

SB

55

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 22, 1997

FURTHER REFERRALS:

Date of Committee Action: 5/5/97

The FINANCE Committee considered:

CSSB 55 (FIN) am

CS FOR SENATE BILL NO. 55(FIN) am

AMEND DEFINITION OF "PROGRAM RECEIPTS"

"An Act relating to the definition of certain state receipts to state fiscal procedures, to the state budget, to agency performance reports, and to appropriation bills, eliminating the authority of a department to award a grant to a recipient other than the one named in the appropriation or allocation for the grant; and providing for an effective date."

recommends it be replaced with the following committee substitute ACS (SSB 55 (FIN)) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal note(s) _____

fiscal note(s) office of gov 4/18/97

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Care Therriault</i> Therriault			X	
<i>John Mulder</i> Mulder	✓			
<i>Terry Martin</i> Martin				X
<i>Victor Kohrinsky</i> Kohrinsky				X
<i>John Davies</i> Davies				X
<i>John Kelly</i> Kelly			✓	
<i>John Foster</i> Foster			X	

CHAIR'S SIGNATURE

Care Therriault

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. CS for SB55 (FIN)am

Revision Date 4/29/97 Dept. Affected Various Departments
 Title An Act relating to the definition of certain state BRU _____
receipts; to state fiscal procedures ... Component _____
 Sponsor Rules Committee at the request of the Governor
 Requester House Finance Component Serial No. _____

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1004 GF							
1077 Gifts, Grants & Bequests	(2,642.5)	(2,642.5)	(2,642.5)	(2,642.5)	(2,642.5)	(2,642.5)	
1091 Designated Program Receipts	(4,069.5)	(4,069.5)	(4,069.5)	(4,069.5)	(4,069.5)	(4,069.5)	
Test Fisheries Receipts	2,594.5	2,594.5	2,594.5	2,594.5	2,594.5	2,594.5	
AK Public Utilities Commission	4,117.5	4,117.5	4,117.5	4,117.5	4,117.5	4,117.5	
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

Estimate of any current year (FY97) cost: 0.0

POSITIONS					
Full-time					
Part-time					
Temporary					

This bill addresses seven fund sources under AS 37.05.146.

1. Establishes a new fund source titled Designated Program Receipts. These receipts are defined as: money that is received by the state from a source other than the state or federal government that is restricted to a specific use by the terms of a gift, grant, bequest, or contract.
2. Establishes a new fund source titled Test Fisheries Receipts. These receipts are derived from Department authorized test fish operations under AS 16.05.050 (15). NOTE: The Governor's FY98 budget includes these receipts in the Designated Program Receipts category. Upon passage of this legislation they will be moved to the appropriate fund source.
3. Establishes a new fund source titled Alaska Public Utilities Commission. These receipts are derived from the imposition of the Regulatory Cost Charge. By statute, these receipts are intended to cover the full costs of the Commission.
4. Deletes the separate fund source "Gifts, Grants & Bequests." These funds will be included in the Designated Program Receipts category.
5. Establishes, for the first time, a definition for Corporate Receipts. This is a "house-keeping" provision which codifies current budgetary practices.
6. Amends the language relating to the Public School Trust Fund to comport with statutory language.
7. Establishes a separate fund source reference for the Alaska Children's Trust.

Increases or decreases, to any of these fund sources, will have no impact on the state's fiscal gap.

Prepared by Royce Weller Phone 465-4694
 Division OMB Date 4/29/97
 Approved by Annalee McConnell Date 4/29/97
 Agency Director, Office of Management & Budget

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SB 55

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA HOUSING FINANCE CORPORATION,)
)
 Plaintiff,)
)
 vs.)
)
 BARBARA COLLINS,)
 d/b/a/ INNOVATIVE COMMUNICATIONS,)
)
 Defendant.)

Case No. 3AN-97-1686 CIV

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff Alaska Housing Finance Corporation (AHFC) is a public corporation and government instrumentality of the State of Alaska;

2. Defendant Barbara Collins (Collins) is a resident of the State of Alaska, Third Judicial District. Collins operates a sole proprietorship doing business under the name "Innovative Communications."

3. On June 21, 1991, Collins entered into a grant agreement with the Department of Community and Regional Affairs (DCRA). The period of performance under the grant (FY 92 Grant) covered state fiscal year 1992 which began on July 1, 1991 and ended on June 30, 1992.

4. Under the terms of her FY 92 grant agreement, Collins was responsible for coordinating DCRA's Energy Rated Homes of Alaska program. The purpose of the Energy Rated Homes of

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Diet. by Ry. Davies

1 Alaska program is to promote the energy-efficient construction and
2 renovation of residential housing.

3 5. On June 19, 1992, Collins entered into a second
4 grant agreement with DCRA under which she continued to provide
5 services as coordinator of the Energy Rated Homes of Alaska
6 program. The period of performance under this grant (FY 93-94
7 Grant) was from July 1, 1992 to June 30, 1994.

8 6. Under the terms of both the FY 92 and FY 93-94
9 grant agreements, DCRA had the right to access any books,
10 records, documents, and papers directly pertinent to the grant.
11 Collins was also required to maintain all grant records for a
12 period of three years following her final payment under each
13 grant.
14

15 7. On July 1, 1992, DCRA's energy programs, including
16 the Energy Rated Homes of Alaska program were transferred to AHFC
17 and AHFC became the successor-in-interest to DCRA under the FY 92
18 and the FY 93-94 grant agreements.

19 8. On June 30, 1994, Collins entered into a new grant
20 agreement, this time directly with AHFC, to continue providing
21 services coordinating the Energy Rated Homes of Alaska program.
22 The period of performance under this grant (FY 95 Grant) was from
23 July 1, 1994 to June 30, 1995

24 ///

25 ///

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1 13. On January 12, 1996, Collins delivered 30 boxes of
2 materials to AHFC. Of the 30 boxes, only one contained file
3 folders with documents related to grant operations. The remaining
4 29 boxes largely consisted of out-dated advertising materials,
5 videotapes, miscellaneous publications and some training
6 materials. Scattered throughout these 29 boxes were several
7 additional file folders containing documents which, when
8 consolidated, totaled less than one box of documents.

9
10 14. On January 16, 1996, Collins delivered to AHFC an
11 additional seven boxes of file folders containing what she alleged
12 were all remaining grant records.

13 15. The records produced by Collins were incomplete.
14 Collins did not include any financial records and failed to
15 produce any records for numerous activities performed under her
16 various grants.

17 16. AHFC again demanded production of grant records on
18 October 14, 1996, November 19, 1996, January 21, 1997 and February
19 4, 1997. On February 11, 1997, AHFC, through its attorney, made
20 a final demand for the production of all grant records not
21 previously produced. In response to each of these demands, Collins
22 made only a partial production of records or no production at all.

23 17. By failing to deliver to AHFC or to allow it to
24 inspect and copy the remaining grant records, Collins has
25 breached her obligations under the FY 92, FY 93-94, FY 95 and
26

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1 FY 96 grant agreements to deliver to AHFC, or to allow it to
2 review, all records, books, papers, and other documents related to
3 the grants.

4 18. AHFC is entitled to injunctive relief to compel
5 Collins to deliver to it or produce for copying all records
6 related to the FY 92, FY 93-94, FY 95 and FY 96 grants.

7 COUNT II

8 19. AHFC realleges the allegations of Complaint
9 Paragraphs 1-18 as though fully set forth herein.

10 20. Under the terms of her FY 93-94, FY 95 and FY 96
11 grants, Collins could only expend grant funds for purposes
12 authorized by the grant agreements.

13 21. On May 4, 1994, Collins incorporated a nonprofit
14 corporation called Energy Rated Homes of Alaska, Inc. (ERHAI), a
15 name identical to the name of the program she coordinated for
16 AHFC. Incorporation of the nonprofit was not authorized by AHFC.

17 22. Shortly after ERHAI's incorporation, Collins
18 established its offices in the same suite of offices which she
19 rented for the operations of AHFC's Energy Rated Homes of Alaska
20 program. Collins used the same offices, telephones, equipment and
21 supplies to carry out both AHFC's grant activities and the
22 business activities of ERHAI. Even though the expenditures
23 benefitted both AHFC AND ERHAI, Collins billed AHFC for the full
24 cost of the rent, telephones, equipment and supplies used to carry
25
26

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1 out both ERHAI's business activities and the AHFC grant
2 activities. Collins failure to fairly apportion these joint
3 overhead expenses and bill AHFC only for its proportionate share
4 of such expenses was a violation of her FY 93-94, FY 95 and FY 96
5 grant agreements.

6
7 23. Between April 1994 and February 1996, Collins, in
8 her capacity as ERHAI's executive director, solicited, was
9 awarded and undertook performance of a grant with the United
10 States Department of Energy (USDOE). In her USDOE grant
11 application, Collins stated that one-third of her time would be
12 spent administering the USDOE grant.

13 24. Between January 1994 and February 1996, Collins and
14 her employees spent a significant amount of time engaged in
15 activities in furtherance of ERHAI's interest in the federal
16 grant. Collins never disclosed to AHFC that she and her employees
17 were spending time on USDOE grant activities. Collins billed the
18 time spent on USDOE grant activities against her AHFC grant.
19 Unaware of the true nature of the non-AHFC work, AHFC paid
20 Collins. By charging time spent on ERHAI's USDOE grant against
21 her AHFC grants, Collins violated her FY 93-94, FY 95 and FY 96
22 grant agreements.

23
24 25. Between January 1994 and November 1995, Collins
25 traveled to numerous meetings outside the state of Alaska. The
26 exclusive or primary purpose of these meetings was to establish

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1 policy regarding federal funding of energy rating organizations
2 and to determine the recipient of the USDOE grant. At these
3 meetings, Collins was present for the primary purpose of
4 representing her nonprofit corporation and obtaining the USDOE
5 funding for ERHAI. During these meetings she did not represent
6 the interests of AHFC. Despite this, Collins improperly charged
7 all expenses related to her travel to her AHFC grants. By charging
8 travel expenses related to ERHAI's USDOE grant against her AHFC
9 grants, Collins violated her FY 93-94, FY 95 and FY 96 grant
10 agreements.
11

12 26. Between September 1994 and February 1996, Collins,
13 in her capacity as ERHAI's executive director, solicited, was
14 awarded and undertook performance of a contract with the Oregon
15 Department of Energy (ODOE).

16 27. Between September 1994 and February 1996, Collins
17 and her employees spent a significant amount of time engaged in
18 activities in furtherance of ERHAI's interest in the Oregon
19 contract. Collins never disclosed to AHFC that she and her
20 employees were spending time on the Oregon contract. Collins then
21 billed the time she and her employees spent on the Oregon contract
22 against her AHFC grant. Unaware of the true nature of the non-
23 AHFC work, AHFC paid Collins. By charging time spent on ERHAI's
24 Oregon contract against her AHFC grants, Collins violated her FY
25 93-94, FY 95 and FY 96 grant agreements.
26

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1 28. Between January 1995 and February 1996, Collins, in
2 her capacity as ERHAI's executive director, solicited, was awarded
3 and undertook performance of a contract with the Nevada Energy
4 Office.

5 29. Between January 1995 and February 1996, Collins and
6 her employees spent a significant amount of time engaged in
7 activities in furtherance of ERHAI's interest in the Nevada
8 contract. Collins never disclosed to AHFC that she and her
9 employees were spending time on the Nevada contract. Collins then
10 billed the time she and her employees spent on the Nevada contract
11 against her AHFC grant. Unaware of the true nature of the non-
12 AHFC work, AHFC paid Collins. By charging time spent on ERHAI's
13 Nevada contract against her AHFC grants, Collins violated her FY
14 93-94, FY 95 and FY 96 grant agreements.

15 30. Between May 1994 and February 1996, Collins and her
16 employees engaged in other ERHAI business activities and Collins
17 improperly charged time spent on those activities against her AHFC
18 grants. Those activities include, but are not limited to,
19 solicitation of contracts with the State of Wyoming, the State of
20 Washington, the State of Montana and the City of Seattle. By
21 charging time spent on ERHAI's other business activities against
22 her AHFC grants, Collins violated her FY 93-94, FY 95 and FY 96
23 grant agreements.

24 ///
25
26

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1 31. Beginning in November 1995 and on numerous
 2 occasions since, AHFC has demanded that Collins submit a cost
 3 allocation plan or other accounting of work done on non-grant
 4 activities. Such an accounting would enable AHFC to disallow
 5 charges which Collins improperly made against her AHFC grants for
 6 costs incurred in furtherance of ERHAI's separate business
 7 interests. Despite these repeated demands, Collins has refused to
 8 provide such an accounting or cost allocation plan or has asserted
 9 that only insignificant non-grant charges were made against the
 10 grant. Collins has also refused to produce business records which
 11 would enable AHFC to prepare its own accounting or cost allocation
 12 plan.
 13

14 32. AHFC is entitled to injunctive relief to compel
 15 Collins to prepare an accounting of her non-AHFC work and to
 16 compel her to deliver to it or produce for copying all records
 17 necessary for AHFC to verify such an accounting or determine on
 18 its own the extent of improper charges made against the grant.
 19

20 WHEREFORE, AHFC prays for relief as follows:

21 1. For an injunction ordering Collins to deliver to
 22 AHFC all records relating to her FY 92, FY 93-94, FY 95 and FY 96
 23 grant agreements;

24 ///

25 ///

26 ///

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LEGAL SERVICES

JB 55

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Juneau, Alaska 99801-2105

MEMORANDUM

May 2, 1997

SUBJECT: Overinclusive Bill Title

TO: Representative Gene Therriault

FROM: George Utermohle *GU*
Legislative Counsel

You have asked for a discussion of the effect of having an overinclusive bill title (one that specifically mentions A and B when the body of the act deals only with A).

Article II, Section 13 of the state constitution requires "The subject of each bill shall be expressed in the title." Clearly, if the title mentions something that is not contained in the bill, the title does not literally comply with this provision and there is a substantial risk that a court will find a violation of the constitution. However, the court has not specifically considered the question of an overinclusive title in this state, so no one can say with any degree of certainty how the court will react.

Courts have generally held that an act will be valid unless the title is misleading or deceptive. (Lowery v. Red Cab Co., 262 S.W. 147 (Tex. Ct. Civ. App. 1924)) Whether a particular title will be misleading or deceptive because it mentions something that is not included in the body of the act will depend on the facts of the case, so an overinclusive title will always be risky. However, some courts have been tolerant of overinclusive titles. (Watts v. Oliphant, 143 S.E. 813 (S.C. (1965)); Dovle v. King, 44 S.E. 2d 608 (S.C. 1947)) On the other hand, a court has held an overbroad title to be misleading. (Reeves v. Adam Hat Stores, 198 S.W.2d 789 (Ky. Ct. App. 1946))

My guess is that the more specific the description of the "missing" item is in the title, the more likely that a court will find the title misleading and unconstitutional. The uniform rules prohibiting title changes may affect the decision of Alaska's courts, not because the court would take it upon itself to enforce the rules, but because the court may find that those rules encourage legislators to rely on the title when deciding whether to accept amendments by the second house and, therefore, cause the title to be misleading.

While our court has not had occasion to consider title questions, it has considered the single-subject requirement which is contained in the same section of the constitution and been lenient in finding compliance with that requirement. However, the Alaska Supreme Court

Representative Gene Therriault

May 2, 1997

Page 2

has begun to reevaluate its broad interpretation of the single-subject rule. (State v. First National bank of Anchorage, 660 P.2d 406 (Alaska 1982); Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1985)) These cases suggest that the court may be reluctant to adopt an expansive view of the constitutional title requirement.

GU:glc

97-295.glc

#7

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

MEMORANDUM

May 3, 1997

SUBJECT: Exxon Valdez oil spill restoration fund capital appropriations (Work Order No. 20-LS8000A.25)

TO: Virginia Stonkus
Division of Legislative Finance

FROM: George Utermohle *GU*
Legislative Council

Enclosed is an amendment containing appropriations of funds received as the result of litigation involving the Exxon Valdez oil spill that you had requested on behalf of Senator Pearce.

Please note that the appropriation to the Department of Community and Regional Affairs for grants to unincorporated rural communities for restoring, replacing, or enhancing resources or services lost as a result of the oil spill does not specify any authority under which the department may make grants for the stated purposes. The appropriation references grants under AS 44.47.050; however that statute does not authorize the Department of Community and Regional Affairs to make any grants. The fact that this same process was used to make similar grants under a prior appropriation (sec. 11, ch. 79, S.L.A. 1993) does not immunize the current appropriation from a potential challenge on the ground that the appropriation violates the confinement requirement of the Alaska Constitution by amending substantive law in an appropriation bill. The appropriate authority for such grants would be the unincorporated community grant program under AS 37.05.317; however such grants require individual appropriations by the legislature that identify the unincorporated community and set the amount of the grant.

The other alternative is to establish the appropriate grant program through the enactment of substantive legislation. Also enclosed is an amendment that would establish such a grant program in the Department of Community and Regional Affairs. The amendment is retroactive to June 29, 1993 in order to cover the 1993 appropriation to the department for similar grants. The proposed amendment may fit within the subject and title of SB 55.

If I may be of further assistance, please advise.

GU:glc
97-297.glc
Enclosure

need amend to SB 55. Show them memo + amend. Tell them we will know before they go to floor!

*Craig
at
Jim A. if
they
want
have to
know
Sunday!
Alex House
(Gene) we*

Failed
3-6

#-1

Amendment- SB55

Representative Gary Davis

pg. 4, after line 13 insert:

(X) receipts of the Alaska Pioneers' Home program established under AS 47.55.030;

Adopted

0-GS0049\FA.5
Utermohle
5/3/97

#2

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 55(FIN) am

- 1 Page 5, line 4, following "allocation":
- 2 Insert "unless the department determines that an award of the grant would not
- 3 be in the public interest"

W. Th...
#3

0-GS0049\FA.3
Utermohle
4/30/97

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 55(FIN) am

DAVID

1 Page 1, lines 3 - 5:

2 Delete ", eliminating the authority of a department to award a grant to a
3 recipient other than the one named in the appropriation or allocation for the grant"

4 Page 4, line 17, through page 5, line 4:

5 Delete all material and insert:

6 "(a) A [WHEN AN AMOUNT IS APPROPRIATED OR ALLOCATED TO
7 A DEPARTMENT AS A] grant for a named recipient that is not a municipality must
8 be made under this section. The [, THE DEPARTMENT TO WHICH THE]
9 appropriation or allocation making the grant must be directed to the Legislative
10 Council and must include the amount of the grant, the named recipient of the
11 grant, the purpose of the grant, and the source of funds from which the grant is
12 made. The Legislative Council [IS MADE] shall promptly notify the named
13 recipient of the availability of the grant and request the named recipient to submit a
14 proposal to provide the goods or services specified in the appropriation act for which
15 the appropriation or allocation is made. At the same time, the Legislative Council
16 [DEPARTMENT] may issue a request for proposals from other qualified persons to
17 provide the same goods or services in the same area. The Legislative Council
18 [DEPARTMENT] shall award the grant to the named recipient unless the Legislative
19 Council [OFFICE OF THE GOVERNOR], with due regard for the local expertise or
20 experience of those making proposals, determines that an award to a different party
21 would better serve the public interest. [IF THE GRANT IS AWARDED TO A
22 PARTY OTHER THAN THAT NAMED BY THE LEGISLATURE, THE BASIS OF
23 THAT ACTION SHALL BE STATED IN WRITING AT THE TIME THE GRANT
24 IS ISSUED AND A COPY OF THE WRITTEN STATEMENT SHALL BE SENT

1 TO THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE.] A grant agreement
2 must be executed within 60 days after the effective date of the appropriation or
3 allocation."

26

AMENDMENT

#4 Failed

OFFERED IN THE HOUSE

BY

DAVIES

TO: CSSB 55 (FIN) am

Page 4, following line 15:

Insert "(W) program receipts from users of the state park system;

AMENDMENT

#5 Failed

~~#6~~
6

THE HOUSE

BY

DAVIES

SB 55 (FIN) am

ing line 15:

(W) occupational licensing receipts under AS 08.01;

(X) division of insurance receipts under Title 21, except
remium tax receipts

AMENDMENT

#6

failed

OFFERED IN THE HOUSE

BY

DAVIES

TO: CSSB 55 (FIN) am

Page 4, page 16:

Delete through page 5, line 4

Adopted

0-LS8(X)VA.26
Utermohle
5/3/97

A M E N D M E N T 7

1 * Sec. A. AS 44.47.050 is amended by adding a new subsection to read:

2 (d) There is created in the department the Exxon Valdez oil spill
3 unincorporated rural community grant fund. The fund consists of money appropriated
4 to the fund from the Exxon Valdez oil spill restoration fund, the Alyeska settlement
5 fund, or other sources. Appropriations to the fund do not lapse unless otherwise
6 provided by the legislature in the bill making the appropriation to the fund. The
7 department may use the fund to make grants to unincorporated rural communities in
8 the area affected by the Exxon Valdez oil spill for capital projects for purposes of
9 restoring, replacing, or enhancing subsistence resources or services or other services
10 damaged or lost as the result of the Exxon Valdez oil spill. In this subsection,

11 (1) "Alyeska settlement fund" means the trust fund established in the
12 state treasury for the purpose of receiving, holding, and disbursing the settlement
13 proceeds received by the state under the Agreement and Consent Decree in re: The
14 Exxon Valdez, United States District Court, District of Alaska, Case No. A92-175
15 Civil, decree entered November 25, 1992;

16 (2) "Exxon Valdez oil spill restoration fund" means the fund
17 established by the Department of Revenue, to implement the judgment entered by the
18 United States District Court for Alaska in the criminal case United States of America
19 v. Exxon Shipping Company and Exxon Corporation, No. A90-015 CR.

20 * Sec. B. Section A of this Act is retroactive to June 29, 1993.