and the limits of which are within the vision of any officer or officers who calculate the speed of a vehicle passing through such speed trap by using the lapsed time during which such vehicle travels between the entrance and exit of such speed trap.

(2) Evidence shall be admissible against any person arrested or issued a notice of a traffic infraction for violation of any of the laws of this state or of any orders, rules, or regulations of any city or town or other political subdivision regarding speed if the same is determined by a particular section of or distance on a public highway, the length of which has been accurately measured off or otherwise designated or determined and either: (a) The limits of which are controlled by a mechanical, electrical, or other device capable of measuring or recording the speed of a vehicle passing within such limits; or (b) a timing device is operated from an aircraft, which timing device when used to measure the elapsed time of a vehicle passing over such a particular section of or distance upon a public highway indicates the speed of a vehicle.

(3) The exceptions of subsection (2) of this section are limited to devices or observations with a maximum error of not to exceed five percent using the lapsed time during which such vehicle travels between such limits, and such limits shall not be closer than one-fourth mile. [1981 c 105 § 1; 1961 c 12 § 46.48.120. Prior: 1937 c 189 § 74; RRS § 6360–74; 1927 c 309 § 7; RRS § 6362–7. Formerly RCW 46.48.120.]

46.61.475 Charging violations of speed regulations. (1) In every charge of violation of any speed regulation in this chapter the complaint, also the summons or notice to appear, shall specify the approximate speed at which the defendant is alleged to have driven, also the maximum speed applicable within the district or at the location. [1965 ex.s. c 155 § 58.]

RECKLESS DRIVING, DRIVING WHILE INTOXICATED, VEHICULAR HOMICIDE AND ASSAULT

46.61.500 Reckless driving——Penalty. (1) Any person who drives any vehicle in wilful or wanton disregard for the safety of persons or property is guilty of reckless driving. Violation of the provisions of this section is a misdemeanor.

(2) The license or permit to drive or any nonresident privilege of any person convicted of reckless driving shall be suspended by the department for not less than thirty days. [1979 ex.s. c 136 § 85; 1967 c 32 § 67; 1965 ex.s. c 155 § 59.]

Rules of court: Bail in traffic offense cases——Mandatory appearance——JCrR 2.09.

Effective date——Severability——1979 ex.s. c 136: See notes following RCW 46.63.010.

Arrest of person involved in reckless driving: RCW 10.31.100.

of transportation to the clerk of any city or town that such street, or portion thereof, is no longer required as a part of the state highway system: *Provided further*, That any such certification that a street, or portion thereof, is no longer required as a part of the state highway system shall be made between the first and fifteenth of July following the determination by the department that such street or portion thereof is no longer required as a part of the state highway system, but this shall not prevent the department and any city or town from entering into an agreement that a city or town will accept responsibility for such a street or portion thereof at some time other than between the first and fifteenth of July of any year. [1979 ex.s. c 86 § 2; 1977 ex.s. c 151 § 57; 1973 c 95 § 3; 1961 c 13 § 47.24.010. Prior: 1959 c 160 § 1; 1957 c 83 § 2; 1955 c 179 § 2; 1949 c 220 § 5, part; 1945 c 250 § 1, part; 1943 c 82 § 10, part; 1937 c 187 § 61, part; Rem. Supp. 1949 § 6450–61, part.]

Severability——1979 ex.s. c 86: See note following RCW 13.24.040.

47.24.020 Jurisdiction, control of such streets. The jurisdiction, control, and duty of the state and city or town with respect to such streets shall be as follows:

(1) The department has no authority to change or establish any grade of any such street without approval of the governing body of such city or town, except with respect to limited access facilities established by the commission;

(2) The city or town shall exercise full responsibility for and control over any such street beyond the curbs and if no curb is installed, beyond that portion of the highway used for highway purposes. However, within incorporated cities and towns the title to a state limited access highway vests in the state, and, notwithstanding any other provision of this section, the department shall exercise full jurisdiction, responsibility, and control to and over such facility as provided in chapter 47.52 RCW;

(3) The department has authority to prohibit the suspension of signs, banners, or decorations above the portion of such street between the curbs or portion used for highway purposes up to a vertical height of twenty feet above the surface of the roadway;

(4) The city or town shall at its own expense maintain all underground facilities in such streets, and has the right to construct such additional underground facilities as may be necessary in such streets;

(5) The city or town has the right to grant the privilege to open the surface of any such street, but all damage occasioned thereby shall promptly be repaired either by the city or town itself or at its direction;

(6) The city or town at its own expense shall provide street illumination and shall clean all such streets, including storm sewer inlets and catch basins, and remove all snow, except that the state shall when necessary plow the snow on the roadway. In cities and towns having a population of fifteen thousand or less according to the latest determination of population by the office of financial management, the state, when necessary for public safety, shall assume, at its expense, responsibility for the stability of the slopes of cuts and fills and the embankments within the right of way to protect the roadway itself. The state shall install, maintain, and operate all illuminating facilities on any limited access facility, together with its interchanges, located within the corporate limits of any city or town, and shall assume and pay the costs of all such installation, maintenance, and operation incurred after November 1, 1954;

(7) The department has the right to use all storm sewers on such highways without cost; and if new storm sewer facilities are necessary in construction of new streets by the department, the cost of the facilities shall be borne by the state and/or city as may be mutually agreed upon between the department and the governing body of the city or town;

(8) Cities and towns have exclusive right to grant franchises not in conflict with state laws, over, beneath, and upon such streets, but the department is authorized to enforce in an action brought in the name of the state any condition of any franchise which a city or town has granted on such street. No franchise for transportation of passengers in motor vehicles may be granted on such streets without the approval of the department, but the department shall not refuse to approve such franchise unless another street conveniently located and of strength of construction to sustain travel of such vehicles is accessible;

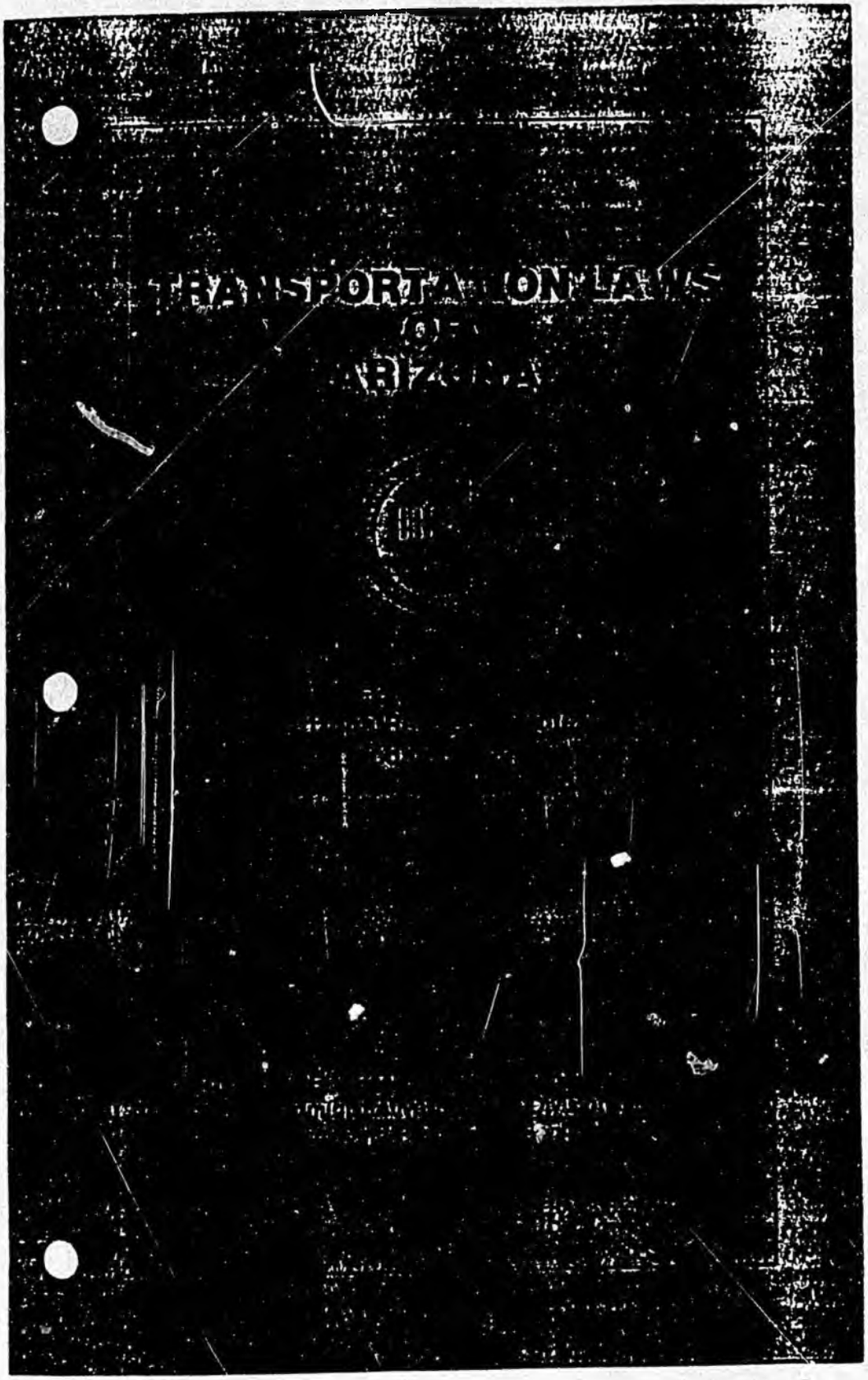
(9) Every franchise or permit granted any person by a city or town for use of any portion of such street by a public utility shall require the grantee or permittee to restore, repair, and replace to its original condition any portion of the street damaged or injured by it;

(10) The city or town has the right to issue overload or overwidth permits for vehicles to operate on such streets or roads subject to regulations printed and distributed to the cities and towns by the department;

(11) Cities and towns shall regulate and enforce all traffic and parking restrictions on such streets, but all regulations adopted by a city or town relating to speed, parking, and traffic control devices on such streets not identical to state law relating thereto are subject to the approval of the department before becoming effective. All regulations pertaining to speed, parking, and traffic control devices relating to such streets heretofore adopted by a city or town not identical with state laws shall become null and void unless approved by the department heretofore or within one year after March 21, 1963;

(12) The department shall erect, control, and maintain at state expense all route markers and directional signs, except street signs, on such streets;

(13) The department shall install, operate, maintain, and control at state expense all traffic control signals, signs, and traffic control devices for the purpose of regulating both pedestrian and motor vehicular traffic on, entering upon, or leaving state highways in cities and towns having a population of fifteen thousand or less according to the latest determination of population by the office of financial management. Such cities and towns may submit to the department a plan for traffic control signals, signs, and traffic control devices desired by


TRANSPORTATION LAWS

shall suspend the driving privilege of such person for the period of time ordered by the judge.

C. When a person convicted of a violation of this section has been previously convicted of a violation of this section, section 13-1102 or 13-1103, subsection A, paragraph 1, in the driving of a vehicle, 28-692 or 28-708 within a period of twenty-four months, such person is guilty of a class 1 misdemeanor and shall not be eligible for probation, pardon, parole, commutation or suspension of sentence or release on any other basis until such person has served not less than twenty days in jail. The judge shall require the surrender to him of any operator's or chauffeur's license of such convicted person and shall immediately forward to the department the license with the abstract of conviction. The department upon receipt thereof shall revoke the driving privilege of such person. The dates of the commission of the offense shall be the determining factor in applying this rule. A second or subsequent violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts. No judge may grant probation to or suspend the imposition or execution of a jail sentence or fail to secure the surrender to him of any license of any person for such a second or subsequent conviction.

D. The court may, upon pronouncement of any jail sentence under this section, provide in the sentence that the defendant may be permitted, if he is employed and can continue his employment, to continue such employment for not more than twelve hours per day nor more than six days per week, and the remaining day, days or parts of days shall be spent in jail until the sentence is served. He shall be allowed out of jail only long enough to complete his actual hours of employment and no longer.

ARTICLE 6 -- SPEED RESTRICTIONS

28-701. Reasonable and prudent speed; prima facie evidence; exceptions; classification

A. A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the circumstances, conditions and actual and potential hazards then existing. In every event, speed shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on, entering or adjacent to the highway in compliance with legal requirements and the duty of all persons to exercise reasonable care for the protection of others.

B. Except as provided in subsections C and D or where a special hazard requires a lesser speed, any speed in excess of these speeds is prima facie evidence that the speed is too great and therefore unreasonable:

1. Fifteen miles per hour approaching school crossing.
2. Twenty-five miles per hour in any business or residential district.
3. Sixty-five miles per hour in other locations.

C. The speed limits set forth in this section may be altered as authorized in sections 28-702 and 28-703.

D. The maximum speed as provided in this section shall be reduced to that which is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, such as when:

1. Approaching and crossing an intersection or railroad crossing.
2. Approaching and going around a curve.
3. Approaching a hill crest.
4. Traveling upon any narrow or winding roadway.
5. Special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

E. A person shall not drive a motor vehicle at a speed that is less than that which is reasonable and prudent under existing conditions.

28-701.01 Definitions

In this article, unless the context otherwise requires:

28-701.01. **Definitions**

1. "Freeway" means a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access, and which is declared to be such by the director of the department of transportation.

28-701.02. **Excessive speed**

A. A person shall not:

1. Exceed thirty-five miles per hour approaching a school crossing.

2. Exceed the posted speed limit in a business or residential district by more than twenty miles per hour, or if no speed limit is posted, forty-five miles per hour.

3. Exceed eighty-five miles per hour in other locations.

B. A person who violates subsection A is guilty of a class 3 misdemeanor.

C. A person charged with a violation of this section may not be issued a civil complaint for a violation of section 28-701 if the civil complaint alleges a violation arising out of the same circumstances.

28-702. **Establishment of state speed zones**

When the director determines upon the basis of an engineering and traffic investigation that any maximum speed limit is greater or less than is reasonable or safe under the conditions found to exist upon any part of a state highway, the director may determine and declare a reasonable and safe maximum speed limit for such location, which shall be effective when appropriate signs giving notice thereof are erected. A maximum speed limit, as declared pursuant to this section, may be declared to be effective at all times or at such times as are indicated on the speed limit signs. Varying speed limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds. Such varying limits shall be effective when posted upon appropriate fixed or variable signs.

28-702.01. **Maximum speed limit; authority for order increasing; waste of a finite resource; fine; sanction**

A. No maximum speed limit on any public highway in this state shall be in excess of fifty-five miles per hour notwithstanding any other higher maximum speed limit previously established pursuant to any other provision of law. This shall not be construed as altering any existing maximum speed limit which is less than fifty-five miles per hour or to prevent the appropriate jurisdiction from establishing, altering, or lowering any maximum speed limit which is less than fifty-five miles per hour within its respective jurisdiction.

B. The speed limit for all types of motor vehicles shall be fifty-five miles per hour on any portion of any public highway that has four or more traffic lanes, the opposing lanes of which are physically separated other than by striping, which portion of highway has had a speed limit for all types of motor vehicles of fifty-five miles or more on November 1, 1973.

C. The director may order that this maximum speed limit be increased up to seventy-five miles per hour on an individual highway or on all highways in the state if the governor declares by proclamation that an emergency does not exist and that the receipt of federal highway funds would not be withheld.

D. It is unlawful for any person to drive a motor vehicle at a speed in excess of fifty-five miles per hour, or in excess of a higher maximum speed if changed as set forth under subsection C of this section.

E. If a person is charged with violating the provisions of subsection D of this section and the speed at which the defendant is alleged to have driven as provided in section 28-707, subsection A is sixty-five miles per hour or less or the court finds that the defendant violated subsection D of this section and that the speed at which the defendant drove was not in excess of sixty-five miles per hour the offense shall be designated as the waste of a finite resource currently in short supply, which is a petty offense.

F. If a person is charged with violating the provisions of subsection D of this section and the speed at which the defendant is alleged to have driven as provided in section 28-707, subsection A is more than sixty-five miles per hour and the court so finds the offense shall be designated as unlawful speed which is a class 3 misdemeanor.

G. If a person is convicted of a petty offense under this section:

1. No department or agency of this state shall consider such violation for the purpose of determining whether such person's operator's or chauffeur's license should be suspended or revoked.

2. An insurer shall not consider the violation as a moving traffic violation against the person for the purpose of establishing rates of motor vehicle insurance charged by the insurer nor shall the insurer cancel or refuse to renew any policy of insurance for such a violation.

3. The fine shall not exceed fifteen dollars plus the penalty assessment imposed pursuant to section 41-2403.

4. No report may be made under section 28-1061, subsection B.

28-702.02. **Authority to change speed signs on freeways**

When the director determines upon the basis of an engineering and traffic survey that the safe and orderly movement of traffic upon any state highway which is a freeway will be facilitated by the establishment of variable speed limits, the department may erect, regulate, and control signs upon the state highway which is a freeway, or any portion thereof, which signs shall be so designed as to permit display of different speed limits at various times of the day or night. Such signs shall be of sufficient size and clarity to give adequate notice of the applicable speed limit. The speed limit upon the freeway at a particular time and place shall be that which is then and there displayed upon such sign.

28-702.03. **Maximum speed limit on interstate system highway; out of state violation**

If a resident of this state is convicted of violating the maximum speed limit of fifty-five miles per hour on the interstate system highways of another state, but the speed at which the person is alleged to have driven is sixty-five miles per hour or less:

1. No department or agency of this state may consider the violation for the purpose of determining whether the person's operator's or chauffeur's license should be suspended or revoked.

2. An insurer shall not consider the violation as a moving traffic violation against the person for the purpose of establishing rates of motor vehicle insurance charged by the insurer nor shall the insurer cancel or refuse to renew any policy of insurance for such a violation.

28-703. **When local authorities may and shall alter maximum limits**

A. When local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the maximum speed permitted under this article is greater or less than is reasonable or safe under the conditions found to exist upon any part of a street or highway, the local authority subject to subsection D may determine and declare a reasonable and safe maximum speed limit at such location and based on such investigation may:

1. Decrease the limit at intersections.

2. Increase the limit within any business or residence district, but not to more than sixty-five miles per hour.

3. Decrease the limit outside any business or residence district.

4. Increase or decrease the limits on streets adjacent to school grounds.

B. Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under this article for a business or residence district.

C. Any altered limit established as provided for in this section shall be effective at all times, or during hours of darkness, or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

D. Alteration of maximum limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until the alteration has been approved by the director.

E. Not more than six such alterations as provided for in this section shall be made per mile along a street or highway, except in the case of reduced limits at intersections, and the difference between adjacent limits shall not be more than ten miles per hour except for school crossings.

28-703.01. **End of speed zone; signs required**

The agency or authority establishing a speed zone under the provisions of sections 28-702 or 28-703 shall be responsible for erecting, at the beginning of each such zone a sign designating the maximum allowable speed within the zone, and at the end thereof a sign bearing either the word "resume speed" or setting forth the new maximum speed limit.

28-703.02. **Establishing speed on multiple-lane highways**

On multiple-lane highways and freeways with two or more separate roadways different prima facie speed limits may be established for different roadways under any of the procedures specified in sections 28-702, 28-703 and 28-703.01.

28-704. **Minimum speed regulation**

A. No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

B. Whenever the director or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the director or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

28-705. **Special speed limitation on motor-driven cycles**

No person shall operate any motor-driven cycle at any time mentioned in section 28-922 at a speed greater than thirty-five miles per hour unless such motor-driven cycle is equipped with a head lamp or lamps which are adequate to reveal a person or vehicle at a distance of three hundred feet ahead.

28-706. **Special speed limitations**

A. No person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten miles per hour.

B. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to the bridge or structure, when the structure is signposted as provided in this section.

C. The director upon request from any local authority shall, or upon his own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if he thereupon finds that the structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this article he shall determine and declare the maximum speed of vehicles which the structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of three hundred feet before each end of the structure.

D. Upon the trial of any person charged with a violation of this section, proof of determination of the maximum speed by the director and the existence of the signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to the bridge or structure.

28-707. **Charging violations and rule in civil actions**

A. In every charge of violation of any speed regulation in this article, the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.

B. The provision of this article declaring maximum speed limitations shall not be construed to relieve the plaintiff in any civil action, other than a civil action to impose a civil sanction, from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

28-708. **Racing on highways; classification**

A. No person shall drive any vehicle in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record on a street or highway, and no person shall in any manner participate in any such race, competition, contest, test or exhibition.

B. Drag race is defined as the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course, from the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle or vehicles within a certain distance or time limit.

C. Racing is defined as the use of one or more vehicles in an attempt to outgain, outdistance, or prevent another vehicle from passing.

D. A person who violates this section is guilty of a class 2 misdemeanor. If a person is convicted of a second or subsequent violation within twenty-four months of a first conviction, such person is guilty of a class 2 misdemeanor and shall not be eligible for probation, pardon, parole, commutation or suspension of sentence or release on any other basis until such person has served not less than ten days in jail.

E. The court may, upon pronouncement of any jail sentence under this section, in cases of extreme hardship provide in the sentence that the defendant may be permitted, if he is employed and can continue his employment, to continue such employment for not more than twelve hours per day nor more than six days per week, and the remaining day, days or parts of days shall be spent in jail until the sentence is served. He shall be allowed out of jail only long enough to complete his actual hours of employment and no longer.

F. When any person is convicted of a violation of the provisions of this section, the judge may, upon a first conviction, and shall upon a second or subsequent conviction for an offense committed within a period of twenty-four months require the surrender to him of any operator's or chauffeur's license of such person and immediately forward same to the department with the abstract of conviction. Upon a first conviction the judge may order the suspension of the driving privileges of such person for a period not to exceed ninety days. The department upon receipt of the license, abstract of conviction, and order of the court, in the case of a first conviction, shall suspend the driving privileges of such person for the period of time ordered by the judge. In the case of a second or subsequent conviction for an offense committed within a period of twenty-four months, the department upon receipt of the license and the abstract of conviction shall revoke the driving privileges of such person.

G. The director may give authorization in writing for any organized and properly controlled event otherwise prohibited by this section to utilize a highway or part of a highway. The authorization shall specify the time of the event, the highway or part of a highway to be utilized, and any special conditions the director may require for the particular event.

Alaska State Legislature

ANCHORAGE
DOWNTOWN
DISTRICT TWELVE

AIRPORT HEIGHTS
CITY VIEW
DOWNTOWN
FAIRVIEW
GOVERNMENT HILL
INLET VIEW
SOUTH ADDITION

House of Representatives

Representative
RICK UEHLING

MEMBER
HOUSE FINANCE COMMITTEE
HOUSE SPECIAL COMMITTEE
ON STATE LOANS
HOUSE FINANCE SUBCOMMITTEE ON
ADMINISTRATION, REVENUE
AND THE GOVERNOR'S OFFICE

To: Senator Jack Coghill
Chair, Senate Transportation Committee
From: Rep. Rick Uehling
Subject: HB 552 "An Act relating to setting speed limits and neighborhood speed zones"
Date: April 12,1986

HB 552 would require DOT to consider the presence of neighborhoods, schools, parks, and pedestrian traffic when setting speed limits. I refer to this concept as Neighborhood Speed Zones.

Our State law charges DOT with setting speed limits but the Legislature has never given DOT any indication of what factors it should consider when setting speed limits. As a result, speed limits are decided according to DOT internal policies referred to by DOT as 'policies and procedures'. At the heart of these 'policies and procedures' is the use of the '85% percentile'. DOT sets speed limits on highways and other roadways under its jurisdiction at the rate at which 85% of the drivers are currently driving.

DOT only gives lip service to the consideration of neighborhood and pedestrian safety factors when setting speed limits. DOT always uses the '85% percentile' to overrule local resident's safety concerns about speed limits. Residents have no where to turn because DOT decisions are based upon their internal policies and there are no statutory or regulatory (AAC) guidelines.

HB 552 will give Legislative direction to DOT about setting speed limits and opens the process by which DOT sets speed limits by providing local governments, community councils and community organizations a right to a public hearings. It is important to note that HB 552 does not attempt to set speed limits in neighborhoods or take any authority away from the Commissioner of DOT, he retains final authority to set speed limits.

With the State spending hundreds of millions of dollars on new roads across the State, it is more important now than ever that there be some protections built into the system for our neighborhoods. Neighborhood Speed Zones (HB552) will be an important protection, not just for the safety of our Streets in Anchorage, but throughout the state as well.

Changes were made by the House State Affairs Committee to insure that DOT responds to the concerns of local government and

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neighborhood organizations by providing for public notice and the holding of public hearings.

The House Transportation Committee Substitute reorganizes the structure of the House State Affairs Committee in a clarifying manner to with regard to the local hearing process.

The House Finance Committee changed the the words "arterial roadways' (p.1,ln.13) to 'other roadways' to insure that 'collector roads' for which DOT sets speed limits are also covered in this legislation.

The House made a technical amendment on the floor (p.2,ln.2) to correct a House Finance oversight and changed the words 'neighborhood organization' (p.2,ln.4) to 'community organization.

With regard to the fiscal note placed on this legislation by DOTPF of $47,000, I support the House Finance fiscal note of zero.

HB

6889

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen Joe Josephson

Pouch V
Juneau, Alaska 99811

April 18, 1986

TO: Committee Members
Senate Transportation

FROM: Committee Staff

RE: ~~SB~~ 689 Relating to required equipment on, and the transportation of certain loads by, motor vehicles

---

The committee will be taking up House Bill 689 on Monday, April 21st. This bill adds new sections to Title 28.35 of the Alaska Statutes, the miscellaneous provisions of the Department of Public Safety, that would require persons hauling gravel and like loads keep the loads from spilling.

Below are copies of both versions of the bill and a report by House Research on methods of lowering the danger of flying debris, opposite are copies of the present DOT regulations dealing with gravel haulers, the penalty that violators of this bill would face, a public safety opinion paper on the original bill and a zero fiscal note with analysis.

The department of public safety has informed staff that they are in favor of the bill as it is written and feel that it is sufficiently "air tight" to deal with the problem of gravel spillage. The Department of Commerce and Economic Development, Division of Measurement Standards (the weigh stations) has told staff that they have no problem with the bill, but, without the passage of Senate Bill 82 they will have no enforcement capabilities. The Alaska Association of General Contractors has worked closely with Representative Cotten on this bill and supports the present language.

Offered: 3/21/86
Referred: Finance

Original sponsor: Cotten

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 689 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to required equipment on and the transportation of certain loads by, motor vehicles."

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

* Section 1. AS 28.35 is amended by adding new sections to read:

Sec. 28.35.251. CONTAINED OR CONFINED LOADS. (a) A person may not drive a motor vehicle loaded with sand, gravel, rock, or similar materials on a highway unless

(1) the load is contained or confined to prevent the load from dropping, shifting, leaking, or escaping, except that sand or other substances may be dropped, sprinkled, or sprayed for the purpose of cleaning or maintaining the highway or providing traction; and

(2) the load is subjected to treatment by methods, approved by the commissioner by regulation, designed to settle the load or remove loose material before the vehicle is driven on the highway.

(b) If a cover is used to contain or confine a load being driven on a highway, the cover shall be securely fastened to prevent the cover from becoming loose or detached, or from being a hazard to other users of the highway.

Sec. 28.35.253. ANTI-SPRAY DEVICES REQUIRED. A person may not drive a motor vehicle on a highway unless the vehicle is equipped with fenders, mud flaps, or other anti-spray devices adequate to prevent the vehicle from being a hazard to other users of the highway.

Sec. 28.35.255. PENALTY. A person convicted of violating AS 28.35.251 or 28.35.253 is guilty of an infraction.

Introduced: 2/17/86
Referred: Transportation
Judiciary and Finance

IN THE HOUSE BY COTTEN

HOUSE BILL NO. 689

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicles."

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

* Section 1. AS 28.35 is amended by adding a new section to read:

Sec. 28.35.165. MOTOR VEHICLE OPERATING RESTRICTIONS. (a) A person may not drive a loaded motor vehicle on a highway unless

(1) the load is contained or confined to prevent the load from dropping, shifting, leaking, or escaping, except that sand may be dropped for the purpose of securing traction, and water or another substance may be sprinkled in cleaning or maintaining a roadway;

(2) a cover used to contain or confine the load is securely fastened to prevent the cover from becoming loose or detached, or being a hazard to other users of the highway;

(3) a load consisting of gravel, sand, or other loose material is subjected to treatment by methods, approved by the commissioner by regulation, designed to settle the load or remove loose material before the vehicle is driven on the highway.

(b) A person may not drive a motor vehicle on a highway unless the vehicle is equipped with fenders, mud flaps, or other anti-spray devices adequate to prevent the vehicle from being a hazard to other users of the highway.

(c) A person charged with violating this section shall appear in court to enter a plea to the offense. A person convicted of violating this section may be punished by a fine of not more than $500.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

May 25, 1984

MEMORANDUM

TO: Representative Barbara Lacher

FROM: Gretchen Keiser, Legislative Analyst

RE: Hazardous Debris from Commercial Vehicles
Research Request No. 84-116

Ann Plunkett of your staff requested this agency to investigate options for reducing the hazard of debris and construction materials, particularly gravel, which fly off commercial vehicles traveling on Alaska's roads. We were also asked to consider the practicality of enforcing the various options presented.

In summary, options for minimizing the problem of debris/gravel flying off commercial vehicles appear to be rather straightforward. As practical solutions, the truck driver can: 1) ensure that the truck is properly loaded; 2) secure the load in the bed of the truck; 3) ensure that tailgates, or bottom gates in the case of belly dump gravel trucks, are properly functioning and engaged; 4) clear the ledge around the bed of the truck; and 5) maintain proper anti-spray devices, or "mud flaps", behind the rear wheels. Furthermore, officials could increase enforcement of existing laws and regulations which address several of the above measures; however, this would likely divert enforcement effort from other priorties. Finally, the driver of a vehicle following the truck can: 1) allow for a greater distance between vehicles;and 2) seek compensation from the truck owner for damages caused by flying debris.

Truck Operator Measures

The uncontrolled release of gravel from a truck while in transit stems primarily from loose gravel falling off the ledges, spinning-off the top of the load in the bed, or leaking from partially sprung tailgates or bottomgates which no longer engage properly. In addition, gravel entrained in the tire treads can be sprayed toward the rear if the truck is not equipped with mud flaps. Making sure that a truck is not overloaded and cleaning the rig at the pit are reasonable measures to pursue. According to Bill Synder of the Association of General Contractors (AGC), AGC is aware of the problem and has conducted an educational campaign this spring in its weekly bulletin to its members urging

gravel haulers to clean their rigs before leaving the pit. AGC has also called gravel pit operators and urged them to load trucks properly and to level the loads. Requiring gravel haulers to cover their loads, however, would be time-consuming and costly, and AGC would oppose such efforts.

In the case of construction material scraps being hauled, debris hazards would be reduced if the driver: 1) limited the size of the load; and 2) secured the load properly.

Enforcement Measures

If self-policing by the truck operators is not effective, there are statutes and regulations which could be enforced more strenuously. The State Troopers, the primary enforcement agency, would have to divert staff effort from other duties in order to increase truck inspections. The statutes and the condition they address are summarized below:

Condition	Statute/Regulation	Enforcement Agency
Unsafe/defective equipment (e.g. sprung tailgates)	AS 28.05.011(3) 13 AAC 04.007	State Troopers
Lack of mud flaps	AS 28.05.011(2) 13 AAC 04.265	State Troopers
Unsecured load	AS 44.33.020(25) 17 AAC 25.040	State Troopers Commerce & Ec. Dev. (Weigh Stations)
Littering/ Unsecured load	AS 46.06.080(b)	State Troopers Environmental Cons.

The State Troopers have the authority to inspect vehicles for safe operating conditions and typically issue "fix it" citations which require repair of defective/unsafe equipment within a specified period of time (13 AAC 04.007). Similarly, mud flaps are required on all trucks under 13 AAC 04.265 and the regulation is enforced by the Troopers.

In 1982, operation of the State's weigh stations was transferred from the Department of Public Safety (State Troopers) to the Department of Commerce and Economic Development (Division of Measurement Standards). DCED maintains that it was not given the authority to issue citations in the case of unsecured load violations (under 17 AAC 25.040; attached). However, under authority delegated to DCED in the Imminent

Safety Hazard Program by the Alaska Transportation Commission, the weigh station inspectors can pull over vehicles until the condition is corrected.[1] Mr. Aves Thompson, Chief of Permits and Weigh Stations in DCED, interpreted a sprung tailgate or bottomgate on a gravel truck as an unsecured load that would be a violation covered under this program. Mr. Thompson stated that he receives complaints regarding the gravel hazard. His division recently cooperated with the State Troopers in an inspection operation between Palmer and Anchorage. The Troopers used the weigh station for inspection of trucks and noted problems with tailgates and gravel on ledges. In general, the State Troopers enforce the vehicle laws and regulations as much as they are able during their highway patrols, given their staffing and other responsibilities of higher priority.[2]

The Department of Environmental Conservation (DEC) has anti-littering enforcement authority under the Recycling and Reduction of Litter Law (AS 46.06; attached).[3] DEC routinely applies the secured load provision of the law in the issuance of warnings and citations to drivers of trucks carrying loads of construction material scraps [AS 46.06.080(b)]. However, the statute is somewhat ambiguous with respect to gravel loads because it exempts "mining products" from the secured load provision but fails to define mining products. DEC has not sought a legal opinion on this point. The department has focused primarily on the problem of litter in its common form (i.e., refuse) and has chosen not to enforce the gravel situation because of the ambiguity.

To our knowledge, the Municipality of Anchorage is the only local government to address the litter/debris situation with a local ordinance.[4] The "covered load ordinance" enacted in the fall of 1983 has been very successful in tackling the problem of unsecured loads

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[1]CSSB 491 would give the department the authority to issue citations under AS 45.75.130. The bill is awaiting action in the House Labor and Commerce Committee.

[2]1st Sergeant Young, Alaska State Troopers Headquarters, Anchorage. Personal Communication, May 23, 1984.

[3]A bill (CSSB 500) to extend the litter law, which terminates on July 1, 1984, is currently in House Rules awaiting scheduling for floor action.

[4]The Fairbanks North Star Borough Assembly is considering a revision to its solid waste ordinance which would require covered or secured loads.

releasing trash and scrap construction materials enroute to the landfill. Once again, this ordinance has not been applied to gravel trucks. Attempts by municipal officials in Anchorage, Fairbanks North Star and the Mat-Su Boroughs to urge contractors and trucking firms to reduce their uncontrolled release of gravel from trucks have met with moderate success, at best.

Judging by the extent of the problem, it appears that greater educational efforts by the trucking industry itself are warranted. In addition, the State Troopers could be encouraged to enforce existing vehicular laws to the maximum extent possible and especially in areas where local governments have no policing powers, such as the Mat-Su and Fairbanks North Star Boroughs. A clarification of the application of the State's litter law to improperly loaded gravel trucks could be sought through the Department of Law. This might expand DEC's enforcement actions as well.

Passenger Vehicle Measures

Enforcement aside, the driver of passenger vehicles following trucks loaded with gravel appear to have two immediate remedies at their disposal. They can drive defensively and allow for greater distance between themselves and the loaded truck and potential hazard. Secondly, they can seek compensation from the trucking firm or contractor if their vehicle, or its windshield as is often the case, is damaged. If the driving public continually demands compensation and brings the situation to the attention of the firms' owners, there might very well be greater incentive for self-policing on the part of the firms.

We hope that this information will be of use to you.

GK

Attachment

ATTACHMENT A
Statutes and Regulations Addressing Litter and
Confinement of Vehicular Loads

Editor's notes. — The repealed article derived from ch. 117, SLA 1949; ch. 129, SLA 1970.

Article 2. Prohibited Acts and Penalties.

Section

160 — 220. [Repealed]

Cross references. — For present provisions as to prohibited acts and penalties, see AS 46.03.710 et seq.

Secs. 46.05.160 — 46.05.220.
Repealed by § 4 ch 120 SLA 1971.

Editor's notes. — The repealed article derived from ch. 117, SLA 1949; ch. 109, SLA 1968; ch. 244, SLA 1970; ch. 62, SLA 1971.

Article 3. General Provisions.

Section

225 — 240. [Repealed]

Secs. 46.05.225 — 46.05.240.
Repealed by § 4 ch 120 SLA 1971.

Editor's notes. — The repealed article derived from ch. 117, SLA 1949; ch. 109, SLA 1968; ch. 145, SLA 1970.

Chapter 06. Recycling and Reduction of Litter.

Section

10. Powers and duties of the department
20. Annual report
30. Advisory council
40. Public awareness; motivation
50. Litter receptacles and anti-litter symbol
60. Litter bags
70. Litter patrol
80. Littering prohibited
90. Prohibited beverage containers
100. Notice to public
110. Enforcement authority
120. Grants
130. Conditions for grants
140. Federal requirements
150. Definitions

Revisor's notes. This chapter was enacted as AS 41.21.010 — 41.21.150 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

Termination date of chapter. — Section 5, ch. 149, SLA 1980, provides: "This Act terminates July 1, 1984."

Editor's notes. — As to intent of 1980 legislation enacting AS 46.06.010 — 46.06.150, see § 1, ch. 149, SLA 1980, in Temporary and Special Acts and Resolves.

Collateral references. — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 466, 467; 40 Am. Jur. 2d, Highways,

Streets and Bridges, § 608; 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 455, 456; 61A Am. Jur. 2d, Pollution Control, §§ 46-49.

39A C.J.S., Health and Environment, §§ 44, 125-128.

Validity and construction of statute or ordinance requiring return deposits on soft drink or similar containers, 73 ALR3d 1105.

Sec. 46.06.010. Powers and duties of the department [Terminates July 1, 1984]. The department shall

(1) serve as the coordinating agency among the various government and private organizations in the state which are involved in litter control and reduction and the recovery of energy or materials from litter;

(2) assist local governments in the adoption and amendment of ordinances relating to litter control and reduction;

(3) encourage, organize and coordinate voluntary local information campaigns which seek to focus the attention of the public on the reduction of litter and the recovery of materials and energy from litter;

(4) encourage, organize and coordinate voluntary or nonprofit local programs for the recovery of materials or energy from litter;

(5) encourage federal, state and local agencies to aid programs for the recovery of materials and energy from litter by providing publicity which encourages those programs and by allowing the use of publicly owned land, buildings, or equipment for those programs whenever possible;

(6) investigate the availability of, apply for, receive, and expend grants, loans or other funds available from any source, and, if it is appropriate and feasible, accept nonmonetary assistance in the form of services or equipment for use in programs established under this chapter;

(7) determine the types of materials or energy which may be profitably recovered from litter, and adopt regulations under the Administrative Procedure Act (AS 44.62) which require the recovery of the materials or energy;

(8) adopt other regulations under the Administrative Procedure Act (AS 44.62) necessary to implement this chapter; and

(9) develop methods for the measurement of litter in the state and encourage competition between municipalities to establish which municipality has the least litter. (§ 2 ch 149 SLA 1980)

Sec. 46.06.020. Annual report [Terminates July 1, 1984]. Not later than six months after the end of each fiscal year, the department shall prepare a detailed report describing and evaluating the actions taken and programs established under this chapter for submission to the governor and the legislature. The report must include

(1) the status and results of all grants made under this chap.

(2) an evaluation of the progress achieved by litter control and reduction programs; and

(3) an evaluation of the resources and energy recovered from litter in the state. (§ 2 ch 149 SLA 1980)

Sec. 46.06.030. Advisory council [Terminates July 1, 1984]. (a) There is created an advisory council to the department, which shall advise the department concerning the litter control and reduction, source separation and other programs for the recovery of energy and materials from litter under this chapter. The council may encourage the participation of industry, labor, municipalities, and the public in the programs administered by the department.

(b) The council consists of seven members appointed by the governor who are aware of and concerned with achieving the goals of this chapter. The members serve at the pleasure of the governor.

(c) The council shall meet annually, and may meet more frequently if necessary or desired. The members of the council serve without compensation but are entitled to per diem and travel expenses authorized by law for boards and commissions. (§ 2 ch 149 SLA 1980)

Sec. 46.06.040. Public awareness; motivation [Terminates July 1, 1984]. The department shall establish, provide advice concerning, and coordinate programs designed to

(1) encourage the public to recover material and energy from litter;

(2) use existing, and develop new, techniques and programs to reduce litter and littering;

(3) encourage the public not to litter and to engage in cleanup efforts; and

(4) advise the public of the state's anti-litter laws and regulations and encourage enforcement of those laws and regulations. (§ 2 ch 149 SLA 1980)

Sec. 46.06.050. Litter receptacles and anti-litter symbol [Terminates July 1, 1984]. (a) The department shall designate one or more types and sizes of litter receptacles for use in the state. The department shall make available for distribution throughout the state an anti-litter symbol of a uniform color and design adopted by the department. This anti-litter symbol must bear a statement of the penalties for littering, and the department shall design the anti-litter symbol so that it may be attached to litter receptacles. To aid public recognition and use of litter receptacles, the department may adopt an anti-litter symbol used in another state. The anti-litter symbol designed by the department must be attached to litter receptacles located in the public places of the state by the person or agency responsible for the placement of those receptacles.

(b) Litter receptacles designated for use in the state by the department shall be placed at public places in the state unless the public place

is specifically exempted by regulations adopted by the commissioner under the Administrative Procedure Act (AS 44.62). The number of receptacles required to be placed in each public place shall be determined by a formula related to the need for those receptacles. The requirements of this subsection are satisfied by the use of a litter receptacle which was in use before July 1, 1980, if the anti-litter symbol of the state is attached to the receptacle.

(c) A person owning or operating a privately owned public place at which litter receptacles are required under (b) of this section shall place litter receptacles at the public place at his own expense.

(d) Compliance with this section requires proper upkeep, maintenance and repair of a litter receptacle sufficient to permit the receptacle to serve the function for which it was designed and to prevent the receptacle from becoming unsightly.

(e) Responsibility for the placement of litter receptacles at publicly owned public places and for the removal of litter from those litter receptacles remains with the municipality or other public agency performing litter removal. Removal of litter from litter receptacles placed at privately owned public places remains the responsibility of the owner or operator of the privately owned public place.

(f) A person may not damage, deface, abuse or misuse a litter receptacle not owned by him so as to interfere with its proper function or to detract from its appearance.

(g) A person may not deposit leaves, clippings, prunings, garden refuse or household waste materials in a litter receptacle unless he has the permission of the owner of that receptacle.

(h) Except as provided in (i) of this section, a person who violates the provisions of (b) — (g) of this section is guilty of a violation and in addition to the punishment imposed by AS 12.55.035(b)(5), the court may order a person who violates this section to gather and dispose of litter in an area and for a length of time determined by the court.

(i) If a municipality of the state adopts an ordinance which prohibits the same conduct prohibited by (b) — (g) of this section, a violation of (b) — (g) of this section which occurs in the municipality is punishable under the provisions of the municipal ordinance if the punishment imposed under the ordinance is equal to or greater than the punishment imposed by AS 12.55.035(b)(5). (§ 2 ch 149 SLA 1980)

Sec. 46.06.060. Litter bags [Terminates July 1, 1984]. The department shall design and have produced a biodegradable litter bag bearing the state anti-litter symbol and a statement of the penalties for littering in the state. The department shall make litter bags available to the division of motor vehicles in the Department of Public Safety for this purpose. To the greatest extent practicable, the division of motor vehicles shall distribute one litter bag to each person who applies for registration or reregistration of his motor vehicle and shall notify the person of his responsibilities under the law. The department shall

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make litter bags available to all vessel owners and persons entering state by automobile. The commissioner shall designate distribution points for the broadest possible distribution of litter bags to persons entering the state by automobile or vessel. (§ 2 ch 149 SLA 1980)

Sec. 46.06.070. Litter patrol [Terminates July 1, 1984]. (a) The department shall establish a youth litter patrol program for the employment of young people on a seasonal basis. The department shall cooperate with federal, state or municipal programs that either employ young people or encourage their employment. The department may contract with other state agencies to provide administration and other support for the youth litter patrol established by this section.

(b) The department may adopt regulations under the Administrative Procedure Act (AS 44.62) which are necessary to implement this section. (§ 2 ch 149 SLA 1980)

Sec. 46.06.080. Littering prohibited [Terminates July 1, 1984]. (a) A person may not throw, drop, deposit, discard or otherwise dispose of litter from a vehicle or otherwise, on public or private property in the state or in waters in the state or under state jurisdiction unless

(1) the property is designated by a state agency or municipality as a site for the sanitary disposal of garbage or refuse, and the person is authorized to use the site for that purpose; or

(2) litter is placed in a litter receptacle so that the litter is prevented from being carried away or deposited by the elements upon public or private property or waters in the state or under state jurisdiction.

(b) A vehicle may not be driven or moved on a public highway or right-of-way unless it is constructed, loaded or covered to prevent its load from dropping, sifting, leaking or otherwise escaping from the vehicle. This subsection does not apply to a vehicle used (1) to deposit salt or sand to secure traction, (2) by a public agency to clean or maintain highways, or (3) to transport agricultural, mining or timber products. A person who operates a vehicle from which an object has fallen or escaped which obstructs or endangers travel upon a public highway or right-of-way shall immediately remove the object at his own expense or pay the cost of removal incurred by the state or by a person.

(c) A person who violates this section is guilty of a class B misdemeanor, and in addition to the punishment imposed by AS 12.55.035(b)(4) and 12.55.135(b), the court may order the person to gather and dispose of litter in an area and for a length of time determined by the court. (§ 2 ch 149 SLA 1980)

Sec. 46.06.090. Prohibited beverage containers [Terminates July 1, 1984]. (a) Beginning October 1, 1981, a person may not sell or offer to sell a nonglass beverage container which is designed and constructed so that the container is opened by detaching a metal ring or tab. This section does not apply to a beverage container which is opened by a detachable piece of tape, foil, or other soft material.

(b) Beginning October 1, 1981, a person may not sell or offer to sell beverage containers which are held together by plastic rings or similar plastic devices which are not degradable.

(c) A person who violates this section is guilty of a violation. Each sale or offer to sell is a separate offense. (§ 2 ch 149 SLA 1980)

Cross references. — As to fines for violations, see AS 12.55.035(b)(5).

Sec. 46.06.100. Notice to public [Terminates July 1, 1984]. The penalties imposed for littering shall be posted along the public highways of the state, at visitor centers, at entrances to state parks and recreational areas, at public beaches, and other publicly owned public places the commissioner determines necessary to accomplish the purposes of this chapter. The state agency or municipality responsible for litter removal from a public place shall post the notice required by this section. (§ 2 ch 149 SLA 1980)

Sec. 46.06.110. Enforcement authority [Terminates July 1, 1984]. (a) The following persons are authorized to enforce the provisions of this chapter:

(1) a state employee authorized by the commissioner; and

(2) a peace officer.

(b) The department shall prescribe a citation form which shall be used by all peace officers and persons in the state who are authorized to enforce the provisions of this chapter. (§ 2 ch 149 SLA 1980)

Sec. 46.06.120. Grants [Terminates July 1, 1984]. The department may make grants to state agencies, to municipalities, and to private organizations including nonprofit organizations for the establishment and operation of programs authorized under this chapter. A grant under this section may not exceed 18 months. A program qualifying for a grant under this section may include

(1) courses of instruction at, or the distribution of informative materials to, elementary and secondary schools;

(2) purchase and erection of roadside signs;

(3) organization and operation of litter removal activities conducted by municipalities, private organizations or service groups using volunteer help;

(4) a public information program to inform the public concerning the reduction of litter using the media including use of the electronic media;

(5) expansion of existing, and planning, design and construction of new, facilities for the recovery of materials and energy from litter;

(6) research and evaluation of markets for the materials and energy recovered from litter;

(7) advice and assistance, including information and consultation on available technology, operating procedures, organizational arrange-

ments, markets for materials or energy obtained from litter, tra.. tation alternatives, and publicity techniques;

(8) surveys by public agencies or recognized research organizations to assess the amount and composition of litter, and rates of littering;

(9) the purchase of litter receptacles;

(10) the creation or expansion of litter law enforcement programs;

(11) the initial purchase or lease of recycling equipment, the cost of operating that equipment, and the cost of storing and transporting materials before and after those materials are recycled. (§ 2 ch 149 SLA 1980)

Sec. 46.06.130. Conditions for grants [Terminates July 1, 1984]. (a) The department shall adopt regulations under the Administrative Procedure Act (AS 44.62) which establish

(1) eligibility requirements for applicants for a grant under AS 46.06.120;

(2) standards for the evaluation of proposals submitted by applicants for grants under AS 46.06.120; and

(3) other conditions for the receipt of a grant under AS 46.06.120 which are necessary to achieve the purposes of this chapter.

(b) The regulations adopted by the department under (a) of this section must meet the following criteria:

(1) if there is not enough money for grants to all eligible applicants, the following shall receive priority:

(A) a proposed program or project which most efficiently recovers materials or energy from litter;

(B) the proposed program or project which creates the greatest number of new jobs;

(2) the maximum amount for a single grant shall be established so that available money is distributed to a variety of programs;

(3) a grant may be made for new programs or for improvements to or additions to existing programs which were not previously financed by other existing resources of financing. (§ 2 ch 149 SLA 1980)

Sec. 46.06.140. Federal requirements [Terminates July 1, 1984]. If a federal department or agency issues a formal ruling that a section of this chapter will prevent the state from receiving federal financial participation in a program or activity established under this chapter, the section does not apply to the extent that it causes the program or activity to lose federal funding. (§ 2 ch 149 SLA 1980)

Sec. 46.06.150. Definitions [Terminates July 1, 1984]. In this chapter,

(1) "beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar or carton containing beer or other malt beverages or carbonated soft drinks, in liquid form;

(2) "commissioner" means the commissioner of environmental conservation;

(3) "department" means the Department of Environmental Conservation;

(4) "litter" means all waste materials susceptible to being dropped, deposited, discarded or otherwise disposed of upon property in the state or in waters under state jurisdiction; "litter" does not include the waste of the primary processes of mining or other extraction process, logging, sawmilling, farming or manufacturing;

(5) "litter bag" means a bag, sack or other container made of any material which is large enough and suitable to serve as a receptacle for litter inside a vehicle or vessel;

(6) "public place" means public or private property that is used or held out for use by the public, including but not limited to highways or other roads upon which vehicles are moved, parks, campgrounds, trailer parks, drive-in and fast food restaurants, gasoline service stations, parking lots for taverns, shopping centers and grocery stores and other parking lots which have a capacity for more than 50 vehicles, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches, bathing areas, school grounds, sporting event sites with seating capacity for more than 200 spectators, and business district sidewalks;

(7) "vehicle" means a mechanically driven device of any kind which is used for the transportation of a person or property on a public highway, trail or path;

(8) "vessel" means all descriptions of watercraft used or capable of being used as a means of transportation on the water. (§ 2 ch 149 SLA 1980)

Chapter 07. Village Safe Water Act.

Section

10. Statement of purpose
20. Provision of facilities
30. Nature and location of facilities
40. Construction of facilities
50. Operation of facilities
60. Educational and informational program
70. Economy of administration
80. Definitions

Collateral references. — 39 Am. Jur. 2d, Health, § 22; 61A Am. Jur. 2d, Pollution Control, §§ 134, 135; 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 31-46.

39A C.J.S., Health and Environment, § 46; 93 C.J.S., Waters, §§ 43-57.

Validity of statute prescribing standard of purity of water furnished for human consumption. 6 ALR 475.

Power of board of health to prescribe means or methods of keeping water supply free of impurities. 23 ALR 228.

Constitutionality and construction of statutes and ordinances for protection of municipal water supply. 72 ALR 673.

Wrongful pollution of stream by municipality as creating single cause of action or successive causes of action. 75 ALR 529.

When statute of limitations commences to run as to action against municipality for damages to riparian premises by pollution of stream by discharge of sewage. 122 ALR 1509.

Measure and elements of damages for pollution of well, cistern, or spring. 19 ALR2d 769.

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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 7, 1986

MEMORANDUM

TO: Representative Sam Cotten

FROM: Jay Livey
Legislative Analyst

RE: Other States Regulations Concerning the Transportation of Loose Fill Material
Research Request 86-124

You asked that we provide you with a summary of how other states regulate the operation of gravel trucks, particularly with regard to the covering of loads. The American Automobile Association (AAA) is providing us with a summary of state motor carrier laws compiled by the Canvas Products Association International. We will forward a copy of this summary to you upon its receipt.

Mr. Tom Kube of the AAA noted that this summary groups state laws relating to the transportation of loose fill material into several categories, the strictest of which includes states that require loads to be covered in most instances. Mr. Kube identified eight states that were assigned to this category: Florida, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Hampshire and New York.

Florida and New Hampshire require all loads of loose fill to be covered in all circumstances. Mississippi, New York and Michigan require the load to be covered if the load is less than six inches below the top of the sides, front and back of the truck bed. Massachusetts law requires the load to be covered if it is not loaded in a way to prevent it from escaping. Nebraska requires a load to be covered if the material protrudes above the truck sides and Missouri requires a cover if the load can reasonably be expected to blow out of the truck. Copies of statutes from these states are attached.

We also contacted the motor carrier regulatory agencies of several states. Wyoming, Vermont and Pennsylvania all require loose fill loads to be loaded so that they do not spill out of the truck. If a cover is necessary to assure this, the driver will be cited if a cover is not used and the load spills. Tennessee requires a load to be covered if the top of the load is within four inches from the top of the truck sides. Colorado, Montana, Iowa, California and Arizona have laws that

allow peace officers to cite drivers if a spill occurs, but there are no requirements that the load be covered.

Enforcement within these states varies, although generally, any peace officer with the authority to enforce state laws can issue citations if material is spilled on the road. Enforcement officers of several states noted that laws directed toward spills on the roadway are not very effective in controlling material blowing out of a truck unless the quantity of material lost is significant. Most of the states we contacted also had vehicle inspection programs which periodically checked commercial trucks for safety hazards. This inspection includes mudflaps, tailgates and truck beds which can all cause loose fill loads to fly off the truck if in disrepair.

We have also attached a copy of House Research Memorandum 84-116, "Hazardous Debris from Commercial Vehicles."

I hope this information will be helpful. If you require additional information, please contact us.

JL

Attachments

DUMP TRUCK COVERING LAW DIRECTORY
United States and Canada - ~~1977~~ 1983 with add. -

This directory lists the applicable laws of all states and provinces which require the covering of dump trucks with a tarpaulin or restrict the spillage of loads on the highways. This directory is the result of a survey conducted by CPAI in the summer of 1976 and has been updated during the fall of 1977.

The general classification of each law appears next to the name of each state or province. These laws have been divided into four general categories by CPAI.

A - Laws which require covering in most instances.

B - Laws which require covering in limited instances.

C - Laws which restrict spillage and require the secure fastenings of loads and covers.

D - Laws which restrict spillage only.

There are nine states with category A laws. These are the strictest existing laws and are generally suitable as models for the other forty-one states. Florida's law is probably the clearest and most direct, while the New Hampshire law covers reasonable exceptions in the fullest detail. Ten states have laws which fall into category B, requiring covering in some instances, but the majority of the laws fall into category C or D. These laws quote part of the Uniform Vehicle Code, which is the model followed by many states for all their traffic laws. The 13 states in category C and the 17 states in category D are the prime candidates for stricter regulations since their current laws are unenforceable for most practical purposes.

In Canada, all ten provinces have some form of spillage law. Ontario has a strictly enforced law (category A). Quebec's law falls into category B, and there are four provinces with category C laws and four more with category D regulations.

Effective enforcement is the key to increased highway safety through dump truck covering. A strict law is sometimes not enough. In Missouri (category A) the law uses words like "shall have a protective cover," but the state police only enforce the requirement in extreme cases. In Connecticut and Georgia, on the other hand, strict enforcement of "C" type laws as a matter of state police policy has caused most dump trucks to be covered. The motoring public in these two states is fortunate to have police who are concerned about the spillage problem. In most states, "C" and "D" type laws are rarely enforced since the officer has to witness spillage before issuing a ticket. Effective enforcement is necessary with the strictest laws, but in the 30 states with "C" or "D" laws, the police need clear guidance from the legislature if the public is to be protected legally, instead of just luckily. For information on how each law is enforced in actual practice, the state or provincial police should be contacted. Most officers are very cooperative in telling how and when spillage tickets are issued.

ALABAMA (D) Section 58 (45a)

58 (45a) Spilling Loads

Whoever willfully and knowingly operates, owns, or causes to be operated on any public highway, road, or street a motor vehicle so loaded with gravel, rock, slag, bricks, sawdust, chips, wood products, or other like substances, in such manner or in such condition that the contents of the vehicle spill out and endanger the safety of the persons or property of motorists and pedestrians, is guilty of a misdemeanor and upon conviction shall be fined not more than $100.00.

ALASKA No Law

ARIZONA (C) Section 28-1006

28-1006. Loads on Vehicles

a. No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

b. No person shall operate on any highway a vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

ARKANSAS (D) Section 75-805

75-805. Spilling Loads on highways prohibited - Exceptions.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

CALIFORNIA (B) Section 23114 and 23115

Spilling Loads on Highways

23114. No vehicle shall be driven or moved on any highway unless the vehicle is so constructed, covered, or loaded as to prevent any of its contents or load other than clear water or feathers from live birds from dropping, sifting, leaking, blowing, spilling, or otherwise escaping therefrom.

23115. No vehicle loaded with garbage, swill, cans, bottles, waste papers, ashes, refuse, trash, or rubbish, or any other noisome, nauseous, or offensive matter shall be driven or moved upon any highway unless the load is covered with a cover sufficient to prevent the load or any part of the load spilling upon the highway. This section does not prohibit a rubbish vehicle from being without cover while in the process of acquiring its load in circumstances

CALIFORNIA (B) cont.

wherein no law, administrative regulation, or local ordinance requires such cover.

This section does not apply to any vehicle engaged in transporting wet waste fruit or vegetable matter, or waste products from a food processing establishment.

COLORADO (D) Section 42-4-1208

42-4-1208. Spilling Loads on Highways Prohibited.

No vehicle shall be driven or moved on any highway unless such vehicle is constructed or loaded or the load thereof securely covered to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom; except that sand may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

CONNECTICUT (C) Section 14-271

14-271. Securing of Loads

a. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom in such manner or quantity as to constitute a hazard or nuisance to other users of the highway, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

b. No person shall operate on any highway any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

c. The provisions of this section shall not apply to motor vehicles registered as farm motor vehicles or vehicles used for farming purposes.

d. Any person who violates any provision of this section shall be fined not more than one hundred dollars for each offense.

DELAWARE (D) Section 4371

4371. Construction of Vehicles to Prevent Escape of Contents

a. No vehicle shall be driven or moved on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom.

b. Whoever violates subsection (a) of this section shall be fined not less than $5, nor more than $25, or imprisoned not less than 2 nor more than 10 days, or both. For each subsequent like offense within one year, he shall be fined not less than $25, nor more than $50 or imprisoned not less than 2 nor more than 15 days, or both.

DISTRICT OF COLUMBIA (B) Section 153 d and 153 f

Sec. 1531 (d) Spilling loads. No vehicle other than a streetcar shall be driven or moved on any street or highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on the roadway in cleaning or maintaining such roadway.

(f) Load limits - securing of loads. The weight of the load carried on any truck, tractor, trailer, or combination thereof, shall not exceed the manufacturer's rated load capacity of such truck, tractor, trailer, or combination thereof, and loads carried on such vehicles shall be adequately secured to prevent shifting or toppling or in any other manner becoming a hazard. Any tarpaulin or other covering used to protect the load carried on any such vehicles shall be securely fastened so as to prevent its detachment.

FLORIDA (A) Section 316.198

316.198. Loads on Vehicles

(1) No vehicle shall be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping therefrom, except that sand may be dropped only for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

(2) It is the duty of every owner and driver, severally, of any vehicle hauling, upon any public road or highway open to the public, dirt, sand, lime rock, gravel, silica, or other similar aggregate or trash, garbage, or any similar material which could fall or blow from such vehicle, to prevent such materials from falling, blowing, or in any way escaping from such vehicle. Covering and securing the load with a close-fitting tarpaulin or other appropriate cover is required.

GEORGIA (C) Section 95A-955

95A-955. Securing Loads on Vehicles

a. No vehicle shall be driven or moved on any public road unless such vehicle is constructed or loaded or covered so as to prevent any of its load from dropping, escaping, or shifting in such a manner as to create a safety hazard, provided that this section shall not prohibit the necessary spreading of any substance in public road maintenance or construction operations.

b. No person shall operate, or load for operation, on any public road any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner becoming a hazard to other users of the public road.

c. Nothing in this section, nor any regulations based thereon, shall conflict with federal regulations or Georgia Public Service Commission regulations applying to the securing of loads on motor vehicles.

HAWAII (B) Section 15-21.4

Sec. 15-21.4. Loads to be Properly Secured.

(1) No vehicle shall be driven or moved on any highway, unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

(2) No vehicle shall be driven or moved on any highway when any load thereon is not entirely within the body of the vehicle; provided, however, that this prohibition shall not apply if the load is securely fastened by means of clamps, ropes, straps, cargo nets, or other suitable mechanical device to prevent such load from dropping onto the highway or from shifting in any manner nd, further that this proviso shall not be deemed to supersede the provisions of Section 15-21.3 hereinabove.

(3) No vehicle shall be driven or moved on any highway with any load consisting partially or entirely of loose paper, empty cartons, crates, or any other material susceptible of being blown or carried by the wind, unless such load is entirely covered by tarpaulin, net, canopy or other suitable material, effectively preventing any part of such load from being blown or carried by the wind; provided, however, this paragraph shall not apply to any vehicle carrying a load consisting entirely of soil, sand, coral or gravel, if such load is wetted down to prevent particles thereof from being blown or carried by the wind.

IDAHO No Law

ILLINOIS (C) Section 15-109

15-109. Spilling loads on highways prohibited.

a. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

b. No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

INDIANA (D) Section 9-8-1-2

9-8-1-2. Vehicles on State Highways

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent its contents from dripping, sifting, leaking or otherwise escaping therefrom.

IOWA (D) Section 321.460

321.460. Spilling loads on highways.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

KANSAS (C) Section 8-1906

8-1906. Securing loads on vehicles.

a. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that this section shall not prohibit the necessary spreading of any substance in highway maintenance or construc ion operations.

b. No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

KENTUCKY (D) Section 189.150

189.150. Escaping contents.

No vehicle shall be operated upon any highway unless it is so constructed as to prevent its contents from escaping.

LOUISIANA (C) Section 32.386.

32:386. Loads on Vehicles: Care Required Thereto

a. No vehicle shall be driven or moved on any highway of this state unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance on a highway in cleaning or maintaining such highway.

b. No person shall operate on any highway of this State any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

MAINE (C) 1750 (h) and 1752

Ch. 1750 (h) No motor vehicle shall be operated unless the tailboard or tailgate, tarpaulins, chains (except ground or contact chains), ropes, stakes, poles and the like, or any part of the load, are securely fastened to prevent dangling, flapping, swinging or falling from side, end or top of load.

MAINE (C) Cont.

Ch. 1752 Injurious substances prohibited on ways and bridges; loads securely fastened

No person shall operate or cause to be operated upon any public way a vehicle with a load, unless such load is fastened, secured, confined or loaded to prevent any danger, reasonably to be anticipated, of any portion of said load from falling to the ground. The word "load" as used in this paragraph shall include, but shall not be limited to, firewood, pulpwood, logs, bolts or other material, but shall not include loose hay, pea vines, straw, grain or cornstalks.

MARYLAND (B) 14 - 106

Section 14-106. Loads on vehicles.

a. Dropping or leading loads; loose material. -- No motor vehicle, trailer, or semitrailer shall be driven or moved on any highway unless the vehicle is contructed or loaded to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway. No person may transport or load for transporting any loose material in a motor vehicle, trailer, or semitrailer, on or over the public roads, streets, or highways of this State in violation of any of the requirements of this sub-section. "Loose material" includes dirt, sand, gravel, wood chips, or other material capable of blowing, falling, or spilling from a vehicle as a result of movement or of exposure to air, wind currents, or weather, but does not include agricultural products in their natural state. The Administrator, by rule and regulation, may specify any other types of material capable of spilling or blowing for purposes of this section.

b. Loads to be securely fastened; removal of debris. -- No person shall operate on any highway any vehicle with any load unless the load and any coverning thereon is securely fastened to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway. Furthermore, the owner of a vehicle which has caused dirt or debris to be deposited on the street shall be responsible for removing the same within a reasonable period.

MASSACHUSETTS (A) C. 85 - Sec. 36

C. 85 - Sec. 36

No person shall drive or move a vehicle on any way, as defined in section one of chapter ninety (90), nor shall the owner or bailee of any vehicle require or permit the same to be driven or moved on any way, unless such vehicle is constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom and, if it is loaded with sand or gravel, unless its load is fully and adequately covered. This section shall not prohibit the dropping of sand for the purpose of securing traction, or the sprinkling of water or other substance on such a way in cleaning or maintaining the same. Whoever violates the provisions of this section shall be punished by a fine of not less than ten (10) nor more than fifty (50) dollars.

MICHIGAN (A)

Section 257.720

Sec. 720. (1) A vehicle shall not be driven or moved on a highway unless the vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, blowing off, or otherwise escaping therefrom. The tailgate, faucets, and taps shall be securely closed to prevent spillage during transportation, whether loaded or empty, and the body of the vehicle shall not have any holes or cracks through which material can escape. Actual spillage of material on the highway or proof thereof is not necessary to prove a violation of this section. Any highway maintenance vehicle engaged in either ice or snow removal shall be exempt from this act.

(2) A commercial vehicle carrying a load, other than logs or tubular products, which is not complete enclosed shall either:

(a) Be loaded so that no part of the load making contact with any sideboard or side panel or rear part of the enclosure shall be within 6 inches of the top of the part of the enclosure contacted, unless the load is covered with firmly secured canvas or similar type covering.

(b) Have the load securely fastened to the body of the frame of the vehicle with binders of adequate number and of adequate breaking strength to prevent the dropping off or shifting of the load.

(3) A company or individual who loads or unloads a vehicle or causes it to be loaded or unloaded, with knowledge that it is to be driven on a public highway, in a manner as to cause a violation of subsection (1) shall be prima facie liable for a violation of this section.

(4) A person shall not operate a motor vehicle carrying logs or tubular products on a highway unless the following conditions are complied with:

(a) If the logs or tubular products are loaded crosswise or at right angles to the side of the vehicle, the logs or tubular products shall be securely fastened to the body or frame of the vehicle with not less than 2 binders which are secured to the frame at each end of the load and pass over the load so that the frame and binders completely encircle the load.

(b) If the logs or tubular products are loaded lengthwise of the vehicle, obliquely or parallel to the sides, the logs or tubular products shall be securely fastened to the body or frame of the vehicle with not less than 2 toggle binders which are secured to the frame at each end of the load and pass over the load so that the frame and binders completely encircle the load and 1 wrapping binder which completely encircle the load.

(c) The toggle and wrapping binders shall be made of steel chain or a combination of steel chain and wire rope, which shall not be less than 3/8 of an inch in diameter and have a breaking strength of not less than 12,000 pounds.

MINNESOTA (D) Sec. 169.81 Subd. 5.

Section 169.81, Subd. 5. Manner of Loading.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed, loaded, or the load securely covered as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway. This subdivision shall not apply to motor vehicles operated by a farmer or his agent when transporting produce he has produced.

MISSISSIPPI (A) Senate Bill 1648

Senate Bill 1648.

An act to require all trucks, trailers and other carriers with open tops when hauling sand, dirt, gravel or rock to use a cover when loaded and traveling on state and United States highways or in the alternative to be equipped with sideboards.

Be it enacted by the legislature of the State of Mississippi:

SECTION 1. Every truck, trailer or other carrier with an open top, while traveling upon any state, United States or interstate highway in the State of Mississippi and while carrying any load of sand, dirt, gravel or rock shall be equipped with a tarpaulin, canvas or other such top and same to be secured over the top of any load of sand, dirt, gravel, or rock.

SECTION 2. In lieu of the tarpaulin provided in Section 1 of this act, a truck, trailer or other carrier with an open top while traveling upon any state, United States or interstate highway in the State of Mississippi and while carrying any load of sand, dirt, gravel or rock shall be in full compliance with this act provided same is not loaded within six (6) inches of the top of the bed or is equipped with four (4) six inch (6") sideboards, which sideboards shall be attached one (1) each to the front, back and two (2) sides of the carrier body, and shall remain lowered while the body is being loaded, provided that no part of the load shall extend above the body of the carrier. After loading, the sideboards shall be raised and secured to remain raised during travel, and the space between the top of the sideboards and the top of the load making contact with the sideboards shall not be less than six (6) inches.

SECTION 3. The Motor Vehicle Comptroller, Mississippi Highway Patrol and other law enforcement agencies are hereby charged with enforcement of this act.

MISSISSIPPI (A) cont.

SECTION 4. Any person, firm or corporation operating a truck, trailer or other carrier on any state, United States or interstate highway not properly covered as set forth in Section 1 or without sideboards as set forth in Section 2 or in violation of any of the other provisions of said Section 2 shall be guilty of a misdemeanor and upon conviction shall be fined not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00) for each separate and distinct violation.

SECTION 5. This act shall take effect and be in force from and after July 1, 1974.

MISSOURI (A) Sec. 307.010

Section 307.010. Loads which might become dislodged to be secured -- Failure, penalty.

1. All motor vehicles, and every trailer and semitrailer operating upon the public highways of this State and carrying goods or material or farm products which may reasonably be expected to become dislodged and fall from the vehicle, trailer or semitrailer as a result of wind pressure or air pressure and/or by the movement of the vehicle, trailer or semitrailer shall have a protective cover or be sufficiently secured so that no portion of such goods or material can become dislodged and fall from the vehicle, trailer or semitrailer while being transported or carried.

2. Operation of a motor vehicle, trailer or semitrailer in violation of this section shall be a misdemeanor, and any person convicted thereof shall be punished as provided by law.

MONTANA No Law

NEBRASKA (A) Sec. 39-6, 129

Section 39-6, 129. Transportation of sand, gravel, rock; material covered with canvas.

No person shall transport any sand, gravel, rock less than two inches in diameter, or refuse in any motor vehicle on any hard-surfaced state highway if such material protrudes above the sides of that part of the vehicle in which it is being transported unless such material is enclosed or completely covered with canvas or similar covering. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than five dollars nor more than twenty-five dollars.

NEVADA (C) 484.771

484.771. 1. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

2. No person shall operate on any highway any vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

NEW HAMPSHIRE (A) RSA 249:51

RSA 249:51. Spillage of Material

I. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

II. No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway. Without limiting the foregoing provision, no person shall operate on any highway any open vehicle loaded with earth, sand, asphalt, stone, gravel or other particulate substance unless said vehicle is equipped with and said load is covered and secured by a close-fitting tarpaulin which prevents the escape of any substance from said load onto the highway.

III. Any person who violates the provisions of this section shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person. Any person shall be liable to the state or town for any damage done to the highway by spillage.

IV. The provisions of paragraphs I, II, and III of this section shall not apply to a local farmer transporting his own farm products or materials incidental to his farming operations where such transporting requires incidental use of a public highway provided that such farmer shall not thereby be relieved of his duty to exercise reasonable care in carrying on such operations.

V. The provisions of paragraph II shall not apply to:

(a) The operation of highway building equipment as defined in RSA 259:1, XII and motor vehicles used in the construction of highways provided that such equipment or motor vehicle is used within a highway construction zone as prescribed by the commissioner, public works and highways, provided that the operator of any such vehicle shall not thereby be relieved of his duty to exercise reasonable care.

(b) The operation of municipal and state highway maintenance equipment.

(c) The operation of any vehicle on a highway at speeds of less than thirty miles per hour.

NEW JERSEY (B) 39:4-77

Section 39:4-77. Loading so as to spill prohibited; minimum safety standards; penalty.

No person shall cause or permit a vehicle to be so loaded that the contents or any part thereof may be scattered in any street whenever the load of any vehicle is of material other than farm products susceptible to scattering on a street and such load extends above the height of the sides or tail gate or rear of the body of the vehicle, such load shall be securely covered by a tarpaulin or other cover.

NEW MEXICO (C) 64-23-17

Section 64-23-17. Loads on vehicles.

a. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

b. No person shall operate on any highway any vehicle or combination of vehicles with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

NEW YORK (A) 380-a.

Section 380-a. Certain vehicles engaged in the transportation of loose cargo.

1. It shall be unlawful to operate on any public highway any open truck or trailer being utilized for the transportation of earth, sand, stone or similar loose substances, unless said truck or trailer has a cover, tarpaulin, or other device of a type and specification approved by the commissioner of transportation which completely closes in the opening on the said truck or trailer while said truck or trailer shall be so operated, so as to prevent the falling of any such substances therefrom. However, if the load is six inches below the top of the sides of such truck, the covering is not necessary.

2. The commissioner of transportation is authorized to make necessary rules and regulations to carry into effect the provisions of this section, applying such provisions to specific conditions and loads and prescribing means, methods and practices to effectuate such provisions.

3. The provisions of this section shall not apply to motor vehicles, trailers and semitrailers conveying "farm products" as defined in section two of the agriculture and markets law.

NORTH CAROLINA (D) 20-116, Sec. G

20-116, Section G. Size of vehicles and loads.

No vehicle shall be driven or moved on any highway unless such vehicle is

NORTH CAROLINA (D) cont.

so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

Trucks, trailers or other vehicles when loaded with rock gravel, stone or other similar substances which could blow, leak, sift or drop shall not be driven or moved on any highway unless the height of the load against all four walls does not extend above a horizontal line six inches below their tops when loaded at the loading point, or if not so loaded, unless the load shall be securely covered by tarpaulin or some other suitable covering, or unless it is otherwise constructed so as to prevent any of its load from dropping, sifting, leaking, blowing, or otherwise escaping therefrom.

Provided this section shall not be applicable to or in any manner restrict the transportation of poultry or livestock or silage or other feed grain used in the feeding of poultry or livestock.

NORTH DAKOTA (C) 39-21-44.1

Section 39-21-44.1. Vehicle to be constructed to prevent sifting or leaking loads.

No vehicle shall be driven or moved on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway. No person shall operate on any highway any vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

OHIO (B) C. 41 - Sec. 87A

C. 41 - Sec. 87A

No person shall drive or move a vehicle on any way, as defined in section one of chapter ninety (90), nor shall the owner or bailee of any vehicle require or permit the same to be driven or moved on any way, unless such vehicle is constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom and, if it is loaded with sand or gravel, unless its load is fully and adequately covered. This section shall not prohibit the dropping of sand for the purpose of securing traction, or the sprinkling of water or other substance on such a way in cleaning or maintaining the same. Whoever violates the provisions of this section shall be punished by a fine of not less than ten (10) nor more than fifty (50) dollars.

OKLAHOMA (B) 14--105

Section 14--105. Loads on Vehicles.

a. No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, blowing or otherwise escaping therefrom, except that sand may be dropped

OKLAHOMA (B) cont.

for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining such roadway.

b. No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached or in any manner a hazard to other users of the highway. Any vehicle loaded with sand, cinders, or other loose material susceptible to blowing or escaping by reason of wind shall have such load covered or dampened so as to prevent the blowing or escaping of said load from the vehicle.

c. This section shall not apply to trucks loaded with livestock, poultry or agricultural products only except baled agricultural products, provided that any such truck shall be so constructed or loaded as to prevent such livestock or poultry from escaping therefrom.

OREGON (D) 483.510

Section 483.510. Sifting or leaking loads; permit for food processing by-products.

(1) Except as provided in subsection (2) of this section, no vehicle shall be driven or moved on any highway unless it is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.

(2) Upon receipt of an application, the Department of Transportation, county court, or board of county commissioners, or the city council shall grant a written permit for the operation over highways or streets under their respective jurisdictions of vehicles transporting food processing plant by-products to be used for livestock feed from which there is fluid leakage. Such permits shall be issued for a maximum period of 60 days and shall be revocable if it is found by the granting authority that the amount or character of the fluid leakage is such that it constitutes a danger to other vehicles. This subsection shall have no effect after December 31, 1976.

PENNSYLVANIA (D) 75 P. S. 831

75 P. S. 831. Sifting or Leaking Loads.

No vehicle carrying inanimate contents shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent such contents from dropping, sifting, leaking or otherwise escaping therefrom.

RHODE ISLAND (B) 31-25-9 and 31-25-10 Sec. D

31-25-9 and 31-25-10, Sec. D. Prevention of leakage of load. Fastening of load and covering.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

RHODE ISLAND (B) cont.

31-25-10 Sec. D. Fastening of load and covering.

No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

No person shall operate a motor truck or other vehicle carrying or transporting any rubbish, refuse or other debris on any highway without first securely fastening a covering thereon to prevent the contents from falling to said highway. No person shall operate on any highway any vehicle with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

SOUTH CAROLINA (C) 46-660 & 46-661

46-660. Spilling loads on highways prohibited.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom.

46-661. Loads to be firmly attached.

No person shall operate on any highway any vehicle with any load unless such load and any covering thereon is securely fastened so as to prevent such covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

SOUTH DAKOTA (D) SDCL 32-15-18

SDCL 32-15-18. Improperly Loaded Vehicle Unlawful.

No vehicle shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.

TENNESSEE No Law

TEXAS (B) Article 6701d-11 Section 3A

Article 6701d-11, Section 3A. Transporting Loose Materials.

a. No person, co-partnership, limited partnership, association, corporation, State, county, municipality, town, village, or any department or political subdivision thereof, their agents or employees, shall load or transport, cause to be loaded or transported, or aid or abet the loading or transporting, in a motor vehicle, commercial motor vehicle, truck-tractor, trailer or semi-trailer, any loose material on or over the public roads, streets or highways of this State in violation of any requirement of this section.

TEXAS (B) cont.

b. As used in this section, 'loose material' means dirt, sand, gravel, wood chips, or other material that is capable of blowing or spilling from a vehicle as a result of movement or exposure to air, wind currents, or weather, but shall not include agricultural products in their natural state.

c. The bed carrying the load must be completely enclosed on both sides by sideboards or sidepanels, on the front by a board or panel or by the cab of the vehicle, and on the rear by tailgate or board or panel, all of which must be so constructed as to prevent the escape of any part of the load because of blowing or spilling.

d. The top of the load making contact with any sideboard or sidepanel or front or rear part of the enclosure must not be within six inches of the top of the part of the enclosure contacted, and the highest point of the load must not be above any point on a horizontal plane equal in height to the top of the side, front, or rear part of the enclosure that is the least in height, or in the alternative by covering the load with a canvas or similar type covering firmly secured thereby creating a physical horizontal plane; and at no time shall the load exceed the six inches as stated in this section during transportation of load without being covered.

e. The excess spillage of loose material on the non-load carrying parts of the vehicle occasioned by or from the act of loading shall be removed before the vehicle is operated over a public road, street, or highway of this State.

f. The tailgate must be securely closed to prevent spillage during transportation, whether loaded or empty.

g. The bed shall not have any holes, cracks, or openings through which loose material may escape.

h. The residue of the transported loose material shall be removed from the non-load carrying parts of the vehicle upon completion of unloading before the vehicle is operated over a public road, street, or highway of this State.

i. Subsection (d) of this section does not apply to any load-carrying compartment that completely encloses the load or to the transporting of any load that is otherwise suitably covered or secured by other means which prevents the escape of loose material.

j. Nothing in this Section 3A applies to any vehicle or construction or mining equipment which is:

(1) moving between construction barricades on a public works project; or
(2) merely crossing a public road, street, or highway.

k. Any person, co-partnership, limited partnership, association, corporation, or any departmental head, agent or employee of the State or of any county, municipality, town, village, or any department or political subdivision thereof who fails to comply with the provisions of this section shall be guilty of a misdemeanor, and upon first conviction shall be fined a sum of not less than Twenty-five Dollars ($25) nor more than Two Hundred Dollars ($200), and on second conviction a sum of not less than Two Hundred Dollars ($200).

UTAH (C) 27-12-146

Section 27-12-146. Loads on Vehicles - Confining, securing and fastening load required.

No vehicle shall be driven or moved on any public highway unless such vehicle is so constructed or loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom, except that sand or other abrasives may be dropped for the purpose of securing traction or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

No person shall operate on any public highway any vehicle with any load unless said load and any covering thereon is suitably fastened, secured and confined according to the nature of such load so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

VERMONT (D) T. 23, Sec. 1454

T. 23, Section 1454. Securing loads; penalty.

a. A person shall not operate a motor vehicle nor draw a trailer or semi-trailer on a highway unless the motor vehicle, trailer or semi-trailer is so constructed and loaded that it will create no hazard to other users of the highway.

b. Repealed.

VIRGINIA (D) 46.1-303 & 10-211

Section 46.1-303. Construction must prevent escape of contents.

No vehicle shall be operated or moved on any highway unless such vehicle is so constructed as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.

Section 10-211. Allowing escape of load material; penalty.

No vehicle shall be driven or moved on any highway unless such vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom. Provided, however, that sand or any substance for increasing traction during times of snow and ice may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in the cleaning or maintaining of such roadway by the State or local government agency having that responsibility. Any person operating a vehicle from which any glass or objects have fallen or escaped, which could constitute an obstruction or damage a vehicle or otherwise endanger travel upon such public highway shall immediately cause the highway to be cleaned of all glass or objects and shall pay any costs therefor. Violation of this section shall constitute a Class I misdemeanor.

WASHINGTON (D) 46.61.655

Section 46.61.655. Permitting escape of load materials.

No vehicle shall be driven or moved on any public highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in the cleaning or maintaining of such roadway by public authority having jurisdiction. Any person operating a vehicle from which any glass or objects have fallen or escaped, which would constitute an obstruction or injure a vehicle or otherwise endanger travel upon such public highway shall immediately cause the public highway to be cleaned of all such glass or objects and shall pay any costs therefor.

WEST VIRGINIA (C) 17C-17-6

Section 17C-17-6. Loads to be securely fastened and not allowed to leak, escape, etc.

a. No vehicle or combination of vehicles shall be operated on any highway unless such vehicle or combination of vehicles is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

b. It shall be unlawful to operate on any highway any vehicle or combination of vehicles with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

WISCONSIN (D) 348.10, Section 2
346.94, Sections 6 & 7

348.10, Section 2. Special limitations on load.

(2) No person shall operate a vehicle on a highway unless such vehicle is so constructed and loaded as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom.

346.94, Sections 6 & 7.

(6) Debris on public or private property. No person shall throw or deposit any type of debris or waste material on or along any highway or on any other public or private property.

(7) Spilling loads of waste or foreign matter. The operator of every vehicle transporting waste or foreign matter on the highways of this State shall provide adequate facilities to prevent such waste or foreign matter from spilling on or along the highways.

WYOMING (D) — No statute citation available

"Dump trucks are not required to be covered during operation. Wyoming statutes do require that all vehicles be loaded as not to spill any substances on the roadway." Wyoming Highway Patrol

PUERTO RICO (A) — Section 1371 (b) 10

Section 1371 (b) 10.

(b) Except as otherwise provided by the Secretary through regulations promulgated for the purpose there shall not be operated or moved on public highways:

(10) "Any vehicle or trailer engaged in the transportation of refuse, soil, clay, mud, sand, cement, block or crushed stone, or any other nanalogous material, unless it is equipped with a body free from crevices, openings, or cracks and is not filled to overflowing so that any such material may spill or drop upon the pavement. Where the cargo consists of fine gravel, sand, lime, cement or refuse, or any other analogous material, said cargo shall be completely covered with a tarpaulin, oilskin or canvas so that it will not spill over or pollute the atmosphere to the detriment or prejudice of the public health and safety, provided, further, that on rainy days, if the source of the cargo is swampy, the vehicle's tires shall be cleaned or washed before entering a public road."

CANADIAN PROVINCES

ALBERTA (D) — Section 3.3.2

Section 3.3.2. Loose Materials.

When the load of a vehicle consists of loose material or of material liable to shift, slip, blow off or fall off while being conveyed, it shall be placed on the vehicle inside a container or otherwise so placed as to prevent it from falling off the vehicle.

BRITISH COLUMBIA (C) — Section 19.03

Section 19.03 (5)

No person shall drive or operate on a highway a vehicle unless it is so constructed or loaded as to prevent any of its load,

(a) from shifting or swaying in such a manner as to affect the operation of the vehicle; or
(b) from dropping, sifting, leaking, or otherwise escaping therefrom, but sand may be dropped for the purpose of securing traction, and water or other substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

BRITISH COLUMBIA (C) cont.

Section 19.03 (6)

No person shall drive or operate on a highway a vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent the covering or load from becoming loose, detached, or in any manner hazardous to other users of the highway.

MANITOBA (D) — No statute quotation available

Section 56.2

When the load is made up of loose material, it must be placed in a container or otherwise so placed to prevent it from spilling. (Summary)

NEW BRUNSWICK (C) — Section 256

Section 256 (1) & (2)

(1) No vehicle carrying material that is injurious to a highway or that would constitute a hazard to users of the highway shall be driven or moved on any highway unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(2) No person shall operate on any highway any vehicle with any load unless the load and any covering thereon is securely fastened so as to prevent the covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

NEWFOUNDLAND (C) — No statute quotation available

Section 177.1

Vehicle must be so constructed or loaded to prevent spillage. (Summary)

Section 177.2

Load and any covering must be securely fastened. (Summary)

NOVA SCOTIA (C) — Section 177

Section 177 (7)

7. (1) All vehicles transporting firewood, Christmas trees, tree branches, moss or seaweed or other similar loosely packed bulk materials, or liquid or semi-liquid materials shall be constructed in such a manner so as to prevent the contents thereof from dropping, shifting, leaking or otherwise escaping from the vehicle.

NOVA SCOTIA (C) cont.

(2) Loads consisting of sawdust, shavings or wood chips shall be covered entirely by a tarpaulin or other covering in a manner sufficient to prevent the escape from the vehicle of any portion of the load.

(2A) Subject to subsection (2B), loads consisting of salt, sand, gravel, asphalt, coal or other similar bulk materials shall be covered entirely by a tarpaulin, or other covering in a manner sufficient to prevent the escape from the vehicle of any portion of the load.

(2B) Where a vehicle carrying a load consisting of salt, sand, gravel, asphalt, coal or other similar bulk materials is adequately constructed or loaded to prevent the escape from the vehicle of any portion of the load, it shall not be necessary for the load to be covered by a tarpaulin or other covering.

ONTARIO (A) Ontario Regulation 632/76

O.R. 632/76

COVERING OF LOADS

1. In this Regulation,

(a) "clear aggregate" means gravel, crushed stone or slag in the form of particles that are not less than 3/8 inch in diameter or more than 1½ inches in diameter;

(b) "registered gross weight" means the weight for which a permit has been issued under the Act, the fee for which permit is based upon the weight of the vehicle or combination of vehicles and load; and

(c) "waste" means ordinary waste associated with municipal collection systems, including ashes, garbage, refuse and domestic waste.

2. (1) Subject to subsection 2, where a commercial motor vehicle or a combination of a commercial motor vehicle and trailer or trailers is being operated on a highway and is carrying a load that is:

(a) sand, gravel, crushed stone, slag, salt or any mixture thereof, where such substances are in the form of particles of up to 1½ inches in diameter;

(b) waste; or

(c) shredded scrap metal,

the portion of the load that is not enclosed by the vehicle or load container shall be covered with a covering that is made of tarpaulin, canvas, netting or other material capable of confining the load within the vehicle container or load container.

(2) Subsection 1 does not apply where the commercial motor vehicle or the combination of a commercial motor vehicle and trailer or trailers is being operated.

(a) in the course of applying sand, salt, a mixture of sand and salt or any similar substance to the highway for the purpose of winter highway maintenance;

(b) in the course of collecting waste;

(c) in the course of carrying waste where the vehicle does not have a gross weight or registered gross weight in excess of 10,000 pounds;

(d) in the course of carrying a load that is not waste and the vehicle does not have a gross weight or registered gross weight in excess of 18,000 pounds;

(e) in the course of carrying sand, gravel, crushed stone or slag, of which not less than 90 per cent is clear aggregate, where the highest point of the load does not extend above the top of the vehicle container or load container, and the perimeters of the load are not less than twelve inches beneath the top of the vehicle container or load container;

(f) in the course of carrying sand, gravel, crushed stone, slag, salt or any mixture thereof in December, January, February or March where the highest point of the load does not extend above the top of the vehicle container or load container, and the perimeters of the load are not less than twelve inches beneath the top of the vehicle container or load container;

(g) in the course of carrying agricultural products, where such vehicle is owned by a farmer;

(h) on a highway with,

(i) an untreated gravel or
(ii) an earth surface, or
(iii) a surface treated solely for dust abatement purposes;
or

(i) within the limits of a highway construction contract.

3. This Regulation comes into force on the 1st day of January, 1977.

QUEBEC (B) Section 11 - 38

Section 11 - 38. Security of Load

It is forbidden to drive or permit to be driven on a public highway any vehicle the load of which is not firmly bound, or sufficiently covered or otherwise secured.

Any policeman or officer of the Department who has reason to believe that a vehicle and its load constitute a public danger is authorized to detain the said vehicle until such condition has been rectified.

SASKATCHEWAN (D) Section 232

Section 232.

"No person shall cause or allow a vehicle to be so loaded that when the vehicle is driven on a public highway the load or any part thereof might drop onto the highway, and no person shall drive on a public highway a vehicle so loaded."

YUKON (D) Section 131

Section 131.

(1) Every motor vehicle or trailer shall be loaded in such a manner that no portion of the load may become dislodged or fall from the motor vehicle or trailer during transit.

Chapter 40. General Provisions.

Section		Section	
050.	Penalty for violations of law, regulations, and municipal ordinances	100.	Definitions for title
		110.	Short title

Sec. 28.40.050. Penalty for violations of law, regulations, and municipal ordinances. (a) It is a misdemeanor for a person to violate a provision of this title unless the violation is by this title or other law declared to be a felony or an infraction.

(b) A person convicted of a misdemeanor for a violation of a provision of this title for which another penalty is not specifically provided is punishable by a fine of not more than $500, or by imprisonment for not more than 90 days, or by both. In addition, the privilege to drive or the registration of vehicles may be suspended or revoked.

(c) Unless otherwise specified by law a person convicted of a violation of a regulation adopted under this title, or a municipal ordinance regulating vehicles or traffic when the municipal ordinance does not correspond to a provision of this title, is guilty of an infraction and is punishable by a fine not to exceed $300.

(d) An infraction, as provided for in (c) of this section, is not considered a criminal offense and may not result in imprisonment, nor is a fine imposed for the commission of an infraction considered a penal or criminal punishment; nor may the commission of a single infraction result in the loss of a driver's license or privilege to drive in this state except as may result from the accumulation of points under AS 28.15.221 — 28.15.261, or the registration of vehicles; nor does a person cited with an infraction have a right to trial by jury or to court-appointed counsel.

(e) Notwithstanding the maximum fine provided for infractions under (c) of this section, for the violation of regulations or special permits issued governing vehicle weight limits, overweight penalties shall be imposed at the rate of five cents for each pound of weight over the authorized weight limit for that vehicle. (§ 50-1-8 ACLA 1949; am § 12 ch 241 SLA 1976; am §§ 22, 23 ch 144 SLA 1977)

Revisor's notes. — Formerly AS 28.35.230. Renumbered in 1984.

Penalty

17 AAC 25.040. CONFINEMENT OF LOADS. (a) No vehicle shall be driven or moved on any highway unless it is so constructed or loaded as to prevent any of the load from dropping, shifting, leaking, or escaping, except that sand may be dropped for the purpose of securing traction, and water or other substance may be sprinkled on a roadway in cleaning or maintaining it.

(b) No person may operate on any highway any vehicle with a load unless the load and any covering on it is securely fastened so as to prevent the covering or load from coming loose, detached or in any manner a hazard to other users of the highway. (Eff. 6/25/69, Reg. 30; am 9/3/72, Reg. 43)

Authority: AS 19.05.020
AS 19.10.060
AS 28.05.020

DOT REGS

MEMORANDUM State of Alaska

TO: Major Walter J. Gilmour
Field Enforcement Commander
Alaska State Troopers

DATE: 5/20/85

FILE NO:

TELEPHONE NO: 745-5258

FROM: Captain Terry McConnaughey
Commander, B Detachment
Alaska State Troopers

SUBJECT: Bail Schedule -
Karla L. Forsythe Letter

I would like to take this opportunity to offer the following comments on the letter from Karla Forsythe, re: uncovered loads.

The letter addresses the use of 13 AAC 02.530(d) and possible bail schedule modification as an enforcement tool for uncovered loads and is in error in several areas.

The majority of the complaints generated from the public are as a direct result of property damage (broken windshields, etc.) caused by gravel trucks, and the victim's inability to identify the responsible person or collect just compensation.

As it stands now, the State had no regulation requiring that gravel loads be covered or tarped; instead, a vehicle that spills a load is usually cited under 17 AAC 25.040(a) or (b) with a bail of $50.00.

Representative Cotten's concerns are certainly valid, the penalties are not sufficient for the offense, especially considering the safety hazard, property damage, and inconvenience cause to the general public. The entire traffic regulations and bail schedule are in dire need of revision. As you know, we no longer have any commercial vehicle regulations. all enforcement tools expired with the Alaska Transportation Commission, making many needed enforcement areas impossible.

I think that a mandatory court appearance for violations of 13 AAC 02.530(d) or 17 AAC 25.040(a) or (b) will do very little to correct the problem at hand, as the magistrates generally hesitate to convict and levy substantial fines. For example, recently a Palmer magistrate reduced a statutorily mandated fine after a conviction on an overloaded commercial vehicle from over $2,000.00 to $150.00. I also believe that a law requiring tarps on gravel loads would be counter-productive, that the flapping tarps could very well aggravate the problem. The flying rock causing the complaints and problems are not coming from the tops of loads in most cases. They are instead being released from worn gates, shaken off of under-carriages, rails, and wheels and propelled by revolving vehicle parts.

Public Safety Opinion

To correct this problem that has been causing Representative Cotten's constituents to complain, the law need a complete revision in the area dealing with anti-spray devices (fenders and flaps), unsafe vehicles, failure to contain loads, etc.

TM:kf

cc: Trooper Bud Dial
Trooper Mark Troutman

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 689 (Jud)
Title : "An Act relating to motor vehicles."

Sponsor : Rep. Cotten
Requestor : House Finance
Date of Request : 4/02/86

FISCAL DETAIL

Agency Affected : Public Safety
BRU : Alaska State Troopers

Components : Detachments and CIB

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

No fiscal impact is anticipated.

Prepared by : Kathy Niles, Admin Assistant — Phone : 465-4336
Division : Commissioner's Office — Date : 4/2/86

Approved by Commissioner : _____ — Date : 4/2/86
Agency : Public Safety

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

Fiscal Note

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSHB 689 (Jud)

Support

April 2, 1986

CSHB 689 (Jud) - "An Act relating to required equipment on and the transportation of certain loads by, motor vehicles."

Our interpretation of this legislation is that it is an attempt to prevent damage often caused to private vehicles from gravel, rocks and like items falling from uncovered commercial vehicle loads.

The new provisions provided by this statute will be enforced during our current patrol activities. While no additional enforcement effort is anticipated, this statute will add strength to the current provisions.

Robert J. Sundberg

HCR

36

- D R A F T -

ALASKA/LOWER 48 STATES AIR FARES

DOT&PF - STATEWIDE AVIATION

December 2, 1985

I. INTRODUCTION

This paper conducts two analyses of air fares. The first is a comparison of representative airlines (RA) air fares over three types of routes:

(1) routes between points in Alaska,
(2) routes between points in Alaska and points in the Lower 48 States, and
(3) routes between points in the Lower 48 States.

The intent is to determine how RA air fares in Alaska compare to their air fares in the Lower 48 States. For ease of comparison and data collection, only coach and SuperSaver fares RA have been used.

The second analysis is a comparision of several of RA air fares and air fares of other airlines for trips of comparable length in the Lower 48 States. The intent of this analysis is to determine how RA air fares compare to fares of other airlines. Only coach fares have been compared, again for ease of comparison and data collection.

II. RA FARES; Within Alaska, Alaska to Lower 48 States, and Within the Lower 48 States

Table 1 compares average RA fares for three types of routes in Alaska and the Lower 48 States.

TABLE 1
RA
AVERAGE COACH AND SUPERSAVER
FARES/MILE

RA Routes	RA Coach Fares/Mile	RA SuperSaver Fares/Mile
Within Alaska	$.30	$.22
Alaska to Lower 48	.21	.15
Within the Lower 48	.22	.15

The Table shows that fares for travel within Alaska far exceed other fares. There may be a variety of explanations for this. Higher labor and operation costs and shorter stage lengths (flight distances) for RA routes within Alaska compared to the Lower 48 States could be one cause of the differential. In addition, traffic densities and load factors are likely to be lower in Alaska. The low traffic in Alaska also results in fewer carriers competing with RA compared to the relatively stiff competition for heavier traveled routes between Alaska and the Lower 48 States and between points in the Lower 48 States.

Table 1 also shows that RA fares for travel between Alaska and the Lower 48 States are comparable to their fares for travel within the Lower 48 States. Some fares are higher than others, but on the average, they are comparable.

Actual fares for travel between points in Alaska are shown in Table A-I in the Appendix. Only fares from Anchorage to outlying communities were used because RA routes to the outlying communities originate in Anchorage. For example, to fly Fairbanks to Deadhorse would require a flight from Fairbanks to Anchorage and another flight from Anchorage to Deadhorse.

Fares range from the highest fare/mile for service to Cordova which has low traffic, a short stage length and only air taxi competition, to the lowest fare in the Anchorage to Fairbanks market which has higher traffic, heavier loads, and greater competition. It should be noted that fares to points in Southeast Alaska are as much as three cents/mile less than the average fares for other routes within Alaska. These fares may be slightly artificially low due to subsidies provided through the Essential Air Service (EAS) program.

Actual fares for travel between Alaska and the Lower 48 States are shown in Table A-II in the Appendix. Fares have been shown from Anchorage, Fairbanks, and Juneau because most routes originate from these points. Coach and SuperSaver fares from Anchorage average about one cent/mile less than fares from Fairbanks and Juneau. The highest fares/mile are for routes to Seattle and Portland while the lowest fares/mile are for the longer routes to Phoenix and Tucson.

Actual fares for travel between points in the Lower 48 States are shown in Table A-III. Fares have been shown for travel from Seattle and Portland since most of the RA routes in the Lower 48 States arrive or depart from these cities.

III. AIR FARES:

This analysis compares air fares for several of RA routes to fares of other airlines for routes of comparable length in the Lower 48 States. Only coach fares are compared and none of RA routes entirely within the Lower 48 States were examined.

Table II summarizes the results of this comparison. This table shows that, except for routes from Fairbanks to Seattle and Anchorage to Deadhorse, RA flights were consistently cheaper per mile than routes of comparable length by other airlines.

This data has limitations in that only 5 or 6 Lower 48 routes were used for each comparison. In addition, in the case of comparisons of routes within Alaska to routes in the Lower 48 States, in some instances the aircraft flown in the Lower 48 are different from aircraft flown in Alaska. Furthermore, many routes within Alaska utilize 737 aircraft equipped for cargo and passenger loads. In general, however, it appears that RA fares are generally lower than fares of other airlines in the Lower 48 for routes of comparable length.

TABLE II
COMPARISON OF RA FARES TO OTHER AIRLINES' FARES

RA Route	Approximate Stage Length	RA Coach Fare/Mile	Other Airlines' Average Coach Fare/Mile for Lower 48 Routes of Comparable Length
Anchorage-Seattle	1450 miles	$.22	$.24
Fairbanks-Seattle	1550 miles	.25	.23
Juneau-Seattle	900	.25	.29
Ketchikan-Seattle	650	.27	.36
Anchorage-Deadhorse	627	.38	.36
Anchorage-Petersburg	677	.29	.36
Anchorage-Sitka	592	.29	.36
Anchorage-Wrangell	700	.27	.36
Anchorage-Bethel	500	.25	.42
Anchorage-Fairbanks	500	.21	.42
Anchorage-Nome	530	.37	.42
Anchorage-Kotzebue	540	.36	.42

The Lower 48 States routes used to compare to RA fares are shown in Tables A-IV-A1X.

IV. CONCLUSIONS

The data presented in this paper suggests three conclusions, based on a fare per mile comparison.

(1) RA air fares for travel within Alaska are substantially higher than its fares for travel to and within the Lower 48 States. Higher labor and operations costs in Alaska and lower stage lengths and load factors may be the primary reasons for the higher fares for travel in Alaska.

(2) RA air fares for travel from Alaska to the Lower 48 States are, on the average, comparable to RA fares for travel within the Lower 48 States.

(3) RA fares for travel within Alaska and from Alaska to the Lower 48 States are usually lower than fares of other airlines for routes of comparable length in the Lower 48 States.

TM/sg

COMPARISON OF COACH AIR FARES BETWEEN ALASKAN SERVICE HUB COMMUNITIES AND SEATTLE WITH COMPARABLE STAGE LENGTH FLIGHTS IN THE LOWER 48

City Pair	Mileage	Fare/Carrier	O & D Pax	Direct Flight
KETCHIKAN-SEATTLE	679	$184.00 AS	3996	AS
Seattle-Salt Lake City	689	$129.63 CO $231.48 UA/WA	7213	UA/WA
Birmingham-Oklahoma City	631	$268.52 all carriers	441	DL
Boise-Denver	642	$231.48 UA/WA	4081	FL/UA
Chicago-Oklahoma City	693	$231.48 AA/EA/OZ/RE/TW/UA	8395	OZ/AA/TW
Bismark-Kansas City	613	$212.96 FL $231.48 NW/RC	289	NW
JUNEAU-SEATTLE	909	$228.00 AS $250.00 WA	4460	AS/WA
Portland-San Diego	933	$166.67 CO $189.81 PS/UA	7714	PS/UA
Denver-San Francisco	956	$129.63 CO $268.52 UA/WA	33164	UA/FL/CO
Atlanta-Omaha	821	$268.52 AA/NW/OZ/RC/TW/UA	3515	RC/EA/AA
Chicago-Jacksonville	864	$264.81 DL/EA/OZ/PI/UA	6061	EA/UA/PI
New Orleans-Washington D.C.	969	$268.52 AL/DL/PI/RC $305.56 AA	12959	AL/NY/EA/RC/PI
ANCHORAGE-SEATTLE	1448	$319.00 all carriers	18466	AS/WA/NW/UA
Chicago-Phoenix	1440	$342.59 AA/DL/EA/TW/UA $143.52 BN	44186	BN/UA/AA
Omaha-Seattle	1367	$342.59 NW/RC/TW/UA/WA $370.37 EA $180.56 CO	2870	Connections
Dallas/Fort Worth-Spokane	1477	$342.59 NW/UA/WA $231.48 FL	1364	FL
Boston-Wichita	1433	$342.59 AA/EA/RC/TW/UA	1151	TW
Los Angeles-Shreveport	1425	$338.89 AA/DL $342.59 RC $217.59 CO	2090	DL

City Pair	Mileage	Fare/Carrier	O & D Pax	Direct Flight
ANC-SEA-Cont'd:				
Birmingham-Salt Lake City	1471	$342.59 AA/DL/EA/UA	444	Connections
Minneapolis/St. Paul-Seattle	1399	$342.59 AA/NW/RC/TW/UA/WA	11831	RC/NW/UA
FAIRBANKS-SEATTLE:	1533	$386.00 AS/UA/WA	3314	AS/UA/WA
Atlanta-Phoenix	1587	$362.96 AA/DL/EA/TW/UA $326.85 NW	6897	DL/EA/AA
New York-Lubbock	1613	$357.41 all carriers	1150	Connections
Los Angeles-Memphis	1619	$355.56 all carriers	5146	UA/RC/TW
Albuquerque-Washington D.C.	1650	$364.81 AA/DL/EA/TW/UA $347.22 NW	6401	TW/AA
Chicago-Spokane	1498	$250.00 FL $370.37 NW/UA/WA	1976	UA/NW
NOME-SEATTLE:	1987	$424.00 AS	242	AS Connections
PRUDHOE BAY-SEATTLE	1906	$549.00 AS	297	AS Connections
Loa Angeles-Miami	2342	$418.52 AA/DL/NW/PA/PI/RC/TW $194.44 CO $180.56 BN	38140	CO/EA/BN/AA/DL
Boise-New York	2167	$425.93 all carriers	1690	Connections
Atlanta-Boise	1838	$398.15 UA	457	UA Connections
Phoenix-Washington D.C.	1979	$398.15 AL/AA/DL/NW/TW/UA/WA $147.22 BN	10813	TW/AL/NM/BN/AA
Boston-Salt Lake City	2105	$408.33 AA/DL/EA/RC/TW/UA/WA	3802	WA

O & D Pax = 12 months ending 12/31/84. Number of passengers in 10% sample. Outbound plus inbound.

Data extracted from ATPCO Passenger Tariff issued October 23, 1985. Only those fares that do not have qualifying restrictions have been listed.

This is an unofficial study prepared by the Alaska Field Office of the Department of Transportation November 26, 1985

Alaska State Legislature

REPRESENTATIVE
ADELHEID HERRMANN

PO BOX 63
NAKNEK, ALASKA 99633
(907) 246-4495

While in Juneau
BOX V
JUNEAU, ALASKA 99811
(907) 465-4942, 465-4943

House of Representatives

CO-CHAIRMAN
RESOURCES COMMITTEE

MEMBER
TRANSPORTATION
COMMITTEE

DISTRICT 28

ADAK
AKUTAN
ALEKNAGIK
ATKA
BELKOFSKI
CLARK'S POINT
COLD BAY
DILLINGHAM
DUTCH HARBOR
EGEGIK
EKUK
EKWOK
FALSE PASS
IGIUGIG
ILIAMNA
KING COVE
KING SALMON
KOKHANOK
KOLIGANEK
LEVELOCK
MANOKOTAK
NAKNEK
NELSON LAGOON
NEWHALEN
NEW STUYAHOK
NIKOLSKI
NONDALTON
PEDRO BAY
PILOT POINT
PORT ALSWORTH
PORT HEIDEN
PORT MOLLER
PORTAGE CREEK
SAND POINT
SOUTH NAKNEK
SQUAW HARBOR
ST. GEORGE
ST. PAUL
TOGIAK
TWIN HILLS
UGASHIK
UNALASKA

MEMORANDUM

TO: Senator Jack Coghill

FROM: Representative Adelheid Herrmann

DATE: April 17, 1986

SUBJECT: Scheduling of CS HCR 36 (Fin)

As you know, my staff has been in touch with your office to request scheduling of House Concurrent Resolution 36, regarding intrastate airfares.

I know that the Senate Committee on Transportation has taken an active interest in the issue of air travel costs in Alaska and I hope that this bill will see prompt action.

I have attached some back-up information on the bill for your consideration. If you have any questions, please contact me.

Attachments

Offered: 4/3/86
Referred: Rules

Original sponsors: Herrmann, Wallis and Thompson

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE CONCURRENT RESOLUTION NO. 36 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Relating to intrastate airline travel.

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

WHEREAS intrastate air travel is an essential and often the only effective means of transportation within the state; and

WHEREAS competitive market forces in many other states have caused a decline in commercial air fares; and

WHEREAS these same competitive forces have not caused a significant decline in air fares offered by the major carriers for travel in many markets of the state; and

WHEREAS the cost of air travel between many areas of the state has become prohibitively expensive; and

WHEREAS the high cost of air travel may result from a lack of adequate competition and may constitute a violation of state or federal law;

BE IT RESOLVED by the Alaska State Legislature that the Governor is respectfully requested to direct the Department of Transportation and Public Facilities, and the Department of Commerce and Economic Development to jointly investigate the tariffs charged by major air carriers servicing various urban and rural areas of the state; and be it

FURTHER RESOLVED that the results of the investigation and in particular recommendations for action by the legislature be reported to the First Session of the Fifteenth Legislature by January 31, 1987.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 4/7/86

REQUEST

Bill/Resolution No. : CS HCR 36 (FIN)
Title : Intrastate air travel

Sponsor : Herrmann
Requestor : House Finance Committee
Date of Request : 4/7/86

FISCAL DETAIL

Agency Affected : DOT&PF
BRU :

Components :

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
TOTAL		0	0	0	0	0

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Funds will be reappropriated in FY 87 to address this investigation of tariffs charged by air carriers servicing urban and rural areas of the state.

APA

Prepared by : Al Adams, Chair
Division : House Finance Committee
Phone : 465-3706
Date : 4/7/86

Approved by Commissioner : _____ Date : _____
Agency : _____

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

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*

TO: HOUSE TRANSPORTATION COMMITTEE

REPS. CATO, DAVIS, SHULTZ, HERRMANN, FURNACE, PIGNALBERI, MARROU

AND REP. HERRMANN

FROM: LAMAR COTTEN, TY OF SAND POINT, BOX 177, SAND POINT, AK, 99661, 383-2696

SUBJECT: HCR 36, INTRASTATE AIRLINE INDUSTRY

CITY OF SAND POINT SUPPORT THE EFFORTS OF REP. HERRMANN AND OTHERS TO ANALYZE AND DETERMINE THE HIGH COST OF INTRA STATE TRANSPORTATION AND RECOMMEND THAT THE TRANSPORTATION COMMITTEE INVESTIGATE THIS MATTER.

*
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*

TO: HOUSE TRANSPORTATION COMMITTEE

REPS. CATO, DAVIS, SHULTZ, HERRMANN, FURNACE, PIGNALBERI, MARROU

AND REP. HERRMANN

FROM: LAMAR COTTEN/CITY OF KING COVE, KING COVE, AK 99612

SUBJECT: HCR 36, INTRASTATE AIRLINE INDUSTRY

CITY OF KING COVE SUPPORT THE EFFORTS OF REP. HERRMANN AND OTHERS TO ANALYZE AND DETERMINE THE HIGH COST OF INTRA STATE TRANSPORTATION AND RECOMMEND THAT THE TRANSPORTATION COMMITTEE INVESTIGATE THIS MATTER.

****
* DELIVER TO: JPOM *
* ORIGINAL *
* SENT: 01/28/86 TIME: 15:46 *
* FROM: DOROTHY LARSON *
* SUBJECT: HCR36 POM *
* PRINT DATE: 01/28/86 TIME: 15:47 *
****

TO: HOUSE TRANSPORTATION COMMITTEE
REPRESENTATIVE CATO, CHAIR
REPRESENTATIVES DAVIS, FURNACE, HERRMANN, MARROU, PIGNALBERI AND SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

SENATOR ZHAROFF, ALASKA STATE SENATE

FROM: CARLOS TENIENTE, BOX 34, ADAK, ALASKA, FPO SEATTLE 89791

RE: HCR36, RELATING TO AIRLINE TRAVEL

URGE YOUR POSITIVE CONSIDERATION AND PASSAGE OF HCR36. AIRLINE TRAVEL IS AN AREA OF GREAT CONCERN TO THOSE OF US IN THE RURAL AREAS AND THOSE WHOSE PRIAMRY MODE OF TRAVEL IS BY AIR CARRIER AND QUITE COSTLY. THANK YOU.

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 01/28/86 TIME: 15:01
* FROM: DOROTHY LARSON
* SUBJECT: POM - HCR 36
* PRINT DATE: 01/28/86 TIME: 15:02
*
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TO: HOUSE TRANSPORTATION COMMITTEE
REPRESENTATIVES CATO, DAVIS, FURNACE, HERRMANN, MARROU, PIGNALBERI, SHULTZ

FROM: IDA APOKEDAK, PRESIDENT, EXECUTIVE COMMITTEE,
BRISTOL BAY AREA HEALTH CORPORATION, DILLINGHAM, ALASKA 99576
PHONE - 842-5201

RE: HCR 36, RELATING TO INTRASTATE AIRLINE TRAVEL

THE EXECUTIVE COMMITTEE OF THE BRISTOL BAY AREA HEALTH CORPORATION MET TODAY AND VOTED BY RESOLUTION TO SUPPORT HCR 36 RELATING TO THE HIGH COST OF AIRLINE TRAVEL IN RURAL AREAS. WE HOPE THAT SOMETHING CAN BE DONE TO LOWER AIRFARES. PLEASE PASS HCR 36. OTHER MEMBERS OF THE EXECUTIVE BOARD ARE JOHN MARK, ANDREW WASSILLIE AND ALVIN BOSKOFSKY.

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 01/28/86 TIME: 16:30
* FROM: JEAN MILLER
* SUBJECT: POM
* PRINT DATE: 01/28/86 TIME: 16:53
*
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TO: HOUSE TRANSPORTATION COMMITTEE

REPRESENTATIVES CATO, DAVIS, SHULTZ, HERRMANN, FURNACE PIGNALBERI AND MARROU

FROM: DR. LEROY OWENS
SUPERINTENDENT, ALEUTIAN REGION SCHOOL DISTRICT
640 WEST 36TH, SUITE 3
ANCHORAGE, AK 99503 PHONE: 562-2924

SUBJECT: HCR 36 -- INTRASTATE TRAVEL

THE ALEUTIAN REGION SCHOOL DISTRICT SUPPORTS THE ATTENTION OF HCR 36 TO INVESTIGATE THE RATE CHARGE FOR INTRASTATE TRAVEL. RATE INCREASES HAVE RESTRICTED THE ABILITY OF RURAL DISTRICT TO OPERATE EFFECTIVELY. SEVERAL RURAL DISTRICTS ARE INVOLVED IN AN ATTEMPT TO NEGOTIATE THEIR RATES FOR REQUIRED DISTRICT TRAVEL. THIS EFFORT COULD BE GREATLY AIDED BY PASSAGE OF HCR 36.

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 01/28/86 TIME: 16:32
* FROM: DOROTHY LARSON
* SUBJECT: HCR 36 - POM
* PRINT DATE: 01/28/86 TIME: 16:54
*
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9

TO: HOUSE TRANSPORTATION COMMITTEE

REPRESENTATIVE CATO, CHAIR, REPRESENTATIVES DAVIS, FURNACE, HERRMANN,
MARROU, PIGNALBERI, AND SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

FROM: SOUTHWEST REGION SCHOOLS, DILLINGHAM, AK 842-5287

RE: HCR 36 - RELATING TO AIRLINE TRAVEL

THE SOUTHWEST REGION BOARD OF EDUCATION SUPPORTS HCR 36 AND FURTHER REQUESTS THAT THE LEGISLATURE INVESTIGATE SOME FORM OF SUBSIDY AS CURRENTLY PRACTICAL WITH STUDENT TRAVEL ON THE STATE FERRY SYSTEM.

AIR TRAVEL IS THE ONLY FORM OF TRANSPORTATION BETWEEN OUR SITES OR MAJOR COMMUNITIES OUTSIDE OF OUR DISTRICT.

IT MAY BE OF INTEREST TO KNOW THAT THE COST OF A ROUND TRIP TICKET TO ANCHORAGE, 300 MILES FROM DILLINGHAM APPROXIMATES THE COST OF A ROUND TRIP TICKET FROM ANCHORAGE TO SAN FRANCISCO, 2,018 AIR MILES.

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* DELIVER TO: JPOM                                             *
*                                                              *
*                                                              *
* ORIGINAL                                                     *
* SENT:          01/28/86  TIME: 16:42                         *
* FROM:          DOROTHY LARSON                                *
* SUBJECT:       HCR 36 - POM                                  *
* PRINT DATE:    01/28/86  TIME: 16:54                         *
*                                                              *
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10

TO: HOUSE TRANSPORTATION COMMITTEE MEMBERS
REPRESENTATIVES CATO, CHAIR, REPRESENTATIVES DAVIS, FURNACE, HERRMANN,
MARROU, PIGNALBERI, AND SHULTZ
REPRESENTATIVES WALLIS AND THOMPSON

FROM: NORMAN ANDERSON, BOX 112 NAKNEK AK. 99633

RE: HCR 36 RELATING TO AIR TRAVEL INTRASTATE

I WISH TO EXPRESS MY VIEWS ON HCR36. TRANSPORTATION COSTS IN THE BRISTOL BAY AREA ARE AT AN ALL TIME HIGH. ALTHOUGH WE ARE ENJOYING A REDUCED FARE PRESENTLY, THIS IS A TEMPORARY AND TIMELY FIXED RATE. IN A COUPLE OF WEEKS, WE AGAIN, WILL HAVE TO PAY THE INFLATED SCHEDULED RATES WHICH, FIRSTLY MAKES TRAVEL BY SMALL CHARTER AIRLINES MORE ATTRACTIVE WHICH IS PLACING MORE OF A RISK TO TRAVELERS. SMALL PLANES ARE MORE SUSCEPTIBLE TO THE HARSH WEATHER AND TERRAIN CONDITIONS BETWEEN THE ANCHORAGE AND BRISTOL BAY AREA.

SECONDLY, TRAVEL BETWEEN ANCHORAGE AND OUR AREAS IS COMPARED TO TRAVEL COAST TO COAST OUTSIDE. MANY PEOPLE ARE LIMITED TO TRAVEL OUTSIDE THE METROPOLITAN AREA BECAUSE OF THE HIGH COST OF AIRFARE LIMITING THE AVAILABILITY AND ACCESS TO LESS EXPENSIVE PRODUCTS FORCING US TO PAY THE HIGH COST LOCALLY. WE ARE A CAPTIVE AUDIENCE AND AT THE MERCY OF THESE AIR PIRATES.

TO: HOUSE TRANSPORTATION COMMITTEE
REPRESENTATIVE CATO, CHAIR, REPRESENTATIVES DAVIS, FURNACE, HERRMANN, MARROU
PIGNALBERI, SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

FROM: BILLIE BENEDICT, BOX 10019, DILLINGHAM, AK.

RE:

I WOULD LIKE TO FULLY SUPPORT REPRESENTATIVE HERRMANN'S, THOMPSON'S AND WALLIS' LEGISLATION FOR LOOKING INTO AIR FARES TO RURAL ALASKA AREAS. IN CHOOSING TO LIVE IN ISOLATION, WE WERE AWARE OF THE SACRIFICES. HOWEVER, THE HIGH AIR FARES ARE NOT ONLY AN INCONVENIENCE WHICH PREVENTS US FROM TAKING VACATION OUTSIDE OUR AREA, BUT MOST OF US LEFT FAMILIES BEHIND FROM WHOM WE ARE CUT OFF. ALSO, CONSIDER THE COST TO THE STATE FOR THESE AIR FARES WHEN STATE WORKERS AND WORKERS FROM STATE FUNDED ORGANIZATIONS TRAVEL. THE COST IN OUR COMMUNITY ALONE IS INCREDIBLE. I WOULD LIKE TO SEE SOMETHING POSITIVE DONE TO INCLUDE US IN THE REST OF THE WORLD.

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 01/28/86 TIME: 16:14
* FROM: DOROTHY LARSON
* SUBJECT: HCR 36 POM
* PRINT DATE: 01/28/86 TIME: 16:40
*
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TO: HOUSE TRANSPORTATION COMMITTEE MEMBERS
REPRESENTATIVES CATO, CHAIR, REPRESENTATIVES DAVIS, FURNACE, HERRMANN, AND MARROU, PIGNALBERI AND SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

SENATOR FRED ZHAROFF, ALASKA STATE SENATE

FROM: SUE FLENSBURGER, BOX 174, DILLINGHAM, AK., 842-2666

RE: HCR36-RELATING TO AIRLINE TRAVEL

BRISTOL BAY REGION IS ACCESSIBLE TO THE REST OF ALASKA BY AIR AND WATER ONLY. THE COMMERCIAL AIRLINES SERVING OUR REGION HAVE EXCESSIVE FARES CREATING AN ECONOMIC HARDSHIP. AN AUTHORIZED INVESTIGATION INTO THIS SITUATION IS WARRANTED. A MEANS OF ALLEVIATING INSURANCE PROBLEMS FOR AIR TAXIS ALSO DESERVES CONSIDERATION AND ATTENTION.

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DELIVER TO: JPOM

ORIGINAL
SENT: 01/28/86 TIME: 16:06
FROM: LIOKOD
SUBJECT: KODIAK POM
PRINT DATE: 01/28/86 TIME: 16:32

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TO: REPRESENTATIVES CATO, DAVIS, FURNACE, HERRMANN, MARROU, PIGNALBERI, SHULTZ

FR: NANCY GROSS MANAGER
CITY OF UNALASKA
P.O. BOX 89
UNALASKA, ALASKA 99685
PH: 581-1251

RE: HCR 36 INTRASTATE AIRLINE TRAVEL

UNALASKA SUPPORTS HCR 36. THREE CARRIERS NOW SERVE US AND THE TICKETS HAVE GONE UP. WE WOULD LIKE TO KNOW WHY.

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 01/29/86 TIME: 09:38
* FROM: DOROTHY LARSON
* SUBJECT: HCR36-POM
* PRINT DATE: 01/29/86 TIME: 09:39
*
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TO: HOUSE TRANSPORTATION COMMITTEE MEMBERS

REPRESENTATIVES CATO, CHAIR; DAVIS, FURNACE, HERRMANN, MARROU, PIGNALBERI, AND SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

SENATOR FRED ZHAROFF, ALASKA STATE SENATE

FROM: SHELLEY FARLER, BOX 1001B, DILLINGHAM, AK. 99576

RE: HCR36 - AIRLINE TRAVEL

PLEASE PASS HCR36 OUT OF YOUR COMMITTEE, AIR FARES ARE EXTREMELY HIGH WHEN TRAVELING FROM RURAL ALASKA TO THE LARGER CITIES. STUDY SHOULD BE CONDUCTED TO DETERMINE WHY THIS IS SO.

TO: HOUSE TRANSPORTATION COMMITTEE MEMBERS, REPRESENTATIVES CATO - CHAIR, DAVIS, FURNACE, HERRMANN, MARROU, PIGNALBERI, SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

SENATOR FRED ZHAROFF, ALASKA STATE SENATE

FROM: KEN HARPER, DILLINGHAM, AK. 99576

RE: HCR36 - AIRLINE TRAVEL

URGE PASSAGE OF HCR36 TO STUDY THE TARIFFS THAT ARE CHARGED RURAL ALASKANS TO TRAVEL. WE PAY HIGH PRICES TO TRAVEL WITHIN THE STATE. WHY IS IT CHEAPER TO TRAVEL TO THE LOWER 48 THAN TO TRAVEL INTRASTATE?

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* DELIVER TO: JPOM
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* ORIGINAL
* SENT: 01/29/86 TIME: 09:05
* FROM: DOROTHY LARSON
* SUBJECT: HCR36-POM
* PRINT DATE: 01/29/86 TIME: 09:08
*
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TO: HOUSE TRANSPORTATION COMMITTEE
REPRESENTATIVES CATO, CHAIR, DAVIS, FURNACE
HERRMANN, MARROU, PIGNALBERI, SHULTZ
REPRESENTATIVES WALLIS AND THOMPSON

SENATOR ZHAROFF, ALASKA STATE SENATE

FROM: DAVE FISHER, BOX 10201, DILLINGHAM, 99576

RE: HCR36, AIRLINE TRAVEL

URGE SUPPORT OF HCR 36 CONCERNING INTRASTATE AIRLINE TRAVEL. COST OF TRANSPORTATION TO RURAL AREAS IS PROHIBITIVE COMPARED TO TRAVEL OUT OF THE STATE. URGE CONSIDERATION THAT THESE AIR FARES BE STUDIED.

TO: HOUSE TRANSPORTATION COMMITTEE MEMBERS
REPRESENTATIVES CATO, CHAIR, DAVIS, FURNACE, HERRMANN, MARROU,
PIGNALBERI AND SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

SENATOR ZHAROFF, ALASKA STATE SENATE

FROM: JOHANNA BOUKER, BOX 241, DILLINGHAM, ALASKA 99576 - PH 842-5433

RE: HCR36-RELATING TO AIRLINE TRAVEL

IT APPEARS MAJOR STRUCTURAL CHANGES WILL TAKE PLACE AMONG RURAL CARRIERS DUE TO DEREGULATION. INSURANCE RATES ARE AT A PREMIUM-ONE OF THE CAUSES FOR HIGH FARES. (LOWERING FARES MIGHT CONSTITUTE HAZARD TO RURAL TRAVELERS IN CARRIERS ATTEMPT TO SAVE ON MAINTENANCE COSTS, ETC..) MAJOR CARRIERS RATES BETWEEN CITIES AND BUSH SHOULD BE STUDIED.

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* DELIVER TO: JPOM

*

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* ORIGINAL

* SENT: 01/29/86 TIME: 09:14

* FROM: DOROTHY LARSON

* SUBJECT: HCR36-POM

* PRINT DATE: 01/29/86 TIME: 09:14

*

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TO: HOUSE TRANSPORTATION COMMITTEE
REPRESENTATIVES CATO,CHAIR, DAVIS, FURNACE
HERRMANN, MARROU, PIGNALBERI, SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

SENATOR ZHAROFF, ALASKA STATE SENATE

FROM: LEE HOTCHKISS, BOX 10201, DILLINGHAM, AK 99576

RE: HCR36-RELATING TO AIRLINE TRAVEL

PLEASE CONSIDER PASSAGE OF HCR36 TO UNDERTAKE A STUDY OF AIR FARES TO RURAL ALASKA, WE LIVING OUT HERE KNOW THE AIR FARES CHARGED ARE EXTREMELY HIGH. WHY IS IT CHEAPER TO GO FROM ANCHORAGE TO THE LOWER 48 THAN IT IS FOR US TO GET TO ANCHORAGE?

****

TO: HOUSE TRANSPORTATION COMMITTEE MEMBERS
REPRESENTATIVES CATO, CHAIR, DAVIS, FURNACE,
HERRMANN, MARROU, PIGNALBERI, SHULTZ

REPRESENTATIVES WALLIS AND THOMPSON

SENATOR FRED ZHAROFF, ALASKA STATE SENATE

FROM: MARK LISAC, BOX 2818, DILLINGHAM, AK 99576

RE: HCR36-AIRLINE TRAVEL

HOPE THAT YOU WILL CONSIDER HCR36 FAVORABLY. AIRLINE TRAVEL TO RURAL AREAS NEEDS TO BE STUDIED AND REASONS GIVEN FOR THE DISCREPANCY AND DIFFERENCES IN AIR TRAVEL FROM URBAN TO RURAL AREAS VERSUS THE COST OF TRAVEL FROM OUR URBAN CENTERS TO LOWER 48 AND HAWAII.

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*
* DELIVER TO: JPOM
*
*
* ORIGINAL
* SENT: 02/11/86 TIME: 15:57
* FROM: LIODLG
* SUBJECT: PUBLIC OPINION MESSAGE
* PRINT DATE: 02/11/86 TIME: 15:57
*
****

TO: HOUSE TRANSPORTATION COMMITTEE MEMBER:
REPRESENTATIVE CATO, CHAIR, REPRESENTATIVES DAVIS
FURNACE, HERRMANN
MARROU, PIGNALBERI, AND SHULTZ

SENATOR ZHAROFF

FROM: SHIRLEY CHAPMAN, P.O.BOX 442, KING SALMON,AK.99613
PH 246-4442

RE: HCR 36: AIRLINE TRAVEL

AIRLINE RATES ARE SO HIGH MOST PEOPLE IN THE BUSH AREAS CAN'T AFFORD THEM.

EOM

STATEMENT OF REPRESENTATIVE ADELHEID HERRMANN

CS HCR 36: Intrastate Airfares

House Finance Committee

March 26, 1986

MISTER CHAIRMAN, MEMBERS OF THE COMMITTEE, I WOULD LIKE TO GIVE BRIEF TESTIMONY ON CS HCR 36, A RESOLUTION CONCERNING THE COST OF INTRASTATE AIRLINE TRAVEL -- THAT IS, AIR TRAVEL WITHIN THE STATE OF ALASKA.

IN THIS RESOLUTION, THE LEGISLATURE IS ASKING THE GOVERNOR TO DIRECT THE DEPARTMENT OF TRANSPORTATION AND THE DEPARTMENT OF COMMERCE TO INVESTIGATE THE AIRFARES BEING CHARGED BY THE MAJOR AIR CARRIERS TO RURAL ALASKA.

MISTER CHAIRMAN, IF YOU LOOK INSIDE YOUR COMMITTEE PACKETS YOU WILL FIND A BRIEF SURVEY OF AIRFARE COSTS FOR TRAVEL ROUND TRIP FROM ANCHORAGE TO SEVERAL COMMUNITIES IN MY DISTRICT. THESE FARES ARE JUST TRAVEL TO ANCHORAGE -- IF YOU ADD THE COST OF TRAVEL TO JUNEAU YOU CAN ADD ANOTHER COUPLE OF HUNDRED DOLLARS.

MISTER CHAIRMAN, FOR THE COST OF TRAVEL TO ANCHORAGE AND

JUNEAU FROM MANY OF THE COMMUNITIES IN MY DISTRICT YOU COULD TRAVEL ALL THE WAY ACROSS THE U.S. OR TO EUROPE.

I SHOULD ALSO LIKE TO NOTE THAT I DID A SIMILAR AIRFARE SURVEY OF THESE COMMUNITIES ALMOST EXACTLY ONE YEAR AGO AND HAVE FOUND THAT NEARLY ALL OF THESE FARES HAVE INCREASED -- SOME AS MUCH AS 10 TO 15 PERCENT. ONLY ONE FARE -- A SPECIAL WEEKEND FARE -- DECREASED IN COST.

MISTER CHAIRMAN, I THINK IT IS FAIR TO SAY THAT MANY OF MY CONSTITUENTS -- AND RESIDENTS THROUGHOUT THE ENTIRE STATE FOR THAT MATTER -- FEEL THAT AIRFARES LIKE THIS ARE OUTRAGEOUS. IN THE WAKE OF AIRLINE DEREGULATION, AIR TRAVEL CONSUMERS ARE IN THE DARK AND THERE IS A GENERAL PERCEPTION THAT THESE FARES ARE UNREASONABLY HIGH.

WHETHER THE MAJOR AIR CARRIERS ARE, IN FACT, CHARGING UNREASONABLE FARES IS NOT CLEAR AND THAT IS THE REASON FOR THIS RESOLUTION.

AS YOU CAN ALSO SEE FROM THE BACK-UP MATERIALS FOR THIS RESOLUTION, THE ALASKA DEPARTMENT OF TRANSPORTATION HAS UNDERTAKEN A VERY BRIEF ANALYSIS OF AIRFARES OF A "REPRESENTATIVE AIRLINE" WHICH HAS PRODUCED INCONCLUSIVE FINDINGS. AT THIS POINT, THE DEPARTMENT FEELS THAT IT REQUIRES ADDITIONAL EXPERTISE OUTSIDE OF THE DEPARTMENT TO PURSUE THIS QUESTION

FURTHER. ACCORDINGLY, YOU WILL FIND THAT THIS RESOLUTION HAS A FISCAL NOTE CALLING FOR AN APPROPRAITION OF 50,000 DOLLARS TO SUPPO: T THE NECESSARY INVESTIGATION OF AIRFARES. I WILL LET THE DEPARTMENT EXPAND ON THIS.

[NOTE: RON LIND SHOULD BE THERE TO REPRESENT DOTPF]

TO SUMMARIZE, MISTER CHAIRMAN, THE INTENT OF CS HCR 36 IS TO INVESTIGATE THE HIGH COST OF AIRFARES TO AND FROM RURAL AREAS OF THE STATE AND TO DETERMINE WHETHER THESE PRICES ARE REASONABLE. IS IT THE COST OF FUEL...? IS IT INSURANCE...? A LACK OF PASSENGERS...? WHAT EXACTLY IS IT THAT IS CAUSING THESE HIGH AIRFARES?

THANK YOU.

DISTRICT AIRFARE RATES
ROUNDTRIP AIRFARE FROM/TO ANCHORAGE
MARCH 24, 1986

REEVE ALEUTIAN	COACH	*SUPER SAVER	OTHER
ADAK	$ 866.00	650.00	
COLD BAY	604.00	453.00	
DUTCH HARBOR	620.00	465.00	
KING COVE	624.00	541.00	
SAND POINT	562.00	422.00	
SHEMIYA	1176.00	882.00	
ST. PAUL	816.00	612.00	
AIRPAC			
DUTCH HARBOR	682.00	512.00	
MARKAIR			
DILLINGHAM	320.00	241.00	163.00 (1)
KING SALMON	320.00	241.00	163.00 (1)
ALASKA AIRLINES			
ILIAMNA	162.00	120.00	

* Reeve Aleutian: 7 days advance purchase
All others: 14 days advance purchase

(1) Weekend Rate

- D R A F T -

ALASKA/LOWER 48 STATES AIR FARES

DOT&PF - STATEWIDE AVIATION

December 2, 1985

I. INTRODUCTION

This paper conducts two analyses of air fares. The first is a comparison of representative airlines (RA) air fares over three types of routes:

(1) routes between points in Alaska,
(2) routes between points in Alaska and points in the Lower 48 States, and
(3) routes between points in the Lower 48 States.

The intent is to determine how RA air fares in Alaska compare to their air fares in the Lower 48 States. For ease of comparison and data collection, only coach and SuperSaver fares RA have been used.

The second analysis is a comparision of several of RA air fares and air fares of other airlines for trips of comparable length in the Lower 48 States. The intent of this analysis is to determine how RA air fares compare to fares of other airlines. Only coach fares have been compared, again for ease of comparison and data collection.

II. RA FARES; Within Alaska, Alaska to Lower 48 States, and Within the Lower 48 States

Table I compares average RA fares for three types of routes in Alaska and the Lower 48 States.

TABLE 1
RA
AVERAGE COACH AND SUPERSAVER
FARES/MILE

RA Routes	RA Coach Fares/Mile	RA SuperSaver Fares/Mile
Within Alaska	$.30	$.22
Alaska to Lower 48	.21	.15
Within the Lower 48	.22	.15

The Table shows that fares for travel within Alaska far exceed other fares. There may be a variety of explanations for this. Higher labor and operation costs and shorter stage lengths (flight distances) for RA routes within Alaska compared to the Lower 48 States could be one cause of the differential. In addition, traffic densities and load factors are likely to be lower in Alaska. The low traffic in Alaska also results in fewer carriers competing with RA compared to the relatively stiff competition for heavier traveled routes between Alaska and the Lower 48 States and between points in the Lower 48 States.

Table 1 also shows that RA fares for travel between Alaska and the Lower 48 States are comparable to their fares for travel within the Lower 48 States. Some fares are higher than others, but on the average, they are comparable.

Actual fares for travel between points in Alaska are shown in Table A-I in the Appendix. Only fares from Anchorage to outlying communities were used because RA routes to the outlying communities originate in Anchorage. For example, to fly Fairbanks to Deadhorse would require a flight from Fairbanks to Anchorage and another flight from Anchorage to Deadhorse.

Fares range from the highest fare/mile for service to Cordova which has low traffic, a short stage length and only air taxi competition, to the lowest fare in the Anchorage to Fairbanks market which has higher traffic, heavier loads, and greater competition. It should be noted that fares to points in Southeast Alaska are as much as three cents/mile less than the average fares for other routes within Alaska. These fares may be slightly artificially low due to subsidies provided through the Essential Air Service (EAS) program.

Actual fares for travel between Alaska and the Lower 48 States are shown in Table A-II in the Appendix. Fares have been shown from Anchorage, Fairbanks, and Juneau because most routes originate from these points. Coach and SuperSaver fares from Anchorage average about one cent/mile less than fares from Fairbanks and Juneau. The highest fares/mile are for routes to Seattle and Portland while the lowest fares/mile are for the longer routes to Phoenix and Tucson.

Actual fares for travel between points in the Lower 48 States are shown in Table A-III. Fares have been shown for travel from Seattle and Portland since most of the RA routes in the Lower 48 States arrive or depart from these cities.

III. AIR FARES,

This analysis compares air fares for several of RA routes to fares of other airlines for routes of comparable length in the Lower 48 States. Only coach fares are compared and none of RA routes entirely within the Lower 48 States were examined.

Table II summarizes the results of this comparison. This table shows that, except for routes from Fairbanks to Seattle and Anchorage to Deadhorse, RA flights were consistently cheaper per mile than routes of comparable length by other airlines.

This data has limitations in that only 5 or 6 Lower 48 routes were used for each comparison. In addition, in the case of comparisons of routes within Alaska to routes in the Lower 48 States, in some instances the aircraft flown in the Lower 48 are different from aircraft flown in Alaska. Furthermore, many routes within Alaska utilize 737 aircraft equipped for cargo and passenger loads. In general, however, it appears that RA fares are generally lower than fares of other airlines in the Lower 48 for routes of comparable length.

TABLE II

COMPARISON OF RA FARES TO OTHER AIRLINES' FARES

RA Route	Approximate Stage Length	RA Coach Fare/Mile	Other Airlines' Average Coach Fare/Mile for Lower 48 Routes of Comparable Length
Anchorage-Seattle	1450 miles	$.22	$.24
Fairbanks-Seattle	1550 miles	.25	.23
Juneau-Seattle	900	.26	.29
Ketchikan-Seattle	650	.27	.36
Anchorage-Deadhorse	627	.38	.36
Anchorage-Petersburg	677	.29	.36
Anchorage-Sitka	592	.29	.36
Anchorage-Wrangell	700	.27	.36
Anchorage-Bethel	500	.25	.42
Anchorage-Fairbanks	500	.21	.42
Anchorage-Nome	530	.37	.42
Anchorage-Kotzebue	540	.36	.42

The Lower 48 States routes used to compare to RA fares are shown in Tables A-IV-A1X.

IV. CONCLUSIONS

The data presented in this paper suggests three conclusions, based on a fare per mile comparison.

(1) RA air fares for travel within Alaska are substantially higher than its fares for travel to and within the Lower 48 States. Higher labor and operations costs in Alaska and lower stage lengths and load factors may be the primary reasons for the higher fares for travel in Alaska.

(2) RA air fares for travel from Alaska to the Lower 48 States are, on the average, comparable to RA fares for travel within the Lower 48 States.

(3) RA fares for travel within Alaska and from Alaska to the Lower 48 States are usually lower than fares of other airlines for routes of comparable length in the Lower 48 States.

TM/sg

HJR

16

Alaska State Legislature

SENATOR
JOHN B. "JACK" COGHILL
Chairman

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Senate Committee
on
Transportation

MEMORANDUM

To: Committee members

From: Committee staff

Date: March 18, 1985

Re: Proposed SCS for CSHJR 16

This afternoon the committee is scheduled to take up HJR 16, which asks the federal government to continue the Essential Air Service subsidy until its originally scheduled termination date in 1988, rather than to phase it out this year, as President Reagan has proposed. The enclosed background material will explain the how important the program is to many Alaskan communities.

The proposed committee substitute does not change the intent of the original resolution, but does make the background a little more clear and specific.

In addition to the House version and the proposed cs, the background materials include:

- A short staff synopsis
- A senate advisory council memorandum explaining the program
- A CAB document explaining how eligibility for the subsidy is determined
- A copy of PL 98 - 443, CAB sunset legislation passed in 1984
- A copy of the House Conference report on CAB sunset
- Two articles from the Anchorage times explaining the effects of early phase-out of the program
- A short discussion of the subsidy from "Interior Alaska Transportation Study" by DOT/PF

SENATOR
JOHN B. "JACK" COGHILL
Chairman

Senator Jan Faiks—Vice Chairman
Senator Mitch Abood
Senator Paul Fischer
Senator Joe Josephson

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4921

Senate Committee on Transportation

TO: COMMITTEE MEMBERS
FROM: COMMITTEE STAFF mm
DATE: MARCH 18, 1985
RE: CS FOR HJR 16 (RELATING TO ESSENTIAL AIR SERVICE)

Background

"The Essential Air Service program which ensures air service to 147 small communities across the nation may fall victim to administration budget cuts.

"The Reagan administration's budget,... reportedly proposes the elimination of federal subsidies to the program, which would save $35 million to $45 million in fiscal 1986. The EAS program was instituted by Congress in 1978 when it deregulated the airline industry, to guarantee that service to be phased out in 1988, and in the past three years subsidies have substantially declined. The 1981 level of subsidies was $116 million, while last year only $36 million was issued out of a $51 million appropriation.

"Subsidized air service had existed before the creation of the EAS program. The EAS program had formerly been administered by the Civil Aeronautics Board, which expired Dec. 31, 1984, and is now under the purview of the Department of Transportation."1

---

1 AASHTO Journal, Cuts Proposed for Essential Air Service, February 1, 1985, p. 5.

STAFF SYNOPSIS

Proposed Cuts Would Be Devastating

The EAS program provides communities with passenger and cargo service. The people of these areas are dependent on these services. The effect of the proposed cuts would be immense. An article in the Anchorage Times, 02/03/85, gave a case study of the effect of the proposed cuts on the communities of Atka, in the Aleutians, and St. George, in the Pribilofs.

Atka

There are no roads in Atka, therefore, the 100 inhabitants rely on barges and air transport. Without Peninsula Airways, its subsidized carrier, Atka will be completely isolated.

St. George

Without service to St. George, the city will be unable to complete a new $13 million harbor. Without the new harbor, the islands bottomfishing industry would collapse. Without service, the city's tourist industry will deteriorate.

Like Atka and St. George, many communities involved in the EAS program are dependent on one industry. The proposed cuts would be disasterous to the economy of many of Alaska's towns and regions.

Explanation of 406

The Federal Aviation Act of 1958, under section 406, compensates carriers for providing service to communities which do not generate sufficient traffic to cover costs.

Section 419 (of the Airline Deregulation Act of 1978) is a method to fund essential air service to eligible points, i.e., a subsidy. This is intended to guarantee essential air service to small communities served only by one CAB certificated carrier. There are 230 communities in the state of Alaska which are eligible for essential air service.2 (although not all of them receive subsidized service)

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2 State of Alaska, Dept. of Transportation and Public Facilities, Interior Alaska Transportation Study, Volume I, page 201 - 204.

Offered: 2/20/85
Referred Rules

Original sponsors: Cato, Thompson, Adams, et al

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 16 (Transportation) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to essential air service.

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

WHEREAS Alaskan air carriers are recipients of federal funding under the U.S. Department of Transportation Essential Air Service program; and

WHEREAS the President of the United States has proposed a budget for fiscal year 1986 that would eliminate the Essential Air Service program; and

WHEREAS under the Airline Deregulation Act of 1978 (P.L. 95-504) Congress provided that the program would continue until 1988; and

WHEREAS Alaska has 38 communities that would be adversely affected by elimination of the funding; and

WHEREAS Alaskan air operators have been developing free market alternatives consistent with the deregulation of air transportation and the scheduled termination of the subsidy in 1988;

BE IT RESOLVED by the Alaska State Legislature that Congress fully fund the Essential Air Service program and that the U.S. Department of Transportation adhere to the scheduled 1988 timetable for elimination of the program.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Robert Dole, Majority Leader of the Senate; the Honorable Thomas P. "Tip" O'Neill, Speaker of the U.S. House of Representatives; the Honorable Elizabeth Dole, Secretary of Transportation; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable

CURRENT HOUSE VERSION

Don Young, U.S. Representative, members of the Alaska delegation in Congress.

SCS FOR CS FOR HOUSE JOINT RESOLUTION NO. 16 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to essential air service.

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

WHEREAS Alaskan air carriers are recipients of federal funding under the U.S. Department of Transportation Essential Air Service program; and

WHEREAS the President of the United States has proposed a budget for fiscal year 1986 that would eliminate the Essential Air Service program; and

WHEREAS under the Airline Deregulation Act of 1978 (P.L. 95-504) Congress provided that the program would continue until 1988; and

WHEREAS more than 38 Alaskan communities would be directly and adversely impacted, and dozens of others would be indirectly impacted [ALASKA HAS 38 COMMUNITIES THAT WOULD BE ADVERSELY AFFECTED] by elimination of the funding; and

WHEREAS the Essential Air Service program provides communities with necessary passenger and cargo service; and

WHEREAS a lack of a state highway system forces Alaskans to be dependent on air travel; and

WHEREAS Alaskan air operators have been developing free market alternatives consistent with the deregulation of air transportation and the scheduled termination of the subsidy in 1988; and

WHEREAS a reduction or elimination of funds for the Essential Air Service program at this time will almost certainly cause a reduction or elimination of air service to those communities where it is not economically feasible to maintain present service without this program;

PROPOSED COMMITTEE SUBSTITUTE

BE IT RESOLVED by the Alaska State Legislature that Congress fully fund the Essential Air Service program and that the U.S. Department of Transportation adhere to the scheduled 1988 timetable for elimination of the program.

COPIES of th s resolution shall be sent to the Honorable Ronald Reagan, President of the United States; the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Robert Dole, Majority Leader of the Senate; the Honorable Thomas P. "Tip" O'Neill, Speaker of the U.S. House of Representatives; the Honorable Elizabeth Dole, Secretary of Transportation; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Falls Church, Virginia, station of the Washington, D.C. metrorail system and Dulles International Airport in Virginia. The study shall include, but need not be limited to, a study of the feasibility of heavy rail, light rail, monorail, magnetic levitation systems, and any other appropriate transportation systems. The Secretary shall study the feasibility of each such system with and without intermediate stops.

(b) The Secretary shall complete the study required by subsection (a) and transmit the results thereof to Congress not later than one year after the date of enactment of this Act.

AIR SERVICE IN THE STATE OF ALASKA

SEC. 16. (a)(1) Notwithstanding any other provision of law, with respect to air transportation to each of the points in Alaska listed in paragraph (4), essential air transportation for purposes of section 419 of the Federal Aviation Act of 1958 shall neither be specified at a level of service nor operated with aircraft of lesser seating and cargo capacity than provided for in CAB Order 80-1-167 and its Appendices unless otherwise specified under an agreement between the Department of Transportation and the State of Alaska, after consultation with the community affected. This paragraph shall cease to be in effect on January 1, 1987.

(2) Notwithstanding any other provision of law, the total amount of compensation which may be paid under section 419 of the Federal Aviation Act of 1958 with respect to the points in Alaska listed in paragraph (4) shall not exceed $3,572,778 for each of the fiscal years 1985 and 1986 and shall not exceed $893,195 for service provided during the period beginning October 1, 1986, and ending at the close of December 31, 1986.

(3) The Secretary of Transportation shall study the feasibility of providing essential air transportation to each of the points in Alaska listed in paragraph (4) with aircraft having a smaller capacity than that required by paragraph (1), the level of compensation which would be required under section 419 of the Federal Aviation Act of 1958 for such transportation, and the impact of using such aircraft on the air transportation system in Alaska. The Secretary shall complete such study and submit a report of the results of such study to Congress not later than January 1, 1986.

(4) The points in Alaska referred to in paragraphs (1), (2), and (3) are Cordova, Yakutak, Gustavus, Petersberg, and Wrangell.

(b) Notwithstanding any other provision of law, no part of the order of the Civil Aeronautics Board in CAB docket number 38961 (CAB Order 84-6-77) shall enter into effect until after December 31, 1984.

And the Senate agree to the same.

NORMAN Y. MINETA,
GLENN M. ANDERSON,
ROBERT A. ROE,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,
Managers on the Part of the House.

IDENTIFICATION

BILL NAME
"Relating to Essential Air Service"

BILL NUMBER
CS HJR 16

DATE INTRODUCED
2-20-85

RELATED BILLS PENDING
None

REFERRALS

SPONSOR(S)
Cato, Thompson, Adams, Et AL

INITIAL RESEARCH

INITIAL SUMMARY COMPLETED
Yes

SPONSOR CONTACTED FOR BACKUP MATERIALS
yes

AGENCY RESPONSE
Senate Advisory Council

LEGAL DIVISION SUMMARY

DEPT OF LAW SUMMARY

FISCAL NOTE
None

OTHER INTERESTED LEGISLATORS NOTIFIED
Cato, Thompson

BACKGROUND RESEARCH

SIMILAR BILLS INTRODUCED IN PREVIOUS LEGISLATURES

OTHER STATE OR FEDERAL PRECEDENTS, REGULATIONS, ETC

RESPONSES FROM INTERESTED PERSONS AND/OR GROUPS
Fbks Chamber of Commerce - "Interior Ak Trans Study"

HEARING PREPARATION

CHAIRMAN BRIEFED
Yes

DATE & PLACE SET
3-20-85

STAFF MEMO TO COMMITTEE
Yes

TELECONFERENCE
None

BACKGROUND MATERIAL DISTRIBUTED
Yes

PSA/PRESS RELEASE
None

LIST OF WITNESSES
Bob Jacobs - Ak. Air Carriers
Dave Thompson - AK Legislature

SUGGESTED AMENDMENTS/CS DRAFTED
Transportation CS Adopted 3-20-85

Alaska State Legislature

Advisory Council Members
Senator Bennett, Chairman
Senator Kerttula
Senator Abood
Senator Sackett

Pouch V
State Capitol
Juneau, Alaska 99811
Phone: (907) 465-3114

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Senator Coghill

FROM: Gene Doss
Systems Analyst

DATE: February 27, 1985

RE: Essential Air Service

The Essential Air Service Program came into being as a direct result of the Airline Deregulation Act of 1978. The program was, in effect, a sales pitch to those Congressmen who were not in favor of airline deregulation. What the Act did was guarantee a certain specified level of scheduled air service to those locations which might not otherwise receive it due to economic factors.

All of Alaska falls into the category covered by this Act and, in fact, was singled out as a special case before the Act went into effect. This special category was primarily due to the Alaskan geographic problems caused by the absence of an adequate road system to handle the necessary commercial traffic within the State. Commercial traffic in this instance is applicable to either passenger or freight service.

Level of service is determined to be a small or large airplane operation depending upon the type of service required and may be illustrated by the Gustavus route in Southeast Alaska. During the summer months, large aircraft make daily trips because of the great number of tourists who visit the area and the large volumes of freight transported. However, during the winter months when the volume of traffic is negligible, the route is still served by a small airplane making two scheduled trips per week.

Periodically, airlines bid on these essential routes which they do from a strictly business standpoint; that is, the airline agrees to supply the level of service required if there is sufficient profit to make the route worthwhile. This applies to any airline that wins a bid for servicing a particular route. It follows then, that if the Essential Air

SENATE ADVISORY COUNCIL MEMO

Service Program received a reduction or an elimination in funding, it will almost certainly cause a reduction or elimination of air service to those communities where it is not economically feasible to maintain a route.

The following attachments were supplied by the U.S. Department of Transportation, Anchorage, Alaska, and reflect the status of the Essential Air Service Program as of January, 1985. These attachments show the points in Alaska that receive Essential Air Service under the program and are broken into two categories; (1) points receiving subsidy and the subsidy amount and, (2) points receiving no subsidy.

GD;cb
Attachments

FEB 19 1985

ALASKA

Points Receiving Subsidized
Essential Air Service

Community	Air Carrier	Annual Compensation in effect as of Jan. 1985 */
1. Petersburg 2. Wrangell 3. Cordova 4. Yakutat 5. Gustavus	Alaska Airlines	$ 3,572,778
6. Boswell Bay 7. Cape Yakataga 8. Chitina 9. Icy Bay	Chitina Air Service	$ 112,986
10. Chisana 11. Gulkana 12. May Creek 13. McCarthy	Ellis Air Service	$ 56,333
14. Atka Island	Peninsula Airways	$ 208,088
15. St. George	Peninsula Airways	$ 97,329
16. Akhiok 17. Amook Bay 18. Karluk 19. Kitoi Bay 20. Larsen Bay 21. Lazy Bay/Alitak 22. Moser Bay 23. Old Harbor 24. Olga Bay 25. Ouzinkie 26. Parks/Uzark 27. Port Bailey 28. Port Lions 29. Port Williams 30. San Juan/Uzanik 31. Terror Bay 32. West Point 33. Zachar Bay	Seair Alaska	$ 488,735

*/ Compensation represents a rate applicable for the highlighted group of points unless identified separately.

Community	Air Carrier	Annual Compensation in Effect as of Jan. 1985
34. Farewell	HUB AIR [redacted]	$ 23,920 **/
35. Flat		
36. Takotna		
37. Tatalina		
38. Central	Harold's Air Service	$ 34,320
39. Circle		
40. Wiseman	Frontier Flying Service	$ 10,800
	Total	$ 4,605,299

**/ Only in effect if mail is not carried under USPS contract.

ALASKA

[redacted]

POINT
Adak Island
Akiachak
Akiak
Akutan
Alakanuk
Aleknagik
Allakaket
Ambler
Anaktuvuk Pass
Aniak
Angoon
Annette Island
Anvik
Arctic Village
Atmautluak
Attu Island
Barrow/Point Barrow
Barter Island (Kaktovik)
Beaver
Bethel
Bettles
Birch Creek
Brevig Mission
Buckland
Candle
Cape Lisburne
Cape Newenham */
Cape Romanzof */
Chalkyitsik
Chatham
Chevak
Chicken
Chifornak (Chefornak)
Chignak
Chignik Lake
Chignik Lagoon

*/ These points are currently the subject of carrier selection proceedings with subsidy anticipated.

POINT

Clark's Point
Cold Bay
Council
Craig
Crooked Creek
Deering
Dutch Harbor
Eagle
Eek
Egegik
Ekuk
Ekwok
Elfin Cove
Elim
Excursion Inlet
False Pass
Fort Yukon
Funter Bay
Galena
Gambell
Golden Horn
Golovin
Goodnews Bay
Grayling
Haines
Hawk Inlet
Haycock
Hogatza
Holy Cross
Homer
Hoonah
Hooper Bay
Hughes
Huslia
Hydaburg
Igiugig
Iliamna
Ivanoff Bay

POINT

Kake
Kalskag
Kaltag
Kenai
Ketchikan
Kiana
King Cove
King Salmon
Kipnuk
Kivalina
Klawock
Kobuk
Koliganek
Kongiganak
Kotlik
Koyuk
Koyukuk
Kwethluk
Kwigillingok
Kwiguk (Emmonak)
Kwinhagak
Lake Minchumina
Levelock
Manley Hot Springs
Manokotak
Marshall/Fortuna Ledge
McGrath
Mekoryuk
Minto
Mountain Village
Naknek
Napakiak
Napaskiak
New Stuyahok
Newtok
Noatak

POINT

Noorvik
Nulato
Nunapitchuk
Nyac
Perryville
Pelican City
Pilot Point
Pilot Staton
Platinum
Point Hope
Point Lay
Porcupine Creek
Portage Creek
Port Heiden
Prudhoe Bay/Sag River (Deadhorse)
Queen
Rampart
Red Devil
Ruby
Russian Mission
Saginaw Bay
St. Mary's
St. Michael
St. Paul Island
Sand Point
Sarichef/Scotch Cap (Cape Sarichef)
Savoonga
Scammon Bay
Selawik
Seward
Shageluk
Shaktoolik
Sheldon Point
Shemya Island
Shishmaref
Shungnak

POINT

Sitka
Skagway
Skwentna
Sleetmute
South Naknek
Stebbins
Stevens Village
Stony River
Tanana
Tatitlek
Teller
Tenakee (Tenakee Springs)
Tikchik Lake (seasonal)
Tin City
Togiak
Toksook
Tuluksak
Tuntatuliak
Tununak
Twin Hills
Ugankik
Ugashik
Umiat
Umnak Island
Unalakleet
Utopia
Valdez
Venetie
Wainwright
Wales
White Mountain
Wood River

Order 80-1-167

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D.C.

Issued Under Delegated Authority
January 25, 1980

Issued February 8, 1980

EFFECTIVE: APRIL 8, 1980

Essential Air Transportation Determination of Eligible Points in ALASKA under to section 419(a)(2)(A) of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978.	Dockets EAS-105 thru EAS-333 and EAS-347

ESSENTIAL AIR TRANSPORTATION DETERMINATION

Under section 419(a)(2)(A) of the Federal Aviation Act, as amended by the Airline Deregulation Act, the Board must determine by October 24, 1979, what constitutes essential air transportation for each certificated point which received service from one or no certificated carriers on October 24, 1978. Section 419(f)(2) of the Act states that "with respect to air transportation to any point in Alaska, essential air transportation shall not be specified at a level of service less than that which existed for such point during calendar year 1976, or two round trips per week, whichever is greater, unless otherwise specified under an agreement between the Board and the State agency of the State of Alaska, after consultation with the community affected." Congress asked us to confer with the communities and with state aviation officials to get their views on their essential air service, prior to making these determinations. To accomplish this for Alaska, we held a series of seven regional meetings throughout the state earlier this year to listen as state and community representatives gave their views on all aspects of the essential service program. 1/ Building on the input which we received at these meetings, we proposed guidelines for the essential air service determinations, and we requested comments on these guidelines from all interested parties. We then requested specific views from each community concerning its essential service in a questionnaire which was sent to the civic official of each community for which a determination was to be made.

1/ We held meetings in Anchorage, Bethel, Fairbanks, Juneau, Ketchikan, Kodiak and Nome. In addition we visited several Bush communities where we held at least 20 informal meetings with individuals and community representatives.

C.A.B. ELIGIBILITY DETERMINATION

With the adoption on August 31 of the final guidelines for essential air service determinations, 2/ we are now going forward with the determinations mandated by the Airline Deregulation Act.

The essential air service program provides, for the first time, assurance to a community that it will not lose its air service. Prior to the introduction of this program, communities received no guarantee that they would receive a particular level of service from the carriers serving them, nor a guarantee of the destination to which that service would be provided. They now have such a guarantee. Additionally, carriers in the past could, in some cases, drop their service at a point even when no other carrier was serving the point, without a replacement carrier entering the market. This often meant that the community disappeared from the air service map. In all, 129 communities lost their certificated air service in the 1968-1978 period. The essential service program guarantees that communities are no longer faced with such a bleak possibility.

In Alaska, we are required to make a determination for two hundred and thirty communities. In making our determination for each community we have considered the views of the communities 3/ and the communities' ability to generate air traffic based on historic traffic totals for both certificated and commuter carriers. 4/ Based on this information, we have made an analysis to determine each point's primary community of interest, and to determine which hub or regional center would assure the community access to the national air transportation system. Our essential air service determinations are set forth in Appendix A. Appendix B presents a description of the communities' present service, population and any appropriate notes. Appendix C contains the historic service for 1976 and 1978, the communities' requests for essential air service and our general comments on either their requests or our essential air service determinations. Appendix D sets forth the historic traffic data.

GENERAL APPROACH

A few remarks are in order here regarding our general approach and guidelines which we used in determining essential air service for Alaska communities. Particularly, it is important to reiterate our observations and conclusions which formed our guidelines in PR-213.

2/ PS-87 and PR-213; Parts 325 and 398 of the Board's rules.
3/ Community views were sought in a questionnaire which was sent to the civic official of each community.
4/ We have used commuter traffic data for communities where commuter airlines carry a significant amount of traffic, or provide service in key markets. Statistics submitted by commuter carriers are confidential for a one year period, but under section 298.66 of the Board's Economic Regulations, we find that it is in the public interest to disclose 1978 commuter traffic information in this order and all others defining essential air service.

The overall transportation needs of the state, the level of development and type of air transportation industry, and the logistical considerations in Alaska are substantially different from the rest of the country and require different essential air transportation findings. One of the major factors affecting air service in Alaska, particularly at the smaller communities, is the airport facilities. In many cases, airports consist of unpaved runways without any navigational equipment. During periods of bad weather, which are frequent, aircraft are unable to operate at these communities, and scheduled service becomes undependable because of frequent flight cancellations and delays. Consequently, the reliability of scheduled air service in Alaska is greatly reduced because of the absence of airports that can be served during adverse weather conditions. We are concerned about the importance of improved airport facilities to the development of air service in Alaska and to our statutory responsibility to ensure essential air transportation. Although we are not able to fund airport facilities under the essential air service program, we are prepared, where airport improvements are important to the availability and maintenance of essential air service, to relate these needs to the Department of Transportation which has jurisdiction in this area and to urge that it take steps to effect the necessary improvements.

The isolation of communities is also a major factor to be considered in essential air service determinations. The state highway system and the availability of surface modes of transportation are practically non-existent in a large portion of the state. Consequently, the typical Alaskan bush community relies almost exclusively on air transportation for its commercial and social ties with other communities. In many instances long distances separate the points. Even in cases where the distances are short, the terrain may not permit the operation of convenient and reliable surface transportation between communities.

As a result of these logistical circumstances and the relatively small populations of many Alaskan communities, a significant air taxi industry has developed in the state. The air taxis provide reliable, on-demand service, affording maximum flexibility in the timing of flights to meet individuals' needs. This system of service being provided in response to a specific demand for transportation is very practical, especially in the low density traffic areas prevalent in Alaska. In fact, as a result of the reliability and widespread availability of this type of service as compared to the usually infrequent operation of scheduled service at smaller communities in Alaska, the air taxi carriers are handling a sizable portion of the traffic, particularly passengers, in Alaska. Furthermore, judging by their success, air taxis have demonstrated that they can operate at fares that attract passengers and yet achieve sufficient profits to remain viable.

Severe weather is another factor that has an impact on the reliability and utility of air service. Adverse weather conditions frequently prohibit the operation of flights in Alaska. In addition, during certain parts of the year airport landing strips at many communities are not usable because of the effects of weather. Because of these conditions, scheduled flights are frequently disrupted, and the benefits of scheduled service are reduced. Although representatives at our meetings indicated that there is very little that can be done to overcome the problems of weather, they claim that these circumstances must be taken into account if the essential air service program is to be effective and viable.

The importance of mail and cargo needs was cited almost unanimously by spokespersons at our meetings. Alaskan communities are heavily dependent on air transportation to provide this service. We therefore have defined cargo and mail service as falling within the essential air service guarantee for Alaska. Frequent complaints were voiced about the irregularity of mail delivery and cargo service, the backlog of mail at the hubs,and the problems with the current system of postal contracting to federally certificated carriers. 5/ Under current contracting policy the Postal Service tenders mail only to certificated carriers and subcontract carriers even if other carriers, usually air taxis, are also operating to the certificated community. We were told that there are frequent instances where communities do not receive mail for extended periods because the contracted carrier has not operated a flight to the point even though during this time other carriers not allowed to transport the mail, particularly air taxis, have been operating to the point. Often, items being sent by post that require prompt delivery, such as perishable foods, are unnecessarily delayed at a distribution point because of this system. We favor a policy of allowing any air carrier--certificated, commuter or air taxi--to contract for mail delivery, and we have indicated this position to the Postal Service. We feel that this approach would alleviate some of the delays in mail delivery and improve this important part of air service to the communities in Alaska. It is our understanding that the Postal Service is now considering such an approach. With respect to backlogs under the existing subcontracting system, the certificated carrier is required by Part 293 of our regulations to provide for extra sections either with the subcontractor, through another air taxi, or with its own equipment. Until any changes take place in the postal contracting system, we will attempt to monitor the existing subcontract system to insure that the certificated carriers incur no undue backlogs.

SPECIFIC DETERMINATIONS

Our determinations rely on a system of regional service centers in addition to the FAA hubs. We believe that this system will best meet the needs of the Alaska communities for service to their major communities of interest and for access to the national air transportation system. In addition to the FAA hubs and regional centers listed in our guidelines in

5/ Outside of the federally certificated system in Alaska, the Postal Service has its own contracts with air taxi operators for mail delivery to noncertificated points.

Part 398, our determinations in this order include Seattle and several other regional centers. The complete list of hubs and regional centers we relied on include the FAA hubs of Anchorage, Fairbanks, Juneau, and Seattle, and the regional centers of Aniak, Barrow, Bethel, Bettles, Cordova, Cold Bay, Dillingham, Ft. Yukon, Galena, Ketchikan, King Salmon, Kodiak, Kotzebue, McGrath, Nome, Petersburg and St. Mary's. Because of the status of these regional centers as separate eligible points as well as "feeder" centers for outlying points in their areas, we have required that there be adequate service between the regional service centers and the FAA hubs to handle both the regional centers' essential air service needs and the traffic seeking access to the national air system from the other eligible points served through the regional centers.

As for aircraft requirements, we have considered various views and have concluded that for practical reasons we should not impose any overall minimum size for aircraft in Alaska. As attested to by most spokespersons in Alaska, small aircraft are operated at almost all communities in the state. In addition, operations with small aircraft, especially by air taxis, provide useful and high quality service and are reasonably reliable given the weather constraints. Under these circumstances, it is clear that service with small equipment will afford the best means of meeting the air service needs of many eligible points. However, where operational requirements, distances and duration of flights between eligible points and their designated hubs or regional centers require the operation of larger aircraft to provide usable service, we have included such a requirement in our determinations. Between some regional service centers and the FAA hubs we have required service with large aircraft because of the distances and the level of traffic from the surrounding communities at the regional center.

In general, we have required sufficient frequencies to accommodate both the number of passengers and accompanying baggage as well as normal cargo requirements of the communities. We recognize the critical importance of cargo air service for the communities in Alaska and therefore included cargo as a factor in determining the numbers of flights and capacity of service we guarantee. We have not specified actual freight capacity or aircraft to be operated for cargo purposes. Instead, we have required frequencies based on the overall passenger and cargo needs of the point. In considering cargo, we recognize that in Alaska cargo is frequently transported in the passenger compartment of aircraft and that the carriage of large cargo items can preclude the accommodation of passengers on a particular flight or alternatively the carriage of passengers may result in delays in transporting cargo. Thus, it is difficult to establish required service levels based on the separate capacity needs for passengers and cargo.. We examined the combined need for passenger and cargo service in determining the level of service required, and we expect that with the level we have set, both transportation needs, passenger and cargo, will be afforded service that meets the communities' essential air service needs.

In making our determinations, we have designated a specific level of essential service for each community based primarily on historic patterns of service. Should alternative patterns develop or different size aircraft be employed we will allow variations in the number of flights depending on the size of aircraft operated and the number of intermediate stops or points beyond the eligible point that share available capacity on the flights with the eligible point. As for maximum capacity, our rationale for imposing a ceiling of 80 seats per day in each direction for each eligible point in the rest of the country is that above the 80-seat level we are confident that the marketplace will satisfy the needs of the community for air service. Where we are confident that the marketplace in Alaska can respond to the needs of the community, we take a similar approach. In general, we guarantee service to accommodate up to 40 passengers per day in each direction and the community's cargo needs. We recognize though that the circumstances and the marketplace in Alaska are different than in the rest of the country, and therefore we have examined the individual situations and determined whether a level above this ceiling is required. As noted above, between the regional centers and the FAA hubs higher capacity levels are required in some cases to handle both the regional point's traffic and the traffic from the outlying eligible points being served through the regional center.

Our essential air service determinations for most points require scheduled service, and we anticipate relying on service by certificated carriers, state certificated carriers, commuter carriers operating under subcontract to the certificated carriers, and other commuter air carriers to meet this requirement. Even though our essential air service determination may only specify scheduled air service at a point, we fully expect that air taxi operators will be available and that they will play an important role in the overall air service of the communities. Alternatively, at a few points in Alaska we will rely for the most part on unscheduled service by air taxi operators for essential air transportation. We are convinced that at these points unscheduled on-demand service will provide better, more responsive service than scheduled service. The quality, reliability and public acceptance of air taxi operations in Alaska is high, and we are confident that where we rely on air taxis this type of service will meet the essential air service requirements of the community. At yet other points, we require as our essential air service determination that both air taxi and scheduled service be available if it is felt that the on-demand service should be guaranteed as a supplement to the scheduled service. A final variety of service we will rely on at certain communities is flag stop service by scheduled carriers.

We have generally imposed a maximum of two stops between the eligible point and the regional point or the FAA hub. The purpose of this provision is to assure communities that under normal circumstances convenient access to the national air transportation system will be permitted. However, in several cases we have determined that the historic pattern of more than two stops is required to insure that the carrier will continue to provide the community with its past number of frequencies. Regardless of the number of stops, we expect that the community will continue to receive available capacity equivalent to our definition and any change in the historic pattern of service either in frequencies, stops or aircraft size will result in an equitable adjustment in available capacity. The Act established 1976 as a reference for the level of essential air service in Alaska, and our determinations are, for the most part based on a community's present service or its 1976 level of service. The essential level was set at the greater of the two levels except in cases where the data indicated that available traffic and/or circumstances warranted the lower level. In only a few cases did we determine that essential service was less than the present service. One case involved three points (Haines, Skagway and Valdez) which receive high quality, competitive commuter service. Here we were confident that the marketplace will insure sufficient frequencies to accommodate all the traffic. Therefore, we guaranteed sufficient seats at a 50 percent load factor to accommodate the present traffic level. This is considerably less than the actual frequencies provided. Another case involved Prudhoe Bay, Homer and Kenai, none of which are regional points, yet the guarantee of seats sufficient to accommodate traffic at a 50 percent load factor exceeded our maximum capacity guarantee guideline of 80 seats in each direction per day. Therefore, we guaranteed only up to our ceiling of 80 seats.

We have had the benefit of close cooperation by the Alaska Transportation Commission in developing our essential air service determinations for Alaska. The Commission's help was especially important with regard to thirty-one of the points for which we found that less than the statutory minimum two round trips per week is required, simply because the available traffic does not warrant a higher level. We are authorized to drop below this two round trip minimum when the State of Alaska concurs, and they have done so for these very small points. 6/ As shown in the appendices to this document, many of the communities are very tiny or are characterized by seasonal industry such as a fish cannery. Another fourteen points involved essential service determinations of zero because it appeared that they have no population at all and 21 points involved essential air service determinations less than the 1976 level. In most cases the difference is insignificant such as one less trip per week in the peak or off-peak season. Here again, the State has concurred.

6/ See Appendix F.

We note that several of our determinations require frequencies which exceed the guideline of at least two daily round trips applicable to points in the lower 48 states. For instance, we determined that 58 weekly frequencies were essential at Valdez. However, we would emphasize that this was based on a small aircraft capacity of 8 seats. Should the aircraft size change in the future, then our determinations would also change accordingly.

Another point we should make about our determinations is that a number of markets now receive competitive service from state certificated carriers that was not in existence during our base traffic periods of 1976 and 1978. We are reluctant in most cases to determine all or part of this new service as essential since we are uncertain of its future development. In such cases we have set the definition at the highest level of past or present federally certificated service. We will be receptive, however, to any substantiated evidence which would warrant our setting a different level of essential air service.

Two final aspects of our determinations which we should elaborate on are their seasonal variations and aircraft specifications. Generally, we have set peak and off-peak levels of essential service. We do not intend to establish exact dates on these seasons since frequently they are more a function of natural phenomena such as "break-up" than the calendar. Carriers historically have adjusted their own schedules to coincide with seasonal shifts, and there is no reason to expect they will not continue to respond with service changes that are in the mutual best interests of the communities and themselves.

As for aircraft specification, we have defined each community's essential service on the basis of operations with certain sizes of aircraft. We did this for the convenience of all parties concerned with this program so they can readily comprehend the type of service we contemplate for each community. Normally, each community will continue to be served with one general size of aircraft because of traffic and airport considerations. Nevertheless, should a carrier contemplate a change in size of equipment we would expect that frequency would be adjusted to provide at least the capacity equivalent to our definition.

DATA PROBLEMS

In applying our guidelines to specific points we encountered several problems. First, a definitive analysis of certain communities' service needs was difficult because of the poor quality of available data. Unlike the 48 continental United States, there are no origin and destination data among the points within the state of Alaska. To the extent possible we utilized other data sources: service segment data, Forms 41, commuter reports (Part 298C) and subcontractor's reports (Part 293). Unfortunately, each of these sources also has limitations. 6/

6/ Service segment data. Three of the five Alaskan certificated carriers are not required to file service segment data (Kodiak-Western Alaska, Reeve Aleutian and Munz Northern). Alaska Airlines files service segment data for its mainline points, but not for its subcontracted bush points. Wien Air Alaska files service segment data for all of its points. However, its filings for bush points are not all inclusive of its subcontractors' activities at each point. For example, many points show no passenger enplanements when in fact a subcontractor carried passengers. Also the points show lower than actual cargo activity.

Form 41. This data source has several shortcomings. Alaska Airlines does not report data for its bush points and Wien's bush point data is not complete. In addition, it is impossible to identify cargo activity at bush points, because the majority of cargo activity is inbound, but only enplaned (outbound) cargo at each point is reported.

Commuter Reports (Part 298C). Many Alaskan commuters ignore the requirement to file these reports. Those that do report are not required to file aircraft departure data. Consequently, this data source is of limited value.

Subcontractor Reports (Part 293). Here again, many of the carriers do not send in reports. Certain carriers file their reports but the data are in such form that activity at a single point is impossible to identify. For instance, Bush Air files data by total flight rather than at each individual point. Moreover, we were relatively certain that Bush Air's reports are unreliable. For example, for seven consecutive quarters it reported identical departures, enplaned passengers and deplaned cargo on specific flights. It also appears that some carriers report all their activity at a particular point, while others report only activity related to its subcontract.

Finally, a significant portion of activity at bush points is conducted by air taxi charter operations which are not contained or required in any of the Board's data sources.

Another problem is that it is difficult to determine from our data sources the number of seats or cargo capacity provided at each bush point, either currently or historically. In the small aircraft category reported by many of the subcontract carriers, there are a variety of aircraft types ranging from four to ten seats and 500 to 1500 pounds cargo capacity, and the reports do not identify the type used at each point. Furthermore, the aircraft type used at a particular point probably varies from day to day.

Finally, as we stated earlier, we sent out questionnaires asking the communities to provide us with specific details about the service they have received and require. Only twenty five percent of the communities responded.

As a consequence of these deficiencies, our data base has limited utility as a tool for pinpointing a community's service requirements. Nevertheless, we are confident our determinations have been made on the basis of the most comprehensive and accurate data available on Alaskan air service, and we note again that we have consulted closely with our Alaska Field Representative and with the Alaska Transportation Commission to develop information and to reinforce the validity of our observations as fully as possible. Should better information be brought to our attention, we are prepared to amend our determinations.7/

CURRENT SERVICE

The vast majority of the points in Alaska receive essential service as defined in this order. Nevertheless, some of the current service does not fulfill the essential air service requirement specified in this order. In most cases the service available may be able to meet the communities' essential needs with only minor adjustments, and without the need for seeking proposals. Rather than embark on the process of seeking proposals to provide essential air service, we believe that through informal consultations with the communities and air carriers we may be able to work out agreements by which service patterns can be adjusted to meet the communities' essential air service requirements. However, we will not begin this process until after the 60-day appeal period or after the appeal procedure has been concluded. Following that we intend to convene a series of informal meetings between members of our staff, the state, the affected communities and the carriers to see that essential service is provided. Should we determine that Section 419 subsidy funds are required, we will not hesitate to authorize such expenditure.

As a final matter, at several Alaskan points the essential air service requirements are being fulfilled by commuter carriers. We will soon conduct inquiries and evaluations to determine their fitness to provide essential air service. We will audit all aspects of each carrier's operations including its

7/ We just recently received a 205-page report prepared by Parker Associates for the Alaska State Legislature concerning air service to rural Alaska. At the time we received the report we had already completed our analysis. Because of the statutory deadline for the essential air service determinations, we are not able to fully reflect its findings at this time. However, we will carefully review it in the near future and if the report reveals any inadequacies in our determinations we will amend this order accordingly.

safety record, compliance with FAA regulations, reliability, and other aspects of its operations which affect its fitness, willingness and ability to provide essential air service. When we have finalized our proposed rulemaking on commuter fitness 8/ and completed our investigations we will issue an order with our findings.

ACCORDINGLY, based on the above discussion and evaluation, we make the following essential air service determinations:

1. We determine that essential air transportation at all Alaskan eligible communities would consist of at least the service outlined in Appendix A;

2. These determinations shall become effective on the service date of this order;

3. We establish a 60-day period following the service date of this order for interested persons to submit an appeal of this decision containing specific objections supported with relevant economic data, stating how the determination departs from our guidelines for essential air service determinations, and stating the level of essential service that should be designated;

4. We will serve a copy of this order upon the civic officials and airport managers at the communities listed in Appendix A; The Governor of Alaska; the Alaska Transportation Commission; the air carriers, commuter airlines and air taxis listed in Appendix E; and the Board's Alaskan regional office; and

5. We will review this determination within 24 months of the date of service of this order unless circumstances justify an earlier review, or a petition for modification of this finding is filed and granted.

By Barbara A. Clark
Director
Bureau of Domestic Aviation

PHYLLIS T. KAYLOR

Secretary

(SEAL)

8/ EDR-385, 44FR 44108, July 26, 1979.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE 1/	BASIS FOR DETERMINATION
ADAK ISLAND	5	4	Anchorage	2	Large	1976/1978/Present level
AKHIOK	3 ~~6(F)~~	2 ~~2(F)~~	Kodiak	2	Small	Present level
AKIACHAK	2	2	Bethel	2	Small	1978/Present level
AKIAK	3	2	Bethel	2	Small	1976 level
AKUTAN	2	2	Cold Bay	2	Small	Statutory minimum
ALAKANUK	14	12	St. Mary's	2	Small	1978/Present level
ALEKNAGIK	2	2	Dillingham	2	Small	Statutory minimum
ALLAKAKET	5	3	Bettles	2	Small	1978/Present level
AMBLER	7	6	Kotzebue	2	Small	1978/Present level
~~AMCHITKA~~	~~0~~	~~0~~	~~—~~	~~—~~	~~—~~	~~1976/1978/Present level~~
AMOOK BAY	1	2/Mo.	Kodiak	2	Small	1978/Present level
ANAKTUVUK PASS	5	4	Bettles or Barrow	2	Small	1976/Present level
ANIAK	3	2	Anchorage	2	Large/Intermediate	1978/Present level
ANGOON	5	5	Juneau	2	Small	1978/Present level

1/ See discussion in order for details on this requirement:
Small Aircraft - up to 10 seats
Medium Aircraft - 11-30 seats
Intermediate Aircraft - 30-60 seats
Large Aircraft - over 60 seats.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK		SERVICE HUBS OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
	PEAK SEASON	OFF-PEAK SEASON				
ANNETTE IS. (METLAKATLA)	35	28	Ketchikan	2	Small	1978/Present level
ANVIK	4 +5(F)	4 +5(F)	Aniak or McGrath	2	Small	1978/Present level
ARCTIC VILLAGE	6	6	Ft. Yukon	2	Small	1976 level
ATKA ISLAND 2/	0	5 RT/MO	—	-	—	1976/1978/Present le
ATMAUTLUAK	3	3	Bethel	3	Small	1976/1978/Present le
ATTU ISLAND	1	1	Anchorage	3	Large	1978/Present level
BARROW/PT. BARROW	14	7	Fairbanks	2	Large	1976/1978/Present le
BARTER ISLAND	2	2	Fairbanks	2	Intermediate	1976 level
BEAVER	4	4	Fairbanks or Ft. Yukon	2	Small	1976 level
BETHEL	16	14	Anchorage	2	Large	Present level
BETTLES	10	4	Fairbanks	2	Small	Present level
~~BIG LAKE~~	~~0~~	~~0~~				~~1976/1978/Present le~~
BIRCH CREEK	3	3	Ft. Yukon	2	Small	Community request
BOSWELL BAY A/K/A KENNY COVE	3(F)	3(F)	Cordova	2	Small	1976/1978/Present le
BREVIG MISSION	3	3	Nome	2	Small	Present level
BUCKLAND	6	6	Kotzebue/Nome	2	Small	Present level

(F) means flag stop

2/ Department of Interior provides demand service of approximately five round trips per week every other week.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
CANDLE	6(F)	6(F)	Kotzebue/Nome	2	Small	Present level
CAPE LISBURNE	3	3	Kotzebue or Barrow	2	Small	1976/Present level
CAPE NEWENHAM	3	3	Bethel	2	Small	1976/1978 Present level
CAPE ROMANZOF	3	3	Bethel	2	Small	1976/1978 Present level
CAPE YAKATAGA	4	3	Cordova	2	Small	1978/Present level
CENTRAL	4	3	Fairbanks	2	Small	1976 level
CHALKYITSIK	6	3	Ft. Yukon	2	Small	1976 level
~~CHANDALAR~~ 84-10:30	~~1RT/Month~~	~~1RT/Month~~	~~Bettles~~	~~2~~	~~Small~~	~~1976/1978 Present level~~
CHATHAM	1RT/Month	1RT/Month	Juneau	3	Small	1978/Present level
CHERNOFSKI	2(F)	1(F)	Dutch Harbor	2	Small	Uncertain demand
CHEVAK	6	6	Bethel	2	Small	Community request
CHICKEN	1	1	Tok	2	Small	Present level
CHIFORNAK	5	5	Bethel	2	Small	1978/Present level
CHIGNIK	2(F)	2(F)	Port Heiden	2	Small	1976/1978 Present level
CHIGNIK LAKE	2(F)	2(F)	Port Heiden	2	Small	1976/1978 Present level
CHIGNIK LAGOON	2(F)	2(F)	Port Heiden	2	Small	1976/1978 Present level
CHISANA	1	1	Cordova	3	Small	Present level plus community request

(F) means flag stop

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
CHITINA	1	1	Cordova	2	Small	1976/1978/Present le
CIRCLE	4	3	Fairbanks	2	Small	1976 level plus community request
CIRCLE HOT SPRINGS	4	3	Fairbanks	2	Small	1976 level
CLARK'S POINT	2+3(F)	2+1(F)	Dillingham	2	Small	Present level
COLD BAY	8	7	Anchorage	2	Large/Intermediate	Present level
CORDOVA	7	7	Anchorage	2	Large	1976/1978/Present le
COUNCIL	2RT/MO	2RT/MO	Nome	2	Small	Latest effective lev
CRAIG	28	21	Ketchikan	2	Small	Present level
CROOKED CREEK	3	3	Aniak	2	Small	1976/1978/Present le
DEERING	5 6	5 5	Kotzebue/Nome	2	Small	Present level
DUTCH HARBOR	6	5	Anchorage	3	Intermediate	1978/Present level
EAGLE	4	3	Fairbanks	2	Small	1976 level
EEK	3	3	Bethel	2	Small	1976/1978/Present le
EGEGIK	6	6	King Salmon	2	Small	1976/1978 level
EKUK	2+3(F)	2+1(F)	Dillingham	2	Small	Present level

(F) means flag stop

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK		SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
	PEAK SEASON	OFF-PEAK SEASON				
EKWOK	9	9	Dillingham	2	Small	Present level
ELFIN COVE	1 +5(F)	5(F)	Juneau	2	Small	1978/Present level
ELIM	3	3	Nome	2	Small	1976/1978/Present level
EXCURSION INLET	3	1	Juneau	2	Small	1976 level
FALSE PASS	2	2	Cold Bay	2	Small	Statutory Minimum
FAREWELL	1	1	McGrath	2	Small	1976/1978/Present level
FLAT	1	1	McGrath	2	Small	1978/Present level
FORT YUKON	6	6	Fairbanks	2	Small	1976 level
FUNTER BAY	1	1	Juneau	2	Small	1978/Present level
GALENA	3	2	Anchorage or Fairbanks	2	Large/Intermediate	1976/1978/Present level
GAMBELL	15	12	Nome	2	Small	Present level
GOLDEN HORN	ON-DEMAND			2	Small	1976/1978/Present level
GOLOVIN	3	3	Nome	2	Small	1976/1978/Present level
GOODNEWS BAY	3	3	Bethel	2	Small	1976/1978/Present level
GRAYLING	4 +5(F)	4 +5(F)	Aniak or McGrath	2	Small	Present level

(F) means flag stop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK		SERVICE HUBS OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
	PEAK SEASON	OFF-PEAK SEASON				
GULKANA	1	1	Cordova or Anchorage	2	Small	Present level
GUSTAVUS	7	2	Juneau	2	Small / Large	1976/1978/Present level
HAINES	20	8	Juneau	2	Small	Guaranteed sufficient seats to yield a 50% load factor
HAWK INLET	1RT/MO	1RT/MO	Juneau	2	Small	1978/Present level
HAYCOCK	1RT/MO	1RT/MO	Nome	2	Small	1976 level
HOGATZA (Hog River)	2	2	Fairbanks	2	Small	Statutory minimum
HOLY CROSS	4 +5(F)	4 +5(F)	Aniak or McGrath	2	Small	Present level
HOMER	32	32	Anchorage	2	Medium	Maximum seat guarantee
HOONAH	35	21	Juneau	2	Small	Present level
HOOPER BAY	6	6	Bethel	2	Small	1978/Present level
HUGHES	2	2	Galena or Fairbanks	2	Small	1978/Present level
HUSLIA	5	5	Galena	2	Small	1976/1978/Present level
HYDABURG	34	34	Ketchikan	2	Small	Present level
ICY BAY	4(F)	4(F)	Cordova	2	Small	Present level

(F) means flag stop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
IGIUGIG	2	2	King Salmon	2	Small	Statutory minimum
ILIAMNA	7	4	Anchorage	2	Intermediate	Present level
IVANOFF BAY	2(F)	2(F)	Port Heiden	3	Small	1976/1978/Present level
KAKE	6	3	Petersburg or Juneau	2	Small	1978/Present level
~~KALAKAKET~~	~~0~~	~~0~~			—	~~Present level~~
KALSKAG	10	10	Aniak	2	Small	Present level
KALTAG	10	5	Galena	2	Small	1978/Present level
KARLUK	3	3	Kodiak	2	Small	1976/1978/Present level
KENAI	32	32	Anchorage	2	Medium	Maximum Seat Guarantee
KETCHIKAN	21	21	Seattle	2	Large	1978 Northbound level
KIANA	8	8	Kotzebue	2	Small	Present level
KING COVE	3	3	Cold Bay	2	Small	1976/1978/Present level
KIPNUK	5	5	Bethel	2	Small	1978/Present level
KITOI BAY	1	1	Kodiak	2	Small	1978/Present level

(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK		SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
	PEAK SEASON	OFF-PEAK SEASON				
KIVALINA	12	9	Kotzebue or Barrow	2	Small	Present level
KLAWOCK	34	28	Ketchikan	2	Small	1978/Present level
KOBUK	3	3	Kotzebue	2	Small	1978/Present level
KOLIGANEK	6 +3(F)	6 +3(F)	Dillingham	2	Small	Present level
KONGIGANAK	4	4	Bethel	2	Small	1978/Present level
KOTLIK	9	9	St. Mary's	2	Small	Present level
KOYUK	6	6	Nome or Unalakleet	2	Small	1976/1978/Present leve
KOYUKUK	5	5	Galena	2	Small	1976/1978/Present leve
KWETHLUK	2	2	Bethel	2	Small	1978/Present level
KWIGILLINGOK	4	4	Bethel	2	Small	1978/Present level
KWIGUK (EMMONAK)	19	19	St. Mary's	2	Small	Present level
KWINHAGAK	6	6	Bethel	2	Small	1976/1978/Present leve
LAKE MINCHUMINA	1	1	Fairbanks	2	Small	1978/Present level
LARSEN BAY	3	3	Kodiak	2	Small	1976/1978/Present leve

(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
LAZY BAY/ALITAK	6	3 (F)	Kodiak	2	Small	Present level
LEVELOCK	3 +9(F)	3 +9(F)	King Salmon	2	Small	Present level
MANLEY HOT SPRINGS	2	2	Fairbanks	2	Small	1976/1978/Present level
MANOKOTAK	5	5	Dillingham	2	Small	Present level
MARSHALL/FORTUNA LEDGE	5	5	Bethel or St. Mary's	2	Small	1978/Present level
MAY CREEK	1(F)	1(F)	Cordova	2	Small	1976/1978/Present level
McCARTHY	1	1	Cordova	2	Small	1976/1978/Present level
McGRATH	3	3	Anchorage	2	Large/Intermediate	1978/Present level
~~MEDFRA~~ 84-3-11	~~1~~	~~1~~	~~McGrath~~	~~2~~	~~Small~~	~~1976/1978/Present level~~
MEKORYUK	3	3	Bethel	2	Small	1976/1978/Present level
~~MIDDLETON ISLAND~~ 81-3-3	~~IRT/MO~~	~~IRT/MO~~	~~Anchorage~~	~~2~~	~~Small~~	~~1976/1978/Present level~~
MINTO	2	2	Fairbanks	2	Small	1976/1978/Present level
MOSER BAY	3	1	Kodiak	2	Small	1976/1978/Present level
MOUNTAIN VILLAGE	13	12	St. Mary's or Bethel	2	Small	Present level

(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
~~NAKEEN~~	~~0~~	~~0~~				~~1976/1978/Present lev~~
NAKNEK	6(F)	6(F)	King Salmon	2	Small	Present level
NAPAKIAK	2	2	Bethel	2	Small	1976/1978/Present lev
NAPASKIAK	2	2	Bethel	2	Small	1976/1978/Present lev
~~NERKA LAKE~~	~~0~~	~~0~~				~~1976/1978/Present lev~~
NEW STUYAHOK	9	9	Dillingham	2	Small	Present level
NEWTOK	2	2	Bethel	2	Small	Statutory minimum and community request
NOATAK	6	6	Kotzebue	2	Small	Present level
NOORVIK	18	15	Kotzebue or Barrow	2	Small	1978/Present level
~~NORTH DUTCH ISLAND~~	~~0~~	~~0~~				~~1976/1978/Present lev~~
~~NORTHEAST CAPE~~	~~0~~	~~0~~				~~1976/1978/Present lev~~
NULATO	10	5	Galena	2	Small	Present level
NUNAPITCHUK	3	3	Bethel	2	Small	1976/1978/Present lev
NYAC	2RT/MO	2RT/MO	Aniak	2	Small	Present level

(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
OLD HARBOR	11 +6(F)	8 +2(F)	Kodiak	2	Small	Present level
OLGA BAY	2	2	Kodiak	3	Small	1978/Present level
OUZINKIE	12	12	Kodiak	2	Small	1976/Present level
PARKS	3	2RT/MO	Kodiak	2	Small	Present level
~~PEDERSON POINT~~	~~0~~	~~0~~				~~1976/1978/Present level~~
PELICAN CITY	6	6	Juneau	2	Small	1978/Present level
PERRYVILLE 1/	2(F)	2(F)	Port Heiden	3	Small	1976/1978/Present level
PETERSBURG	7	7	Juneau or Ketchikan	2	Large	1976/1978/Present level
PILOT POINT	5	5	King Salmon	2	Small	Present level
PILOT STATION	7	7(F)	St. Mary's	2	Small	Present level
PLATINUM	3	3	Bethel	2	Small	1976/1978/Present level
POINT HOPE	9	9	Kotzebue or Barrow	2	Small	Present level
POINT LAY	2(F)	2(F)	Barrow	2	Small	Present state certification service.
PORCUPINE CREEK	1(F)	1(F)	Bettles	2	Small	1976/1978/Present level
PORTAGE CREEK (UGSONOKLE)	2 +6(F)	2 +6(F)	Dillingham	3	Small	Present level

1/ Added to our list of eligible points because it appears on Reeve's schedules.
(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK		SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
	PEAK SEASON	OFF-PEAK SEASON				
PORT BAILEY	6+6(F)	1 +5(F)	Kodiak	2	Small	Present level
PORT HEIDEN	2	2	Anchorage	2	Intermediate	Present level
PORT LIONS	12	10	Kodiak	2	Small	1978/Present level
~~PORT MOLLER~~	~~0~~	~~0~~				~~Present level~~
PORT WILLIAMS	1	1	Kodiak	2	Small	1978/Present level
PRUDHOE BAY (DEADHORSE)	7	7	Fairbanks or Anchorage	2	Large	Maximum guarantee
QUEEN	5(F)	3(F)	Dillingham	2	Small	1976 level
RAMPART	7	6	Ft. Yukon or Fairbanks	2	Small	1976 level
RED DEVIL	3	3	Aniak	2	Small	1976/1978/Present lev
RUBY	2	2	Galena or Fairbanks	2	Small	1976/1978/Present lev
RUSSIAN MISSION	5	5	Bethel	2	Small	1978/Present level
~~SAGINAW BAY~~ 81-5-84	~~1~~	~~1RT/MO~~	~~Petersburg~~	~~2~~	~~Small~~	~~1978/Present level~~
ST. GEORGE	~~2RT/MO~~ 1	~~2RT/MO~~ 1	~~King Salmon~~ Cold Bay	2	Small	Present level
ST. MARY'S	3	2	Anchorage	2	Large/Intermediate	1976/Present level

(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
ST. MICHAEL	3	3	Unalakleet	2	Small	1976/1978/Present level
ST. PAUL ISLAND	3	1	Anchorage	2	Large	1976/1978/Present level
SAND POINT	4	4	Anchorage	2	Intermediate	1978/Present level
SAN JUAN/UGANIK	3 +6(F)	1	Kodiak	2	Small	1978/Present level
SARICHEF/SCOTCH CAP (CAPE SARICHEF)	1	1	Cold Bay	2	Small	1976/1978/Present level
SAVOONGA	12	12	Nome	2	Small	1978/Present level
SCAMMON BAY	4	4	Bethel	2	Small	1978/Present level
SELAWIK	18	15	Kotzebue	2	Small	Present level
SHAGELUK	4 +5(F)	4 +5(F)	Aniak or McGrath	2	Small	Present level
SHAKTOOLIK	5	3	Nome or Unalakleet	2	Small	1976/1978/Present level and community request
SHELDON POINT	2	2	Emmonak	2	Small	1976/1978/Present level
SHEMYA ISLAND	2	2	Anchorage	2	Large	1976/1978/Present level
SHISHMAREF	9	9	Nome	2	Small	Present level
SHUNGNAK	8	8	Kotzebue or Fairbanks	2	Small	Present level

(F) means flagstop.

*SEWARD
ADDED BY ORDER 81-8-45

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK		SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
	PEAK SEASON	OFF-PEAK SEASON				
SITKA	14	10	Juneau	2	Large	Present level
~~SITKINAK~~	~~0~~	~~0~~				~~1976/Present level~~
SKAGWAY	32	10	Juneau	2	Small	Guaranteed sufficient seats to yield a 50% load factor
SKWENTNA	2	1	Anchorage	2	Small	Community request
SLEETMUTE	3	3	Aniak	2	Small	1976/1978/Present level
~~SOLOMON~~ DELETED 84-3-11	~~1(F)~~	~~1(F)~~	~~Nome~~	~~2~~	~~Small~~	~~Community request~~
SOUTH NAKNEK	5 +5(F)	5 +5(F)	King Salmon	2	Small	Present level
STEBBINS	3	3	Unalakleet	2	Small	1976/1978/Present level
STEVENS VILLAGE	7	6	Fairbanks	2	Small	1976 level
STONY RIVER	3	3	Aniak	2	Small	1976/1978/Present level
TAKOTNA	2	2	McGrath	2	Small	1976/1978/Present level
TANANA	12	12	Fairbanks	2	Small	1976/1978 level
TATALINA	4	4	McGrath	2	Small	Present level
TATITLEK	1	~~1(F)~~ 0 81-8-79	Cordova	2	Small	1976/1978/Present level

(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
~~TAYLOR~~	~~0~~	~~0~~	~~—~~	~~—~~	~~—~~	~~1976/1978/Present level~~
TELLER	6	3 +3(F)	Nome	2	Small	Present level
TENAKEE(TENAKEE SPRINGS)	3	3	Juneau	2	Small	1976/1978/Present level
TERROR BAY	1	1	Kodiak	5	Small	1976/Present level
TIKCHIK LAKE	ON-DEMAND		Dillingham	2	Small	1976/1978/Present level
TIN CITY	3	3	Nome	2	Small	1976/1978/Present level
TOGIAK	6	6	Dillingham	2	Small	Present level
TOKSOOK	5	4	Bethel	2	Small	1976 level
TULUKSAK	3	2	Bethel	2	Small	1976 level and community request
TUNTATULIAK	3	3	Bethel	2	Small	1976/1978/Present level
TUNUNAK	5	4	Bethel	2	Small	1976 level
TWIN HILLS	6(F)	6(F)	Dillingham	2	Small	Present level
UGANIK	SEE SAN JUAN					
UGASHIK	2	2	King Salmon	2	Small	Statutory minimum

(F) means flagstop.

ESSENTIAL AIR SERVICE DETERMINATIONS FOR ALASKAN COMMUNITIES

COMMUNITY	AVERAGE DEPARTURES PER WEEK PEAK SEASON	AVERAGE DEPARTURES PER WEEK OFF-PEAK SEASON	SERVICE HUB OR REGIONAL POINT	MAXIMUM NUMBER OF STOPS	AIRCRAFT TYPE	BASIS FOR DETERMINATION
UMIAT	1RT/MO	1RT/MO	Fairbanks	2	Small	Present level
UMNAK ISLAND (NIKOLSKI)	2	2	Cold Bay or Dutch Harbor	2	Small	Statutory minimum
UNALAKLEET	3	3	Anchorage	2	Large	1976 level
UTOPIA	2	2	Galena or Fairbanks	2	Small	1976/1978/Present level
VALDEZ	58	44	Anchorage	2	Small	Guaranteed sufficient seats to yield a 50% load factor
VENETIE	8	3 +6(F)	Ft. Yukon	2	Small	1976 level
WAINWRIGHT	2	2	Barrow	2	Small	1976/1978/Present level
WALES	6	6	Nome	2	Small	1978/Present level
WEST POINT	1	1	Kodiak	4	Small	1976/1978/Present level
WHITE MOUNTAIN	3	3	Nome	2	Small	1976/1978/Present level
WISEMAN	2RT/MO	2RT/MO	Bettles	2	Small	1976/1978/Present level
WOOD RIVER	ON-DEMAND		Dillingham	2	Small	1976/1978/Present level
WRANGELL	7	7	Ketchikan or Juneau	2	Large	1976/1978/Present level
YAKUTAT	7	7	Anchorage or Juneau	2	Large	1976/1978/Present level
ZACHAR BAY	1	1	Kodiak	2	Small	1976/1978/Present level

(F) means flagstop.

GS 4.110: 98-443

Public Law 98-443
98th Congress

An Act

To amend the Federal Aviation Act of 1958 to terminate certain functions of the Civil Aeronautics Board, to transfer certain functions of the Board to the Secretary of Transportation, and for other purposes.

Oct. 4, 1984
[H.R. 5297]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Civil Aeronautics Board Sunset Act of 1984.

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Aeronautics Board Sunset Act of 1984".

49 USC app. 1301 note.

AMENDMENT OF FEDERAL AVIATION ACT OF 1958

SEC. 2. Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.).

49 USC app. 1301 note.

TERMINATION AND TRANSFER OF FUNCTIONS UNDER THE FEDERAL AVIATION ACT OF 1958

SEC. 3. (a) Section 1601(b)(1)(C) is amended by striking out "Justice" and inserting in lieu thereof "Transportation".

49 USC app. 1551.

(b) Section 1601(a)(3) is amended by inserting after "Act" the following: "(other than section 204)".

(c) Section 1601(a) is amended by adding at the end thereof the following:

Effective dates.

"(4) The following provisions of this Act (to the extent such provisions relate to interstate and overseas air transportation) and the authority of the Board with respect to such provisions (to the same extent) shall cease to be in effect on January 1, 1985:

"(A) Sections 401 (l) and (m) and 405 (b), (c), and (d) of this Act (except insofar as such sections apply to the transportation of mail between two points both of which are within the State of Alaska).

49 USC app. 1371, 1375.

"(B) Section 403 of this Act.

49 USC app. 1373.

"(C) Section 404 of this Act (except insofar as such section requires air carriers to provide safe and adequate service).

49 USC app. 1374.

"(5) The following provisions of this Act and the authority of the Board with respect to such provisions shall cease to be in effect on January 1, 1985:

"(A) Sections 407 (b) and (c) of this Act.

49 USC app. 1377.

"(B) Section 410 of this Act.

49 USC app. 1380.

"(C) Section 417 of this Act.

49 USC app. 1387.

"(D) Sections 1002 (d), (e), (g), (h), and (i) of this Act (except insofar as any of such sections relate to foreign air transportation).

49 USC app. 1482.

51-139 O - 84 (473)

PL 98-443 - CAB SUNSET

49 USC app. 1382.

49 USC app. 1384.

"(6) Sections 412 (a) and (b) of this Act (to the extent such sections relate to interstate and overseas air transportation) and section 414 of this Act (to the extent such section relates to orders made under sections 412 (a) and (b) with respect to interstate and overseas air transportation) and the authority of the Secretary of Transportation under such sections (to the same extent) shall cease to be in effect on January 1, 1989.

49 USC app. 1378, 1379, 1384.

"(7) Sections 408 and 409 of this Act and section 414 of this Act (relating to such sections 408 and 409) and the authority of the Secretary of Transportation under such sections (to the same extent) shall cease to be in effect on January 1, 1989.

Alaska, mail transportation. 49 USC app. 1371, 1375.

"(8) Sections 401 (l) and (m) and 405 (b), (c), and (d) of this Act (to the extent such sections apply to the transportation of mail between two points both of which are within the State of Alaska) shall cease to be in effect on January 1, 1989.".

Alaska, mail transportation. 49 USC app. 1551. Effective date.

(d) Section 1601(b)(1)(D) is amended by inserting after "transportation" the following: "(other than for the carriage of mails between any two point. both of which are within the State of Alaska)".

(e) Section 1601(b)(1) is amended by adding at the end thereof the following:

"(E) All authority of the Board under this Act which is not terminated under subsection (a) of this section on or before January 1, 1985, and is not otherwise transferred under this subsection is transferred to the Department of Transportation.".

Alaska, mail transportation. Effective date.

(f) Section 1601(b) is amended by adding at the end thereof the following:

"(3) The authority of the Secretary of Transportation under this Act with respect to the determination of the rates for the carriage of mails between any two points both of which are within the State of Alaska is transferred to the Postal Service and such authority shall be exercised through negotiations or competitive bidding. The transfer of authority under this paragraph shall take effect on January 1, 1989.".

TRANSFERS OF FUNCTIONS UNDER OTHER LAWS

49 USC app. 1553.

SEC. 4. (a) There are hereby transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Civil Aeronautics Board under the following provisions of law:

(1) The International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1159b).

49 USC app. 1159b.

(2) The International Aviation Facilities Act (49 U.S.C. 1151-1160).

49 USC app. 1151 note.

(3) The Animal Welfare Act (7 U.S.C. 2131 et seq.).

(4) Section 11 of the Clayton Act (15 U.S.C. 21).

(5) Sections 108(a)(4), 621(b)(5), 704(a)(5), and 814(b)(5) of the Consumer Credit Protection Act (15 U.S.C. 1607(a)(4), 1681s(b)(5), 1691c(a)(5), and 1692l(b)(5)).

15 USC 1692l.

(6) Section 382 of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6362).

(7) Section 401 of the Federal Election Campaign Act of 1971 (2 U.S.C. 451).

Alaska, mail transportation.

(8) Section 5402 of title 39, United States Code (to the extent such section relates to foreign air transportation and to air transportation between any two points both of which are within the State of Alaska).

(9) Sections 4746 and 9746 of title 10, United States Code.

(10) Section 3 of the Act entitled "An Act to encourage travel in the United States, and for other purposes" (16 U.S.C. 18b).

Effect

(b) The transfer of any authority under subsection (a) of this section shall take effect on January 1, 1985.

Alaska transp Effect

(c) The authority of the Secretary of Transportation under section 5402 of title 39, United States Code, with respect to air transportation between any two points both of which are within the State of Alaska shall cease to be in effect on January 1, 1989.

COLLECTION OF DATA

SEC. 5. (a) Section 329(b)(1) of title 49, United States Code, is amended to read as follows:

"(1) collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.)) including, at a minimum, information on (A) the origin and destination of passengers in interstate and overseas air transportation (as those terms are used in such Act), and (B) the number of passengers traveling by air between any two points in interstate and overseas air transportation; except that in no case shall the Secretary require an air carrier to provide information on the number of passengers or the amount of cargo on a specific flight if the flight and the flight number under which such flight operates are used solely for interstate or overseas air transportation and are not used for providing essential air transportation under section 419 of the Federal Aviation Act of 1958;".

49 US

(b) The amendment made by this section shall take effect on January 1, 1985.

Effect 49 US

REPORTS

49 US note.

SEC. 6. (a) The Secretary of Transportation shall submit a report to the appropriate committees of Congress not later than July 1, 1987, listing (1) transactions submitted to the Secretary for approval under section 408 of the Federal Aviation Act of 1958, (2) interlocking relations submitted to the Secretary for approval under section 409 of such Act, and (3) the types of agreements filed with the Secretary of Transportation under section 412 of such Act, and, with respect to such transactions, interlocking relationships, and agreements, those that have been exempted from the operation of the antitrust laws under section 414 of such Act. The Secretary shall recommend whether the authority under such sections 408, 409, 412, and 414 should be retained or repealed with respect to interstate and overseas air transportation and with respect to foreign air transportation.

49 US 1378.

49 US 1379.

49 US 1382.

49 US 1384.

(b) The Secretary of Transportation and the Postmaster General shall each submit a report to the appropriate committees of Congress not later than July 1, 1987, describing how the Secretary and the Postmaster General have administered their respective authorities to establish rates for the air transportation of mail and setting forth the recommendations of the Secretary and the Postmaster General as to whether the authority to establish rates for the transportation of mail between points within the State of Alaska should continue to be carried out by the Secretary by regulatory ratemaking or by the Postal Service through negotiations or competitive bidding.

INCORPORATION BY REFERENCE

49 USC app. 1381.

SEC. 7. (a) Section 411 of the Federal Aviation Act of 1958 is amended by inserting "(a)" after "SEC. 411." and by adding at the end thereof the following new subsection:

"INCORPORATION BY REFERENCE

"(b) Any air carrier may incorporate by reference in any ticket or other written instrument any of the terms of the contract of carriage in interstate and overseas air transportation, to the extent such incorporation by reference is in accordance with regulations issued by the Board.".

(b) Section 411 of the Federal Aviation Act of 1958 is amended by inserting before subsection (a) (as designated by subsection (a) of this section) the following subsection heading:

"INVESTIGATIONS".

(c) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the center heading

"TITLE IV—AIR CARRIER ECONOMIC REGULATION"

is amended by striking out

"Sec. 411. Methods of competition.".

and inserting in lieu thereof

"Sec. 411. Methods of competition.
"(a) Investigations.
"(b) Incorporation by reference.".

REFERENCES TO CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

49 USC app. 1371 note.

SEC. 8. Any reference in any law to a certificate of public convenience and necessity, or to a certificate of convenience and necessity, issued by the Civil Aeronautics Board shall be deemed to refer to a certificate issued under section 401 or 418 of the Federal Aviation Act of 1958.

MISCELLANEOUS AMENDMENTS

49 USC app. 1371, 1388.

49 USC app. 1301.

SEC. 9. (a)(1) Section 101(11) is amended to read as follows:

"(11) 'All-cargo air service' means the carriage by aircraft in interstate or overseas air transportation of only property or mail, or both.".

49 USC app. 1388.

(2) Section 418(b)(3) is repealed.

49 USC app. 1537.

(b) Section 1307(a) is amended by striking out ", after consultation with the Civil Aeronautics Board,".

49 USC app. 1159a.

(c) Section 11 of the International Aviation Facilities Act (49 U.S.C. 1159a) is amended in the second sentence by striking out "and the Civil Aeronautics Board" and by striking out "in collaboration with the Civil Aeronautics Board" and inserting in lieu thereof "in collaboration with the Secretary of Transportation".

49 USC app. 1159b.

(d) Section 2 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1159b) is amended by—

(1) striking out "the Civil Aeronautics Board," in subsection (a);

(2) striking out "Civil Aeronautics Board" and "Board" each time they appear in subsection (b) and the first sentence of subsection (d) and inserting in lieu thereof "Secretary of Transportation" and "Secretary", respectively;

(3) striking out "and the Department of Transportation" in subsection (b)(2); and

(4) striking out the last sentence in subsection (d) and inserting in lieu thereof the following: "The Secretaries of State and Treasury shall furnish to the Secretary of Transportation such information as may be necessary to prepare the report required by this subsection.".

(e) Section 5314 of title 5, United States Code, is amended by striking out "Chairman, Civil Aeronautics Board.". Section 5315 of title 5, United States Code, is amended by striking out "Members, Civil Aeronautics Board.".

(f) Section 3726(b)(1) of title 31, United States Code, is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation with respect to foreign air transportation (as defined in the Federal Aviation Act of 1958)".

49 US note.

(g)(1) Sections 3401 (b) and (c) of title 39, United States Code, are each amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(2) Section 5005(b)(3) of title 39, United States Code, is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation if for the carriage of mail in foreign air transportation (as defined in section 101 of the Federal Aviation Act of 1958)".

49 US 1301.

(3) Section 5401(b) of title 39, United States Code, is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(4) Section 5402 of title 39, United States Code, is amended—

(A) by striking out "Civil Aeronautics Board" each place it appears and inserting in lieu thereof "Secretary of Transportation";

(B) in the first sentence of subsection (a), by inserting "in foreign air transportation" after "points";

(C) in the second sentence of subsection (a), by striking out "10 percent of the domestic mail transported under any such contract or";

(D) in the first sentence of subsection (b), by inserting "in foreign air transportation" after "points";

(E) in the first sentence of subsection (c), by inserting "in foreign air transportation" after "points"; and

(F) by adding at the end thereof the following new subsections:

"(d) The Postal Service may contract with any air carrier for the transportation of mail by aircraft in interstate and overseas air transportation either through negotiations or competitive bidding.

"(e) For purposes of this section, the terms 'air carrier', 'interstate air transportation', 'overseas air transportation', and 'foreign air transportation' have the meanings given such terms in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301).

"(f) During the period beginning January 1, 1985, and ending January 1, 1989, the authority of the Secretary of Transportation and the Postal Service under subsections (a), (b), and (c) of this section shall also apply, and the authority of the Postal Service under subsection (d) shall not apply, to the transportation of mail by

Effect.

aircraft between any two points both of which are within the State of Alaska and between which the air carrier is authorized by the Secretary to engage in the transportation of mail.".

(h) Section 3502(10) of title 44, United States Code, is amended by striking out "the Civil Aeronautics Board,".

(i) Section 15(a) of the Animal Welfare Act (7 U.S.C. 2145(a)) is amended by striking out "the Civil Aeronautics Board" and inserting in lieu thereof "the Secretary of Transportation".

(j) Section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) is amended by striking out "the Civil Aeronautics Board".

(k) Sections 4746 and 9746 of title 10, United States Code, are each amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

(l) Section 7 of the Clayton Act (15 U.S.C. 18) is amended in the final paragraph by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation" and by striking out "Commission, Secretary, or Board" and inserting in lieu thereof "Commission or Secretary".

(m) Section 11 of the Clayton Act (15 U.S.C. 21) is amended—

(1) in subsection (a), by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation" and by striking out "Civil Aeronautics Act of 1938" and inserting in lieu thereof "Federal Aviation Act of 1958";

(2) in subsection (b), by striking out "Commission or Board" each place it appears and inserting in lieu thereof "Commission, Board, or Secretary"; and

(3) by striking out "commission or board" each place it appears in such section and inserting in lieu thereof "commission, board, or Secretary".

(n) The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation" each place it appears in section 108(a)(4) (15 U.S.C. 1607(a)(4)), section 621(b)(5) (15 U.S.C. 1681s(b)(5)), section 704(a)(5) (15 U.S.C. 1691c(a)(5)), and section 814(b)(5) (15 U.S.C. 1692l(b)(5)).

(o) Section 3 of the Act entitled "An Act to encourage travel in the United States, and for other purposes" (16 U.S.C. 18b; 54 Stat. 773), is amended by striking out "the Civil Aeronautics Authority,".

5 USC 47. (p) Section 47(a)(7)(C) of the Internal Revenue Code of 1954 is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

5 USC 7701. (q) Section 7701(a)(33)(E) of the Internal Revenue Code of 1954 is amended by striking out "Civil Aeronautics Board" and inserting in lieu thereof "Secretary of Transportation".

9 USC app. 389. (r) Section 419(c)(1) is amended by striking out "416(b)(3)" and inserting in lieu thereof "416(b)(4)".

5 USC app. 382. (s) Section 412(c)(2) is amended by striking out "subsection (c) of this section" and inserting in lieu thereof "subsection (a) of this section".

9 USC app. 377. (t) Section 407(e) is amended by striking out the first sentence and inserting in lieu thereof the following: "The Board shall have access to all lands, buildings, and equipment of any air carrier or foreign air carrier when necessary for a determination under section 401, 402, 418, or 419 of this title that such carrier is fit, willing, and able. The Board shall at all times have access to all accounts, records, and memorandums, including all documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by air carriers, foreign air carriers, or ticket agents. The Board may employ special agents or auditors, who shall have authority under the orders of the Board to inspect and examine lands, buildings, equipment, accounts, records, and memorandums to which the Board has access under this subsection.".

49 USC app. 1371, 1372, 1388, 1389.

(u) Section 105(a)(1) is amended by striking out "interstate air transportation" and inserting in lieu thereof "air transportation".

49 USC app. 1305.

(v) The amendments made by this section shall take effect on January 1, 1985.

Effective date 5 USC 5314 n

TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL

SEC. 10. (a) The personnel (including members of the Senior Executive Service) employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with, any function transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act, subject to section 1531 of title 31, United States Code, shall be transferred to the head of the agency to which such function is transferred for appropriate allocation. Personnel employed in connection with functions so transferred, or transferred in accordance with any other lawful authority, shall be transferred in accordance with any applicable laws and regulations relating to transfer of functions. Unexpended funds transferred pursuant to this subsection shall only be used for the purpose for which the funds were originally authorized and appropriated.

49 USC app. 1554.

49 USC app. 1551.

(b) In order to facilitate the transfers made by section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act, the Director of the Office of Management and Budget is authorized and directed, in consultation with the Civil Aeronautics Board and the heads of the agencies to which functions are so transferred, to make such determinations as may be necessary with regard to the functions so transferred, and to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with, such functions, as may be necessary to resolve disputes between the Civil Aeronautics Board and the agencies to which functions are transferred by section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act.

(c) The Chairman of the Civil Aeronautics Board and the Secretary of Transportation shall, beginning as soon as practicable after the date of enactment of this Act, jointly plan for the orderly transfer of functions and personnel pursuant to section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act.

EFFECT ON PERSONNEL

SEC. 11. (a) Employees covered by the merit pay system under chapter 54 of title 5, United States Code, who are transferred under section 10 of this Act to another agency shall have their rate of basic pay adjusted in accordance with section 5402 of such title. With respect to the evaluation period during which such an employee is transferred, merit pay determinations for that employee shall be

49 USC app. 1555. 5 USC 5401 et seq. 5 USC 5402.

5 USC 5402.

based on the factors in section 5402(b)(2) of such title as appraised in performance appraisals administered by the Civil Aeronautics Board in accordance with chapter 43 of title 5, United States Code, in addition to those administered by the agency to which the employee is transferred.

5 USC 3301 *et seq.*

(b) With the consent of the Civil Aeronautics Board, the head of each agency to which functions are transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act is authorized to use the services of such officers, employees, and other personnel of the Board for such period of time as may reasonably be needed to facilitate the orderly transfer of such functions.

49 USC app. 1551.

SAVINGS PROVISIONS

49 USC app. 1556.

SEC. 12. (a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any agency or official thereof, or by a court of competent jurisdiction, in the performance of any function which is transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act from the Civil Aeronautics Board to another agency, and

(2) which are in effect on December 31, 1984,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the head of the agency to which such function is transferred, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) The transfers of functions made by section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending at the time such transfers take effect before the Civil Aeronautics Board; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if such sections 1601(b) and 4 had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if such sections 1601(b) and 4 had not been enacted.

(c) Except as provided in subsection (e)—

(1) the transfer of any function under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act shall not affect any suit relating to such function which is commenced prior to the date the transfer takes effect, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if section 1601(b) of the Federal Aviation Act of 1958 and section 4 of this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Civil Aeronautics Board shall abate by reason of the transfer of any function under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act. No cause of action by or against the Civil Aeronautics Board, or by or against any officer thereof in his official capacity shall abate by reason of the transfer of any function under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act.

49 USC app. 1551.

(e) If, before January 1, 1985, the Civil Aeronautics Board, or officer thereof in his official capacity, is a party to a suit relating to a function transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act, then such suit shall be continued with the head of the Federal agency to which the function is transferred.

(f) With respect to any function transferred to another agency by section 1601(b) of the Federal Aviation Act of 1958 or by section 4 of this Act and exercised after the effective date of such transfer, reference in any Federal law (other than title XVI of the Federal Aviation Act of 1958) to the Civil Aeronautics Board or the Board (insofar as such term refers to the Civil Aeronautics Board), or to any officer or office of the Civil Aeronautics Board, shall be deemed to refer to that agency, or other official or component of the agency, in which such function vests.

49 USC app. 1551.

(g) In the exercise of any function transferred under section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act, the head of the agency to which such function is transferred shall have the same authority as that vested in the Civil Aeronautics Board with respect to such function, immediately preceding its transfer, and actions of the head of such agency in exercising such function shall have the same force and effect as when exercised by the Civil Aeronautics Board.

(h) In exercising any function transferred by section 1601(b) of the Federal Aviation Act of 1958 or section 4 of this Act, the head of the agency to which such function is transferred shall give full consideration to the need for operational continuity of the function transferred.

DEFINITIONS

49 USC app. 1557.

SEC. 13. For purposes of this Act—

(1) the term "agency" has the same meaning such term has in section 551(1) of title 5, United States Code; and

(2) the term "function" means a function, power, or duty.

ACCESS FOR HANDICAPPED PERSONS

49 USC app. 1301.

SEC. 14. Section 104 is amended by adding at the end thereof the following new sentence: "In the furtherance of such right, the Board or the Secretary, as the case may be, shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973, prior to issuing or amending any order, rule, regulation, or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped persons.".

29 USC 792.

STUDY OF TRANSPORTATION TO AND FROM WASHINGTON DULLES AIRPORT

49 USC note.

SEC. 15. (a) The Secretary of Transportation shall study the feasibility of constructing a rail rapid transit line between the West Falls Church, Virginia, station of the Washington, District of Columbia

metrorail system and Dulles International Airport in Virginia. The study shall include, but need not be limited to, a study of the feasibility of heavy rail, light rail, monorail, magnetic levitation systems, and any other appropriate transportation systems. The Secretary shall study the feasibility of each such system with and without intermediate stops.

(b) The Secretary shall complete the study required by subsection (a) and transmit the results thereof to Congress not later than one year after the date of enactment of this Act.

AIR SERVICE IN THE STATE OF ALASKA

pp. 1389 SEC. 16. (a)(1) Notwithstanding any other provision of law, with respect to air transportation to each of the points in Alaska listed in paragraph (4), essential air transportation for purposes of section pp. 419 of the Federal Aviation Act of 1958 shall neither be specified at a level of service nor operated with aircraft of lesser seating and cargo capacity than provided for in CAB Order 80-1-167 and its Appendices unless otherwise specified under an agreement between the Department of Transportation and the State of Alaska, after date. consultation with the community affected. This paragraph shall cease to be in effect on January 1, 1987.

(2) Notwithstanding any other provision of law, the total amount of compensation which may be paid under section 419 of the Federal Aviation Act of 1958 with respect to the points in Alaska listed in paragraph (4) shall not exceed $3,572,778 for each of the fiscal years 1985 and 1986 and shall not exceed $893,195 for service provided during the period beginning October 1, 1986, and ending at the close of December 31, 1986.

(3) The Secretary of Transportation shall study the feasibility of providing essential air transportation to each of the points in Alaska listed in paragraph (4) with aircraft having a smaller capacity than that required by paragraph (1), the level of compensation which would be required under section 419 of the Federal Aviation Act of 1958 for such transportation, and the impact of using such aircraft on the air transportation system in Alaska. The Secretary shall complete such study and submit a report of the results of such study to Congress not later than January 1, 1986.

(4) The points in Alaska referred to in paragraphs (1), (2), and (3) are Cordova, Yakutak, Gustavus, Petersburg, and Wrangell.

(b) Notwithstanding any other provision of law, no part of the order of the Civil Aeronautics Board in CAB docket number 38961 (CAB Order 84-6-77) shall enter into effect until after December 31, 1984. Effective date.

Approved October 4, 1984.

LEGISLATIVE HISTORY—H.R. 5297:

HOUSE REPORTS: No. 98-793 (Comm. on Public Works and Transportation) and No. 98-1025 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 130 (1984):
June 5, considered and passed House.
Aug. 8, considered and passed Senate, amended.
Sept. 19, House agreed to conference report.

98TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
98-1025

CIVIL AERONAUTICS BOARD SUNSET ACT OF 1984

SEPTEMBER 14, 1984.—Ordered to be printed

Mr. MINETA, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 5297]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5297) to amend the Federal Aviation Act of 1958 to terminate certain functions of the Civil Aeronautics Board, to transfer certain functions of the Board to the Secretary of Transportation, 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 House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Aeronautics Board Sunset Act of 1984".

AMENDMENT OF FEDERAL AVIATION ACT OF 1958

SEC. 2. Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Aviation Act of 1958 (49 U.S.C. 1301 et seq.).

31-006 O

CONFERENCE REPORT - CAB SUNSET

Falls Church, Virginia, station of the Washington, D.C. metrorail system and Dulles International Airport in Virginia. The study shall include, but need not be limited to, a study of the feasibility of heavy rail, light rail, monorail, magnetic levitation systems, and any other appropriate transportation systems. The Secretary shall study the feasibility of each such system with and without intermediate stops.

(b) The Secretary shall complete the study required by subsection (a) and transmit the results thereof to Congress not later than one year after the date of enactment of this Act.

AIR SERVICE IN THE STATE OF ALASKA

SEC. 16. (a)(1) Notwithstanding any other provision of law, with respect to air transportation to each of the points in Alaska listed in paragraph (4), essential air transportation for purposes of section 419 of the Federal Aviation Act of 1958 shall neither be specified at a level of service nor operated with aircraft of lesser seating and cargo capacity than provided for in CAB Order 80-1-167 and its Appendices unless otherwise specified under an agreement between the Department of Transportation and the State of Alaska, after consultation with the community affected. This paragraph shall cease to be in effect on January 1, 1987.

(2) Notwithstanding any other provision of law, the total amount of compensation which may be paid under section 419 of the Federal Aviation Act of 1958 with respect to the points in Alaska listed in paragraph (4) shall not exceed $3,572,778 for each of the fiscal years 1985 and 1986 and shall not exceed $893,195 for service provided during the period beginning October 1, 1986, and ending at the close of December 31, 1986.

(3) The Secretary of Transportation shall study the feasibility of providing essential air transportation to each of the points in Alaska listed in paragraph (4) with aircraft having a smaller capacity than that required by paragraph (1), the level of compensation which would be required under section 419 of the Federal Aviation Act of 1958 for such transportation, and the impact of using such aircraft on the air transportation system in Alaska. The Secretary shall complete such study and submit a report of the results of such study to Congress not later than January 1, 1986.

(4) The points in Alaska referred to in paragraphs (1), (2), and (3) are Cordova, Yakutak, Gustavus, Petersberg, and Wrangell.

(b) Notwithstanding any other provision of law, no part of the order of the Civil Aeronautics Board in CAB docket number 38961 (CAB Order 84-6-77) shall enter into effect until after December 31, 1984.

And the Senate agree to the same.

NORMAN Y. MINETA,
GLENN M. ANDERSON,
ROBERT A. ROE,
GENE SNYDER,
JOHN PAUL HAMMERSCHMIDT,
Managers on the Part of the House.

cargo air service between any pair of points both of which are within the State of Alaska or the State of Hawaii.

(4) If any all-cargo air service authorized by a certificate issued under this subsection is not performed to the minimum extent prescribed by the Board, it may by order, entered after notice and opportunity for a hearing, direct that such certificate shall, thereafter, cease to be effective to the extent of such service.

EXEMPTIONS

(c) Any applicant who is issued a certificate under this section shall, with respect to any all-cargo air service provided in accordance with such certificate, be exempt from the requirements of section 401(a) of this Act, and any other section of this Act which the Board by rule determines appropriate, and any rule, regulation, or procedure issued pursuant to any such section.

AIR CARRIER STATUS

(d) Any applicant who is issued a certificate under this section shall be an air carrier for the purposes of this Act, except to the extent such carrier is exempt from any requirement of the Act pursuant to this section.

SMALL COMMUNITY AIR SERVICE

GUARANTEED ESSENTIAL AIR TRANSPORTATION

SEC. 419. (a)(1) For purposes of this subsection, the term "eligible point" means any point in the United States to which, on the date of enactment of this section, any air carrier—

(A) is providing service pursuant to a certificate issued to such carrier under section 401 of this title; or

(B) is authorized pursuant to such certificate to provide such service, but such service is suspended on such date of enactment.

(2)(A) With respect to each eligible point which on the date of enactment of this section is served by not more than one air carrier holding a certificate issued under section 401 of this title, not later than the last day of the one-year period beginning on such date of enactment, the Board, after considering the views of any interested community and the State agency of the State in which such community is located, shall determine what is essential air transportation for such point.

(B) With respect to any eligible point which on the date of enactment of this section is served by more than one air carrier holding a certificate issued under section 401 of this title and which thereafter receives service by not more than one such air carrier, not later than the last day of the six-month period beginning on the date on which the Board receives notice that service to such point will be provided by not more than one such air carrier, the Board, after considering the views of any interested community and the State agency of the State in which such community is located, shall determine what is essential air transportation to such point.

(C) The Board shall periodically review the determination of what is essential air transportation to each eligible point, and may,

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based upon such review and consultations with any interested community and the State agency of the State in which such community is located, make appropriate adjustments as to what is essential air transportation to such point.

(3) No air carrier shall terminate, suspend, or reduce air transportation to any eligible point below the level of essential air transportation established by the Board under paragraph (2) unless such air carrier—

(A) if such air carrier—

(i) holds a certificate issued under section 401 of this title, or

(ii) does not hold such a certificate, but is receiving compensation pursuant to paragraph (5) of this subsection for service to such eligible point,

has given the Board, the appropriate State agency or agencies, and the communities affected at least ninety days notice prior to such termination, suspension, or reduction; and

(B) if such air carrier does not hold such a certificate and is not receiving compensation pursuant to paragraph (5) of this subsection for service to such eligible point, has given the Board, the appropriate State agency or agencies, and the communities affected at least thirty days notice prior to such termination, suspension, or reduction.

(4) Whenever the Board determines that essential air transportation will not be provided to any eligible point without compensation—

(A) the Board shall provide notice that applications may be submitted by any air carrier which is willing to provide essential air transportation to such point for compensation under this subsection. In selecting an applicant to provide essential air transportation to such point for compensation the Board shall, among other factors, specifically consider—

(i) the desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the communities involved;

(ii) the experience of the applicant in providing scheduled air service in the vicinity of the communities for which essential air transportation is proposed to be provided; and

(iii) notwithstanding the provisions of clause (ii), with respect to any eligible point in the State of Alaska, the experience of an applicant in providing scheduled air service, or significant patterns of nonscheduled air service pursuant to an exemption granted pursuant to section 416 of this title, in Alaska; and

(B) the Board shall establish, in accordance with the guidelines promulgated under subsection (d) of this section, a rate of compensation to be paid for providing such essential air transportation.

(5) The Board shall make payments of compensation under this subsection at times and in a manner determined by the Board to be appropriate. The Board shall continue to pay compensation to any air carrier to provide essential air transportation to any eligible

point only for so long as the Board determines it is necessary in order to maintain essential air transportation to such eligible point.

(6) Notwithstanding section 401(j) of this title, if an air carrier has provided notice to the Board under paragraph (3) of such air carrier's intention to suspend, terminate, or reduce service to any eligible point below the level of essential air transportation to such point, and if at the conclusion of the applicable period of notice the Board has not been able to find another air carrier to provide essential air transportation to such point, the Board shall require the carrier which provided such notice to continue such service to such point for an additional 30-day period, or until another air carrier has begun to provide essential air transportation to such point, whichever first occurs. If at the end of such 30-day period the Board determines that no other air carrier can be secured to provide essential air transportation to such eligible point on a continuing basis, either with or without compensation, then the Board shall extend such requirement for such additional 30-day periods (making the same determination at the end of each such period) as may be necessary to continue air transportation to such eligible point until an air carrier can be secured to provide essential air transportation to such eligible point on a continuing basis.

(7)(A) If any air carrier (i) which is providing air transportation to any eligible point, and (ii) which is receiving compensation under this subsection or under section 406 of this title for providing such air transportation to such point, is required by the Board to continue service to such point beyond the date on which such air carrier would, but for paragraph (6) of this subsection, be able to suspend, terminate, or reduce service to such point below the level of essential air transportation to such point, then after such date such air carrier shall continue to receive such compensation until the Board finds another air carrier to provide essential air transportation to such point.

(B) If the Board requires an air carrier which holds a certificate issued under section 401 of this title and which is providing air transportation to any eligible point without compensation pursuant to paragraph (5) of this subsection or section 406 of this title to continue to provide essential air transportation to such point beyond the 90-day notice period after which, but for paragraph (6) of this subsection, such air carrier would be able to suspend, terminate, or reduce service to such point below essential air transportation for such point, then the Board shall compensate such air carrier for any losses that the air carrier incurs in complying with this subparagraph after the last day of such 90-day period, except that the Board shall not make any payments under this subparagraph, to any truck air carrier for service to such point after the last day of the one-year period beginning on the date on which any payment is made to such air carrier under this subparagraph for service to such point.

(C) If the Board requires an air carrier which does not hold a certificate issued under section 401 of this title, but which is providing air transportation to any eligible point without compensation pursuant to paragraph (5) of this subsection or section 406 of this title to continue to provide essential air transportation to such point

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beyond the 30-day notice period after which, but for paragraph (6) of this subsection, such air carrier would be able to suspend, terminate, or reduce service to such point below essential air transportation for such point, then the Board shall compensate such air carrier for any losses that such air carrier incurs in complying with this paragraph after the last day of such 30-day period.

(9) During any period for which the Board requires any air carrier to continue providing air transportation to an eligible point which such air carrier has proposed to terminate, reduce, or suspend, the Board shall continue to make every effort to secure an air carrier to provide at least essential air transportation to such eligible point, on a continuing basis.

(10) Unless the Board has determined what is essential air transportation for any eligible point pursuant to paragraph (2) of this subsection, the Board shall, upon petition of any appropriate representative of such point, prohibit any termination, suspension, or reduction of air transportation which reasonably appears to deprive such point of essential air transportation, until the Board has completed such determination.

(11)(A) After January 1, 1983, any air carrier may file an application with the Board seeking to have any compensation provided under section 406 of this title to the air carrier then serving an eligible point terminated in order to allow the applicant air carrier to provide air transportation to that eligible point for compensation under this section. The Board shall grant such application, after notice and a hearing if requested by the air carrier receiving subsidy under section 406, taking into consideration the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (5) of this subsection, if the applicant can show that termination of the compensation being paid under section 406, and that the provision of service by such applicant with compensation under this section, will result in a substantial—

(i) improvement in the air service being provided such eligible point; and

(ii) decrease in the amount of compensation that will be required to continue essential air transportation to such eligible point.

(B) After January 1, 1983, any air carrier may file an application with the Board seeking to have the compensation provided under this section to the air carrier then serving an eligible point, and which has been serving such eligible point for at least two years preceding the date on which such application is filed, terminated in order to allow the applicant air carrier to provide essential air transportation to such eligible point for compensation under this section. The Board shall grant such application, after notice and a hearing if requested by an air carrier receiving compensation under this section, taking into consideration the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (4) of this subsection, if the applicant air carrier can show that termination of the compensation being provided to the air carrier then serving such eligible point, and the provision of essential air transportation for compensation under this section by the applicant air carrier will result in a substantial—

(i) improvement in the air transportation being provided such eligible point with no increase in the amount of compensation then being paid; or

(ii) decrease in the amount of compensation that will be required to continue essential air transportation to that eligible point.

(C) In disposing of each application filed under this subsection, the Board shall, in addition to considering the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (4), solicit and give great weight to the opinions of the communities affected by the proposed replacement of an air carrier under this subsection.

OTHER AIR SERVICE

(b)(1) For purposes of this subsection, the term "eligible point" means—

(A) any point in the United States which has been deleted from a certificate issued under section 401 of this title between July 1, 1968, and the date of enactment of this section, both dates inclusive, and which the Board designates pursuant to paragraph 2 of this subsection; and

(B) any other point in the State of Alaska or Hawaii designated by the Board under paragraph 2 of this subsection.

(2)(A) Not later than January 1, 1980, after considering the views of State agencies and other interested parties, the Board shall, by rule, establish objective criteria for designating points as eligible points. In establishing or modifying such criteria, the Board shall consider, among other factors, the level of traffic generated by the point concerned, its future traffic generating potential, the cost to the Federal Government of providing essential air transportation to such point, the alternative means of transportation available to the residents of such point for access to the national transportation system and its principal communities of interest, and the degree of isolation of such point from the national air transportation system. The Board may, from time to time, by rule, modify the criteria established by it under this subparagraph.

(B) Not later than January 1, 1980, the Board shall begin to review each point described in paragraph (1)(A) of this subsection to determine whether such point shall be designated as an eligible point under the criteria established under subparagraph (B) of this paragraph. The review and designation of each such point shall be completed before January 1, 1982.

(C) On or after January 1, 1982, the Board, upon application by any interested party, may designate any point an eligible point under the criteria established under subparagraph (B) of this paragraph (i) if such point is in the State of Alaska or the State of Hawaii, and (ii) if such designation would not increase the total number of points receiving a subsidy under this section and section 406 of this title above the total number of points receiving a subsidy under such section 406 on July 1, 1968.

(3) The designation of any point by the Board under paragraph (2) of this subsection as an eligible point may be withdrawn if the point no longer meets the criteria for designation as an eligible point.

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(4)(A) With respect to any point which the Board designates as an eligible point pursuant to paragraph (2) of this subsection, not later than the last day of the six-month period beginning on the date on which the Board makes such designation, the Board, after considering the views of any interested community and the State agency of the State in which such community is located, shall determine what is essential air transportation to such point.

(B) The Board shall periodically review the determination of what is essential air transportation to each eligible point, and may, based upon such review and consultations with any interested community and any State agency of the State in which such community is located, make appropriate adjustments as to what is essential air transportation to such point.

(5) Whenever the Board determines that essential air transportation will not be provided to any eligible point without compensation—

(A) the Board shall provide notice that applications may be submitted by any air carrier which is willing to provide essential air transportation to such point for compensation under this subsection. In selecting an applicant to provide essential air transportation to such point for compensaton, the Board shall, among other factors, specifically consider—

(i) the desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the communities involved;

(ii) the experience of the applicant in providing scheduled air service in the vicinity of the communities for which essential air transportation is proposed to be provided; and

(iii) notwithstanding the provisions of clause (ii), with respect to any eligible point in the State of Alaska, the experience of an applicant in providing scheduled air service, or significant patterns of nonscheduled air service pursuant to an exemption granted pursuant to section 416 of this title, in Alaska; and

(B) the Board shall establish, in accordance with the guidelines promulgated under subsection (d) of this section, a rate of compensation to be paid for providing such essential air transportation.

(6) The Board shall make payments of compensation under this subsection at times and in a manner determined by the Board to be appropriate. The Board shall continue to pay compensation to any air carrier to provide essential air transportation to any eligible point only for so long as the Board determines it is necessary in order to maintain essential air transportation to such eligible point.

(7) Prior to terminating, suspending, or reducing essential air transportation to any eligible point, an air carrier—

(A) if such air carrier—

(i) holds a certificate issued under section 401 of this title, or

(ii) does not hold such a certificate, but is receiving compensation pursuant to paragraph (6) of this subsection for

service to such eligible point, shall give the Board, the appropriate State agency or agencies, and the communities affected at least ninety days notice prior to such termination, suspension, or reduction; and

(B) if such air carrier does not hold such a certificate and is not receiving compensation pursuant to paragraph (6) of this subsection for service to such eligible point, shall give the Board, the appropriate State agency or agencies, and the communities affected such notice (not to exceed 30 days), as the Board shall by regulation prescribe.

(8)(A) After January 1, 1983, any air carrier may file an application with the Board seeking to have the compensation provided under this subsection to the air carrier then serving an eligible point, and which has been serving such eligible point for at least 2 years preceding the date on which such application is filed, terminated in order to allow the applicant air carrier to provide essential air transportation to such eligible point for compensation under this subsection. The Board shall grant such application, after notice and a hearing if requested by an air carrier receiving compensation under this section, taking into consideration the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (5) of this subsection, if the applicant can show that termination of the compensation being provided to the air carrier then serving such eligible point, and that the provision of essential air transportation for compensation under this subsection by the applicant, will result in a substantial—

(i) improvement in the air transportation being provided such eligible point with no increase in the amount of compensation then being paid; or

(ii) decrease in the amount of compensation that will be required to continue essential air transportation to that eligible point.

(B) In disposing of each application filed under this paragraph, the Board shall, in addition to considering the objectives specified in subparagraphs (A) (i) and (ii) of paragraph (5), solicit and give great weight to the opinions of the communities affected by the proposed replacement of an air carrier under this subsection.

LEVEL OF SAFETY

(c)(1) For purposes of this subsection the term "commuter air carrier" means an air carrier exempt from any requirement of this Act under section 416(b)(3) of this title.

(2) Notwithstanding section 416(b) of this title, the Board shall not provide any compensation under this section to any commuter air carrier to provide service to any eligible point, and the Board shall prohibit any commuter air carrier from providing service to any eligible point, unless the Board determines that such commuter air carrier—

(A) is fit, willing, and able to perform such service; and

(B) that all aircraft which will be used to perform such service and all operations relating to such service will conform to the safety standards established by the Administrator under paragraph (3) of the subsection.

(3) Not later than the one-hundred-eightieth day after the date of enactment of the paragraph, the Administrator, by regulation, shall establish safety standards (A) for aircraft being used by commuter air carriers to provide any service described in paragraph (2) of this subsection, and (B) for all operations relating to such service. Such saftey standards shall become effective not later than the last day of the eighteenth month which begins after such date of enactment and shall impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers which provide service pursuant to certificates issued under section 401 of this title.

GUIDELINES FOR COMPENSATION

(d) The Board shall, by rule, establish guidelines to be used by the Board in computing the fair and reasonable amount of compensation required to insure the continuation of essential air transportation to any eligible point. Such guidelines shall include expense elements based upon representative costs of air carriers providing scheduled air transportation of persons, property, and mail, using aircraft of the type determined by the Board to be appropriate for providing essential air transportation to the eligible point.

INSURANCE

(e) No air carrier shall receive any compensation under this section unless such air carrier complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance or plans for self-insurance in the amount prescribed by the Board which are conditioned to pay, within the amount of such insurance, amounts for which such air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the operation or maintenance of aircraft.

DEFINITION

(f) For purposes of this section, the term "essential air transportation" means scheduled air transportation of persons to a point provided under such criteria as the Board determines satisfies the needs of the community concerned for air transportation to one or more communities of interest and insures access to the Nation's air transportation system, at rates, fares, and charges which are not unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, and—

(1) with respect to air transportation to any point (other than in the State of Alaska), in no case shall essential air transportation be specified as fewer than two daily round trips, 5 days per week, or the level of service provided by air carriers to such point based on the schedules of such air carriers in effect for calendar year 1977, whichever is less; and

(2) with respect to air transportation to any point in Alaska, essential air transportation shall not be specified at a level of

service less than that which existed for such point during calendar year 1976, or two round trips per week, whichever is greater, unless otherwise specified under an agreement between the Board and the State agency of the State of Alaska, after consultation with the community affected.

DURATION OF PROGRAM

(g) This section shall cease to be in effect after the last day of the ten-year period which begins on the date of enactment of this section.

TITLE V—NATIONALITY AND OWNERSHIP OF AIRCRAFT

REGISTRATION OF AIRCRAFT NATIONALITY

REGISTRATION REQUIRED

SEC. 501. (a) It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in section 1108 of this Act) to operate or navigate within the United States any aircraft not eligible for registration: *Provided,* That aircraft of the national-defense forces of the United States may be operated and navigated without being so registered if such aircraft are identified, by the agency having jurisdiction over them, in a manner satisfactory to the Administrator. The Administrator may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership thereof as the Administrator may prescribe.

ELIGIBILITY FOR REGISTRATION

(b) An aircraft shall be eligible for registration if, but only if—

(1)(A) it is—

(i) owned by a citizen of the United States or by an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States; or

(ii) owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof so long as such aircraft is based and primarily used in the United States; and

(B) it is not registered under the laws of any foreign country; or

(2) it is an aircraft of the Federal Government, or of a State, territory, or possession of the United States or the District of Columbia or a political subdivision thereof.

For purposes of this subsection, the Secretary of Transportation shall, by regulation, define the term "based and primarily used in the United States".

Times 1-3-85

Rural Alaskans may lose vital air service

by Curtis Swaney
Times Business Writer

Atka and St. George residents, who have no roads and no regularly-scheduled barge or passenger marine service, will have difficulty getting off their islands if the Reagan Administration kills a federal subsidy program that now guarantees air transportation to remote and rural areas throughout the country.

The plan for ending the Essential Air Service Program will be included in the administration's proposed fiscal 1986 budget for the Department of Transportation.

If the program is halted, government and industry officials estimate that 100 of the 135 communities nationwide now being served by subsidized carriers will lose all air transportation. Of the 230 cities in Alaska eligible for the subsidy, only 37 are now receiving it.

Residents of Atka, located near the end of the Aleutian Chain, said they would be isolated without subsidized air carrier service. The community of 100 people has no barge service or privately-owned aircraft to replace the loss of its subsidized carrier — Peninsula Airways — if Congress decides to sever subsidies.

Orin Seybert, owner of Peninsula Airways, said it would be impossible to serve Atka without federal subsidies.

To serve Atka, Seybert stations a plane and pilot at Adak, about 100 miles east of Atka. The air carrier, which receives $18,000 a month in federal subsidies to fly from Adak to Atka two weeks out of every month.

"Without subsidies, a person could pay as much as $2,500 to fly from Atka to Adak," Seybert said. In Adak, passengers board Reeve Aleutian planes to the Alaska mainland.

Navy tugs used to haul people and freight to Atka until 1977, Seybert said. When the service stopped, Atka residents went four months without supplies or communication with the outside world.

"It was a frightening experience," said Julie Dirks, village council administrator. "I think the thing that saved us was the people's subsistence lifestyle."

Dirks said the village council will lobby against the proposed cut in federal transportation subsidies.

At St. George in the Pribilofs, about 351 miles northeast of Atka, islanders share a similar plight. Without service by Peninsula Airways, which receives $7,000 a month in subsidies for St. George, the island's embryonic bottomfishing industry could collapse.

Rich Wilson, St. George city manager, said air service is essential in completing a new $13 million harbor.

"The airline flies in all the technicians and engineers we need to help us complete a commercial fishing harbor," Wilson said.

Until Oct. 14, 1983, the economic mainstay of the islands was the annual harvest of fur seals. When the government pulled out two years ago, Congress gave the St. George

See Rural, page C-7

Rural residents would be left stranded by program is cut

Continued from page C-1

residents $8 million and those on St. Paul got $12 million.

"We have a commitment now to get out on our own but we need regular air service to accomplish our goals," Wilson said.

St. George Mayor Max Malavansky said the air service also is essential in helping islanders build a tourist industry. Every summer more and more tourists visit St. George's 1,872-acre bird refuge.

"When you start comparing our needs to other areas, you really get mad," Wilson said.

Because many of the areas served by the Essential Air Service Program are one-industry towns, many community leaders claim that entire economies could collapse.

Bruce Venada, city manager of Yakutat, said the Southeast community of 750 residents would be dead in the water without the air service. Yakutat, located 220 air miles from Juneau, currently is served by Alaska Airlines with two flights a day.

Ray Vecci, vice president of planning for Alaska Airlines, said it was too early to tell what the airline would do if subsidies are cut.

"We know the people need the service," he said. "We don't just haul passengers. We also carry freight to these communities."

While most carriers are waiting for official confirmation of the proposed subsidy cuts, some commuter air carriers hope they can get enough work from the the U.S. Postal Service to continue flying into remote Alaskan communities.

The postal service pays more than $30 million a year in subsidies to haul mail throughout the state. In years past, the postal service contracted with one carrier for mail deliveries to a particular town. Later, contracts were split equally among all federally-certificated carriers, which, in effect, gave the smaller commuters a chance of survival.

Teresa Foode of Chitina Air Service said she's not going to worry about the proposed cuts until next year.

Although 15 to 20 percent of the Chitina Air budget comes from federal subsidies, Foode believes the postal service will pick up where the federal government left off and keep commuters flying to rural areas. Chitina Air serves the sparsely populated communities of Boswell Bay, Cape Yakataga, Chitina and Icy Bay.

"I know the folks would miss us out there," Foode said. "I don't think some people realize how difficult travel in here in Alaska."

But officials at the Essential Air Service office in Washington, D.C., said they realize the importance of transportation subsidy to rural communities.

"Our phones have been ringing off the hooks about the issue," said John Coleman, director of the Office of Essential Air Service.

Coleman said he was just as surprised as everyone else about the proposal to dismantle his office. "We're simply waiting like everyone else to hear what's going to happen."

The Essential Air Service Program was supposed to run to 1988, Coleman said. But governmental red ink may force an early retirement for the program administered by 41 people.

Coleman was quick to say that he thinks there will be loud protest about it. "We expect a flurry of debate," he said.

Most Alaskan communities and commuter air services directly impacted by the subsidy cuts are banking on the Alaska congressional delegation to solve the problem.

As one Alaskan pilot observed: "Our congressional delegation will deal with this problem like heavyweight contenders training in seclusion. We don't have to panic yet."

Members of the Alaska congressional delegation say they will fight the cuts, but they will not take any action until the actual budget is revealed, said a spokesperson from Sen. Ted Stevens office in Washington, D.C.

Last September, Stevens introduced an amendment to assure continuation of subsidies to five Southeast Alaskan communities served by the Essential Air Service program, the spokesman said.

ANCHORAGE TIMES 1-3-85

1-3-85 Times

Air cuts would leave 37 towns grounded

by Annetta Taylor
Times Business Writer

The Airline Deregulation Act of 1978, designed to spur competition in the air, did the job in Alaska where the number of federally certificated scheduled carriers ballooned by 900 percent — from five airlines six years ago to 45 today.

As deregulation proponents elsewhere in the nation predicted, commuter air taxi services, which previously operated under the federal certificates of larger airlines, struck out on their own, vying with their former partners and new upstarts for passengers, cargo and lucrative U.S. Postal Service contracts.

But not everywhere.

As in other rural states, there are some places in Alaska — 37 to be exact — with too few potential passengers to lure regularly scheduled service without a little help.

Because of $4.5 million in federal subsidies, five airlines now fly to those towns. But the Reagan administration this week has proposed ending the nationwide $35 million subsidy program next year.

Federal subsidies for air service to rural and remote areas throughout the nation began in 1938 with the creation of the Civil Aeronautics Board.

In Alaska, 230 communities were — and still are — eligible for air service subsidies, although not all received them, said Dick Steinman, a former field representative for the now-defunct CAB and now with the U.S. Department of Transportation.

Alaska boasts 40 percent of all designated subsidized routes in the nation.

By the 1970s, three carriers in Alaska — Wien Airlines, Alaska Airlines and Kodiak Western Alaska Airlines — received more than $10 million in subsidies to regularly fly to 187 communities. The breakdown was roughly $5.6 million to Wien, $4.2 million to Alaska and $410,000 to Kodiak Western, Steinman said.

With the CAB's blessing, Wien had the monopoly on all points north and west of Anchorage, Alaska Airlines had Southeast, and Kodiak Western had Kodiak Island and the Dillingham area.

The other two certified commercial carriers, Reeves Airlines and Munz Northern Airlines, along with private charter operations and state-authorized

See Deregulation, page C-2

Federal subsidies benefit many Bush area

Times Business Staff

Airlines currently receiving annual federal subsidies for guaranteed service to 37 Alaska communities, according to the local office of the U.S. Department of Transportation, are:

- Alaska Airlines, $3.6 million, for flights to Cordova, Gustavus, Petersburg, Wrangell and Yakutat.
- Sealr, $488,737, for flights to 18 towns and villages on Kodiak Island.
- Peninsula Airways, $298,330, for flights to Atka and St. George.
- Chitina Air Service, $112,988, for flights to Chitina, Boswell Bay, Icy Bay and Cape Yakataga.
- Ellis Air Taxi, $58,333, for flights to Chisana, McCarthy and May Creek.

Harold's Air Service is receiving an interim federal subsidy on a flight-by-flight basis for service to Central and Circle. Frontier Flying Service as a similar arrangement for flights to Wiseman.

Subsidies are guaranteed for service to Farewell Flat, Takotna and Tatalina but may not be needed if Hub Air Service can earn enough money for its operations through U.S. Postal Service contracts. The maximum subsidy amount for the year is about $24,000.

Negotiations on the amount of subsidy for service to Cape Romanzof and Cape Newenham are ongoing with Sealr.

Bids for service to Seward, Council, Circle Hot Springs, Birch Creek and Barter Island are pending.

Continued from page C-1

carriers, moved people around the rest of the state.

Then came deregulation.

Deregulation struck the fancy of many of the nation's travelers, who heralded an end to the old monopoly structure and the "we don't care, because we don't have to" attitude of some airlines.

But it also struck fear in rural and remote townspeople, who envisioned themselves stuck on the ground.

To sell deregulation to Congressmen who also feared the larger airlines would fly away from constituents, a new subsidy program emerged.

The new Essential Air Service program is aimed at providing a period of transition for small towns deserted by the large airlines. The subsidies are based on an established minimum level of service in each eligible community as of July 1976 or two flights per week, whichever was greater.

Unlike the old subsidy system which was based on the carriers' systemwide operations, the new program limited federal funds to expenses of operating in the designated routes.

The program is set to expire in 1988. But President Reagan plans to ask Congress to end the program two years early to save money.

The old subsidy program was to remain in effect until 1986, but Congress stop funding the program in 1982. Alaska's air carriers then were forced to formally withdraw from the old system before getting into the new program.

But under the new program, another new carrier could step in and, if it could guarantee similar or better service without a need for federal money, the CAB withdrew the subsidy for that town. The airline that previously operated in the town with a subsidy was out of the money.

At that point, Wien warned it might pull out of the Bush. Wien president James Flood, who bought the airline a year later, said the company could not justify flying on money-losing Bush routes.

During the refiling process, "most points were picked up on a non-subsidized basis," Steinman said.

Alaska Airlines gradually pulled out of most Bush communities, concentrating its state operations in the larger communities. In 1984, Wien had withdrawn from most Bush routes. By the end of the year, the company had filed for reorganization under federal bankruptcy laws.

Steinman said he could recall only a handful of the new carriers that closed shop or merged with other airlines. Among those are Kodiak Western, which folded, and Munz, which merged with Ryan Air.

"It can't be good out there and we keep thinking the shake out will come each winter," he said. "But so far, most carriers are hanging in."

ANCHORAGE TIMES 1-3-85

the exception of hazardous materials, almost anything can be shipped via
including perishable food stuffs. Whenever possible, consumers in the Int
ship goods by parcel post rather than air freight. It is illustrated be
cost of mail service to the postal service is substantially higher t
tariffs or rates paid by consumers.

Parcels sent to hub communities such as Galena or Fort Yukon could g
mail and thus incur a higher postage rate than the air freight tariffs
destination. However, mail destined beyond the hub points is all consider
bush service rate section and shipped as priority mail. Thus, consume
bush communities pay non-priority rates while the postal service pa
subsidies to air carriers. Note that Airmail system communities in
Network fall within the same postage zone rate since Fairbanks
distribution center in the region.

Table 5.4.3-1, in addition to data already presented on consumer costs, shows cost to the postal service for air transport of the mail. Compensation received by the airlines for mail transportation can justifiably be higher than freight tariffs partly because of more stringent requirements of mail contracts. Figure 5.4.3-3 shows costs of transporting a parcel to a typical community in the Interior. The consumer has the advantage of paying non-priority mail rates to bush communities whereas the postal service must pay priority rates to the airlines. Rates paid by the postal service to air carriers in relation to freight tariffs and the consumer cost are really an implied subsidy to the airlines. If these rates were to be reduced, the airlines would have the option of requesting other forms of subsidies, either under Section 406 or under the new Section 419, Essential Air Service tariffs could also be increased.

5.4.4 SUBSIDY UNDER SECTION 406

5.4.4.1 ELIGIBILITY FOR 406 SUBSIDY

The Federal Aviation [illegible] 1958, under Section 406, compensates carriers for providing service to communities which do not generate sufficient traffic to cover costs. A reasonable return on investment, 12.35 percent was established in CAB domestic passenger fare investigation docket 21866. Wien Air Alaska currently receives $6,000,000 annually in subsidy under this section for its state-wide routes. There is no available data to show what portion of this total amount is applied to

routes in the Interior. This subsidy is in addition to rates paid by the postal service for mail delivery. Subsidies under this section are programmed to continue until Jan. 1, 1983. However, the Civil Aeronautics Board has indicated that consideration is being given to terminating this subsidy program after Jan. 1, 1982. Final determination has not yet been made in this matter.

The subsidy program is thus moving away from the concept of cross-subsidies for an entire route system. Additionally, other carriers will be eligible for subsidies under new sections of the Act. At present in the state of Alaska only Wien Air Alaska and Alaska Airlines are entitled to Section 406 payments. Funding in the future will be through Section 419, and is discussed below.

Wien Air Alaska, the only eligible Section 406 carrier serving the Interior has recently been experiencing competition from Air North, a newly CAB certificated carrier under Section 401, but which is not eligible for Section 406 subsidy. The new, unsubsidized carrier, in effect, is competing directly with Wien subcontractors in the Interior. The Civil Aeronautics Board, apparently recognizing the problems to its subsidized carrier in the Interior seems to be accelerating the phase-out of 406 subsidies and is implementing essential air service criteria.

5.4.4.2 THE WIEN AIR ALASKA SUBCONTRACT SYSTEM

Wien Air Alaska currently subcontracts portions of its certificated routes to air taxi and contract carriers in the Interior. These are: Harold's Air Service, Galena; Frontier Flying Service, Fairbanks; Alaska Central Airways, Fairbanks; and Arctic Circle Air, Fort Yukon. Contracts with these carriers are negotiated separately and often have different rates and terms. Wien Air Alaska receives subsidy payment from two sources, section 406 and mail payment directly from the postal service. However, the compensation received by Wien is not directly passed on to the subcontractors.

Wien Air Alaska has recently been modifying contract arrangements in the Interior in an attempt to upgrade service. Until recently, many bush communities experienced service level deterioration under the subcontract system. One cause of this deterioration was the lack of coordination of the entire route structure between the individual subcontractors. In Fairbanks, flights by subcontractors which in the past were handled individually by the contractor, are now centrally operated out of the terminal at Fairbanks International Airport and passengers are ticketed and checked in through the Wien counter. Also, the method of paying subcontractors has been changing

from a per ticket/per pound rate to a straight hourly rate for aircraft used on subcontracted routes. Equipment has been upgraded, and twin turbo prop aircraft are now used on routes by subcontractors.

5.4.5 SECTION 419 OF THE AIRLINE DEREGULATION ACT OF 1978-ESSENTIAL AIR SERVICE

5.4.5.1 DESCRIPTION AND ELIGIBLE POINTS

Section 419 is a method to fund essential air service to eligible Alaskan points, i.e., a subsidy. This is intended to guarantee essential air service to small communities served only by one CAB certificated carrier. There are 230 communities in the state of Alaska which are eligible for essential air service. As of the date of this report, only one point within the state is being served under Section 419--Adak Island, which is outside of the Interior Study region. There are 26 points in the Interior region eligible for essential air service subsidy.

Determination of service levels was made considering cargo, mail and passenger requirements. A maximum of two stops between an FAA hub or CAB determined regional center and the destination community is permitted. The FAA hub in the Interior is Fairbanks and regional centers have been identified as Bettles, Fort Yukon and Galena. In the determination of essential air service levels, the CAB requires that there be adequate service between the regional service centers and the FAA hubs to handle both the regional centers' needs and traffic seeking access to the national air system from other eligible points served through the regional center.

The CAB did not impose any overall minimum size for aircraft in Alaska as it did in the lower 48 states. The CAB definition of aircraft size is: small aircraft - up to 10 seats; medium aircraft - up to 30 seats; intermediate aircraft - from 30 to 60 seats; large aircraft - over 60 seats. Service with small aircraft was determined to afford the best means for meeting service requirements of many small communities. However, between the regional center of Galena and the FAA hub at Fairbanks, for example, service was required with large aircraft because of the distances and level of traffic from communities surrounding the regional center.

Frequency has been determined based on overall passenger and cargo needs of the eligible points. In Alaska, cargo is frequently transported in the passenger compartment of aircraft, thus at times precluding accommodation of passengers on a particular flight or alternatively the passenger loads may result in cargo delays. Thus, frequencies were determined based on the combined need. The CAB will review the

HJR

51

Alaska State Legislature
Senate Transportation Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Faiks
Sen. Joe Josephson

Pouch V
Juneau, Alaska 99811

MEMORANDUM

To: Committee Members

From: Committee Staff

Date: March 4, 1986

RE: HJR 51 Relating to Coast Guard User Fees

Tomorrow, Wednesday the 5th, the committee will be taking up HJR 51. This resolution was sponsored by Representative John Sund.

HJR 51 calls for the Alaska Congressional Delegation to work to prevent the passage of Federal House Bill 1932. House Bill 1932 would establish user fees for Coast Guard Services. The first item in your packet, labeled "Rep. Sund's Analysis" includes a listing of the services that would be subject to a user fee.

Included in your packet, in addition to the Sund analysis, is a copy of the HJR, a zero fiscal note from Representative Hurley, and a copy of the draft bill in front of congress at this time.

Representative Sund's packet is a good source of information on the Coast Guard User Fee issue and breaks down the financing expected if HB 1932 were to pass on the federal level.

JOHN SUND, REPRESENTATIVE
2505 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

January 30, 1986

MEMORANDUM

TO: House State Affairs Committee

FROM: Rep. John Sund

RE: HJR 51 - Coast Guard user fees

.....

Enclosed in your packet is a copy of Federal House Bill 1932, schedules of proposed direct and indirect fees, and a summary of the bill's status. Should it pass, this legislation would require Alaskan commercial and sport vessels to pay user fees for the following Coast Guard services:

seaman's documents and licenses
vessel inspection
merchant marine investigations
maintenance for aids to navigation
non-emergency search and rescue

The intent of the proposal is to raise the following revenue during the ensuing three years.

FY 86 - $150 million
FY 87 - $250 million
FY 88 - $350 million

The following is a sample fee breakdown. The lower figure is that suggested by the Senate/White House and the high figure was the original OMB proposal.

Commercial vessels UNDER 5 GROSS TONS - $540 - $720 per year
(this could include skiffs, set net skiffs, handtrollers, etc.)

Commercial vessels between 5 - 99 gross tons - $810 - $1080

Recreational Boats - approximately $23 per boat average.

This information was provided by K.C. Bell of Congressman Young's office and David Dye of Senator Stevens office.

HJR 51 opposes coast guard user fees overall, and specifically opposes the proposed distribution of fees.

Rep. Sund's Analysis

February 11, 1986

Please telecopy these four pages to :

Mr. Howard Wayne
Office of Rep. John Sund
telcopy #: 465-4648

Mr. Wayne:

I am sending to you the SAMPLE fee breakdown supplied as part of H.R. 1936. As you can see, it reflects a $23 charge for recreational boaters. It should be noted that the 1987 fiscal year budget presented to Congress still assumes that revenues will be collected through a Coast Guard user fee, although it is NOT factored into the Coast Guard budegt request. The Subcommittee on Cost Guard and Navigation last year made it very clear that it continues to oppose such user fees.

I could not get a copy of S.Con.Res. 32 in time for you, however, I have enclosed a summary of the status of that legislation.

Please let me know if you require further information.

Sincerely,

K.C Bell

K.C. BELL

FULL FEE SCHEDULE

INDIRECT FEES -- SAMPLE RECOVERY SCHEDULE

CLASS	NUMBER VESSELS	AVERAGE [1] ANNUAL FEE $	RECOVERY FY86 $000
A. REC BOATS	6,000,000	23	136,000
B. INLAND SYSTEM [2]			57,000
C. FISHING VESSELS			
US <100GT	119,000	780	93,000
US >100GT	2,200	1800	4,000
FOR<100GT	0	900	0
FOR>100GT	840	2500	2,000
		TOTAL	99,000
D. INTERNATIONAL/COASTWISE COMMERCIAL VESSELS			
TONNAGE FEE [3]			75,000
COASTAL should be as high as 50-80,000	3,600	3,800	16,000
TOWBOATS	2,900	2,400	7,000
BARGES	4,000	2,000	8,000
MODU	300	2,000	600
		TOTAL	107,000
	TOTAL INDIRECT RECOVERY		400,000

[1] Estimated Average annual fee. Actual fees may vary significantly when all computational factors are considered. Figures may not compute exactly due to rounding.

[2] Fees will be approximately 0.25 mills per ton-mile to permit compatibility with the Corps of Engineers fees and collection procedures.

[3] Tonnage fee. This fee schedule will be administered in the same manner as the tonnage fees collected by customs in accordance with Title 19 S 4.20 U.S. Code. It will be approximately 5 times the amount currently assessed by Customs.

FULL FEES POLICY

DIRECT FEES -- SAMPLE RECOVERY SCHEDULE[1]

DIRECT FEES	RECOVERY FY86 $000
REGATTA PERMITS	200
REGATTA PATROLS	800
DOCUMENTATION OF VESSELS	2,000
ADMEASUREMENT OF VESSELS	2,000
INSPECTION OF VESSELS	36,000
PERSONNEL LICENSING	10,000
TERMINAL INSPECTIONS	24,000
DOMESTIC ICEBREAKING[2]	1,000
TOTAL	76,000

1 Actual fees will be determined by computed costs of services rendered to specific identifiable users.

2 For specific identifiable users.

STATUS OF MAJOR BILLS—FIRST SESSION

Number of bill	Title	Reported	Passed House	Reported in Senate	Passed Senate	Sent to Conference	Conference report agreed to in—		Date approved	Law No.
							House	Senate		
	LEGISLATIVE BILLS	1985	1985	1985	1985	1985	1985	1985	1985	
H. Con. Res. 152	Budget, First, 1986 (Rept. 99-133)	May 20	May 23							
[redacted]	Budget, First, 1986		May 23	Mar. 20	May 9	May 23 [1]	[2]	Aug. 1 [3]		
H R 2100	Food Security Act of 1985 (H. Rept. 99-271)	Sept. 18	Oct. 8		Nov. 23	Dec. 5	Dec. 18	Dec. 18		
H J Res 372	Debt Ceiling Increase		Aug. 1	Sept. 26	Oct. 10	Oct. 15 Nov. 7	[4][6] Dec. 11	Nov. 1 [5] Dec. 11	Dec. 12	99-177
H R 2817	Superfund Amendments of 1985 (H. Rept. 99-253)	Nov. 12	[8]							
H R. 3500	Budget Reconciliation (H. Rept. 99-360)	Oct. 3	Oct. 24							
H R. 3838	Tax Reform Act, 1985 (H. Rept. 99-426)	Dec. 7	Dec. 17							
	APPROPRIATION BILLS									
H.J. Res. 342	Supplemental, Agriculture, 1985		July 18		July 19				July 24	99-71
H R. 1239	Supplemental Appropriations, African Relief (H. Rept. 99-2)	Feb. 21	Feb. 28	Mar. 5	Mar. 20	Mar. 27	Apr. 2	Apr. 2	Apr. 4	99-10
H R. 2577	Supplemental Appropriations, 1985 (H. Rept. 99-142)	May 22	June 12	June 13	June 20	July 16	July 31	Aug. 1	Aug. 15	99-88
H R. 2942	Legislative Branch, 1986 (H. Rept. 99-194)	July 10	July 18	July 25	July 31	Oct. 8	Oct. 29	Oct. 29	Nov. 13	99-151
H R 2959	Energy and Water, 1986 (H. Rept. 99-195)	July 10	July 16	July 25	Aug. 1	Oct. 1	Oct. 17	Oct. 17	Nov. 1	99-141
H R. 2965	Commerce, Justice, State, Judiciary (H. Rept. 99-197)	July 11	July 17	Oct. 4	Nov. 1	Dec. 3	Dec. 5	Dec. 6	Dec. 13	99-180
H R. 3011	Interior, 1986 (H. Rept. 99-205)	July 16	July 31	Sept. 24	[10]					
H R 3036	Treasury, Postal, 1986 (H. Rept. 99-210)	July 18	July 30	Sept. 9	Sept. 26	Oct. 8	Nov. 7	Nov. 7	[7]	
H R 3037	Agriculture, 1986 (H. Rept. 99-211)	July 18	July 24	Sept. 24	Oct. 16	Dec. 9				
H R. 3038	HUD, 1986 (H. Rept. 99-212)	July 18	July 25	Aug. 28	Oct. 18	Nov. 6	Nov. 13	Nov. 13	Nov. 25	99-160
H R. 3067	District of Columbia, 1986 (H. Rept. 99-223)	July 24	July 30	Sept. 9	Nov. 7	Dec. 4				
H R. 3228	Foreign Assistance (H. Rept. 99-252)	Aug. 1								
H R. 3244	Transportation, 1986 (H. Rept. 99-256)	Sept. 5	Sept. 12	Oct. 4	Oct. 23	Oct. 30				
H J. Res 388	Continuing, 1986 (H. Rept. 99-272)	Sept. 17	Sept. 18	Sept. 24	Sept. 25				Sept. 30	99-103
H R. 3327	Military Construction, 1986 (H. Rept. 99-275)	Sept. 16	Oct. 17	Oct. 31	Nov. 7	Nov. 13	Nov. 20	Nov. 21	Dec. 10	99-173
H R. 3424	Labor, Health, Human Services; 1986 (H. Rept. 99-289)	Sept. 26	Oct. 2	Oct. 4	Oct. 22	Nov. 5	Dec. 5	Dec. 6	Dec. 12	99-178
H R. 3629	Defense, 1986 (H. Rept. 99-332)	Oct. 21	Oct. 30	Nov. 6						
H.J. Res. 441	Continuing, further, 1986		Nov. 12		Nov. 13				Nov. 14	99-154
H J. Res 465	Continuing, further, 1986 (H. Rept. 99-403)	Nov. 21	Dec. 4	Dec. 5	Dec. 10	Dec. 11 Dec. 17	[9] Dec. 19	Dec. 19	Dec. 19	99-190
H J. Res. 476	Continuing, further, 1986		Dec. 12		Dec. 12				Dec. 13	99-179
H.J. Res. 491	Continuing, further, 1986		Dec. 17		Dec. 17				Dec. 17	99-184

[1] S Con. Res. 32 became the budget vehicle subject to a House-Senate conference. [2] House receded from its amendment and concurred with a further amendment Aug. 1, 1985. [3] Senate concurred in further House amendment Aug. 1 *(Legislative day of July 18)*, 1985. [4] House receded and concurred with amendments in Senate amendments Nos. 1 and 2 Nov. 1, 1985. [5] Senate agreed to House amendments with amendments Nov. 2, 4, 6, 1985. [6] House disagreed to Senate amendments and asked for further conference Nov. 6, 1985. [7] Vetoed Nov. 15, 1985. *In House, referred to Appropriations Nov. 19, 1985.* [8] H.R. 2317 passed House Dec. 10, 1985. Pursuant to H Res. 331, H R. 2005 became the vehicle subject to a House Senate conference. [9] House rejected conference report Dec. 16, 1985. [10] Laid on the table Dec. 4 *(Legislative day of Dec. 2)*, 1985.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. : HJR 51
Title : Relating to Coast Guard User Fees

Sponsor : SUND
Requestor : _____
Date of Request : 2/14/86

FISCAL DETAIL

Agency Affected : _____
BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Representative Katie Hurley — Phone : 465-4963
Division : House State Affairs Committee — Date : 2/14/86

Approved by : Chair, Commissioner : Katie Hurley — Date : 2/14/86
Agency : House State Affairs Committee

Distribution (by Agency preparing fiscal note) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

10/25/85

Fiscal Note (House State Affairs)

HR 1936
S. 1318

D R A F T B I L L

To authorize the Secretary of the department in which the Coast Guard is operating to establish fees for certain Coast Guard services 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 "Coast Guard User Fee Authorization Act of 1985".

Sec. 2. (a) At the end of part I of title 14, United States Code, add the following new chapter:

"CHAPTER 19 -- USER FEES

"Sec.

671. Definitions.

672. User fee authority.

673. Establishment of fees.

674. Collection of fees.

675. Treatment of receipts.

676. Annual search and rescue certification.

677. Exemptions.

678. Liability of the United States not altered.

679. Penalties.

FEDERAL BILL ON COAST GUARD USER FEES
SECTIONAL ANALYSIS

"§ 671. Definitions

"In this chapter -

"(1) "associated equipment" -

"(A) means -

"(i) a system, accessory, component, or appurtenance of a recreational boat; or

"(ii) a marine safety article intended for use on board a recreational boat; but

"(B) does not include radio equipment.

"(2) "offshore facility" means any artificial island, installation, or other device permanently or temporarily attached to the seabed of the United States Outer Continental Shelf, which is erected thereon for the purpose of exploring for, developing, or producing resources therefrom.

"(3) "operating expenses" means costs incurred by the Coast Guard as necessary expenses for its operation and maintenance.

"(4) "owner" means a person who claims lawful possession of a vessel, facility, or terminal by virtue of legal title or equitable interest therein which entitles that person to such possession.

"(5) "recreational boat" means any vessel that is operated only for pleasure use.

"(6) "recreational boat and associated equipment manufacturer" means any person engaged in

"(A) the manufacture, construction, or assembly of recreational boats or associated equipment; or

"(B) the manufacture or construction of components for recreational boats and associated equipment to be sold for subsequent assembly; or

"(C) the importation into the United States for sale of recreational boats, associated equipment or components thereof.

"(7) "terminal" -

"(A) means -

"(i) a pier, wharf, dock, similar structure, or area of land to which a vessel is or may be secured;

"(ii) an area of land, water, or land and water under and in immediate proximity to a pier, wharf, dock, similar structure, or area of land to which a vessel is or may be secured;

"(iii) any building on or contiguous to a pier, wharf, dock, similar structure, or area of land to which a vessel is or may be secured;

"(iv) any equipment and materials on a pier, wharf, dock, or similar structure, or area of land to which a vessel is or may be secured, or in a building that is on or adjacent to such a structure or land; and

"(v) a deepwater port; but

"(B) does not include facilities operated by the Department of Defense.

"§ 672. User fee authority

"(a) The Secretary, in consultation with affected Federal agencies, may establish a system of fees to recover that portion of the related operating expenses of services, which primarily benefit the users of the services and are beyond those benefits that accrue to the public at large, that are provided or made available by the Coast Guard to -

"(1) the owners, operators, or persons in charge of -

"(A) vessels,

"(B) terminals, or

"(C) offshore facilities;

"(2) individuals who are licensed, certificated, or issued merchant mariners' documents by the Coast Guard;

"(3) recreational boat and associated equipment manufacturers;

"(4) manufacturers of materials and equipment approved by the Coast Guard; and

"(5) other users of Coast Guard services.

"(b) In addition to the operating expenses relating to the services authorized to be recovered under this subsection, the Secretary may also recover reasonable administrative and enforcement costs associated with this chapter.

"(c) The operating expenses of the following Coast Guard programs may not be included in the operating expenses to be recovered -

"(1) Enforcement of Laws and Treaties.

"(2) Polar Ice Operations.

"(3) Defense Readiness.

"(4) Waterways management.

(d) The fee schedule prescribed by this section may not conflict with the international obligations of the United States.

"§ 673. Establishment of fees

"(a) The Secretary shall issue regulations to carry out this chapter, including fee schedules.

"(b) The Secretary shall consider the following factors in establishing fees for Coast Guard services -

"(1) the costs of providing the services, excluding that portion of the costs that primarily benefits the public at large rather than the actual users of the service;

"(2) the number of vessels, terminals, offshore facilities, and persons affected;

"(3) the costs of administering and enforcing the collection of fees; and

"(4) the equity and economic impact of the charges to be imposed.

"§ 674. Collection of fees

"(a) The Secretary may collect fees from:

"(1) the owner, operator, or person in charge of -

"(A) a vessel (other than a public vessel) operating in or on waters subject to the jurisdiction of the United States,

"(B) a terminal, located on or adjacent to waters subject to the jurisdiction of the United States, or

"(C) an offshore facility;

"(2) individuals who are licensed, certificated, or issued merchant mariners' documents by the Coast Guard;

"(3) recreational boat and associated equipment manufacturers;

"(4) manufacturers of materials and equipment approved by the Coast Guard; and

"(5) other users of Coast Guard services.

"(b) The Secretary may employ any federal, state, or local agency or instrumentality, or private enterprise or business, to collect fees established under this section. These fee collection services, which shall not include the institution of litigation, may be provided under such reasonable terms and conditions, including reimbursement with proper accounting to the Secretary, as the Secretary and such agency or business agree.

"§ 675. Treatment of receipts

Amounts collected pursuant to this Act shall be deposited in the general fund of the Treasury as proprietary receipts of the department in which the Coast Guard is operating, ascribed to Coast Guard activities.

"§ 676. Annual search and rescue verification

"There shall be an annual verification by the Secretary that the amounts spent on Coast Guard search and rescue activities are not less that the amounts collected annually for such purposes.

"§ 677. Exemptions

"The Secretary may grant exemptions from any provision of this chapter or any regulations issued under this chapter.

"§ 678. Liability of the United States not altered

"The collection of fees for Coast Guard services shall not alter or expand the duties and liability of the United States under existing law for the performance of functions for which fees are collected, nor shall the collection of fees constitute an express or implied undertaking by the United States to perform any service or activity in a certain manner or to provide any service at a particular time and place.

"§ 679. Penalties

"(a) The owner, operator, or person in charge of a recreational boat who fails to pay a fee prescribed under section 672 of this title is liable to the United States Government for a civil penalty of not more than $5000 for each occurrence, in addition to any fee imposed.

"(b) The owner, operator, or person in charge of a vessel (other than a recreational boat), terminal, offshore facility, any recreational boat or associated equipment manufacturer; manufacturer of materials or equipment approved by the Coast Guard; or other user of Coast Guard services who fails to pay a fee prescribed under section 672 of this title is liable to the United States Government for a civil penalty of not more than $25,000 or two times the fee, whichever is greater, for each occurrence, in addition to any fee imposed.

"(c) Any individual licensed, certificated, or issued a merchant mariners' document by the Coast Guard who fails to pay a fee prescribed under section 672 of this title is liable to the United States Government for a civil penalty of not more than $5000 for each occurrence, in addition to any fee imposed.

"(d) Any person who fails to comply with a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $5000 for each violation.

"(e) The vessel of any owner, operator, or person in charge who fails to pay a fee or penalty, or who fails to comply with a regulation prescribed under this chapter, also is liable in rem for the fee and any civil penalty assessed under this

section, and may be proceeded against in the United States District Court of any district in which the recreational boat or other vessel may be found.

"(f) A certificate, license, permit, approval, or document issued by the Coast Guard is invalid until all required fees have been paid to the United States Government.

"(g) After notice and an opportunity for a hearing, a person found by the Secretary to have violated this chapter or a regulation prescribed under this chapter for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

"(h) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty under this chapter until the assessment is referred to the Attorney General.

"(i) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

"(j) The Secretary may deny entry to a port or place subject to the jurisdiction of the United States to a vessel if any required fees have not been paid.

"(k) When requested by the Secretary, the Secretary of the Treasury shall deny the clearance required by section 4197 of the Revised Statutes of the United States, as amended, (46 App. U.S.C. 91) to the vessel until the fee assessed for Coast Guard services is paid or until a bond is posted for the payment thereof.".

(b) The analysis of part I of title 14, United States Code, which is located immediately before chapter 1, is amended by adding at the end the following new item:

"19. User Fees.....671".

Sec. 3. Conforming amendments

(a) Subsection I of the Ship Mortgage Act, Sec. 30 of the Act of June 5, 1920, c. 250, 41 Stat. 1002 (46 App. U.S.C. 927), as amended by the Act of September 16, 1966 (Public Law 89-582, 80 Stat. 795) is amended by striking out the third and fourth sentences.

(b) Section 2110 of Title 46, United States Code (P.L. 98-89, August 26, 1983), is repealed.

STATEMENT OF PURPOSE AND NEED

The purpose of this bill is to amend Title 14, United States Code, to authorize the recovery of a proportion of the operating expenses incurred in providing certain Coast Guard services. The recovery of the Federal costs of providing services from those who primarily benefit from them has long been established and accepted as sound public policy.

Two major concepts underlie this cost recovery principle. One concerns fairness and equity in the distribution of the Federal tax burden. Those who obtain special services from the government above and beyond those that accrue to the public at large or who use government funded facilities should pay for them; those who do not should not be expected to share the cost. The second has to do with efficiency. For the market to operate as an efficient allocator of resources, the prices of goods and services should reflect their costs. The basic purpose of this legislation is to allocate the costs of providing certain Coast Guard services to those who primarily benefit from them.

User fees are a widely accepted, equitable means of supporting public programs and services. For many years user fees have been the principal means of supporting other transportation

programs. In the 1986 budget, President Reagan proposed to increase or institute numerous types of user fees, including those for certain Coast Guard services.

This proposal would authorize the Secretary of the department in which the Coast Guard is operating to collect from users the operating expenses proportionately allocable to the users of the following Coast Guard services:

1. Search and rescue;

2. Short range aids to navigation;

3. Radionavigation aids;

4. Domestic icebreaking;

5. Commercial vessel safety;

6. Recreational boating safety;

7. Port and environmental safety;

8. Marine environmental response; and

9. Bridge administration.

User fees would be charged only for Coast Guard services which relate to specific, identifiable persons or classes of users. Among the user groups which would be affected by user fees authorized under this legislation are persons who are issued certificates, permits, approvals, licenses, and documents by the Coast Guard and the owners, operators, and persons in charge of:

1. Commercial vessels, both U.S. and foreign flag;

2. Mobile off-shore drilling units and fixed off-shore structures;

3. Recreational boats that operate on waters subject to the jurisdiction of the United States; and

4. Terminals subject to Coast Guard inspections.

Based on a detailed analysis of the programs for which recovery would be sought, the expenses of the programs would be collected on a proportional basis from the various individual users or user groups, either as a charge for a specific service, when the user of the service is directly identifiable, or by an indirect charge in the form of an annual or biennial fee. Every reasonable effort would be made to make the fee

schedules equitable and reflective of the actual expenses incurred by the Coast Guard to provide a specific service or benefit to a particular user or class of users.

In response to concerns that have been raised about previous Coast Guard user fees proposals, the bill includes an accounting of the amounts collected and spent on search and rescue activities. This is designed to demonstrate that the amounts collected from marine users for this purpose do not exceed the costs of providing the services to those users.

Although all Coast Guard services benefit at least portions of the public at large in one way or another, there are some that clearly contribute to the general welfare, with little or no identifiable benefit to specific users. Those will not be subject to cost recovery. Activities to be excluded under this concept are as follows:

1. Enforcement of laws and treaties;

2. Polar ice operations;

3. Defense readiness;

4. Waterways management.

The Coast Guard currently collects as direct charges for Coast Guard services, or receives from user taxes, approximately $ 16.8 million, less than 1% of its operating budget, from the following sources:

Motorboat fuel tax for recreational boating safety operating expenses	$ 15.0 million
Fees for yacht documentation	1.3 million
Fees for issuing certificates of financial responsibility to vessels	.5 million
Marking wrecks and obstructions to navigation	less than .1 million
Total	16.8 million

In addition to the fees currently generated, the Coast Guard, under section 9701 of title 31, U. S. Code, and sections 3317, 3506, and 7114 of title 46, U. S. Code, is authorized to collect additional user fees for the following Coast Guard services:

1. Permits for private aids to navigation;

2. Domestic icebreaking at the specific request of a user;

3. Inspection and examination of small passenger vessels and sailing school vessels;

4. Issuance of certificates, licenses, or permits related to small passenger vessels and sailing school vessels;

5. Providing required copies of laws to passenger vessels;

6. Material and equipment approvals and factory inspections;

7. Inspection of Outer Continental Shelf facilities;

8. Facility inspections;

9. Cargo of particular hazard inspections;

10. Issuance of regatta permits; and

11. Providing regatta patrols.

The proposed legislation will incorporate the above items and will thus result in all categories of users paying for similar services.

It is the policy of the Coast Guard to encourage private commercial provision of certain services which are currently provided by the Coast Guard. To this end, the Coast Guard has sought to establish formal agreements which would delegate specific authority to discharge certain Coast Guard functions to such organizations as the American Bureau of Shipping and the National Cargo Bureau. Examples of authority which the Coast Guard has delegated or might delegate in the future are new construction plan review and inspection of vessels, vessel measurement, Outer Continental Shelf inspection, load line examinations, and other program responsibilities that would lead to the minimization of direct governmental involvement in the maritime industry. Where delegation takes the place of the authority to provide services which are subject to user fees, the Coast Guard will terminate or reduce those fees when the service is performed and financed by the private sector.

However, it is difficult to shift much of the work to the private sector when the Coast Guard is charged with providing the same service at no cost to the user as a result of the

prohibition against charging fees in section 2110 of title 46, U. S. Code. The elimination of this prohibition would permit the delegation of additional services to the private sector.

An evaluation of Coast Guard programs for which expenses may be assessed under this proposed legislation results in the following estimates:

5 YEAR PROPOSED NET RECEIPTS
BY FISCAL YEAR
(In Millions of 1986 Dollars)

	1986	1987	1988	1989	1990
NET RECEIPTS	236	476	476	476	476

Thus, the expenses for which recovery authority is sought represent approximately 13% of all Coast Guard operating expenses, and 9% of the total estimated Coast Guard budget for FY 1986.