

HB54

SENATE FINANCE COMMITTEE REPORT

DATE: 5/10/91

FURTHER:

DATE TURNED

INTO OFFICE: 5-17-91

The Finance Committee considered CS HB 54 (FINANCE) (title am)

Distribution of national forest receipts; providing for the distribution of national forest receipts to an organized borough in proportion to the percentage of the national forest within the organized borough; establishing an unorganized borough national forest receipts fund to be utilized for the benefit of public schools and roads in the unorganized borough; providing for distributions from the fund to communities in the unorganized borough; and providing for an effective date."

and recommended:

- replace with _____ CS _____
- or adopt CS HB 54 (GRA)
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) SPENDING COMMITTEE

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

Al Adams

Tommy Hefner

Bill Hefner

[Signature]

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

OTHER RECOMMENDATIONS:

Rich [Signature] (No Rec)

1.

[Signature]

2.

[Signature]

No Rec

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SCS CSHB 54(CRA)

Revision Date: _____ Department Affected: /Community & Regional Affairs
 Title: Distribution of national forest receipts BRU: National Forest Receipts
 Sponsor: Rep. Mackie Component: National Forest Receipts
 Requestor: Senate Finance COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	6000.0	6000.0	6000.0	6000.0	6000.0	6000.0
MISCELLANEOUS						
TOTAL OPERATING	6000.0	6000.0	6000.0	6000.0	6000.0	6000.0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER National Forest Receipts	6000.0	6000.0	6000.0	6000.0	6000.0	6000.0
TOTAL Receipts Fund						

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) An estimated \$6 million in National Forest Receipt money which would be deposited in the General Fund under current statutes will be paid out to communities and Regional Education Attendance Areas within unorganized boroughs under HB 54.

Prepared By: Sen. Pat Pourchot Phone: 465-4935
 Division: Co-chairman, Senate Finance Committee Date: May 17, 1991
 Approved by Commissioner: _____
 Agency: _____ Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

SENATE CS FOR CS FOR HOUSE BILL NO. 54 (CRA)**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE****Offered: 5/10/91****Referred: Finance****Sponsor(s): REPRESENTATIVES MACKIE, Grussendorf, C.Davis, Leman****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to the distribution of national forest receipts; providing for the
2 distribution of national forest receipts to an organized borough in proportion to the
3 percentage of the national forest within the organized borough; establishing an unorganized
4 borough national forest receipts fund to be utilized for the benefit of public schools and
5 roads in the unorganized borough; providing for distributions from the fund to
6 communities in the unorganized borough; and providing for an effective date."

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

8 * Section 1. FINDINGS AND PURPOSE. (a) Federal law, 16 U.S.C. 500, provides that 25 percent
9 of all money received each fiscal year from each national forest shall be paid to the state in which the
10 national forest is located, to be distributed under state law for the benefit of the public schools and roads
11 of the county or counties in which the national forest is located.

12 (b) The intent of this federal law is to provide funds to support roads and schools of
13 communities affected by national forest activities.

1 (c) Under present state law, communities and regional educational attendance areas that are
2 affected by national forest activities, but located within the unorganized borough, do not receive direct
3 payment of national forest income.

4 (d) That portion of national forest income not distributed to organized boroughs under
5 AS 41.15.180(a) should be distributed to communities within the unorganized borough that are situated
6 within a national forest or within 20 miles of a national forest that contribute financially to the provision
7 of education and road maintenance and to regional educational attendance areas that have a school
8 located within a national forest or within 20 miles of a national forest, and that presently do not receive
9 funds from national forest receipts.

10 * Sec. 2. AS 41.15.180 is repealed and reenacted to read:

11 Sec. 41.15.180. NATIONAL FOREST INCOME. (a) When the commissioner of
12 community and regional affairs receives national forest income under 16 U.S.C. 500, the
13 commissioner shall immediately pay to each organized borough in which national forest land is
14 located a share of the income from that forest; an organized borough's share of income from a
15 national forest shall be proportional to the area of the national forest located within its
16 boundaries.

17 (b) There is created as a separate account in the general fund the unorganized borough
18 national forest receipts fund. The fund consists of national forest income received by the
19 Department of Community and Regional Affairs under 16 U.S.C. 500 for the percentage of a
20 national forest located within the unorganized borough. Seventy-five percent of the fund shall
21 be allocated for public schools and 25 percent for public roads.

22 (c) From the percentage of the unorganized borough national forest receipts fund
23 allocated to the public schools under (b) of this section, the commissioner shall pay to each home
24 rule or first class city located within the unorganized borough and within a national forest or
25 within 20 miles of a national forest, or regional educational attendance area that has a school
26 located within the unorganized borough and within a national forest or within 20 miles of a
27 national forest, a share of the income from the public schools allocation of the fund. A home
28 rule city, first class city, or regional educational attendance area's share shall be calculated as the
29 proportion of the number of children in average daily membership of the city school district or
30 regional educational attendance area compared to the total number of children in average daily
31 membership in city school districts located within the unorganized borough and within the

1 national forest or within 20 miles of the national forest and in regional educational attendance
2 areas that have a school located within the unorganized borough and within the national forest
3 or within 20 miles of the national forest.

4 (d) From the percentage of the unorganized borough national forest receipts fund
5 allocated to public roads under (b) of this section, the commissioner shall pay to each

6 (1) home rule city, first class city, or second class city that exercises road powers,
7 that is located within the unorganized borough and within a national forest or within 20 miles
8 of a national forest, a share of the income from the roads allocation of the fund; a home rule city,
9 first class city, or second class city's share shall be calculated as the proportion of the number
10 of road miles within municipal boundaries over which the community exercises road powers plus
11 the number of state road miles maintained by the municipality under agreement with the state
12 compared to the total number of road miles maintained by state or local governments in the
13 unorganized borough and within the national forest or within 20 miles of the national forest;

14 (2) municipality organized under federal law as a Indian reserve that existed
15 before the enactment of 43 U.S.C. 1618(a) and is continued in existence under that subsection
16 and that has formed a community development corporation under AS 29.60.365, that exercises
17 road powers and that is located within the unorganized borough and within the national forest
18 or within 20 miles of the national forest a share of the income from the roads allocation of the
19 fund; the share due a municipality organized under federal law that exercises road powers shall
20 be calculated as the proportion of the number of road miles within municipal boundaries over
21 which the community exercises road powers plus the number of state road miles maintained by
22 the municipality under agreement with the state compared to the total number of road miles
23 maintained by state or local governments in the unorganized borough and within the national
24 forest or within 20 miles of the national forest; however, the commissioner may pay income from
25 national forest receipts under this paragraph only after the corporation has delivered a written
26 waiver of sovereign immunity from legal action by the state to recover all or a portion of the
27 money distributed under this section.

28 (e) A distribution made under (a) of this section shall be expended for public schools and
29 public roads. A distribution made under (c) of this section shall be expended for public schools.
30 A distribution made under (d) of this section shall be expended for public roads.

31 (f) For the purpose of making distributions from the fund, the commissioner of

1 community and regional affairs shall consult with the commissioner of education, for purposes
2 of determining the number of children in average daily membership in the public schools affected
3 by this section, and the commissioner of transportation and public facilities, to determine the total
4 number of road miles in the unorganized borough affected by this section.

5 (g) An organized borough, home rule city, first class city, second class city, regional
6 educational attendance area, or a municipality organized under federal law that receives a national
7 forest income payment or distribution under 16 U.S.C. 500 or this section shall annually report
8 and account to the commissioner of community and regional affairs its use of the payment or
9 distribution for the purposes provided in (a) - (e) of this section. The commissioner of
10 community and regional affairs may not distribute national forest income under this section to
11 an entity in the unorganized borough that has previously failed to report and account as required
12 under this subsection.

13 (h) For purposes of this section, if a portion of a home rule city, first class city, or
14 second class city, or municipality organized under federal law in the unorganized borough is
15 located within the national forest or within 20 miles of a national forest or if a regional
16 educational attendance area has a school located within the national forest or within 20 miles of
17 the national forest, the entire home rule city, first class city, or second class city, regional
18 educational attendance area, or municipality organized under federal law is considered to be
19 within the national forest.

20 (i) A payment or distribution made under this section shall be made under an
21 appropriation for the purpose.

22 (j) That portion of the unorganized borough national forest receipts fund remaining in
23 the account unobligated and unexpended on June 30 of a fiscal year shall be deposited into the
24 unrestricted portion of the general fund and shall be used to offset expenses of the general fund
25 for school and road maintenance in the affected areas of the unorganized borough for which
26 direct distribution of funds has not been made.

27 * Sec. 3. This Act takes effect July 1, 1991.

7-LS0427E
Luckhaupt
5/15/91

SENATE CS FOR CS FOR HOUSE BILL NO. 54 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MACKIE, Grussendorf, C.Davis, Leman

A BILL

FOR AN ACT ENTITLED

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2 distribution of national forest receipts to an organized borough in proportion to the
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4 borough national forest receipts fund to be utilized for the benefit of public schools and
5 roads in the unorganized borough; providing for distributions from the fund to
6 communities in the unorganized borough; and providing for an effective date."

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8 * **Section 1. FINDINGS AND PURPOSE.** (a) Federal law, 16 U.S.C. 500, provides that 25 percent
9 of all money received each fiscal year from each national forest shall be paid to the state in which the
10 national forest is located, to be distributed under state law for the benefit of the public schools and roads
11 of the county or counties in which the national forest is located.

12 (b) The intent of this federal law is to provide funds to support roads and schools of
13 communities affected by national forest activities.

1 (c) Under present state law, communities that are affected by national forest activities, but
2 located within the unorganized borough, do not receive direct payment of national forest income.

3 (d) That portion of national forest income not distributed to organized boroughs under
4 AS 41.15.180(a) should be distributed to communities within the unorganized borough that are situated
5 within a national forest or within 20 miles of a national forest that contribute financially to the provision
6 of education and road maintenance and that presently do not receive funds from national forest receipts.

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12 national forest shall be proportional to the area of the national forest located within its
13 boundaries.

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15 national forest receipts fund. The fund consists of national forest income received by the
16 Department of Community and Regional Affairs under 16 U.S.C. 500 for the percentage of a
17 national forest located within the unorganized borough. Seventy-five percent of the fund shall
18 be allocated for public schools and 25 percent for public roads.

19 (c) From the percentage of the unorganized borough national forest receipts fund
20 allocated to the public schools under (b) of this section, the commissioner shall pay to each home
21 rule or first class city located within the unorganized borough and within a national forest or
22 within 20 miles of a national forest, a share of the income from the public schools allocation of
23 the fund. A home rule or first class city's share shall be calculated as the proportion of the
24 number of children in average daily membership of the city school district compared to the total
25 number of children in average daily membership in city school districts located within the
26 unorganized borough and within the national forest or within 20 miles of the national forest and
27 in regional educational attendance areas that have a school located within the unorganized
28 borough and within the national forest or within 20 miles of the national forest.

29 (d) From the percentage of the unorganized borough national forest receipts fund
30 allocated to public roads under (b) of this section, the commissioner shall pay to each

31 (1) home rule city, first class city, or second class city that exercise road powers,

1 that is located within the unorganized borough and within a national forest or within 20 miles
2 of a national forest, a share of the income from the roads allocation of the fund; a home rule city,
3 first class city, or second class city's share shall be calculated as the proportion of the number
4 of road miles within municipal boundaries over which the community exercises road powers plus
5 the number of state road miles maintained by the municipality under agreement with the state
6 compared to the total number of road miles maintained by state or local governments in the
7 unorganized borough and within the national forest or within 20 miles of the national forest;

8 (2) municipality organized under federal law as a Indian reserve that existed
9 before the enactment of 43 U.S.C. 1618(a) and is continued in existence under that subsection
10 and that has formed a community development corporation under AS 29.60.365, that exercises
11 road powers and that is located within the unorganized borough and within the national forest
12 or within 20 miles of the national forest a share of the income from the roads allocation of the
13 fund; the share due a municipality organized under federal law that exercises road powers shall
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16 the municipality under agreement with the state compared to the total number of road miles
17 maintained by state or local governments in the unorganized borough and within the national
18 forest or within 20 miles of the national forest; however, the commissioner may pay income from
19 national forest receipts under this paragraph only after the corporation has delivered a written
20 waiver of sovereign immunity from legal action by the state to recover all or a portion of the
21 money distributed under this section.

22 (e) A distribution made under (a) of this section shall be expended for public schools and
23 public roads. A distribution made under (c) of this section shall be expended for public schools.
24 A distribution made under (d) of this section shall be expended for public roads.

25 (f) For the purpose of making distributions from the fund, the commissioner of
26 community and regional affairs shall consult with the commissioner of education, for purposes
27 of determining the number of children in average daily membership in the public schools affected
28 by this section, and the commissioner of transportation and public facilities, to determine the total
29 number of road miles in the unorganized borough affected by this section.

30 (g) An organized borough, home rule city, first class city, or second class city, or a
31 municipality organized under federal law that receives a national forest income payment or

1 distribution under 16 U.S.C. 500 or this section shall annually report and account to the
 2 commissioner of community and regional affairs its use of the payment or distribution for the
 3 purposes provided in (a) - (e) of this section. The commissioner of community and regional
 4 affairs may not distribute national forest income under this section to an entity in the unorganized
 5 borough that has previously failed to report and account as required under this subsection.

6 (h) For purposes of this section, if a portion of a home rule city, first class city, or
 7 second class city, or municipality organized under federal law in the unorganized borough is
 8 located with the national forest or within 20 miles of a national forest or a regional educational
 9 attendance area that has a school located within the national forest or within 20 miles of the
 10 national forest, the entire home rule city, first class city, or second class city, regional educational
 11 attendance area, or municipality organized under federal law is considered to be within the
 12 national forest.

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 14 appropriation for the purpose.

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 16 the account unobligated and unexpended on June 30 of a fiscal year shall be deposited into the
 17 unrestricted portion of the general fund and shall be used to offset expenses of the general fund
 18 for school and road maintenance in the affected areas of the unorganized borough for which
 19 direct distribution of funds has not been made.

20 * Sec. 3. This Act takes effect July 1, 1991.

REPRESENTATIVE
JERRY MACKIE

P. O. BOX 73
CRAIG, ALASKA 99921
(907) 826-3008 OFFICE
(907) 826-2930 HOME

CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE

VICE CHAIRMAN,
TRANSPORTATION COMMITTEE

Alaska State Legislature



WHILE IN JUNEAU
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4925

House of Representatives

REPRESENTATIVE MACKIE STATEMENT

On

HB 54, "An Act relating to the distribution
of national forest receipts."

HB 54 corrects a long standing inequity in the national forest receipts program. The state receives from the U.S. Department of Agriculture a percentage of the earnings derived from timber harvest and other commercial activities in the Tongass and Chugach national forests. The purpose of these funds is to provide federal assistance for local government services that are impacted by these activities. However, use of the funds are restricted to education and public roads in the "county or counties in which the national forest is situated."

In current practice, the state allocates only a portion of these funds to organized boroughs within the two national forests. The allocation is based on the amount of national forest acreage within the boroughs' boundaries. The remaining portion of funds, associated with forest acreages in the unorganized borough, is not allocated specifically and co-mingles with state general funds.

HB 54 would preserve the intent of the forest receipts program and the spirit of federal law by specifically allocating the unorganized borough portion of funds to the appropriate communities in the Tongass and Chugach forest. The program will be administered by the Department of Community and Regional Affairs. In the senate CRA committee version, the allocation divides the use of the funds into 75% for education and 25% for roads. Distribution of the education funds is based on the school population (ADM) of public school systems in the two national forests. Distribution of the public roads funds is based on the number of road miles maintained by the communities. A percentage of the funds, associated with state maintained roads in the unorganized borough, will revert back to the state.

CIRA
SCS CSHB 54 (Einance)-Prospective distribution

<u>Community</u>	<u>Road Miles</u>	<u>ADM</u>	<u>Road Mile \$</u>	<u>School \$</u>	<u>Total</u>
Home Rule					
Petersburg	12.15	681.20	48.6	795.9	844.5
Wrangle	8.03	508.90	32.1	594.6	626.7
Federal					
Metlakatla	0.00				0.0
1st Class					
Hydaburg	3.17	108.40	12.7	126.6	139.3
Craig	19.00	310.70	76.1	363.0	439.1
Klawock	5.83	201.90	23.3	235.9	259.2
Kake	17.15	178.70	68.7	208.8	277.4
Hoonah	14.00	234.00	56.0	273.4	329.4
Pelican	1.10	48.20	4.4	56.3	60.7
Skagway	11.15	144.75	44.6	169.1	213.7
Yakutat	7.34	150.00	29.4	175.2	204.6
2nd Class					
Thorne Bay	22.70		90.9		90.9
Coffman Cove	2.00		8.0		8.0
Kasaan	2.92		11.7		11.7
Kupreanof	0.00		0.0		0.0
Angoon	5.18		20.7		20.7
Tenakee Springs	0.00		0.0		0.0
Port Alexander	0.00		0.0		0.0
Total Local	131.72	2566.75	527.27	2998.81	3,526.1
State	243.00	1284.90	972.7	1,501.2	2,473.9
Grand Total	374.72	3851.65	1,500.0	4,500.0	6,000.0

76 3 REAS'S



SOUTHEAST
ISLAND
SCHOOL
DISTRICT

1621 TONGASS AVENUE SUITE 301
POST OFFICE BOX 8340
KETCHIKAN, ALASKA 99901
(907) 225-9658 OR 225-9659

Robert Weinstein
SUPERINTENDENT

May 8, 1991

Senator Pat Pourchot, Co-Chair
Senate Finance Committee
Alaska Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

This is to ask that you support HB 54, proposed legislation addressing distribution of National Forest receipts, with an amendment which assures an equitable distribution of the portion set aside for support of public schools.

The basic issue is the federal government gives each state 25% of timber receipts from National Forests within its boundaries, with the money to be distributed to counties for schools and roads impacted by logging activities. In Alaska, boroughs (both organized and unorganized) are considered the equivalent of counties for receipt of these funds. Despite current statute, only the organized boroughs receive a share of funds, which by federal law is based upon geographic proportion of the National Forest within their boundaries. Since about 70% of the National Forest is within the unorganized borough, this means that 70% of the funds are not distributed at all at the current time. For your information, most of the receipts are generated by communities within our school district (as we have 50% of the Tongass National Forest within our boundaries).

For the current year, the state has received over \$9 million in federal timber receipts. Of that, \$2.76 million has been distributed to boroughs. The remainder, \$6.2 million, is the unorganized borough's share. The current bill as passed by the House proposes to allocate 75% of the unorganized borough's share to schools; unfortunately, REAA's are excluded from this distribution. Under the version which passed the House, about \$3.0 million would be distributed to municipal school districts, while what otherwise would be the REAA share of \$1.6 million would continue to be retained by the state.

My understanding is that the major obstacle to the inclusion of all schools was due to a continuing perception that REAA's are 100% state funded and/or funded in a significantly disproportionate manner to all other school districts in Alaska. I have therefore compiled some data which clearly demonstrates, from both actual and theoretical perspectives, that: (1) the level of state support of REAA's is within the range of other school district funding; and (2) from both perspectives, REAA's should be included in a measure which distributes timber receipts for schools located in or near the National Forest. My further understanding is that the Department of Education essentially agrees with this analysis, and will be supporting an amendment as recommended herein.

Enclosed you will find copies of:

1. The HB 54 fiscal note and distribution as projected by the House Finance Committee.
2. Spreadsheet (Table 1) which shows what impact would accrue if all districts, including the three REAA's in Southeast Alaska, were to receive funds. Please note that: (a) no municipal district loses funding if REAA's were to receive their proportional share based upon total ADM in the unorganized borough area of the National Forest; (b) these numbers are slightly different than those in the House Finance projected distribution because I used Department of Education ADM figures as well as this year's actual timber receipts rather than the \$6 million figure used by the House committee.

3. Spreadsheet and accompanying graphs for:

a. Sources of school district revenues. Table 2 and Figure 1 present data from the actual perspective. Table 2 shows the funding sources by percentage that each district actually received in FY 90. Figure 1 graphically presents this data. The three REAA's (Annette Island, Southeast Island, and Chatham) clearly are within the range of state support received by municipal districts.

This data dispels the myth that REAA's are 100% state funded, and are therefore funded disproportionately by the state relative to municipal school districts.

b. Impacts of HB 54 from the theoretical viewpoint. Table 3 and Figure 2 present data showing: (a) basic need for each district; and (b) the impact of HB 54 relative to basic need, demonstrating that all but one municipal district would receive in excess of 100% basic need (while REAA's would be held to this as a maximum level of funding).

In sum, the data shows both that REAA's are not 100% state funded, and that, if limited to only municipal districts, federal funds appropriated by Congress to provide supplemental assistance to National Forest logging-impacted school districts would instead be distributed on a disproportionate basis.

In closing, we are requesting your support of an amendment to HB 54 so that a distribution of National Forest income for schools in the unorganized borough includes REAA's on the same basis as other schools in or near the National Forest. We believe an amendment is supported by:

- A. The above school finance equity considerations.
- B. The fact that our schools are extraordinarily impacted by the logging industry, e.g. the need to move school facilities and teacher housing, students moving from school to school with unusual program impacts, etc., costs of which are not provided through the foundation formula. These are precisely the types of impacts foreseen by Congress.
- C. Most of the timber receipts are generated by logging communities within SISD.

Thank you very much for your consideration of this request.

Sincerely,



Robert Weinstein
Superintendent

Table 1: Comparison of Distribution of Funds Per HB 54 with Distribution for All Districts

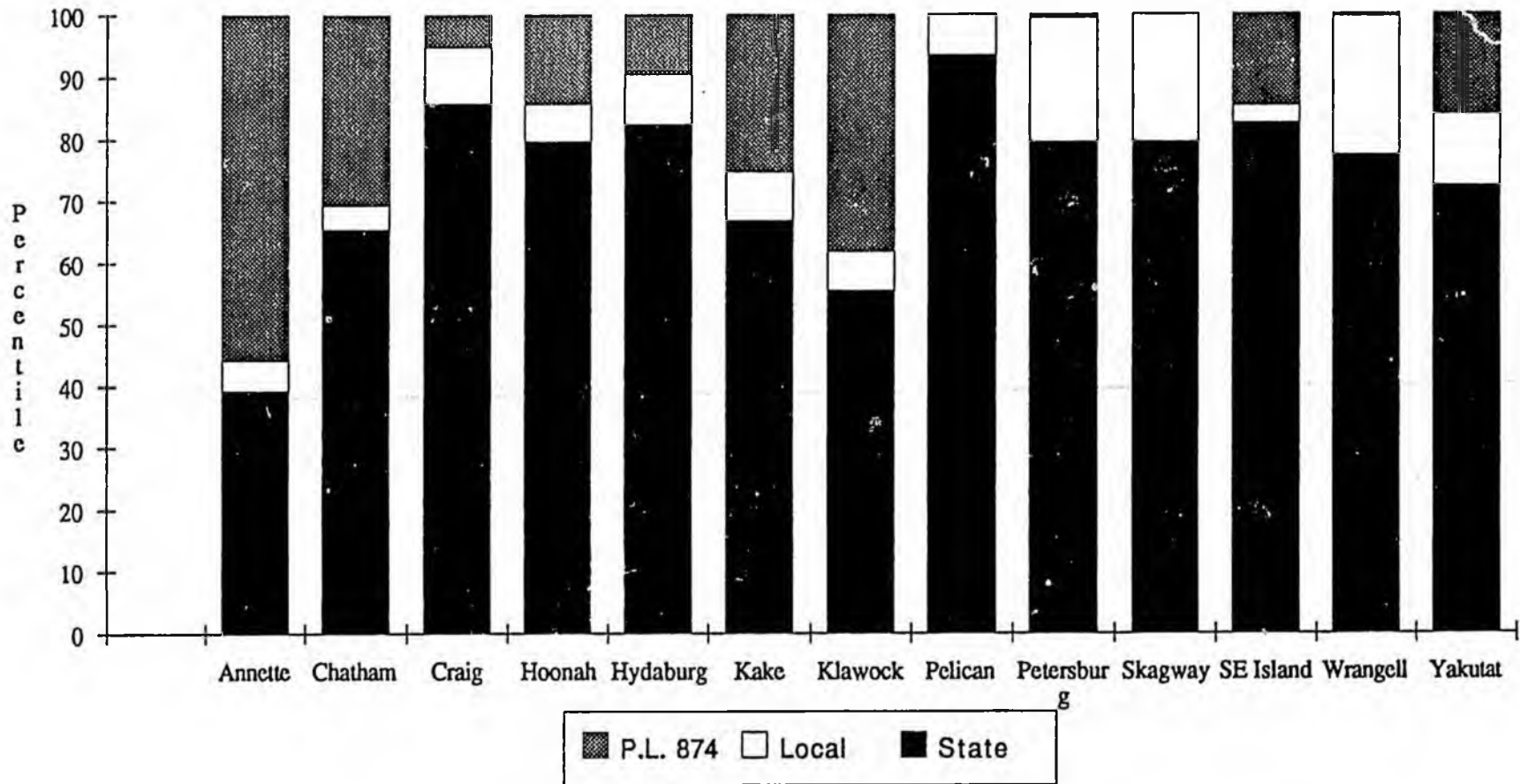
	A	B	C	D	E	F	G	H
1								
2	Amount Available for Distribution =			\$4,608,518	75% of	\$6,144,690		
3								
4	School District	ADM	ADM%	Distribution	Proportional	Difference		
5			of total	Per CS HB 54	Share per ADM			
6								
7	Annette	381	9.91%	\$0	\$456,776	(\$456,776)		
8	Chatham	382	9.94%	\$0	\$457,974	(\$457,974)		
9	Craig	303	7.88%	\$363,262	\$363,262	\$0		
10	Hoonah	234	6.09%	\$280,539	\$280,539	\$0		
11	Hydaburg	108	2.81%	\$129,480	\$129,480	\$0		
12	Kake	179	4.66%	\$214,601	\$214,601	\$0		
13	Klawock	202	5.25%	\$242,175	\$242,175	\$0		
14	Pelican	48	1.25%	\$57,547	\$57,547	\$0		
15	Petersburg	681	17.72%	\$816,441	\$816,441	\$0		
16	Skagway	145	3.77%	\$173,838	\$173,838	\$0		
17	SE Island	522	13.58%	\$0	\$625,818	(\$625,818)		
18	Wrangell	509	13.24%	\$610,233	\$610,233	\$0		
19	Yakutat	150	3.90%	\$179,833	\$179,833	\$0		
20								
21	Total=	3844	100%	\$3,067,949	\$4,608,518	(\$1,540,568)		
22								
23	Column D shows distribution by HB 54.							
24	Column E shows what each district would receive by ADM proportion if all were eligible.							
25	Column E shows difference between HB 54 distribution and equitable distribution for all schools.							

Table 2: School District Revenue Sources

	A	B	C	D	E	F
1						
2	School District					
3		State	Local	P.L. 874	Total	% of Total from
4		Foundation	Sources		Revenues	State Foundation
5	Annette	\$1,319,535	\$164,157	\$1,882,369	\$3,366,061	39.20%
6	Chatham	\$2,554,528	\$157,024	\$1,195,571	\$3,907,123	65.38%
7	Craig	\$1,434,695	\$152,439	\$86,072	\$1,673,206	85.75%
8	Hoonah	\$1,535,024	\$117,632	\$276,766	\$1,929,422	79.56%
9	Hydaburg	\$916,756	\$88,780	\$107,205	\$1,112,741	82.39%
10	Kake	\$1,115,643	\$133,344	\$424,108	\$1,673,095	66.68%
11	Klawock	\$1,374,266	\$158,052	\$948,105	\$2,480,423	55.40%
12	Pelican	\$581,379	\$40,999	\$0	\$622,378	93.41%
13	Petersburg	\$2,962,083	\$745,816	\$23,198	\$3,731,097	79.39%
14	Skagway	\$906,669	\$234,893	\$0	\$1,141,562	79.42%
15	SE Island	\$5,149,771	\$177,933	\$916,648	\$6,244,352	82.47%
16	Wrangell	\$2,577,818	\$748,004	\$13,647	\$3,339,469	77.19%
17	Yakutat	\$1,064,621	\$170,564	\$238,496	\$1,473,681	72.24%

Source: Dept. of Education Audited Data

Figure 1: School District Revenue Sources as Percentage

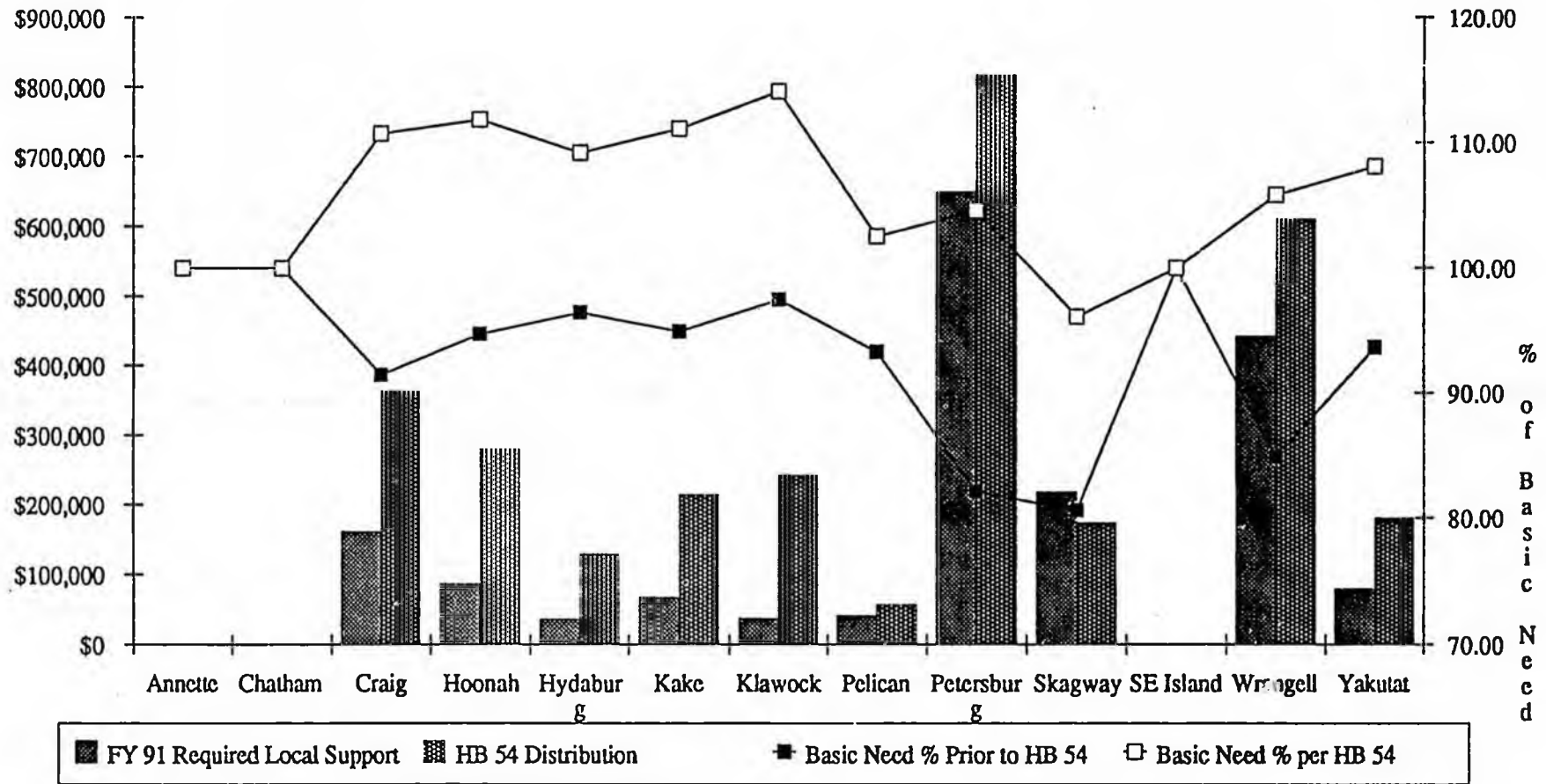


Source: Dept. of Education Audited Data

Table 3: School District Basic Need as Impacted by HB 54

	A	B	C	D	E	F
1	School Distric	Basic	FY 91 Required	HB 54	Basic Need %	Basic Need
2		Need	Local Support	Distribution	Prior to HB 54	% per HB 54
3						
4	Annette	\$2,407,800	\$0	\$0	100.00	100.00
5	Chatham	\$3,490,800	\$0	\$0	100.00	100.00
6	Craig	\$1,887,000	\$160,714	\$363,262	91.48	110.73
7	Hoonah	\$1,638,600	\$86,344	\$280,539	94.73	111.85
8	Hydaburg	\$1,018,200	\$36,096	\$129,480	96.45	109.17
9	Kake	\$1,326,600	\$67,375	\$214,601	94.92	111.10
10	Klawock	\$1,458,600	\$36,776	\$242,175	97.48	114.08
11	Pelican	\$623,400	\$41,763	\$57,547	93.30	102.53
12	Petersburg	\$3,644,400	\$649,768	\$816,441	82.17	104.57
13	Skagway	\$1,122,000	\$217,644	\$173,838	80.60	96.10
14	SE Island	\$5,638,000	\$0	\$0	100.00	100.00
15	Wrangell	\$2,920,800	\$440,792	\$610,233	84.91	105.80
16	Yakutat	\$1,244,400	\$79,168	\$179,833	93.64	108.09

Figure 2: Basic Need as Impacted by HB 54



DEPARTMENT OF EDUCATION
 FOUNDATION PROGRAM AS REVISED BY SB 7
 PREPARED 4/30/91

<< SEC. 1 THRU 3 BASED ON A \$63,000 UNIT >>

	PROJ. FY92 ADM	SB 7 SEC. 1 COMBINED K-12 TABLE REVISED	SB 7 SEC. 2 SPLIT K-6 & 7-12 TABLES REVISED	SINGLE SITE SUPPLEMENTAL FORMULA < 500 ADM	SB 7 SEC. 4 INCREASE UNIT VALUE BY \$3,000	SB 7 INCREASED FOUNDATION IF UNIT VALUE IS \$63,000
ADAK	715.00	\$0	\$160,020	\$0	\$222,480	\$382,500
ALASKA GATEWAY	499.00	165,690	0	0	242,880	408,570
ALEUTIAN REGION	33.00	0	0	0	38,310	38,310
ALEUTIANS EAST	359.00	61,740	0	0	192,360	254,100
ANCHORAGE	42,070.00	15,120	252,000	0	10,064,760	10,331,880
ANNETTE ISLANDS	411.00	182,070	0	0	127,140	309,210
BERING STRAIT	1,398.00	236,250	0	0	839,250	1,075,500
BRISTOL BAY	265.00	160,650	0	0	122,310	282,960
CHATHAM	384.00	74,340	0	0	174,660	249,000
CHUGACH	110.00	0	0	0	80,040	80,040
COPPER RIVER	578.00	165,060	0	0	265,950	431,010
CORDOVA	437.90	206,010	0	197,190	140,430	543,630
CRAIG	413.00	183,330	0	173,880	117,510	474,720
DELTA/GREELY	870.00	0	146,160	0	261,000	407,160
DILLINGHAM	485.00	253,890	0	245,700	184,890	684,480
FAIRBANKS	14,683.00	0	393,120	0	3,644,520	4,037,640
GALENA	150.00	40,950	0	157,500	74,760	273,210
HAINES	441.00	185,850	0	0	135,960	321,810
HOONAH	230.00	125,370	0	173,880	80,070	379,320
HYDABURG	108.00	0	0	101,430	51,030	152,460
IDITAROD	394.00	66,150	0	0	258,000	324,150
JUNEAU	5,328.00	0	126,000	0	1,305,870	1,431,870
KAKE	172.00	56,070	0	136,080	64,260	256,410
KASHUNAMIUT	192.00	100,800	0	0	92,370	193,170
KENAI	9,723.50	601,020	630,000	0	2,666,340	3,897,360
KETCHIKAN	2,798.00	0	126,000	0	687,990	813,990
KLAWOCK	200.00	86,940	0	150,570	72,180	309,690
KODIAK	2,410.70	0	137,340	0	743,400	880,740
KUSPUK	413.45	86,940	0	0	259,620	346,560
LAKE AND PENN.	420.00	0	0	0	315,330	315,330
LOWER KUSKOKWIM	2,835.00	97,650	0	0	1,666,680	1,764,330
LOWER YUKON	1,352.00	412,650	0	0	692,520	1,105,170
MATSU	9,997.00	122,850	504,000	0	2,501,220	3,128,070
NENANA	180.00	75,600	0	163,170	78,450	317,220
NOME	777.95	0	168,840	0	274,740	443,580
NORTH SLOPE	1,406.00	166,320	182,700	0	657,630	1,006,650
NORTHWEST ARCTIC	1,583.60	138,600	182,700	0	823,200	1,144,500
PELICAN	48.00	0	0	61,110	30,780	91,890
PETERSBURG	707.00	0	126,000	0	186,960	312,960
PRIBILOF	153.00	630	0	0	93,870	94,500
RAILBELT	338.00	103,950	0	0	152,700	256,650
SITKA	1,745.00	0	126,000	0	414,360	540,360
SKAGWAY	130.00	10,710	0	116,550	53,010	180,270
SOUTHEAST	557.10	69,930	0	0	294,720	364,650
SOUTHWEST	485.00	49,770	0	0	318,060	367,830
ST MARY'S	115.60	0	0	134,190	68,490	202,680
TANANA	109.00	0	0	128,520	63,930	192,450
UNALASKA	298.00	181,440	0	165,690	114,450	461,580
VALDEZ	765.00	0	139,860	0	208,350	348,210
WRANGELL	520.00	0	126,000	0	152,220	278,220
YAKUTAT	152.00	36,540	0	132,300	63,540	232,380
YUKON FLATS	371.00	41,580	0	0	266,340	307,920
YUKON/KOYUKUK	510.00	62,370	0	0	333,930	396,300
YUPIIT	330.00	32,130	0	0	223,020	255,150
OTHER						225,640

TOTALS | 111,439.80 | \$4,656,960 | \$3,526,740 | \$2,237,760 | \$33,258,840 | \$43,905,940

THIS SPREADSHEET ASSUMES INCREASED ENTITLEMENTS OVER AND ABOVE THE FY92 FULL FUNDING REQUEST OF \$541,746,200.

ANCHORAGE OFFICE

THE ENSERCH CENTER
550 WEST SEVENTH AVENUE, SUITE 1200
ANCHORAGE, ALASKA 99501
PHONE (907) 277-6693
FACSIMILE (907) 279-1959

*ROBERT B BAKER
*LEROY J BARKER
*L G BEHRY
*HAROLD E SNOW, JR
*SUSAN M WEST
*JULIA B BOCKMON
*JOSEPH D DARNELL
*GREGORY G SILVEY
*CHARLES T HUGUELET

WASHINGTON, D.C. AND VIRGINIA OFFICE

ARLINGTON COURTHOUSE PLAZA II
2300 CLARENDON BOULEVARD, SUITE 1010
ARLINGTON, VIRGINIA 22201
PHONE (703) 527-4414
FACSIMILE: (703) 527-0421

**MICHAEL T. THOMAS
*STEVEN W SILVER
*CARL W WINNER
*BRADLEY D. GILMAN

ROBERTSON, MONAGLE & EASTAUGH

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
JUNEAU, ALASKA 99802

JUNEAU OFFICE

COURT PLAZA BUILDING, SUITE 500
240 MAIN STREET
P O BOX 21211
JUNEAU, ALASKA 99802
PHONE (907) 586-3340
FACSIMILE (907) 586-6818

ROYAL ARCH GUNNISON (1873-1918)
R E ROBERTSON (1885-1961)
M E MONAGLE (1902-1985)

F O EASTAUGH (RETIRED)

JAMES F CLARK
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D. ELIZABETH CUADRA
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ADMITTED IN WASHINGTON D C
AND ALASKA

ADMITTED IN VIRGINIA **
WASHINGTON D C AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

May 13, 1991

The Honorable J.M. Kerttula, Co-Chairman
The Honorable Pat Pourchot, Co-Chairman
Senate Finance Committee
Alaska Legislature
Capitol Building, Rm. 516
Juneau, Alaska 99801

Re: National Forest Receipts Distribution:
House Bill 54

Dear Senators Kerttula and Pourchot:

This letter is provided by the City of Craig, Alaska. The City of Craig supports HB 54, and fervently hopes it will become law during the present legislative session.

Alaska statutes, AS 41.15.180, need to be amended so as to remedy the existing situation under which Federal funds intended for municipalities impacted by national forest activities have not actually been reaching those municipalities which are located within the unorganized borough.

The State has been properly distributing national forest receipts monies to the organized boroughs which have national forest lands within their boundaries; and this legislation preserves that flow of monies to the organized boroughs, for their use for schools and roads.

The State, however, has been basically pocketing the other 70% of the national forest receipts without even accounting for how or where the money is spent. [Refer to Division of Legislative Audit's Report for FY ended 6/30/89, pp. 88-89.] This other 70%, arising from forest acreage within the unorganized borough, was intended by Congress to be used (for schools and public roads) to

The Honorable J.M. Kerttula, Co-Chairman
The Honorable Pat Pourchot, Co-Chairman
May 13, 1991
Page 2

alleviate the impact upon communities within or near the forest that generated the income. The State statute, as presently written, does not result in use of the funds as intended by Congress.

Federal law, 16 USC 500 enacted in 1908, provides that 25% of all money the Federal Government receives each fiscal year from each national forest is to be distributed for the benefit of the public schools and public roads of the county or counties in which each such national forest is located. Obviously Congress could not have meant the distribution to be strictly limited to counties as such, as there were no such entities (or even their equivalents by other names) in the territories.

There are numerous court decisions in which the Congressional intent underlying 16 USC 500 has been analyzed and explained: (1) these federal funds are intended to alleviate impacts of forestry on communities in the impact zone of the forest which generated the money, and the funds can only be used for schools or roads; (2) these are not "payments in lieu of taxes" (PILT) funds (the clear implication being that they are not intended as an offset for other state or local monies but instead are an additional overlay). [Refer to opinion letter, Cuadra to Mackie, dated 2/26/91, copy available in the Committee file]. Congress again reiterated its intent that these are impact funds when enacting the National Forest Management Act of 1976. [See Senate Report 94-893, dtd 5/14/76.]

In spite of the Congressional intent, since statehood roughly \$43 million have simply disappeared into the State's general fund, which were generated from the Tongass National Forest portion lying outside organized boroughs. This money should have been distributed to municipalities in the unorganized borough for their use for schools and roads. Last year alone, from the roughly \$9 million generated in the Tongass, some \$6 million went to the general fund instead of being distributed to the communities in the impact zone of the Tongass.

These are federal funds; it would be erroneous to think of corrective legislation such as HB 54 as "removing" these funds from the State's general fund. When the State is entrusted with federal assets to be used for a particular purpose, the State is legally obligated to carry out the intent of Congress on how those assets are expended. The present situation with national forest receipts generated from lands within the unorganized borough bears a certain resemblance to the mental health lands dispute with which the State has been so long entangled, and also a certain similarity to the

The Honorable J.M. Kerttula, Co-Chairman
The Honorable Pat Pourchot, Co-Chairman
May 13, 1991
Page 3

State's previous experience in administering National Petroleum Reserve - Alaska (NPR-A) Federal impact funds for local communities. In the NPR-A case (brought by three municipalities), the State was found at fault and the special nature and purpose of the Federal funds sustained. City of Barrow v. State of Alaska, 1JU-85-2634 Civ., Superior Court Summary Order, dated March 18, 1986. The Legislature should remedy the national forest receipts distribution problem during the current session.

The City of Craig was pleased to note that supporters of HB 54 have included the Office of the Governor, and the Commissioner of Community and Regional Affairs. The Alaska Municipal League supports HB 54.

Affected communities in the Tongass National Forest support remedial legislation, and want to see it enacted this year. Otherwise, several of them (each) stand to again lose several hundreds of thousands of dollars in the next annual distribution of national forest receipts. The Prince of Wales Community Advisory Council adopted a resolution urging amendment of the State statute so as to require national forest receipts generated within the unorganized borough to be distributed to communities within that borough, as the Federal statute intended. Members of that Council include the municipalities on Prince of Wales Island (such as Craig, Kasaan, Klawock, Hydaburg, Coffman Cove and Thorne Bay).

The City of Craig respectfully urges this Committee to act upon HB 54 favorably and expeditiously. We appreciate the Committee's consideration of our views on this subject.

Sincerely,



D. Elizabeth Cuadra
Craig City Attorney

DEC/k11.513
Enclosure

REPRESENTATIVE
JERRY MACKIE

P. O. BOX 73
CRAIG, ALASKA 99921
(907) 826-3008 OFFICE
(907) 826-2930 HOME

CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE
VICE CHAIRMAN,
TRANSPORTATION COMMITTEE

Alaska State Legislature



WHILE IN JUNEAU
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4925

House of Representatives

April 5, 1991

MEMORANDUM

To: Rep. Navarre, Co-chair
Rep. MacLean, Co-chair
Rep. Barnes, Member
House Finance Sub-committee

From: Rep. Mackie *JAM*

Re: Attorney's opinion on HB 54, relating to national forest receipts.

In a previous finance committee hearing on HB 54, concern was expressed that the legislation tacitly admits that the current method of dispersing forest receipts for the unorganized borough is flawed. And hence, it may increase the state's exposure to litigant claims for a portion of past years' receipts.

The attached opinion reviews an Alaska Court decision on a similar question that was presented on the state's handling of NPR-A federal funds. It should give the committee some measure of comfort, at least to the issue of previous years' expenditures.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 4, 1991

SUBJECT: National Forest Receipts (CSHB54())
TO: Representative Jerry Mackie
Attn: Dave Gray
FROM: Jerry Luckhaupt *JER*
Legislative Counsel

You have requested a memorandum exploring the adequacy of AS 41.15.180(c) in regard to 16 U.S.C. §500 and the decision of the superior court in the case of Barrow v. State, No. 1JU-85-2634 Civil, First Judicial District. (Copy of summary judgment attached). You have also asked what the distribution of national forest receipts by the federal government under 16 U.S.C. §500 appears to be designed for. I will address these questions in order.

Initially, in considering your request it is necessary to examine the federal law we are concerned with here. 16 U.S.C. §500 provides:

On and after May 23, 1908, twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. . . .

The law provides that national forest income distributed to a state "shall be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is located." If the national forest lies in more than one county, the share to each county shall be proportional to the area of the forest within each county.

Representative Jerry Mackie
April 4, 1991
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As pointed out in an earlier memorandum, since we do not have counties in Alaska we must assume that a borough is comparable to a county. This seems to be a safe assumption as, from my discussions with you, the U. S. Forest Service currently makes payments directly to the organized boroughs which contain national forest land within their boundaries. Consequently, we must also consider the unorganized borough, that is all land outside of organized boroughs, to be a county.

Additionally, as noted in one of my earlier memoranda to you on this subject, AS 41.15.180(c) can only be reconciled with the requirements of the federal Act if the words "in the unorganized borough" are read into the state law. AS 41.15.180(c) provides:

(c) The commissioner shall deposit income from national forest land outside of organized boroughs in the general fund of the state, 25 percent to be used for public schools and 75 percent for roads.

If we assume that this means that national forest income deposited in the general fund is to be used "in the unorganized borough" then this subsection appears to comport with federal law. If income from national forest land outside of organized boroughs is deposited in the general fund for use for public schools and roads, not just in the unorganized borough, then it appears that the requirements of 16 U.S.C. §500 may not be met.

As to the sufficiency of the statute in light of Barrow v. State, it appears that a local government in the unorganized borough may be able to maintain an action against the state for failure to properly account for and utilize national forest income in the unorganized borough. In Barrow, the court was confronted with a suit brought by the cities of Barrow and Wainwright and the North Slope Borough, concerning the state's failure to properly account for and utilize impact funds distributed to the state under 42 U.S.C. §6508. Under that federal law half of all receipts from leases of land in the National Petroleum Reserve-Alaska (NPR-A) are paid to the state for planning, construction, maintenance, and operation of essential public facilities. In allocating these funds the state must give priority to use of the funds by political subdivisions "most directly or severely impacted by development of oil and gas leases" on the NPR-A.

From 1981 - 1984 the state did not follow this federal requirement and merely deposited half of these funds into the general fund and half into the permanent fund. Starting in 1984, the half not deposited in the permanent fund was deposited in a NPR-A reserve account. No program was developed for distribution of these funds to local governments in accordance with the federal law, though, the state maintained that the amount of money flowing from the general fund to the local governments was similar in amount and satisfied any claim the local governments may have to the NPR-A funds.

Representative Jerry Mackie

April 4, 1991

Page 3

The superior court in Barrow ruled in favor of the local governments, finding that the state's deposit of the funds in the general and permanent funds without regard to the federal requirements was illegal. The court ruled, though, that the local governments were not entitled to the funds deposited in the general fund in the past as the local governments had delayed in bringing their suit and because of the difficulty involved in trying to recreate the funds and state expenditures. The court required the state to gather the funds deposited in the reserve fund and the permanent fund and utilize them as required by the federal law. The court allowed the state to set off amounts appropriated to the local governments for projects actually arising out of oil and gas development activities. The court also required the state to properly account for all funds received by the state in the future under this program. The decision of the superior court was not appealed.

In light of this decision it appears that the current state practice of depositing national forest income from outside of organized boroughs in the general fund without any accounting or assurances that those funds are used in the unorganized borough for public schools and public roads may suffer from the same infirmities found by the court concerning the NPR-A revenues. A local government in the unorganized borough could possibly maintain an action against the state in this regard. A court decision in the local government's favor, presumably though, would only require the state to account for the national forest income and ensure that it is only used in the unorganized borough. A court decision in favor of a local government in the unorganized borough, would probably not require the state to reassemble national forest income that was deposited in the general fund for the same reasons provided in the NPR-A suit, those being: (1) that the local governments delayed in bringing their suit; and (2) that the appropriation process may be impossible to recreate for those funds deposited in the general fund. Also, a court could easily find that state appropriations for public schools and roads in the unorganized borough over the years have satisfied the state's duty to the unorganized borough as the superior court allowed the state to show in the Barrow case.

Finally, you have asked what are the distributions of national forest income under 16 U.S.C. § 500 appear to be designed for. In enacting the National Forest Management Act of 1976, which included amendments to 16 U.S.C. §500, the Senate report on the Act stated:

The formula for paying a 25 percent share of national forest revenues to counties in which National Forest System lands are located is adjusted to minimize adverse impacts on the counties.

1976 U.S.C.C.A.N.6667 (attached). The purpose of this distribution therefore, appears to be to minimize adverse impacts on local governments of activities occurring on national forest lands.

Representative Jerry Mackie
April 4, 1991
Page 4

If you have further questions, please contact me at your convenience.

GPL:pl
91-230.plm

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 CITY OF BARROW, CITY OF WAINWRIGHT,)
4 and NORTH SLOPE BOROUGH,)

5 Plaintiffs,)

6 v.)

7 STATE OF ALASKA, WILLIAM SHEFFIELD,)
8 Governor of Alaska, MARY NORDALE,)
9 Commissioner, Department of)
10 Revenue, State of Alaska,)

11 Defendants.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA, FIRST DISTRICT
AT JUNEAU

MAR 13 1986

Clerk of Court

By FB Deputy

No. 1JU-85-2634 Civil

12 SUMMARY ORDER

13 Plaintiffs move for summary judgment on their
14 complaint for declaratory relief. Specifically, they seek a
15 judicial declaration that the defendants (hereinafter, the
16 State) have violated the terms of P.L. 96-514 (42 U.S.C. 6508)
17 by (a) failing to segregate funds received from the federal
18 government, (b) failing to establish a system by which political
19 subdivisions impacted by oil and gas development in the National
20 Petroleum Reserve - Alaska (hereinafter, NPR-A) could apply for
21 or receive funds to impacted subdivisions on a priority basis as
22 required by the federal law and (c) appropriating those funds to
23 the general use of the State of Alaska. (Plaintiffs alterna-
24 tively seek parallel declaratory relief on the basis of breach
25 of fiduciary duty to administer a trust created by P.L. 96-514.)
26 Plaintiffs additionally seek a declaration that ch. 94, SLA
27 1984, requires all funds (past or future) received by the State
28 from the federal government under P.L. 96-514 to be placed in a
29 special revenue fund and made available for appropriation by the
30 legislature under a system which complies with the requirements
31 of P.L. 96-514. Lastly, plaintiffs seek injunctive relief
32 (a) requiring the State to segregate and account for all funds
received under P.L. 96-514 and to administer those funds in

1 accordance with law and (b) prohibiting the State from expending
2 any P.L. 96-514 revenues (past or future) until a system is
3 established for lawful administration and disposition of such
4 funds.

5 The State has filed a cross-motion for summary judgment,
6 arguing first that the plaintiffs' complaint does not
7 state a cause of action. The State argues to this result from
8 its conclusion that P.L. 96-514 imposes no judicially enforce-
9 able conditions on Alaska's receipt of NPR-A revenues.
10 Additionally, the State argues (a) that the plaintiff municipal-
11 ities have no right to share in NPR-A revenues in advance of
12 actual commercial production from NPR-A; (b) that the State is
13 entitled to deposit a portion of NPR-A revenues directly into
14 the Alaska Permanent Fund upon receipt; (c) that the State is
15 under no obligation to adopt specific procedures whereby
16 political subdivisions may apply for and receive NPR-A funds;
17 (d) that plaintiffs' delay in bringing this action bars their
18 claims for relief as to moneys already expended by the State;
19 (e) that any State obligation with respect to NPR-A funds should
20 be deemed satisfied through the sharing of state revenues with
21 the plaintiff municipalities under other programs; and (f) that
22 ch. 94, SLA 1984, does not affect NPR-A revenues which were
23 received and spent by the State prior to the date on which that
24 law became effective.

25 The parties have both requested expedited handling of
26 this motion. Oral argument was heard one week after the
27 briefing was completed. In order to avoid further delay¹ in
28
29

30 1. The six-week period during which this case has
31 been held under advisement coincides almost exactly with the
32 period during which the undersigned has been the only superior
court judge present in Juneau.

1 announcing the court's decision, the court's conclusions on the
2 above issues are set out below in summary fashion.

3 1. Mandatory Duty Regarding Allocation of NPR-A Revenues.

4 A. P.L. 96-415 provides that half of all receipts
5 from sales, rentals, bonuses and royalties on leases pertaining
6 to lands in the National Petroleum Reserve - Alaska shall be
7 paid by the federal government to the State of Alaska "for
8 (a) planning, (b) construction, maintenance and operation of
9 essential public facilities, and (c) other necessary provisions
10 of public service." In the allocation of such funds, the
11 federal act establishes a mandatory duty on the State of Alaska
12 to "give priority to use [of NPR-A funds] by subdivisions of the
13 state most directly or severely impacted by development of oil
14 and gas leased under [P.L. 96-514]."

15 B. The duty imposed by P.L. 96-514 ultimately falls
16 upon the Alaska Legislature (because it has the spending power),
17 and it includes the duties to examine the claimed needs of
18 subdivisions arising from oil and gas development impacts, to
19 evaluate them and, if the claimed needs are found to exist, to
20 rank them in order of priority, and to meet or satisfy them out
21 of NPR-A revenues.

22 C. The duty set out above may be met through exist-
23 ing entities and the budget review process; it is not necessary
24 that a new apparatus be created to receive NPR-A claims.

25 2. When the Duty Arises.

26 The duty arises upon the commencement of any "develop-
27 ment" of the subject tracts. Because "development" includes
28 "any step taken in the search for . . . hydrocarbons" (as well
29 as capture, production and marketing of same), it is clear that
30 the duty arises well before actual commercial production and
31 exists at least as early as when test wells are being drilled.
32 Of course, in evaluating claimed impact needs, and in

1 determining whether they truly exist, the legislature certainly
2 may take into account the likely pace of exploration, the
3 likelihood of further exploration, the likelihood of actual
4 commercial production which may result and its likely pace, etc.

5 3. Automatic Deposit into Permanent Fund.

6 The State cannot, consistent with its obligations
7 under P.L. 96-514, automatically deposit 50% (or any amount) of
8 all NPR-A revenues into the Alaska Permanent Fund. Such action
9 clearly contravenes the mandatory duty placed on the State by
10 the very law which authorizes payments to the State (since such
11 payments are made on the condition that the State "give priority
12 to use [of such funds] by subdivisions of the state most
13 directly or severely impacted" by the developments of leased
14 lands). Rather than a direct deposit to the permanent fund, the
15 State must first resort to the process referred to in Parts 1-B
16 and 1-C above to examine the claimed needs of impacted subdivi-
17 sions and to rank any found to exist. Because the language of
18 the federal act is so broad concerning the allowable objects of
19 state expenditure of NPR-A funds ("other necessary provisions of
20 public service"), it is conceivable that an allocation of NPR-A
21 revenues to the permanent fund might be allowable after the
22 State complies with the mandatory duty imposed on it to evaluate
23 needs and establish priorities. But this difficult question
24 need not be resolved now, for on the undisputed facts before the
25 court the State has made no effort at all to meet the duty
26 imposed upon it. The automatic deposits into the permanent fund
27 clearly violate the federal law.

28 4. Plaintiffs' Delay in Filing Lawsuit.

29 By virtue of their delay in bringing this action,
30 plaintiffs are barred from obtaining relief as to any moneys
31 already expended by the State. Because the State is under a
32 duty under federal law to undertake an evaluative process to

1 prioritize claims, and because it would be impossible to
2 recreate the conditions under which that process would have
3 taken place in 1982 and 1983 (for example), the State would be
4 prejudiced by an order now requiring it to place into a special
5 fund monies which have been expended for other purposes and an
6 order requiring it to make allocations based on a system of
7 priorities which cannot be recreated. There is no bar, however,
8 as to those funds which have been placed in the NPR-A reserve
9 account since 1984, and there is no bar as to those funds
10 deposited directly into the Permanent Fund.

11 5. Satisfaction.

12 Summary judgment on this defense is denied. Even
13 assuming that the amount of development-related impact needs of
14 the plaintiffs for the period 1981 - 1985 could somehow be known
15 by this court without formal legislative determination under the
16 process mandated by the federal act, there would remain factual
17 matters in dispute. The court, however, adopts the position of
18 the State that it may show satisfaction to the extent that it
19 shows that a given appropriation to plaintiffs was for needs
20 arising out of oil and gas development-related impacts.

21 6. Ch. 94, SLA 1984.

22 Having determined that federal law imposes a mandatory
23 duty upon the State as set out above, it is unnecessary to
24 consider whether state law too forbids the practices complained
25 of here by plaintiffs. Under the supremacy clause of the
26 federal constitution, federal law controls. Whether ch. 94, SLA
27 1984, also requires, as a matter of state law, that which
28 P.L. 96-514 requires therefore need not be decided.

29 CONCLUSION

30 Having reached the above conclusions, the court
31 declares the rights of the parties and orders as follows:

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- (1) The State has violated P.L. 96-514 by failing to establish a system by which political subdivisions impacted by oil and gas development in the NPR-A could apply for and receive funds on a priority basis.
- (2) The State has violated P.L. 96-514 by appropriating NPR-A funds to the general use of the State of Alaska without giving priority to those uses specified in P.L. 96-514.
- (3) The State is required to segregate and account for all funds received under P.L. 96-514, other than those already expended.
- (4) The State is required to administer funds received under P.L. 96-514 in such a way that it gives priority to the use of such funds by subdivisions most directly or severely impacted by development of oil and gas leased under P.L. 96-514.
- (5) As to the defense of satisfaction, that matter must be reserved for trial on the factual issue whether any appropriations to plaintiffs during the years in question were for needs arising from impacts related to oil and gas development.

The matter will be scheduled for trial at counsel's request upon the filing of a proposed scheduling order signed by all parties, or a scheduling conference will be set if counsel are unable to agree upon a schedule for trial.

IT IS SO ORDERED.

DONE at Juneau, Alaska, this 15th day of March, 1986.

Walter L. Carpeneti

Walter L. Carpeneti
Superior Court Judge