

**HB**

**306**

# HOUSE COMMITTEE REPORT

(7) Date Referred: January 10, 1994 FURTHER REFERRALS: Finance

Date of Committee Action: 2/14/94

The RESOURCES Committee considered: HB 306

HOUSE BILL NO. 306 MUNICIPAL TAX CREDIT/HABITAT PROTECTION

"An Act relating to an optional municipal tax credit for costs of certain river habitat protection improvements."

RECOMMENDATIONS:  the same title  
 be replaced with CS HB 306  a new title  
 have attached amendments(s)  
 do pass  
 do not pass  
 no recommendations  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal impact \_\_\_\_\_  fiscal note(s) \_\_\_\_\_  
 zero fiscal note Fish and Game  zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Bill Hudson</i> Hudson	✓				
<i>John Carney</i> Carney	✓				
<i>John Green</i> Green	✓				
<i>David Alstein</i> Alstein	✓				
<i>W. Bunde</i> Bunde	✓				
<i>W.K. Williams</i> Williams	✓				

*W.K. Williams*  
 CHAIRMAN'S SIGNATURE

8-LS09550  
Cook  
2/12/94

CS FOR HOUSE BILL NO. 306( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES G.DAVIS, Phillips, Green

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to an optional municipal tax credit for costs of certain river  
2 habitat protection improvements."

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

4 \* Section 1. AS 29.45 is amended by adding a new section to read:

5 Sec. 29.45.046. RIVER HABITAT PROTECTION TAX CREDIT. (a) A  
6 municipality may by ordinance provide for a river habitat protection credit to be  
7 applied to offset a portion of the property taxes due on land, or an interest in land  
8 taxable under this chapter, upon which an improvement has been constructed that aids  
9 in

10 (1) protecting the Kenai River or a tributary of the Kenai River from  
11 degradation of fish habitat due to public or private use; or

12 (2) restoring riparian fish habitat along or in the Kenai River or a  
13 tributary of the Kenai River that has been damaged by land use practices.

14 (b) The amount of a river habitat protection credit shall be based upon a

1 percentage of the verifiable costs of the improvement and may not exceed 50 percent  
2 of the total amount of taxes levied upon the land or upon the taxable interest in the  
3 land during a single tax year, but the credit may be granted for more than one year.  
4 If the credit is granted for more than one year and the land or taxable interest in the  
5 land is conveyed, the portion of the credit remaining is extinguished. The ordinance  
6 may limit the availability of a credit to some, but not all types of improvements for  
7 which a credit may be granted under this section and to some, but not all areas of the  
8 municipality. A credit may only be granted for an improvement that has been  
9 constructed in compliance with state and federal laws and certified by the Department  
10 of Fish and Game under (c) of this section. A credit may not be granted for an  
11 improvement

12 (1) required under state or federal law; or

13 (2) located more than 150 feet from the mean high tide line or ordinary  
14 high water line; in this paragraph, "ordinary high water line" means that line on the  
15 shore of the nontidal portion of a river or stream that reflects the highest level of water  
16 during an ordinary year and is established by fluctuations of water and indicated by  
17 physical characteristics such as a clear, natural line impressed on the bank, shelving,  
18 changes in the character of soil, destruction of terrestrial vegetation, the presence of  
19 litter and debris, or other appropriate means that consider the characteristics of the  
20 surrounding area.

21 (c) The Department of Fish and Game shall by regulation establish criteria to  
22 be used in determining whether an improvement is effective in accomplishing the  
23 purposes listed in (a)(1) or (2) of this section. Upon application by the owner of land  
24 or taxable interest in land, the department shall certify whether an improvement meets  
25 the criteria established under this subsection. The department may require submission  
26 of plans for approval before construction as a condition of certification.

# Alaska State Legislature

Interim:  
P.O. Box 1287  
Soldotna, AK 99669  
(907) 262-8414

Session:  
State Capitol  
Juneau, AK 99801  
(907) 465-2693

Representative Gary L. Davis

## SPONSOR STATEMENT

### CS for House Bill 306

"An Act relating to an optional municipal tax credit for costs of certain river habitat protection improvements."

House Bill 306 will create a Municipal Tax Incentive Program (MTIP) to encourage private property owners to voluntarily protect important fishing habitat. Currently, under statute, it is not possible for local government to provide a property tax credit.

This piece of legislation will grant local municipalities the ability to designate certain tax incentives for improving certain anadromous riparian habitats. The habitats must be determined by the State to warrant special management. In order to be eligible for a tax credit, the constructed improvement must aid in protecting the Kenai River or a tributary of the Kenai River from degradation due to public or private use; or restoring riparian fish habitat in the Kenai River or a tributary of the Kenai River that has been damaged by land use practices or can be damaged without preventive measures.

Let it be noted, that the Kenai River Special Management Area (KRSMA) Advisory Board established under AS 41.21.510, supports HB 306. The KRSMA Advisory Board is appointed by the Commissioner of Natural Resources to develop and implement the Kenai River Special Management Area plan established in AS 41.21.502 (a).

The eligible improvements will be in compliance with state and federal laws and certified by the Department of Fish and Game as meeting the established criteria.

House Bill 306 sets parameters that allow local governments flexibility in determining their needs and interests, while protecting riparian habitats.

No local government is required to create a MTIP that is not wanted.

Municipal Tax Incentive Programs have proven effective in conserving riparian habitat elsewhere in the country. Once the MTIP proves effective on the Kenai River it may serve as a pilot project for other areas of the state.

# FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 306 (RES)

Revision Date: 2/16/94  
Title: Tax Credit for Kenai River  
Habitat  
Sponsor: Representative Gary Davis  
Requestor: House Resources

Dept. Affected: Fish and Game  
BRU: Habitat and Restoration  
Component: Habitat

COMPONENT SERIAL NO. 486

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES ( )</b>	0	0	0	0	0	0

**FUND SOURCE**

(Thousar . of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/NIHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 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)

This legislation will mandate the creation of a new program. The implementation of this legislation will require the department to develop and adopt new regulations. The department will be responsible under these regulations to approve and certify improvements before they will qualify for the property tax credit from the Kenai Peninsula Borough. In an effort to be responsive to the need to control costs, the department is proposing to perform the new work required by this legislation without asking for additional funding. To do this will require the department to reprogram funding from ongoing activities. The result will be that some things that the department is currently doing will have to be foregone. Protection of irreplaceable chinook and coho rearing habitat is of such importance that the department is willing to undertake the necessary reprogramming to implement the legislation.

Prepared By: Frank Rue *Gene Bruce for*  
Division: Habitat and Restoration  
Approved by Commissioner: *[Signature]*  
Agency: Alaska Department of Fish and Game

Phone: 465-4105  
Date: February 16, 1994  
Date: February 16, 1994

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# FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 306

1994 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources  
 Title: Municipal tax credits for river habitat improvements BRU: Parks and Recreation Management  
 Component: Parks Management  
 Sponsor: Rep. Davis  
 Requestor: Rep. Davis Component Serial No. 452

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY94) cost: \$ \_\_\_\_\_

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)  
 No fiscal impact on DNR.

Prepared by: Gerald Gallagher Phone: 465-2400  
 Division: Legislative Liason Date: Feb. 11, 1994  
 Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: Harry A. Noah Date: Feb. 11, 1994  
Natural Resources

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# DEPARTMENT OF FISH AND GAME POSITION PAPER

BILL No: CSHB306

SPONSOR: Rep. Gary Davis and Gail Phillips


DIVISION: Habitat and Restoration

DEPARTMENT POSITION: Support.

The Kenai River and its tributaries support the largest recreational fishery in Alaska. The Kenai River is the largest contributor to the Cook Inlet commercial salmon fishery. Extensive shoreline development along the Kenai River will continue to have an adverse effect on salmon rearing unless done in a manner which avoids additional damage to productive streambank habitat and restores existing habitat. The intent of the legislature is to encourage landowners to protect fish habitat and restore damaged fish habitat.

The bill provides the statutory foundation for municipalities along the Kenai River to establish a tax incentive program to protect productive fish habitat and restore fish habitat damaged as a result of poor land use practices. A tax incentive program would help landowners protect, restore, or enhance damaged fish habitat to a more productive condition by reducing project costs. A municipal tax incentive program will help stop the loss of productive fish habitat and help control the cumulative effects of shoreline development on fish habitat. This program and other conservation efforts on the Kenai River will help maintain and enhance the economy of the Kenai Peninsula Borough and communities along the river.

COMMISSIONER'S SIGNATURE  
1/23/94

 DATE 2/11/94

# Alaska State Legislature

Interim:  
P.O. Box 1287  
Soldotna, AK 99669  
(907) 262-8414

Session:  
State Capitol  
Juneau, AK 99801  
(907) 465-2693

Representative Gary L. Davis

## SECTIONAL ANALYSIS

### CS for House Bill 306

"An Act relating to an optional municipal tax credit for costs of certain river habitat protection improvements."

Section 1 - Adds a new section to AS 29.45 (Municipal Taxation) that provides for a River Habitat Protection Credit for the Kenai River and its tributaries.

Section 1 (a) - This provision grants a municipality the authority to issue property tax credits for costs of certain river habitat protection improvements. It also explains the purposes of the habitat protection improvements.

Section 1 (b) - This provision explains the process to determine the portion of the improvement costs that will be credited towards the property tax. It also states requirements that the improvement must meet, as well as situations when the improvement would not be eligible for a credit.

Section 1 (c) - This provision directs the Department of Fish & Game to adopt regulations to accomplish the purposes of this section, as well as the duty to determine when an improvement meets the criteria established under this subsection.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

### MEMORANDUM

February 9, 1994

**SUBJECT:** Municipal tax treatment of conservation easements (HB 306)

**TO:** Representative Gary Davis

**FROM:** Tamara Brandt Cook  
Director *TBC*

HB 306 establishes an optional municipal tax credit for certain improvements that protect or restore fish habitat based upon the costs of the improvements. I understand that there have been suggestions to expand the bill to provide a tax credit for conservation easements. You have asked me to explain municipal tax provisions that address conservation easements in current law.

AS 29.45.050(e) provides a fairly broad tax exemption for easements granted to a governmental body, which would include a local, state, or federal governmental entity.

(e) A municipality may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. The easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property, so that the property owner is compensated at a rate that does not reflect the easement grant. The municipality may provide by ordinance that, if the area subject to the easement is sold, leased, or otherwise disposed of for uses incompatible with the easement or if the easement is conveyed to the owner of the property, the owner must pay to the municipality all or a portion of the amount of the tax exempted, with interest.

AS 29.45.062 directs local assessors to assess land that is subject to a conservation easement on the basis of full and true value for use consistent with the easement and not as though the land were free of the restriction. That is to say, if a conservation easement restricts the uses that may be made of the land, that land may

Representative Gary Davis  
February 9, 1994  
Page 2

well be worth less than it otherwise would be, and the statute makes it mandatory for an assessor to take this into account. Only easements created under the Uniform Conservation Easement Act qualify for this special assessment treatment. For purposes of that Act, "conservation easement" is defined quite broadly and includes easements that protect historical, architectural, archaeological or cultural aspects of property as well natural resources and uses of property for scenic, open space, or recreational purposes. (See AS 34.17.060)

TBC:lmb:gc  
94-043.LMB

**MEMORANDUM**  
**KENAI PENINSULA BOROUGH**  
**LEGAL DEPARTMENT**

144 N. Binkley  
Soldotna, AK 99669

Phone: (907) 262-8609  
FAX: (907) 262-1892

**To:** House Resources Committee, Alaska Legislature  
**From:** TRB Thomas R. Bcedeker, Borough Attorney  
**Date:** February 11, 1994  
**Subject:** HB 306

The Kenai Peninsula Borough administration supports adoption of an optional program for giving tax credits for improvements that protect or enhance river habitat as proposed by HB 306. Use of the river by large numbers of people can result in damaged habitat. We feel that a tax credit would provide an incentive to owners to include protective measures in their plans and more importantly give existing owners encouragement to take action to remedy problems with existing use. In working on legislation to accomplish this goal we felt several key issues should be addressed.

First, the streams for which the program could apply should be ones recognized as meriting special treatment or consideration whether because of a special nature or high use impact. These classes of streams should be ones recognized by the legislature. The Kenai River was designated as a special management area due to its importance for commercial and sport fishing and the damage being done from increased use of the resource.

Second, local governments do not have staff to determine what measures protect or enhance habitat so this should be left to the determination by the experts in the Dept. of Fish and Game.

Third, the eligible improvements should be limited to the area immediately adjacent to the stream.

Fourth, the credit should not be allowed where the improvement was made under an order to repair damage or correct a violation of law.

Fifth, the statute authorizing such a program should set limits and allow local governments flexibility to further restrict eligibility for the credit based on local conditions. Too often options allowed are "all or nothing" which more often than not means nothing is enacted locally.

Sixth, avoid setting up a complicated system of review and administration.

Limiting the credit to streams identified by the legislature as having a special status meriting

special protection does not imply other streams shouldn't be protected. However, local governments would be hard pressed to administer the program throughout the boundaries of an area the size of the Kenai Peninsula Borough as would the state in reviewing the improvements. Practical limitations require the program be limited or local governments will have an option they cannot properly handle. We wish to avoid another "good idea" that never gets off the ground because it was broadened to such a point it cannot be administered or that creates local controversy as to scope of application.

Issues of granting a credit for commercial improvements or for natural erosion control can be dealt with at the local level in considering whether to enact a local tax credit.

We wish to thank Representative Davis for presenting this bill and the Committee for its early consideration.

cc: Don Gilman, Mayor Kenai Peninsula Borough

**RESOLUTION #94-1, February 10, 1994**  
**A Resolution related to tax assessments on lands along the Kenai River**

**Introduction:**

It is the mission of the Kenai River Special Management Area Advisory Board to assist the Department of Natural Resources in preserving and protecting the fish and wildlife habitat and resources on the Kenai River, and to promote the recreational opportunities on the river.

**Whereas** since the inception of the KRSMA in 1984, we have found that:

1. Protecting existing riparian river habitat in its natural state is extremely critical for the habitat needs of Kenai River fish; and
2. Valuable riparian habitat along the Kenai River is being subjected to more and more development pressure as private property is developed for commercial and private use; and
3. Encouraging river bank landowners to voluntarily protect the river banks and rehabilitate damaged riparian habitat lands is a high priority for restoring the full vitality of fish habitat on the Kenai River; and
4. Property tax assessment laws require that any improvements, even for rehabilitating damaged river banks, be taxed at their full and true value,

**And Whereas** Senate Bill 240 and House Bill 306 will allow municipalities to provide tax credits to offset the costs of certain Kenai River habitat protection improvements, so long as the improvements meet certain criteria established by the Department of Fish and Game,

**Therefore be it resolved** that the Kenai River Special Management Area Advisory Board encourages the Alaska Legislature to pass Senate Bill 240 and House Bill 306, as proposed for amendment in attached copy.

Adopted February 10, 1994 by the Kenai River Special Management Area Advisory Board.

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Jim Richardson, Vice President, KRSMA Advisor Board



HOUSE RESOURCES COMMITTEE

SUBJECT OF MEETING:

SJR 40  
HB 306

DATE: 2/14/94

PLACE: Capitol, Room 124

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Carol Bruce	ADFIG	Box 25526	99502		465-6143	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 306
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
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