

LEG. FINANCE - BILLS 1981 - 1982 1722

SB 802 cont. - SB 813

1722

1 other than exploration, and be limited to the smallest practicable tract
2 of the property actually used in the developed state;

3 (2) "exploration" means the examination and investigation of
4 undeveloped land to determine the existence of subsurface nonrenewable
5 resources;

6 (3) "lease" means a grant of primary possession entered into
7 for gainful purposes with a determinable fee remaining in the hands of
8 the grantor; with respect to a lease that conveys rights of exploration
9 and development, this exemption shall continue with respect to that
10 portion of the leased tract that is used solely for the purpose of
11 exploration.

12 (1) If the property or interest in the property reverts to an un-
13 developed state, or if the lease is terminated, the exemption shall be
14 reinstated, subject to the provisions of (k) of this section.

15 (m) Nothing in (k) or (1) of this section may be construed to
16 modify, enlarge, or diminish the tax exemption provided under 43 U.S.C.
17 1620(d).

18 * Sec. 5. The exemption provided under AS 29.45.030(a) as amended by sec.
19 3 of this Act and the additions to AS 29.45.030 under sec. 4 of this Act are
20 retroactive to January 1, 1982.

21 * Sec. 6. The amendments and additions made to AS 29.53.020 by secs. 1,
22 2, and 7 of this Act are repealed.

23 * Sec. 7. Sections 1 and 2 of this Act are retroactive to January 1,
24 1982.

25 * Sec. 8. Sections 1, 2 and 7 of this Act take effect immediately in
26 accordance with AS 01.10.070(c).

27 * Sec. 9. Sections 3 - 6 of this Act take effect on the effective date of
28 a version of House Bill No. 170 or Senate Bill No. 180 revising AS 29.

Introduced: 2/16/82
Referred: Community & Regional
Affairs and Finance

1 IN THE SENATE

BY FERGUSON

2 SENATE BILL NO. 802

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to tax exemptions; and providing for
7 an effective date."

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

9 * Section 1. AS 29.53.010(a) is amended by adding a new sub-paragraph to
10 read:

11 (9) real property or interests therein which are exempt from tax-
12 ation under the Alaska Native Claims Settlement Act, as amended by the
13 Alaska National Interest Lands Conservation Act (43 USC 1620(d)(1), as
14 more fully provided in (k) of this section.

15 * Sec. 2. AS 29.53.020 is amended by adding a new paragraph to read:

16 (k) The tax exemption required by the Alaska Native Claims Settle-
17 ment Act, as amended by the Alaska National Interest Land Conservation
18 Act (43 USC 1620(d)(1), shall be implemented according to the following
19 conditions and interpretations:

20 (1) The term "developed" shall mean a purposeful modifica-
21 tion of the property from its original state which effectuates a condi-
22 tion for gainful or productive present use without further substantia-
23 tion modification. Developed property, in order to remove the exemp-
24 tion, must be developed for purposes other than exploration, and be
25 limited to the smallest practicable tract of the property actually used
26 in the developed state. Surveying, platting, construction of roads,
27 providing utilities or other similar actions normally considered to be
28 component parts of the development process do not necessarily create a
29 developed state within the meaning of this sub-section. Forest lands,

X

1 as defined in AS 41.17.950(6), shall be deemed "developed" when gainful
2 or productive present use occurs and the owner of the forest land files
3 a notice of conversion under AS 41.17.110.

4 (2) The term "lease" means a grant of primary possession
5 entered into for gainful purposes with a determinable fee remaining in
6 the hands of the grantor. With respect to lease which conveys rights of
7 exploration and development, this exemption shall continue with re-
8 spect to that portion of the leased tract which is used solely for the
9 purpose of exploration.

10 (3) If the property or interest therein reverts to an under-
11 developed state, or if the lease is terminated, or if property which is
12 currently taxed should be used for purposes of exploration, the exemp-
13 tion shall be reinstated, subject to the provisions of this subsection.

14 * Sec. 3. Sections 1 and 2 of this Act are retroactive to December 31,
15 1980.

Offered: 3/23/82
Referred: Finance

Original sponsor: Ferguson

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2

CS FOR SENATE BILL NO. 802 (C&RA)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to tax exemptions; and providing for
7 an effective date."

8

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

9

* Section 1. AS 29.53.020(a) is amended by adding a new paragraph to
10 read:

11

(9) real property or interests in real property that are exempt
12 from taxation under 43 U.S.C. 1620(d), as amended, as more fully
13 provided in (k) and (l) of this section.

14

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

15

(k) The tax exemption required by 43 U.S.C. 1620(d), as amended,
16 shall be implemented according to the following conditions and inter-
17 pretations:

18

(1) "developed" means a purposeful modification of the prop-
19 erty from its original state that effectuates a condition of gainful or
20 productive present use without further substantial modification; survey-
21 ing, construction of roads, providing utilities or other similar actions
22 normally considered to be component parts of the development process,
23 but which do not create the above condition, do not constitute a
24 developed state within the meaning of this paragraph; developed prop-
25 erty, in order to remove the exemption, must be developed for purposes
26 other than exploration, and be limited to the smallest practicable tract
27 of the property actually used in the developed state;

28

(2) "exploration" means the examination and investigation of
29 undeveloped land to determine the existence of subsurface nonrenewable

1 resources;

2 (3) "lease" means a grant of primary possession entered into
3 for gainful purposes with a determinable fee remaining in the hands of
4 the grantor; with respect to a lease that conveys rights of exploration
5 and development, this exemption shall continue with respect to that
6 portion of the leased tract that is used solely for the purpose of
7 exploration.

8 (1) If the property or interest in the property reverts to an un-
9 developed state, or if the lease is terminated, the exemption shall be
10 reinstated, subject to the provisions of (k) of this section.

11 * Sec. 3. AS 29.45.030(a) is amended by adding a new paragraph to read:

12 (7) real property or interests in real property that are
13 exempt from taxation under 43 U.S.C. 1620(d), as amended, as more fully
14 provided in (k) and (1) of this section.

15 * Sec. 4. AS 29.45.030 is amended by adding new subsections to read:

16 (k) The tax exemption required by 43 U.S.C. 1620(d), as amended,
17 shall be implemented according to the following conditions and inter-
18 pretations:

19 (1) "developed" means a purposeful modification of the prop-
20 erty from its original state that effectuates a condition of gainful or
21 productive present use without further substantiation modification;
22 surveying, construction of roads, providing utilities or other similar
23 actions normally considered to be component parts of the development
24 process, but which do not create the above conditions, do not constitute
25 a developed state within the meaning of this paragraph; developed prop-
26 erty, in order to remove the exemption, must be developed for purposes
27 other than exploration, and be limited to the smallest practicable tract
28 of the property actually used in the developed state;

29 (2) "exploration" means the examination and investigation of

1 undeveloped land to determine the existence of subsurface nonrenewable
2 resources;

3 (3) "lease" means a grant of primary possession entered into
4 for gainful purposes with a determinable fee remaining in the hands of
5 the grantor; with respect to a lease that conveys rights of exploration
6 and development, this exemption shall continue with respect to that
7 portion of the leased tract that is used solely for the purpose of
8 exploration.

9 (1) If the property or interest in the property reverts to an un-
10 developed state, or if the lease is terminated, the exemption shall be
11 reinstated, subject to the provisions of (k) of this section.

12 * Sec. 5. The exemption provided under AS 29.45.030(a) as amended by sec.
13 3 of this Act and the additions to AS 29.45.030 under sec. 4 of this Act are
14 retroactive to December 31, 1980.

15 * Sec. 6. The amendments and additions made to AS 29.53.020 by secs. 1
16 and 2 of this Act are repealed.

17 * Sec. 7. Sections 1 and 2 of this Act are retroactive to December 31,
18 1980.

19 * Sec. 8. Sections 3 - 6 of this Act take effect on the effective date of
20 a version of House Bill No. 170 or Senate Bill No. 180 revising AS 29.
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CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

Introduced: 2/16/82
Referred: Resources and Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 SENATE BILL NO. 804

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a continuing appropriation of repayments
7 of the principal and interest on loans made by the
8 Alaska Agricultural Action Council for land clearing to
9 the land clearing account in the agricultural revolving
10 loan fund (AS 03.10.040); and providing for an effec-
11 tive date."

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

13 * Section 1. Amounts received by the Alaska Agricultural Action Council
14 as repayments of the principal and interest on loans made for land clearing
15 in the Delta I, Delta II, and Point MacKenzie agricultural development pro-
16 jects are appropriate to the land clearing account in the agricultural
17 revolving loan fund (AS 03.10.040) as they are received.

18 * Sec. 2. This Act takes effect on the effective date of an Act estab-
19 lishing the land clearing account in the agricultural revolving loan fund.
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ALASKA STATE LEGISLATURE

TWELFTH Legislature SECOND Session

SENATE ... BILL NO. ..804..

By . RESOURCES COMMITTEE.....

"An Act making a continuing appropriation of repayments of the principal and interest on loans made by the Alaska Agricultural Action Council for land clearing to the land clearing account in the agricultural revolving loan fund (AS 03.10.040); and providing for an effective date."

Introduced in the Senate 2/16, 19. 82

HISTORY IN THE SENATE

19	82	Read first time and referred to Committee on										
2	16	Resources and Finance										
3	29	Reported back with <i>Disapproved</i> recommendation that <i>do pass.</i> <i>no rec. made FY 2001 - A 20</i>										
		Read second time and										
		Read third time and										
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		Reported correctly engrossed										
		Signed by President										
		Sent to House										

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19		Read first time and referred to Committee on										
		Reported back with recommendation that										
		Read second time and										
		Read third time and										
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PASS	Effective Date											
Yeas	Yeas											
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		Reported correctly engrossed										
		Signed by Speaker										
		Returned to Senate										

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19		Received from House
		To enrolling
		Reported correctly enrolled
		Sent to Governor
	 by Governor
		Filed with Lt. Governor
		Chapter No.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

May 4, 1982

Hon. Don Bennett, Co-Chairman
Senate Finance Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Continuing appropriation to
agricultural revolving loan
fund (SB 804)
Our file: J66-638-82

Dear Senator Bennett:

The Senate Finance Committee has requested our opinion concerning the constitutionality of SB 804 (continuing appropriation to agricultural revolving loan fund) under article IX, section 7, of the state constitution, which prohibits dedicated funds. We conclude that the provisions of SB 804 would violate the dedicated fund prohibition. However, there may be an alternative which will substantially accomplish the desired purpose and avoid the dedicated fund problem.

Under SB 804, the principal and interest repayments on certain loans would be appropriated directly to the agricultural revolving loan fund in AS 03.10.040. The loans were made or will be made by the Alaska Agricultural Action Council from appropriations to it. The revolving loan fund to which the principal and interest repayments would be appropriated under the bill is under the administration of the Department of Natural Resources.

Interest repayments on state loans may be public revenues which are subject to the dedicated fund prohibition. Northern Southeast Aquaculture Ass'n v. Alex, ___ P.2d ___, Op. No. 2488 (Alaska, Apr. 23, 1982). By appropriating interest to be earned and received during future years to the revolving loan fund, SB 804 dedicates that public revenue to a particular purpose. This dedication violates article IX, section 7.

Principal repayments on state loans may also be considered public revenues. An appropriation of these repayments to a revolving loan fund treats them as though they were initially made from the revolving loan fund. If principal repay-

ments are considered public revenues and are subject to the dedicated fund prohibition, revolving loan funds probably violate article IX, section 7, since the essential characteristic of a revolving loan fund is the dedication of those principal repayments to the purposes served by the revolving loan fund. However, if principal repayments are not considered public revenues and are not subject to the dedicated fund prohibition, then revolving loan funds do not violate article IX, section 7. The Department of Law intends to conduct further research into the viability of revolving loan funds under article IX, section 7, particularly in light of the Alex decision cited above.

With these considerations in mind, we suggest that the interest repayments referred to in SB 804 be returned to the general fund. The appropriation of the principal repayments may be valid, although at this time we believe it remains at least questionable.

An alternative which we believe more simply accomplishes the purpose of channeling the money to the revolving loan fund and which eliminates most of the legal problems (it does not eliminate the questions surrounding revolving loan funds generally) is to treat the notes representing the loans as a present asset of the state, which they are, and transfer those notes to the revolving loan fund to be used for the purposes of the revolving loan fund. Of course, the interest paid on the notes will still have to be returned to the general fund.

Another problem in SB 804 not relating to the dedicated fund prohibition is an ambiguity relating to the amount intended to be appropriated. It is our understanding that the loans referred to in the bill have not all been made. If the intent is only to appropriate the principal and interest repayments on loans which have been made by the effective date of the bill, that should be clearly expressed. However, if the intent is to appropriate those repayments as well as principal and interest repayments on loans to be made at some time after the effective date of the bill, another problem arises. Certainty in the amount appropriated in an appropriation bill is essential to a valid appropriation. 63 Am.Jur.2d "Public Funds," § 49. Until the loans are made and the terms defined, it cannot be known with certainty the amount which is being appropriated. The simpler and legally more sound method of accomplishing the purpose would be to transfer to the revolving loan fund the amount initially appropriated to the Alaska Agricultural Action Council which has not already been lent. The appropriation to the revolving loan fund can direct the Depart-

Hon. Don Bennett, Co-chairman
Senate Finance Committee

May 4, 1982
Page #3

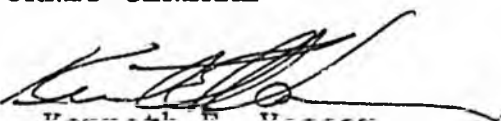
ment of Natural Resources to use the money appropriated for the purposes described in the initial appropriation to the Alaska Agricultural Action Council.

If we can provide any further assistance, please let us know.

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Kenneth E. Vassar
Assistant Attorney General

KEV/pjg

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

THE SUPREME COURT OF THE STATE OF ALASKA

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

Appellants,)

v.)

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

Appellees.)

File Nos. 5065, 5086, 5142

OPINION

[No. 2488 - April 23, 1982]

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

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

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

BURKE, Justice.

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

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

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

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

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

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

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

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

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

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

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

The relevant portions of section 530 provide:

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

. . . .

(c) The commissioner and the appropriate qualified regional association must agree on a means of collection of the royalty assessment and the commissioner may, by regulation, require its collection by buyers of the salmon

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

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

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

(Cont'd)

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

Regional associations. (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that

(1) it is comprised of associations representative of commercial fishermen in the region;

2. (Cont'd)

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

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

(2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and

(3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association.

(b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

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

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

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

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

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

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

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

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

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

3. The section goes on to state:

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

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

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

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

The most relevant sentence of section 530 reads:

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

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

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

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

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

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

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

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

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

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

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

discussions at the constitutional convention which adopted the wording.⁴

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

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

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

The true issue in interpreting enacted law is the conflict between the meaning the enacting body intended and the meaning conveyed to others. 2A. Sutherland, *Statutory Construction* § 48.02, at 18-5 (4th ed. 1973). The conflict is between what the sender meant and what the receiver understands. Id. § 45.08, at 22. The "plain meaning" rule has its basis in this conflict. Obviously, there are elements of unfairness where legislative intent is used to vary the apparent meaning of statutory words. Id. § 48.02, at

(Cont'd)

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

4. (Cont'd)

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

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

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

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

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

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

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

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

Id. at 111.

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

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

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

Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.

Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

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

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

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

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

The defendants claim that the legislature's power to deal with natural resources of the state, contained in article VIII, gives the legislature the power to create a dedicated fund, despite the express prohibition of dedicated funds contained in article IX, section 7. They particularly emphasize the legislature's and the state's powers to provide facilities for the development of fisheries under section 5⁷ and the power to promote the development of aquaculture under section 15.⁸

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

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

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

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

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

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

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

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

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

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

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

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

Section 2 of the same article states:

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

Examination of the convention proceedings shows the delegates' determination to ensure centralized planning and coordination of government functions by limiting the taxing power to governmental units with broad rather than specialized concerns. See 4 Alaska Const. Conv. Proceed. 2611-7, 2701-3. See also Alaska Statehood Commission, Constitutional Studies, supra, pt. VIII, 3-8, 18-24, 51-64.⁹

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

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

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

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

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

There will be just two classes of local governments: boroughs and cities.

Proposed Constitution for the State of Alaska: A Report to the People of Alaska from the Alaska Constitutional Convention 3.

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

First, section 5 of article X provides:

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

Second, Section 6 of the same article states:

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

Third, AS 16.10.380(c) provides:

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

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

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

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

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

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

IV. DID THE TRIAL COURT ERR IN CERTIFY-
ING THE SUIT AS A CLASS ACTION?

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

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

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

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

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

If an action can be maintained under (b)(1) and/or (b)(2), and also under (b)(3), the court should order that the suit be maintained as a class action under (b)(1) and/or (b)(2), rather than under (b)(3), so that the judgment will have res judicata effect as to all the class (with no member having the right to opt out), and not defeat the policy underlying the (b)(1) and (b)(2) class suits.

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

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

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

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

While some courts have indeed required that class certification precede a determination of the merits,¹¹ it is apparent that any right to such a procedure can be waived, either expressly¹² or impliedly.¹³ We have no difficulty finding a waiver under the facts of this case. The plaintiffs diligently sought adjudication of the class action issues by twice moving for certification. The defendants initiated summary judgment proceedings while plaintiffs' second motion for certification of the class action was pending. Under these circumstances, the trial court did not err in ruling on the merits and then certifying the class.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ALASKA

STATE LEGISLATURE

MEMORANDUM

Lee Stoops
Senator Sackett's Office

April 26, 1982

Since SB 804 is up for hearing in the Senate Finance Committee tomorrow, I thought you might like the attached background information on the bill.



Tom Johnson
Senate Resources
Committee Staff

Introduced: 2/16/82
Referred: Resources and Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

SENATE BILL NO. 804

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act making a continuing appropriation of repayments
7 of the principal and interest on loans made by the
8 Alaska Agricultural Action Council for land clearing to
9 the land clearing account in the agricultural revolving
10 loan fund (AS 03.10.040); and providing for an effec-
11 tive date."

12

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

13

* Section 1. Amounts received by the Alaska Agricultural Action Council
14 as repayments of the principal and interest on loans made for land clearing
15 in the Delta I, Delta II, and Point MacKenzie agricultural development pro-
16 jects are appropriated to the land clearing account in the agricultural
17 revolving loan fund (AS 03.10.040) as they are received.

18

* Sec. 2. This Act takes effect on the effective date of an Act estab-
19 lishing the land clearing account in the agricultural revolving loan fund.

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LEGISLATION SUMMARY

SB 804: "An Act making a continuing appropriation of repayments of the principal and interest on loans made by the Alaska Agricultural Action Council for land clearing to the land clearing account in the agricultural revolving loan fund (AS 03.10.040); and providing for an effective date."

Sec. 1: Appropriates repayments of principal and interest on loans made for land clearing in the Delta I, Delta II, and Point MacKenzie agricultural development projects to the land clearing account in the agricultural revolving loan fund as they are received.

Sec. 2: Effective date the same as an Act establishing the land clearing account (SB 803).

PRIME SPONSOR: Resources

CO-SPONSOR(S): None



Alaska State Legislature

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DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

SENATE Resources Committee

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturuglewski

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

March 26, 1982
1:40 p.m.

Beltz Room
Room 211 - Capitol

Hearing:

- SB 772 Making a special appropriation to the Department of Natural Resources for construction of a plant quarantine station at the plant material center operated in cooperation with the Institute of Agricultural Sciences.
- SB 803 Establishing the land clearing account in the agricultural revolving loan fund.
- SB 804 Making a continuing appropriation of repayments of the principal and interest on loans made by the Alaska Agriculture Action Council for land clearing to the land clearing account in the agricultural revolving loan fund.
- SB 843 Relating to surface coal mining and the underground effects of underground coal mining.
- SB 697 An Act relating to the Alaska Renewable Resources Corporation.

SB 772

Paul Huppert, Matanuska Valley farmer, explained that a quarantine center is needed at the latitudes of the Matanuska Valley for plants brought in from that latitude. This would require modification of existing facilities at the plant material center, and employment of a person to collect plant material worldwide.

Nick Carney, Director, Division of Agriculture, Department of Natural Resources, explained that the appropriation would pay for construction of a "screen house". Bud materials would be reproduced inside, with the screen restricting movement of insects, thus inhibiting the spread of disease. The long term fiscal needs are minor, as most of the infrastructure is already in place.

Bob Palmer, Alaska Agriculture Action Council, expressed support for the bill, stating that it was long overdue.

Senator Sturgulewski moved SB 772 with individual recommendations.

SB 803 and SB 804

Nick Carney expressed support for SB 803. It helps small farmers who do not presently qualify for land clearing loans.

Bob Palmer said he supports both SB 803 and SB 804.

Senator Sturgulewski pointed out that SB 804 has a negative impact on the general fund, by allowing repayment of principal and interest of loans to the revolving loan fund rather than to the general fund, and thinks this should be reflected in a fiscal note.

Senator Fahrenkamp stated this should be brought to the attention of the Finance Committee.

Ken Vassar, Assistant Attorney General, Department of Law, expressed concern over the constitutionality of SB 804, specifically the dedicated fund prohibition.

Paul Huppert supports SB 803 as curing the current inequity, by allowing all farmers to obtain land clearing loans.

Senator Mulcahy moved SB 803 and SB 804 with individual recommendations.

SB 843

Mark Wittow, Special Assistant to the Commissioner, Department of Natural Resources, discussed several amendments DNR is proposing, mostly of a technical nature.

Howard Roitman, Consultant to DNR, explained DNR's suggested solution to the issue raised by the Office of Surface Mining, namely the prepayment of penalties into an escrow account pending appeal. DNR's proposed alternative would require submitting a bond for the amount of the penalty.

Phil Holdsworth, COAL, expressed the coal operators support for the bond alternative.

Senator Gilman moved and asked unanimous consent for several amendments to SB 843. (For brevity's sake, please see attached copy of memo to Billy Berrier, Legal Division.)

Senator Fischer moved and asked unanimous consent for several amendments which serve to neuter SB 843. (Again, see attached copy of memo.)

Senator Mulcahy moved CSSB 843, as amended, with individual recommendations.

SB 697

Senator Fahrenkamp explained that three Committee Substitutes had been prepared for SB 697.

Senator Rodey testified in support of Committee Substitute #3, which reflects the work done by the Banking Committee.

Senate Resources Committee

March 26, 1982

Page 3

Dean Olson, Chairman of the Board, Alaska Renewable Resources Corporation, endorsed Committee Substitute #3.

Senator Sturgulewski emphasized the drastic changes Committee Substitute #3 makes to the Corporation, and expressed concern over what impact these changes would have on the current investments made through ARRC.

Wayne Littleton, President, ARRC, stated that funding is adequate to continue the Corporation.

Senator Rodev explained that the sunset provision for ARRC, which is much longer than most other sunset provisions, is a traditional banking concept, as a longer period is required to adequately judge the competency of such a corporation. He also explained that there is a confusing section at the top of page 5, and that correct language will be prepared by the time the bill goes to Finance Committee.

Don Hostak, Director, Division of Business Loans, Department of Commerce, stated that a fiscal note is needed, because the Department of Commerce will need operating funds for ARRC.

Senator Fischer moved the acceptance of Committee Substitute #3.

Senator Sturgulewski moved CSSB 697 with individual recommendations.

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 804
 Title Clearing Loan Fund Appropriation
 Requested by Resources Committee Date 2/19/82

II. FISCAL DETAIL

Agency Affected DNR/Division of Agriculture
 Program Category Affected Development
 BRU, Program, or Subprogram(s) Affected Financing/Marketing
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	NONE					
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	NONE					
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	NONE					
PART TIME						
TEMPORARY						

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

While bill will result in no additional expenditures (See Fiscal Note for SB 803), it will cause a reduction in funds returned to the general fund, since repayments of "project" clearing loan will come to ARLF Special Clearing Fund for relending statewide. This could in turn result in a corresponding decrease in requested additional appropriation for the ARLF.

IV. DATE 2/19/82 PREPARED BY Nick Carney
 AGENCY DNR - Wasilla
 PHONE 376-3276
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Introduced: 2/16/82
Referred: Resources and Finance

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2 SENATE BILL NO. 804

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a continuing appropriation of repayments
7 of the principal and interest on loans made by the
8 Alaska Agricultural Action Council for land clearing to
9 the land clearing account in the agricultural revolving
10 loan fund (AS 03.10.040); and providing for an effective
11 date."

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

13 * Section 1. Amounts received by the Alaska Agricultural Action Council
14 as repayments of the principal and interest on loans made for land clearing
15 in the Delta I, Delta II, and Point MacKenzie agricultural development pro-
16 jects are appropriated to the land clearing account in the agricultural
17 revolving loan fund (AS 03.10.040) as they are received.

18 * Sec. 2. This Act takes effect on the effective date of an Act estab-
19 lishing the land clearing account in the agricultural revolving loan fund.
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THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 804
 Title An Act making continuing appropriation of repayments of the principal
 Requested by Senate Resources Date 4-27-82 etc.

II. FISCAL DETAIL

Agency Affected Department of Natural Resources, Division of Agriculture
 Program Category Affected ARLF
 BRU, Program, or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND			none	595,855	595,855	595,855
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Existing ARLF staff can handle the administration of the loan repayments. Therefore, DNR originally submitted a zero fiscal note for this bill.

This fiscal note reflects the impact to the General Fund resulting from repayments being made to the ARLF instead of the General Fund. These figures represent the total expected repayments for Delta I contracts for 84-86. Repayments from Delta II and Pt. MacKenzie contracts will not begin until FY 87 or 88 depending on when those loans are executed.

IV. DATE 4-27-82

PREPARED BY Sharon Burton

AGENCY DNR

PHONE 465-2400

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

COMMITTEE REPORT
SENATE

2/18/82

FURTHER: Finance

Date: 3/11/82

Mr. President:

The Committee on STATE AFFAIRS has had SB 813
post-retirement pension adjustments

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

- do pass [] do not pass
- [] do pass with attached amendments(s) with
- replace with CS for SB ~~813~~ 813 [] same title
[X] new title
- and recommends do pass
- [] AND attaches a "Letter of Intent" [] New Fiscal Note
- [] reports it back without recommendation
- [] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

V. Fisher
Tony Thurman
Bradley Bradley

MEMBERS HAVING
OTHER RECOMMENDATIONS:

V. Fisher

CHAIRMAN

Offered: 3/12/82
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 813 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to teachers' and public employees'
7 retirement benefits; and providing for an effective
8 date."

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

10 * Section 1. AS 14.20.345(d) is amended to read:

11 (d) The governing body of the district may agree to continue the
12 teacher's retirement contributions if the teacher agrees to pay the
13 percentage required under AS 14.25.050 [REQUIRED SEVEN PERCENT] of the
14 salary the teacher [HE] would have received during the [HIS] leave of
15 absence and reimburse the district for the district's required retire-
16 ment contribution. Each year of leave of absence then would count as a
17 year of retirement service.

18 * Sec. 2. AS 14.25.050(a) is amended to read:

19 (a) Each [BEGINNING JUL' 1, 1970, EACH] teacher shall contribute
20 to the retirement fund an amount equal to nine [SEVEN] percent of the
21 teacher's [HIS] base salary effective from July 1 to the following June
22 30. The contribution shall be deducted by the employer at the end of
23 each payroll period.

24 * Sec. 3. AS 14.25.060(a) is repealed and reenacted to read:

25 (a) If a member has military service or Alaska Bureau of Indian
26 Affairs (BIA) service, or if a member joined the system before July 1,
27 1978, and has creditable outside service, the member is indebted to the
28 retirement fund as follows:

29 (1) For a member first hired before July 1, 1978, the arrear-

1 age indebtedness for creditable outside service is seven percent of the
2 base salary multiplied by the total number of years of creditable out-
3 side service. Compound interest at the rate prescribed by regulation
4 shall be added to the arrearage indebtedness beginning July 1, 1963, or
5 at the time of first becoming employed as a member, whichever is later,
6 to the date of payment or the date of retirement, whichever occurs
7 first.

8 (2) For a member first hired before July 1, 1982, the arrear-
9 age indebtedness for creditable military and Alaska BIA service is seven
10 percent of the base salary multiplied by the total number of years of
11 military and Alaska BIA service. For a member first hired on or after
12 July 1, 1982, the arrearage indebtedness for military and Alaska BIA
13 service is nine percent of the base salary multiplied by the total
14 number of years of creditable military and Alaska BIA service. Compound
15 interest at the rate prescribed by regulation shall be added to the
16 arrearage indebtedness beginning July 1, 1963, or at the time of first
17 becoming employed as a member, whichever is later, to the date of payment
18 or the date of retirement, whichever occurs first.

19 * Sec. 4. AS 14.25.110(d) is repealed and reenacted to read:

20 (d) The monthly retirement benefit for a member is calculated as
21 follows:

22 (1) For a member with credited service earned before July 1,
23 1982, the monthly retirement benefit is calculated by multiplying two
24 percent of the member's average base salary, divided by 12, by the years
25 of credited service.

26 (2) For a member with less than three years of membership
27 service rendered after June 30, 1982:

28 (A) if the member has a total of at least 10 but less
29 than 20 years of credited service, the member is entitled to the

1 benefit calculated under (1) of this subsection for the credited
2 service rendered before July 1, 1982, plus two and one-quarter
3 percent of the member's average base salary, divided by 12, times
4 the years of credited service earned after June 30, 1982;

5 (B) if the member has a total of at least 20 years of
6 credited service, the member is entitled to the benefit calculated
7 under (1) of this subsection for the credited service rendered
8 before July 1, 1982, plus two and one-half percent of the member's
9 average base salary, divided by 12, times the years of credited
10 service earned after June 30, 1982.

11 (3) For a member with three or more years of membership
12 service rendered after June 30, 1982:

13 (A) if the member has a total of at least 10 but less
14 than 20 years of credited service, the member is entitled to a
15 monthly retirement benefit equal to two and one-quarter percent of
16 the member's average base salary, divided by 12, times the member's
17 total years of credited service;

18 (B) if the member has a total of at least 20 years of
19 credited service, the member is entitled to a monthly retirement
20 benefit equal to two and one-half percent of the member's average
21 base salary, divided by 12, times the member's total years of
22 credited service.

23 (4) For a member who elects to receive an early retirement
24 benefit, an actuarial adjustment must be made.

25 (5) Any indebtedness that exists at the time of retirement
26 must be discharged in accordance with AS 14.25.063(b).

27 * Sec. 5. AS 14.25.125(d) is repealed and reenacted to read:

28 (d) The monthly amount of a conditional service retirement benefit
29 shall be calculated on the years of fully paid credited service only, in

1 accordance with AS 14.25.110(d), except that

2 (1) a member may irrevocably elect to substitute "average
3 monthly compensation" as defined in AS 39.35.680(4) in place of the
4 member's average base salary, divided by 12; and

5 (2) in determining the percentage multiplier for each year of
6 service under AS 14.25.110(d) the years of credited service under AS 39.-
7 35 shall also be considered.

8 * Sec. 6. AS 14.25.143 is repealed and reenacted to read:

9 Sec. 14.25.143. POST-RETIREMENT PENSION ADJUSTMENT. (a) Once
10 each year the administrator shall increase benefit payments to eligible
11 persons age 65 or older receiving benefits under this system in the
12 preceding calendar year.

13 (b) The increase in benefit payments applies to total benefit
14 payments except for the cost-of-living allowance under AS 14.25.142.
15 The amount of the increase is a percentage of the current benefit equal
16 to the lesser of 75 percent of the increase in the cost of living in the
17 preceding calendar year or nine percent, for recipients who on July 1
18 are at least 65 years old.

19 (c) If a recipient was not receiving benefits during the entire
20 preceding calendar year, the increase in benefits under this section
21 shall be adjusted by multiplying it by the fraction whose numerator is
22 the number of months for which benefits were received in the preceding
23 calendar year and whose denominator is 12.

24 (d) If at the time of first receiving a retirement benefit a
25 member was receiving a disability benefit under this system, the adminis-
26 trator shall, at the time the member is appointed to retirement, increase
27 the retirement benefit by a percentage equal to the total cumulative
28 percentage increase that has been applied to the member's disability
29 benefit under this section.

1 (e) When computing a spouse's pension under AS 14.25.164, adjust-
2 ments granted to the deceased member under this section shall be in-
3 cluded.

4 (f) An increase in benefit payments under this section is effec-
5 tive July 1 of each year and is based on the percentage increase in the
6 consumer price index for urban wage earners and clerical workers for
7 Anchorage, Alaska during the previous calendar year as determined by the
8 United States Department of Labor, Bureau of Labor Statistics.

9 * Sec. 7. AS 14.25.143(a) is repealed and reenacted to read:

10 (a) Once each year the administrator shall increase benefit pay-
11 ments to eligible disabled members and persons age 60 or older receiving
12 benefits under this system in the preceding calendar year.

13 * Sec. 8. AS 14.25.143(b) is repealed and reenacted to read:

14 (b) The increase in benefit payments applies to total benefit
15 payments except for the cost-of-living allowance under AS 14.25.142.
16 The amount of the increase is a percentage of the current benefit equal
17 to

18 (1) the lesser of 75 percent of the increase in the cost of
19 living in the preceding calendar year or nine percent, for recipients
20 who on July 1 are at least 65 years old; and

21 (2) the lesser of 50 percent of the increase in the cost of
22 living in the preceding calendar year or six percent, for recipients who
23 on July 1 are at least 60 but less than 65 years old and for members
24 receiving disability benefits who are less than 65 years old.

25 * Sec. 9. AS 14.25.143(a) is repealed and reenacted to read:

26 (a) Once each year the administrator shall increase benefit pay-
27 ments to eligible disabled members and persons age 55 or older receiving
28 benefits under this system in the preceding calendar year.

29 * Sec. 10. AS 14.25.143(b) is repealed and reenacted to read:

1 (b) The increase in benefit payments applies to total benefit
2 payments except for the cost-of-living allowance under AS 14.25.142.
3 The amount of the increase is a percentage of the current benefit equal
4 to

5 (1) the lesser of 75 percent of the increase in the cost of
6 living in the preceding calendar year or nine percent, for recipients
7 who on July 1 are at least 65 years old;

8 (2) the lesser of 50 percent of the increase in the cost of
9 living in the preceding calendar year or six percent, for recipients who
10 on July 1 are at least 60 but less than 65 years old and for members
11 receiving disability benefits who are less than 65 years old; and

12 (3) the lesser of 25 percent of the increase in the cost of
13 living in the preceding calendar year or three percent, for recipients
14 who on July 1 are at least 55 but less than 60 years old.

15 * Sec. 11. AS 39.35.160 is amended to read:

16 Sec. 39.35.160. AMOUNT OF EMPLOYEE CONTRIBUTIONS. (a) While
17 participating in the system each peace officer and each fireman shall
18 contribute seven [FIVE] percent and every other employee shall contri-
19 bute six [FOUR] and one-quarter percent of their [HIS] compensation to
20 the public employees' retirement system.

21 * Sec. 12. AS 39.35.200(b) is amended to read:

22 (b) If, upon termination of employment, an employee has credited
23 service of less than five years and has less than \$1,000 in the [HIS]
24 employee contribution account, a refund of the employee contribution
25 account and the employee savings account must be made unless the
26 employee indicates in writing that future retirement is intended and
27 contributions should not be refunded. An employee who is reemployed
28 with an employer and whose contributions have not been refunded before
29 reemployment [RE-EMPLOYMENT] is not eligible for a refund.

1 * Sec. 13. AS 39.35.340(b) is repealed and reenacted to read:

2 (b) In order to obtain credited service under this section, an
3 employee shall make an election to do so and shall verify the period of
4 military service. When eligibility for credited service for military
5 service has been established, an indebtedness shall be determined as
6 follows: (1) the employee's actual compensation, or the calculated
7 annual compensation for those employees working less than 12 months,
8 during the calendar year 1976 or the year in which an employee first
9 becomes vested under this chapter, whichever is later, multiplied by (2)
10 the number of years of military service credited under this section, and
11 this product multiplied by (3) six percent for members who are first
12 eligible to claim this military service before July 1, 1982, or eight
13 percent for members who are first eligible to claim this military service
14 on or after July 1, 1982. Interest as prescribed by regulation accrues
15 on this indebtedness beginning on July 1, 1977, or one year following
16 the date a person first becomes vested, whichever is later. Any out-
17 standing indebtedness that exists at the time a person is appointed to
18 retirement will necessitate an actuarial adjustment to the benefits
19 payable based upon that military service.

20 * Sec. 14. AS 39.35.370(c) is repealed and reenacted to read:

21 (c) The monthly retirement benefit of an employee, except for an
22 employee who served as a peace officer or fireman before July 1, 1982,
23 is calculated as follows:

24 (1) For an employee with credited service earned before
25 July 1, 1982, the monthly retirement benefit is calculated by multiply-
26 ing two percent of the average monthly compensation of the employee by
27 the number of years of credited service.

28 (2) For an employee with less than three years of credited
29 service rendered after June 30, 1982:

1 (A) if the employee has a total of at least 10 but less
2 than 20 years of credited service, the employee is entitled to the
3 benefit calculated under (1) of this subsection for the credited
4 service rendered before July 1, 1982, plus two and one-quarter
5 percent of the average monthly compensation times the years of
6 credited service earned after June 30, 1982;

7 (B) if the employee has a total of at least 20 years of
8 credited service, the employee is entitled to the benefit calculated
9 under (1) of this subsection for the credited service rendered
10 before July 1, 1982, plus two and one-half percent of the employee's
11 average monthly compensation times the years of credited service
12 earned after June 30, 1982.

13 (3) For an employee with three or more years of credited
14 service rendered after June 30, 1982:

15 (A) if the employee has a total of at least 10 but less
16 than 20 years of credited service, the employee is entitled to a
17 monthly retirement benefit equal to two and one-quarter percent of
18 the employee's average monthly compensation times the total years
19 of credited service earned by the employee;

20 (B) if the employee has a total of at least 20 years of
21 credited service, the employee is entitled to a monthly retirement
22 benefit equal to two and one-half percent of the employee's average
23 monthly compensation times the total years of credited service
24 earned by the employee.

25 (4) For an employee who elects to receive an early retirement
26 benefit, an actuarial adjustment must be made.

27 * Sec. 15. AS 39.35.370 is amended by adding a new subsection to read:

28 (g) The monthly retirement benefit for an employee who served as a
29 peace officer or fireman before July 1, 1982, is calculated as follows:

1 (1) by multiplying two percent of the average monthly compen-
2 sation of the employee by the years of credited peace officer or fireman
3 service up through 10 years plus two and one-half percent of the average
4 monthly compensation of the employee by the years of credited peace
5 officer or fireman service over 10 years; all other credited service
6 shall be multiplied by two percent; or

7 (2) under (c) of this section if the benefit calculated under
8 that subsection exceeds the benefit calculated under (1) of this subsec-
9 tion.

10 * Sec. 16. AS 39.35.385(d) is repealed and reenacted to read:

11 (d) The monthly amount of a conditional service retirement benefit
12 shall be calculated in accordance with AS 39.35.370(c), except that

13 (1) the member may irrevocably elect to substitute one-
14 twelfth of the "average base salary" as defined in AS 14.25.220(5) in
15 place of average monthly compensation; and

16 (2) in determining the percentage multiplier for each year of
17 service under AS 39.35.370(c) the years of credited service under AS 14.-
18 25 shall also be considered.

19 * Sec. 17. AS 39.35.475 is repealed and reenacted to read:

20 Sec. 39.35.475. POST-RETIREMENT PENSION ADJUSTMENT. (a) Once
21 each year the administrator shall increase benefit payments to eligible
22 persons age 65 or older receiving benefits under this system in the
23 preceding calendar year.

24 (b) The increase in benefit payments applies to total benefit
25 payments exclusive only of the cost-of-living allowance under AS 39.35.-
26 480. The amount of the increase is a percentage of the current benefit
27 equal to the lesser of 75 percent of the increase in the cost of living
28 in the preceding calendar year or nine percent, for recipients who on
29 July 1 are at least 65 years old.

1 (c) If a recipient was not receiving benefits during the entire
2 preceding calendar year, the increase in benefits under this section
3 shall be adjusted by multiplying it by the fraction whose numerator is
4 the number of months for which benefits were received in the preceding
5 calendar year and whose denominator is 12.

6 (d) If at the time of first receiving a retirement benefit a
7 member was receiving a disability benefit under this system, the adminis-
8 trator shall, at the time the member is appointed to retirement, increase
9 the retirement benefit by a percentage equal to the total cumulative
10 percentage increase that has been applied to the member's disability
11 benefit under this section.

12 (e) When computing a joint and survivor benefit under AS 39.35.450
13 or a survivor's benefit under AS 39.35.420 or 39.35.440, adjustments
14 granted to the deceased member under this section shall be included.

15 (f) An increase in benefit payments under this section is effective
16 July 1 of each year and is based on the percentage increase in the
17 consumer price index for urban wage earners and clerical workers for
18 Anchorage, Alaska during the previous calendar year as determined by the
19 United States Department of Labor, Bureau of Labor Statistics.

20 * Sec. 18. AS 39.35.475(a) is repealed and reenacted to read:

21 (a) Once each year the administrator shall increase benefit pay-
22 ments to eligible disabled members and persons age 60 or older receiving
23 benefits under this system in the preceding calendar year.

24 * Sec. 19. AS 39.35.475(b) is repealed and reenacted to read:

25 (b) The increase in benefit payments applies to total benefit
26 payments exclusive only of the cost-of-living allowance under AS 39.35.-
27 480. The amount of the increase is a percentage of the current benefit
28 equal to

29 (1) the lesser of 75 percent of the increase in the cost of

1 living in the preceding calendar year or nine percent, for recipients
2 who on July 1 are at least 65 years old; and

3 (2) the lesser of 50 percent of the increase in the cost of
4 living in the preceding calendar year or six percent, for recipients who
5 on July 1 are at least 60 but less than 65 years old and for members
6 receiving disability benefits who are less than 65 years old.

7 * Sec. 20. AS 39.35.475(a) is repealed and reenacted to read:

8 (a) Once each year the administrator shall increase benefit pay-
9 ments to eligible disabled members and persons age 55 or older receiving
10 benefits under this system in the preceding calendar year.

11 * Sec. 21. AS 39.35.475(b) is repealed and reenacted to read:

12 (b) The increase in benefit payments applies to total benefit
13 payments exclusive only of the cost-of-living allowance under AS 39.35.-
14 480. The amount of the increase is a percentage of the current benefit
15 equal to

16 (1) the lesser of 75 percent of the increase in the cost of
17 living in the preceding calendar year or nine percent, for recipients
18 who on July 1 are at least 65 years old;

19 (2) the lesser of 50 percent of the increase in the cost of
20 living in the preceding calendar year or six percent, for recipients who
21 on July 1 are at least 60 but less than 65 years old and for members
22 receiving disability benefits who are less than 65 years old; and

23 (3) the lesser of 25 percent of the increase in the cost of
24 living in the preceding calendar year or three percent, for recipients
25 who on July 1 are at least 55 but less than 60 years old.

26 * Sec. 22. Sections 6 - 10 and 17 - 21 of this Act apply to persons
27 receiving benefits under the retirement systems on and after July 1, 1982.
28 Payment of an increased benefit under AS 14.25.143 or AS 39.35.475 that is
29 effective July 1, 1982, shall begin no later than January 1, 1983, and shall

1 be based on the percentage increase in the consumer price index for the
2 calendar year 1981.

3 * Sec. 23. Sections 1 - 6, 11 - 17, and 22 of this Act take effect July 1,
4 1982.

5 * Sec. 24. Sections 7, 8, 18, and 19 of this Act take effect July 1,
6 1983.

7 * Sec. 25. Sections 9, 10, 20, and 21 of this Act take effect July 1,
8 1984.

Introduced: 2/18/82
Referred: State Affairs
and Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 813

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to post-retirement pension adjustments,
7 and retirement benefits for peace officers, marine
8 transportation employees and Department of Fish and
9 Game employees; and providing for an effective date."

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

11 * Section 1. AS 14.25.143 is repealed and reenacted to read:

12 Sec. 14.25.143. POST-RETIREMENT PENSION ADJUSTMENT. (a) When the
13 administrator determines that the cost of living has increased and that
14 the financial condition of the retirement fund permits, he may increase
15 benefit payments to eligible disabled members and persons age 55 or old-
16 er who received benefits in the preceding calendar year and are also re-
17 ceiving benefits under this system at the time the increase is granted.

18 (b) The increase in benefit payments applies to total benefit pay-
19 ments except for the cost-of-living allowance under AS 14.25.142. The
20 amount of the increase is a percentage of the current benefit and may
21 not exceed

22 (1) the lesser of 75 percent of the increase in the cost of
23 living in the preceding calendar year or nine percent of the current
24 benefit for recipients who are at least 65 years old on July 1;

25 (2) the lesser of 50 percent of the increase in the cost of
26 living in the preceding calendar year or six percent of the current
27 benefit for recipients who are at least 60 but less than 65 years old on
28 July 1 and for members receiving disability benefits who are less than
29 65 years old on July 1; or

1 (3) the lesser of 25 percent of the increase in the cost of
2 living in the preceding calendar year or three percent of the current
3 benefit for recipients who are at least 55 but less than 60 years old on
4 July 1.

5 (c) If a recipient was not receiving benefits during the entire
6 preceding calendar year, the increase in benefits under this section
7 must be adjusted by multiplying it by the fraction whose numerator is
8 the number of months for which benefits were received in the preceding
9 calendar year and whose denominator is 12.

10 (d) If, at the time of first receiving a retirement benefit, a
11 member was receiving a disability benefit under this system, the admini-
12 strator shall, at the time the member is appointed to retirement, in-
13 crease the retirement benefit by a percentage equal to the total cumula-
14 tive percentage increase which has been applied to the member's disabili-
15 ty benefit under this section.

16 (e) When computing a spouse's pension under AS 14.25.164, adjust-
17 ments granted to the deceased member under this section must be in-
18 cluded.

19 (f) An increase in benefit payments under this section is effec-
20 tive July 1 of each year and the limit on the increase is based on the
21 percentage increase in the consumer price index for urban wage earners
22 and clerical workers for Anchorage, Alaska during the previous calendar
23 year as determined by the United States Department of Labor, Bureau of
24 Labor Statistics.

25 * Sec. 2. AS 39.35 is amended by adding a new section to read:

26 Sec. 39.35.305. CREDITED SERVICE FOR EMPLOYMENT WITH THE DIVISION
27 OF MARINE TRANSPORTATION. (a) A vested employee who is a member of the
28 system on July 1, 1981 is entitled to service credit for periods of em-
29 ployment before January 1, 1977 with the division of marine highways of

1 the Department of Transportation and Public Facilities for which the em-
2 ployee received service credit under the Northwest Marine Retirement
3 Trust. The service credit allowed under this section may not exceed an
4 aggregate of nine years. Benefits are not payable on service credit un-
5 der this section unless the employee makes retroactive contributions to
6 the system for the period of time for which service credit is claimed.

7 (b) In order to obtain service credit under this section, an em-
8 ployee shall make an election to do so and shall verify the period of
9 service. When eligibility for service credit has been established, an
10 indebtedness shall be determined as follows: (1) the employee's actual
11 compensation, or the calculated annual compensation for an employee
12 working less than 12 months, during the calendar year 1981 or the year
13 in which an employee first becomes vested under this chapter, whichever
14 is later, multiplied by (2) six percent, and this product multiplied by
15 (3) the number years of service credited under this section. Interest
16 as prescribed by regulation accrues on this indebtedness beginning on
17 July 1, 1981, or one year following the date a person first becomes
18 vested, whichever is later. Any outstanding indebtedness that exists at
19 the time a person is appointed to retirement will necessitate an actuar-
20 ial adjustment to the benefits payable based upon service credited under
21 this section.

22 * Sec. 3. AS 39.35.370 is amended by adding a new subsection to read:

23 (g) A member may not receive retirement benefits under this sec-
24 tion based on a period of employment for which the member received ser-
25 vice credit under AS 39.35.305 if the member is receiving retirement
26 benefits from a marine retirement trust based on the same period of em-
27 ployment.

28 * Sec. 4. AS 39.35.475 is repealed and reenacted to read:

29 Sec. 39.35.475. POST-RETIREMENT PENSION ADJUSTMENT. (a) When the

1 administrator determines that the cost of living has increased and that
2 the financial condition of the retirement fund permits, he may increase
3 benefit payments to eligible disabled members and persons age 55 or old-
4 er who received benefits in the preceding calendar year and are also re-
5 ceiving benefits under this system at the time the increase is granted.

6 (b) The increase in benefit payments applies to total benefit pay-
7 ments except for the cost-of-living allowance under AS 39.35.480. The
8 amount of the increase is a percentage of the current benefit and may
9 not exceed

10 (1) the lesser of 75 percent of the increase in the cost of
11 living in the preceding calendar year or nine percent of the current
12 benefit for recipients who are at least 65 years old on July 1;

13 (2) the lesser of 50 percent of the increase in the cost of
14 living in the preceding calendar year or six percent of the current
15 benefit for recipients who are at least 60 but less than 65 years old on
16 July 1 and for members receiving disability benefits who are less than
17 65 years old on July 1; or

18 (3) the lesser of 25 percent of the increase in the cost of
19 living in the preceding calendar year or three percent of the current
20 benefit for recipients who are at least 55 but less than 60 years old on
21 July 1.

22 (c) If a recipient was not receiving benefits during the entire
23 preceding calendar year, the increase in benefits under this section
24 must be adjusted by multiplying it by the fraction whose numerator is
25 the number of months for which benefits were received in the preceding
26 calendar year and whose denominator is 12.

27 (d) If, at the time of first receiving a retirement benefit, a
28 member was receiving a disability benefit under this system, the admini-
29 strator shall, at the time the member is appointed to retirement, in-

1 crease the retirement benefit by a percentage equal to the total cumula-
2 tive percentage increase which has been applied to the member's disabil-
3 ity benefit under this section.

4 (e) When computing a joint and survivor benefit under AS 39.35.450
5 or a survivor's benefit under AS 39.35.420 or 39.35.440, adjustments
6 granted to the deceased member under this section must be included.

7 (f) An increase in benefit payments under this section is effec-
8 tive July 1 of each year and the limit on the increase is based on the
9 percentage increase in the consumer price index for urban wage earners
10 and clerical workers for Anchorage, Alaska during the previous calendar
11 year as determined by the United States Department of Labor, Bureau of
12 Labor Statistics.

13 * Sec. 5. AS 39.35.680(27) is amended to read:

14 (27) "peace officer" or "fireman" means an employee occupying
15 a position as a peace officer, chief of police, correctional officer,
16 correctional superintendent, [QUALIFIED EMPLOYEE OF THE DEPARTMENT OF
17 FISH AND GAME,] fireman, or fire chief;

18 * Sec. 6. A person who has held a position on or before June 30, 1982, as
19 a "qualified employee of the Department of Fish and Game", shall be treated
20 as a peace officer under AS 39.35 whenever employed by the Department of Fish
21 and Game on or after July 1, 1982.

22 * Sec. 7. AS 39.35.680(32) is repealed.

23 * Sec. 8. This Act takes effect July 1, 1982.

JAY S. HAMMOND
GOVERNOR



SB 813

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 17, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to pension adjustments and retirement benefits for peace officers, marine highway employees and fish and game employees.

The first and fourth sections of the bill relate to post-retirement pension adjustments for teachers and public employees. In place of the old one-tier system, it creates a three-tier system which allows the administrator to grant a higher cost-of-living increase for older retirees who are often more severely impacted by inflation.

The second and third sections provide for the limited transfer of credit from the Northwest Marine Retirement Trust, under which many ferry system employees are provided for, to the Public Employees' Retirement System.

Sections 5 and 6 settle a problem that has existed in recent years whereby selected fish and game employees were entitled to peace officer status and 20-year retirement. The present system is flawed because many persons whose desk jobs did not approach the hazards of peace officer service were nevertheless treated like peace officers. Recent study has indicated little difference between the hazards of fish and game employment and the hazards of other non-peace officer employment. This bill, therefore, eliminates peace officer coverage for fish and game employees. To avoid a constitutional problem, the bill preserves peace officer status for those fish and game employees who have already qualified for such status under the existing law.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jay S. Hammond".

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 813
Title Past Retirement pension
Requested by _____ Date 2/18

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement & Benefits
Program Category Affected Centralized Administrative Services
BRU, Program, or Subprogram(s) Affected Retirement & Benefits
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
100 RETIREMENT BENEFITS		(228.0)	(506.5)	(838.3)	(1,231.4)	(1,694.7)
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		(228.0)	(506.5)	(838.3)	(1,231.4)	(1,694.7)

FUNDING (Thousands of Dollars)

GENERAL FUND	(186.7)	(414.8)	(686.6)	(1,008.5)	(1,388.0)
FEDERAL FUNDS	(10.5)	(23.3)	(38.6)	(56.6)	(78.0)
VETERAN'S FUND	(.5)	(1.0)	(1.7)	(2.5)	(3.4)
FISH & GAME FUND	(1.4)	(3.0)	(5.0)	(7.4)	(10.1)
HIGHWAY FUND	(3.0)	(6.6)	(10.9)	(16.0)	(22.0)
AIRPORT FUND	(6.6)	(14.7)	(24.3)	(35.7)	(49.1)
CAPITAL FUND	(19.3)	(43.1)	(71.2)	(104.7)	(144.1)
PERS					

POSITIONS NONE

FULL TIME					
PART TIME					
TEMPORARY					

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

1. Provision to provide PERS service credit for certain Marine transportation service is estimated to cost \$4,000 per year.
2. Cost savings as a result of curtailing peace officer coverage within the Department of Fish and Game are estimated at \$232,000 in FY 83 and increasing in subsequent years.

IV. DATE February 11, 1982 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement & Benefits
Original: Legislative Finance PHONE 465-4460
cc: Budget and Management
Prime Sponsor (First Legislator Named)
Office of the Governor (Keith Specking)

ALASKA STATE LEGISLATURE

TWELFTH Legislature SECOND Session

SENATE BILL..... NO. 813..

By THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

"An Act relating to post-retirement pension adjustments and retirement benefits for peace officers, marine transportation employees and Department of Fish and Game employees; and providing for an effective date."

Introduced in the Senate ...2/18/, 19.82

HISTORY IN THE SENATE

19	82	Read first time and referred to Committee on																						
2	18	State Affairs and Finance																						
3	12	Reported back with recommendation that <i>J.A. O.S. be rep. & new title, 3rd passed to fin.</i>																						
		Read second time and																						
		Read third time and																						
		<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td colspan="2">Reconsideration</td> </tr> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	Reconsideration		PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
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Absent	Absent																							
Excused	Excused																							
		Reported correctly engrossed Signed by President Sent to House																						

SECRETARY OF THE SENATE

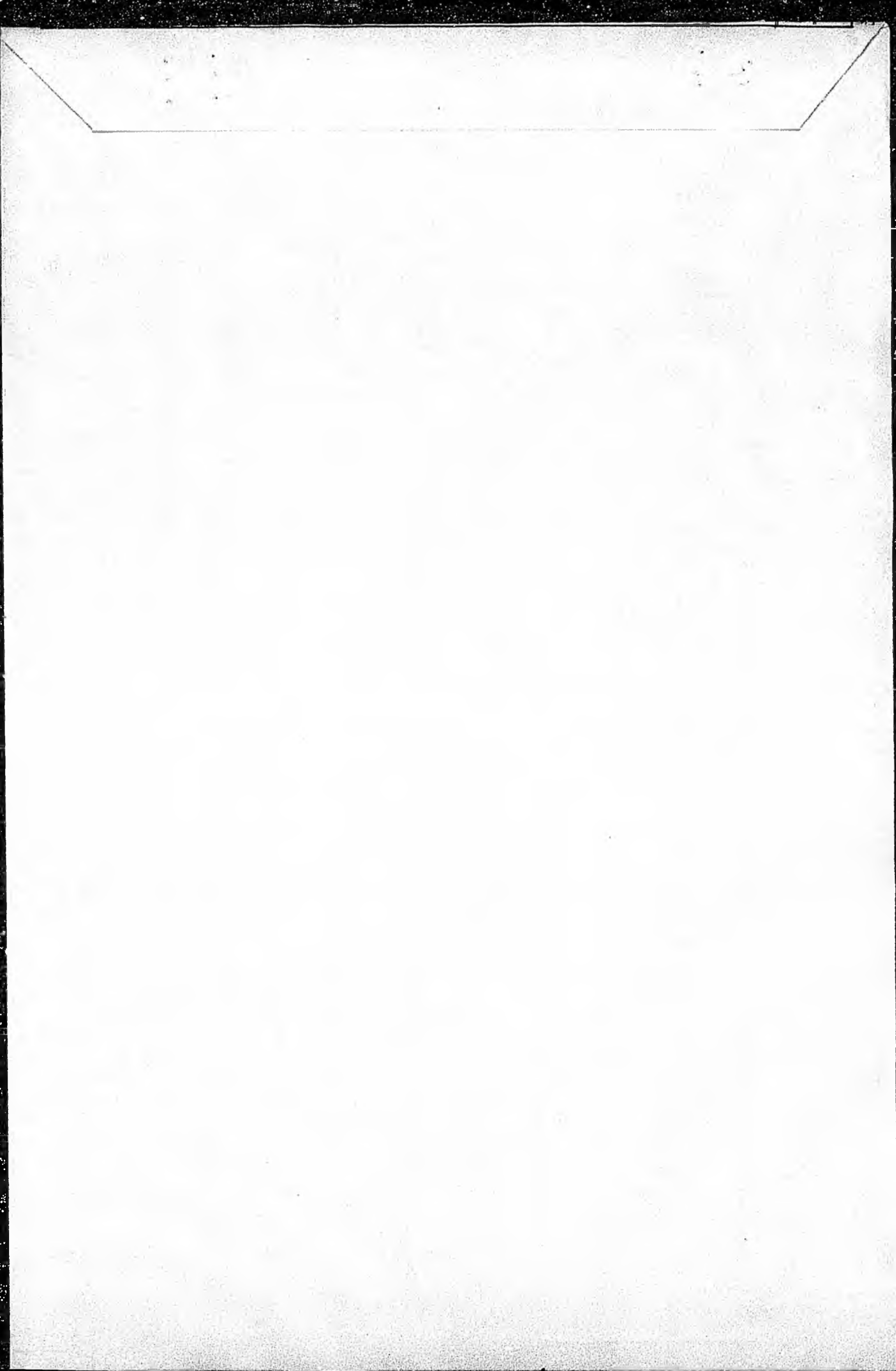
HISTORY IN THE HOUSE

19		Read first time and referred to Committee on																						
		Reported back with recommendation that																						
		Read second time and																						
		Read third time and																						
		<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> <tr> <td colspan="2">Reconsideration</td> </tr> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused	Reconsideration		PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
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Excused	Excused																							
		Reported correctly engrossed Signed by Speaker Returned to Senate																						

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19		Received from House
		To enrolling
		Reported correctly enrolled
		Sent to Governor
	 by Governor
		Filed with Lt. Governor
		Chapter No.



THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 813
Title An Act Relating to Retirement Benefits...(PERS)...and Providing for an Effective Date
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement & Benefits
Program Category Affected Centralized Administrative Services
BRU, Program, or Subprogram(s) Affected Retirement & Benefits
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
100 RETIREMENT BENEFITS		(228.0)	(506.5)	(838.3)	(1,231.4)	(1,694.7)
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		(228.0)	(506.5)	(838.3)	(1,231.4)	(1,694.7)

FUNDING (Thousands of Dollars)

GENERAL FUND	(186.7)	(414.8)	(686.6)	(1,008.5)	(1,388.0)
FEDERAL FUNDS	(10.5)	(23.3)	(38.6)	(56.6)	(78.0)
VETERAN'S FUND	(.5)	(1.0)	(1.7)	(2.5)	(3.4)
FISH & GAME FUND	(1.4)	(3.0)	(5.0)	(7.4)	(10.1)
HIGHWAY FUND	(3.0)	(6.6)	(10.9)	(16.0)	(22.0)
AIRPORT FUND	(6.6)	(14.7)	(24.3)	(35.7)	(49.1)
CAPITAL FUND	(19.3)	(43.1)	(71.2)	(104.7)	(144.1)
PERS					

POSITIONS NONE

FULL TIME					
PART TIME					
TEMPORARY					

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

- Provision to provide PERS service credit for certain Marine transportation service is estimated to cost \$4,000 per year.
- Cost savings as a result of curtailing peace officer coverage within the Department of Fish and Game are estimated at \$232,000 in FY 83 and increasing in subsequent years.

IV. DATE February 23, 1982 PREPARED BY Paul B. Arnoldt
AGENCY Division of Retirement & Benefits
PHONE 465-4460
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)
Office of the Governor (Keith Specking)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS SB 813 (State Affairs)

Title An Act Relating to TRS/PERS Retirement Benefits; and Providing for an Effective Date
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement & Benefits

Program Category Affected Centralized Administrative Services

BRU, Program, or Subprogram(s) Affected Retirement & Benefits

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
100 RETIREMENT BENEFITS		24,148.7	43,170.5	60,279.1	66,307.0	72,937.0
200 TRAVEL						
300 CONTRACTUAL		25.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		24,173.7	43,170.5	60,279.1	66,307.0	72,937.0

FUNDING (Thousands of Dollars)

GENERAL FUND	19,777.8	35,356.6	49,368.6	54,305.4	59,735.4
FEDERAL FUNDS	1,110.9	1,985.9	2,772.8	3,050.1	3,355.1
VETERAN'S FUND	48.3	86.3	120.6	132.6	145.9
FISH & GAME FUND	144.9	259.0	361.7	397.9	437.6
HIGHWAY FUND	313.9	561.2	783.6	862.0	948.2
AIRPORT FUND	700.3	1,252.0	1,748.1	1,922.9	2,115.2
CAPITAL FUND	2,052.6	3,669.5	5,123.7	5,636.1	6,199.6
PERS	25.0				

POSITIONS NONE

FULL TIME					
PART TIME					
TEMPORARY					

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

1. The State PERS payroll contribution rate must be increased by 6.99% in FY83; 11.36% in FY84; and 14.42% in FY85.
2. Estimate the FY83 covered State PERS payroll to be \$345,475,000, increasing 10% annually.
3. Estimate long term inflation rate of 7.5%.
4. The cost to political subdivisions is estimated to be \$18,360,800 in FY 83; \$32,833,600 in FY84; and \$45,831,700 in FY85.

IV. DATE March 15, 1982

PREPARED BY

Paul B. Arnoldt
Paul B. Arnoldt, Director

AGENCY

Division of Retirement & Benefits

Original: Legislative Finance

PHONE

465-4460

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Governor Hammond

Office of the Governor (Keith Specking)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS SB 813 (State Affairs)

Title An Act Relating to TRS/PERS Retirement Benefits; and Providing for an Effective Date
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Administration - Division of Retirement & Benefits

Program Category Affected Centralized Administrative Services & Secondary Education

BRU, Program, or Subprogram(s) Affected Retirement & Benefits

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
100 RETIREMENT BENEFITS		3,985.0	5,776.3	7,733.5	8,506.8	9,357.5
200 TRAVEL						
300 CONTRACTUAL		25.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
700 STATE TRS MATCHING		21,589.1	31,293.8	41,897.1	46,086.8	50,695.5
TOTAL		25,599.1	37,070.1	49,630.6	54,593.6	60,053.0

FUNDING (Thousands of Dollars)

GENERAL FUND		25,574.1	37,070.1	49,630.6	54,593.6	60,053.0
FEDERAL FUNDS						
VETERAN'S FUND						
FISH & GAME FUND						
HIGHWAY FUND						
AIRPORT FUND						
CAPITAL FUND						
PERS						
TRS		25.0				

POSITIONS NONE

FULL TIME						
PART TIME						
TEMPORARY						

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

1. The TRS contribution rate must be increased by 14.54% in FY83; 19.16% in FY84; and 23.32% in FY85 (the TRS contribution rate is split 50/50 between the State and employers in the system).
2. Estimate FY83 covered payroll at \$296,962,000 and increasing 10% annually.
3. Estimate long term inflation rate of 7.5%.
4. The cost to school districts is estimated to be \$17,604,100 in FY83; \$25,517,500 in FY84; and \$34,163,600 in FY85.



IV. DATE March 15, 1982 PREPARED BY Paul B. Arnoldt, Director
AGENCY Division of Retirement & Benefits
PHONE 465-4460
Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) Governor Hammond
Office of the Governor (Keith Specking)