

LEG. FINANCE - BILLS 1985 - 1986 2440

Overview of oil & gas tax Policy, Oil & gas taxes - HB 561 2440

production and marketing process provide profit making opportunities for the industry and revenue opportunities for the state. They show the complexity of valuing our oil and how important that value is to maintaining the financial wellbeing of both parties.

PREPAYMENT OF ASSESSED TAXES

THE SOHIO ALASKA PETROLEUM COMPANY JOINS THE DEPARTMENT OF REVENUE IN OPPOSING LEGISLATION THAT WOULD REQUIRE THE PREPAYMENT OF ASSESSED TAXES PRIOR TO FINAL DETERMINATION OF THE CORRECT TAX.

FIRST AND FOREMOST IT MUST BE UNDERSTOOD THAT THE AMOUNTS INITIALLY ASSESSED IN THE AUDIT PROCESS ARE NOT TAXES DUE AND OWING. THE DEPARTMENT OF REVENUE CHALLENGES VALUATIONS AND ACCOUNTING PROCEDURES AND, USING EVERY ASSUMPTION AND INTERPRETATION FAVORABLE TO THE STATE, MAKES AN INITIAL ASSESSMENT. IT IS THE BEGINNING, NOT THE END, OF THE TAX AUDIT PROCEDURE. IT IS THE CEILING - THE MAXIMUM LIABILITY - NOT THE BOTTOM LINE. TO REQUIRE PAYMENT AT THIS STAGE OR AT ANY STAGE PRIOR TO FINAL DETERMINATION, WOULD HAVE ABSOLUTELY NO BENEFICIAL EFFECT:

1. ALASKA HAS HAD NO DIFFICULTY COLLECTING TAXES FROM THE OIL INDUSTRY ONCE THE AMOUNT OF TAX HAS BEEN FINALLY DETERMINED. PREPAYMENT WOULD ONLY BE NECESSARY TO ENSURE THE COLLECTION OF REVENUES. HOWEVER, THE OIL INDUSTRY HAS ENORMOUS FIXED ASSETS IN ALASKA THAT CAN BE MADE SUBJECT TO LIENS SHOULD THAT PROVE NECESSARY.

THEREFORE IMPOSING A PREPAYMENT PROVISION WILL NOT IMPROVE THE STATE'S PROVEN ABILITY TO COLLECT TAXES, ONCE THEY ARE DUE AND OWING.

- 2: PREPAYMENT WOULD NOT ACCELERATE THE AUDIT PROCESS AND IN ALL LIKELIHOOD WOULD SLOW AND COMPLICATE AN ALREADY DIFFICULT PROCEDURE. TAXPAYERS WOULD INSIST ON THE ENFORCEMENT OF THEIR RIGHTS TO A FAIR HEARING AND DUE PROCESS. LAWYERS AND HEARING OFFICERS WOULD REPLACE AUDITORS AND ACCOUNTANTS. RULES OF EVIDENCE WOULD REPLACE NEGOTIATION.

3. THE ABSENCE OF A PREPAYMENT PROVISION DOES NOT RESULT IN TAXPAYERS DELAYING THE AUDIT PROCESS TO FORESTALL PAYMENT. IF A TAXPAYER KNOWS THAT HE WILL EVENTUALLY HAVE TO PAY THE TAX, IT IS IN HIS BEST INTEREST TO PAY TODAY RATHER THAN DELAYING THE PROCEDURE. COMPANIES CHALLENGE AND CONTEST ASSESSMENTS NOT BECAUSE THEY WANT TO DELAY PAYMENT BUT BECAUSE THEY BELIEVE THE ASSESSED AMOUNT IS INCORRECT. CONSEQUENTLY, A PREPAYMENT PROVISION WOULD NOT CHANGE THE TAXPAYER'S PRACTICE OF CHALLENGING ASSESSMENTS.

4. THE STATE WOULD NOT BENEFIT FROM EARLIER COLLECTION OF THE MONEY. IT WOULD NOT BE IN THE STATE'S BEST INTEREST TO USE PREPAYMENTS FOR THE OPERATING OR CAPITAL BUDGET WHEN, HISTORICALLY, THE INITIAL ASSESSMENTS ARE CHALLENGED AND OFTEN DECREASED. TO ASSURE THAT FUNDS WOULD BE AVAILABLE FOR REFUNDS, PREPAYMENTS WOULD HAVE TO GO INTO A TRUST FUND WHICH WOULD NOT BENEFIT EITHER PARTY.

MOREOVER, THE REQUIREMENT TO PREPAY ASSESSMENTS BEFORE THEY ARE DUE COULD CAUSE IRREPARABLE HARM TO THE TAXPAYER AND THE STATE OF ALASKA. WE BELIEVE THAT PREPAYMENT MAY IN CERTAIN INSTANCES VIOLATE THE TAXPAYER'S RIGHTS TO DUE PROCESS.

THE DUTIES OF THE DEPARTMENT OF REVENUE WILL BE MADE MORE DIFFICULT BY REQUIRING PREPAYMENT OF ASSESSED TAXES. THE AUDIT PROCEDURE WILL BECOME FAR MORE FORMAL AND ADVERSARIAL AT A MUCH EARLIER STAGE. BOOKS AND RECORDS THAT ARE NOW ROUTINELY SUBMITTED TO THE STATE IN ORDER TO SETTLE MINOR VALUATION OR ACCOUNTING PROBLEMS WILL PROBABLY BE PRODUCED ONLY AS A RESULT OF LENGTHY DISCOVERY MOTIONS. AUDITS WILL NOT BE ACCELERATED BUT DELAYED AND EVEN WITH PREPAYMENT INTO A TRUST, THE STATE WILL HAVE A LONGER WAIT BEFORE IT HAS ACCESS TO THE FUNDS.

THE SOHIO ALASKA PETROLEUM COMPANY HAS ALWAYS DEALT IN GOOD FAITH WITH THE DEPARTMENT OF REVENUE. THE AUDIT PROCESS IS

CUMBERSOME AND LENGTHY AND CAN BE IMPROVED. WE ARE WILLING TO WORK WITH THE DEPARTMENT, AND THE LEGISLATURE ON CHANGES THAT COULD BENEFIT ALL PARTIES. THE LENGTH OF THE AUDIT IS DETERMINED, FOR THE MOST PART, BY THE DIFFICULTY OF THE ISSUES, THE AMOUNT OF MONEY INVOLVED, AND THE EXPERIENCE OF TECHNICIANS DOING THE WORK. THE PREPAYMENT OF ASSESSED TAXES WILL NOT CHANGE THESE PARAMETERS AND SPEED REDUCTION OF THE OUTSTANDING ASSESSMENTS.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

POUCH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

OFFICE OF THE COMMISSIONER

January 2, 1986

*Bank up
in
yellow
paper*

RECEIVED

JAN -3 1986

Gerald L. Wilkerson
Division of Legislative Audit
Pouch W
Juneau, AK 99811

LEGISLATIVE
AUDIT

Dear Mr. Wilkerson:

We appreciate the opportunity to provide information to you concerning our audit program. Your memorandum of December 3 posed five questions, each asking for statistical information. Our audit staff has compiled this data and are confident that it represents a conservative estimate.

Question #1 How many oil and gas tax years per taxpayer does the Department of Revenue currently have under audit?

Answer:

Chapter 21

<u># of taxpayers under audit</u>	<u>Tax year(s) under audit</u>
4	1981
3	1980-1981
3	1979-1981
Total 10	19

Chapter 55

<u># of taxpayers under audit</u>	<u>Tax year(s) under audit</u>
1	1982
3	1981-1982
3	1980-1981
3	1982-1983
4	1981-1983
2	1980-1982
Total 16	37

Gerald L. Wilkerson
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Question #2 Based on historical experience, how much uncollected tax revenue do these backlogged tax audits represent?

Answer:

Potential Deficiency *\$463,351,000

* Note: This figure represents potential tax assessments in addition to the \$840 million currently in appeal status.

Comment: Presently we have seven auditors assigned to the Chapter 21 and 55 taxes. Often, the field work will require the presence of two or more auditors in order to complete it within a reasonable period of time. Thus, our most experienced auditors may be the lead auditor on one case and be required to assist others on another case. We estimate that with the addition of several more auditors, our most experienced auditors would be able to devote themselves entirely to the larger cases, and not be required to assist in the less productive capacity as an assistant.

Question #3 How many of the tax years referred to in question #1 face "statute of limitations" deadlines within the next twelve months that foreseeably could restrict the State's authority to eventually collect unpaid taxes as determined by an audit?

Answer: There is no restriction on the state's ability to assess taxes in accordance with law. All tax years scheduled in the answer to question #1 will expire on or before December 31, 1986. We expect that each taxpayer will routinely continue to extend the expiration date by signing waivers. While signing waivers effectively gives us additional time in which to complete our audits, in actuality this approach only temporarily postpones work that must be done and increases the backlog of audit cases to be scheduled and completed. See also our answer to Question #5.

Question #4 How many auditors would be needed to alleviate this backlog, plus maintain an adequate ongoing audit effort over the next three fiscal years?

Answer: It should be noted that audits are usually commenced a year or more following the year for which a return is filed. The complexity and number of issues involved in the audits has increased over time and is only now generally understood. As a consequence, our analysis of workload and personnel requirements is undergoing review.

In order to complete the audits of tax years 1979-1983, within the three year period, to begin conducting net profit share lease and royalty audits, and to devote audit resources to smaller producing companies we would need eleven additional

Gerald L. Wilkerson
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auditors. Of the eleven, one position would be hired at the revenue auditor V level as a lead auditor, five would be hired as senior auditors at the revenue auditor IV level and five at the revenue auditor III journeyman level. Adding untrained staff will not immediately alleviate our understaffing problems. At least one year of intensive classroom and on-the-job training is required to bring each recruit to the point where they can perform field audits without close supervision from a lead auditor. Although we would attempt to hire candidates with experience in oil and gas accounting and auditing, the training period involved remains lengthy. As a general rule, an auditor cannot ascend to the lead position without three years experience.

* Note: We have not commented on associated costs which would necessarily be incurred with the hiring of additional auditors. These costs include space lease and computer and data processing expenses, clerical support, office equipment and travel expenses.

Question #5 Based on historical experience, how much increased State revenue would you estimate each additional auditor would produce, over and above each position's associated costs?

Answer: Your question asks "how much increased State revenue" would be generated by adding audit staff. Many variables make this difficult to answer with certainty. The estimate given in question #2 of \$463 million is based upon our experience in auditing prior years' oil and gas returns. The issues developed in audits currently under appeal are anticipated to exist on subsequent returns filed. As most of the audit issues are being appealed by the taxpayers, future court decisions may also have a substantial impact on the amount of increased revenue actually received by the State. The \$463 million is an estimate of the potential deficiency our auditors may assess. This amount also represents assessments which presumably would be assessed whether or not the audit staff was increased. Additional staff would probably speed assessments and ultimate collections. Appeal, and eventual collection may be postponed several years.

We must also point out that this non-assessed revenue is not in jeopardy at this time. As stated in the answer to question #3, taxpayers willingly sign statute extension waivers. Should they discontinue this practice, the department would have other alternatives available to it, including jeopardy assessments.

There would be two advantages to increasing the number of auditors on our staff. First, a more comprehensive audit could be conducted and issues which we are currently "passing on" can be further developed, possibly resulting in larger assessments.

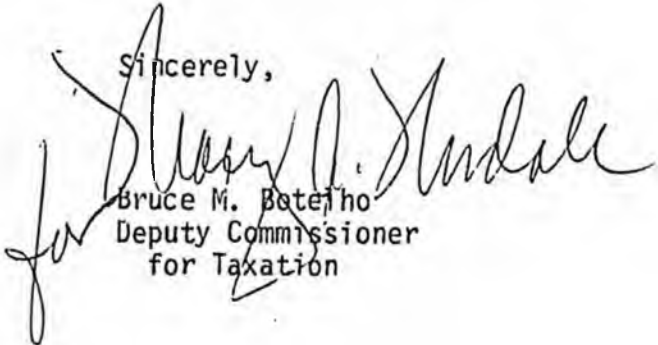
Gerald L. Wilkerson
January 2, 1986
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Second, by freeing our lead auditors to devote themselves entirely to their own cases, field audits could be completed and assessments issued quicker.

As you are undoubtedly aware, there has been increasing pressure on State government to reduce spending in response to falling revenues. Although it is often times difficult to measure the revenue impact our audit and compliance programs have, we are confident that this agency's audit presence has a significant bearing on revenues ultimately received into the general fund. Using the statistics we compile to measure our performance, for every dollar we spend administering the petroleum related tax types we return \$89.58 in additional tax assessments.

Recently we asked several states how much their tax administration programs cost in comparison to total revenues administered. We found that on the low end Washington spends \$3.97 per thousand dollars of total receipts. On the high end Montana spends \$7.22 and Kansas \$8.50 per thousand. At the present time Alaska spends approximately \$2.50 for every one thousand dollars in actual tax receipts. Certainly our tax structure differs substantially from those states which impose individual income tax and sales taxes. We do not require the one hundred or more auditors which these states employ.

Sincerely,


Bruce M. Botelho
Deputy Commissioner
for Taxation

BMB:SEK:m11

cc: Ray Gillespie
Chief of Staff
Office of the Governor

BILL SHEFFIELD, GOVERNOR

REPLY TO:

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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January 29, 1986

Honorable Al Adams
Alaska State Legislature
Pouch V
State Capital
Juneau, Alaska 99811

Re: Prepayment of disputed taxes
Our file: 166-268-86

Dear Representative Adams:

You have requested our opinion on the constitutionality of requiring payment of disputed taxes from taxpayers pending proper appeal of the assessed amounts. You have also asked our opinion on when in the dispute resolution process such payment would be appropriate and whether the collected sums must be put in escrow pending the outcome of the dispute. You have noted that you are especially interested in these questions as they concern taxes owed to the state by the oil and gas corporations under AS 43.21, AS 43.20 and AS 43.55, since, you have stated, "back taxes under these three statutes currently total about \$900 million." Thus, you are interested in whether any proposed changes in the appeal process to require payment of disputed taxes may be applied to the cases currently pending.

We conclude that a requirement that disputed taxes be paid at some point prior to final resolution of the dispute in the courts is permissible under both the Alaska and United States constitutions. We also believe that a statute requiring that taxes be paid pending appeal could be drafted so as to apply to disputes pending at the administrative level at the time of enactment and further, that the state need not escrow payments of disputed taxes but could enact valid legislation authorizing such procedures.

Finally, although we have found nothing that would bar legislation creating a prepayment requirement, we think that there are some practical and policy concerns that would have to be addressed in connection with any specific proposal to change the procedures for the collection of disputed taxes. The Department of Revenue has a number of comments as to the practical implications of any proposed legislation in this area and will be providing you with a list of their concerns.

BACKGROUND: EXISTING PROCEDURES AND APPLICABLE STATUTES AND REGULATIONS

The procedures for taxpayer appeals are currently governed by AS 43.05.240 and Alaska Appellate Rules 602(c) and 204. AS 43.05.240 controls the administrative appeal process and generally provides for a two step process. 1/ In most instances the

1/ AS 43.05.240 provides as follows:

Taxpayer remedies. (a) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department within 60 days from the date of mailing the notice [of assessment] ... giving notice of the grievance and requesting an informal conference. At the conference the person aggrieved may present arguments and evidence relevant to the amount of tax or penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

(b) A person aggrieved by the action of the department in fixing the amount of a tax or in imposing a penalty may apply to the department and request a formal hearing

(1) in place of the informal conference provided for in (a) of this section ...or;

(2) within 30 days after decision resulting from an informal conference.

(c) At the formal hearing the department may subpoena witnesses and may administer oaths and make inquiries necessary to determine the amount of the tax or penalty due the state. The person aggrieved may present arguments and evidence relevant to the amount of the tax penalty due the state. If the department determines that a correction is warranted, the department shall make the correction.

(d) Within 30 days after the formal hearing and decision by the department, a person aggrieved by the decision of the department may appeal to the superior court in the judicial district in which the person resides. If after the appeal is heard it appears that the tax was correct, the court shall confirm the tax. If incorrect, the court shall determine the amount of the tax and if the person aggrieved is entitled to recover the tax or part of it,

(footnote continued)

taxpayer who wishes to protest an assessment begins by requesting an informal conference. 2/ The purpose of the informal conference is both to resolve the dispute, if possible, and to clarify those issues left to be resolved at the formal hearing. In fact, many disputes are resolved at this level.

A taxpayer who does not agree with the informal conference decision may then request a formal hearing. However, the taxpayer first pays any part of the assessment that relates to issues resolved at the informal conference level, thus, streamlining the matters to be addressed at the formal hearing.

The formal hearing is conducted by a hearing officer and is governed by trial-type procedures under which the taxpayer and audit staff may call witnesses to testify under oath, cross-examine witnesses, and introduce documentary evidence relevant to determining the amount of tax due. 3/ AS 43.05.240; 15 AAC 05.030.

If, after the formal hearing decision, any part of the assessment is still in dispute, appeal is to the superior court. AS 43.05.240(d) provides that a taxpayer may appeal to superior court within 30 days after the formal hearing decision is issued. This statute does not expressly require the taxpayer to pay the disputed taxes before appealing to a superior court. However, Section 240(d) can reasonably be interpreted to require prepayment prior to judicial review and this interpretation is reflected in the department's regulations. 15 AAC 05.040 requires full payment of

(footnote continued)

the court shall order the repayment and the department shall immediately pay the amount due....

2/ Although the informal conference can be waived, see AS 43.05.240 (b)(1), the department discourages this practice since it often leads to delays in the formal hearing process as numerous pre-conference hearings become necessary to clarify issues and generally accomplish those matters usually accomplished by the informal conference.

3/ According to representatives of the Department of Revenue, at formal hearing taxpayers win at least a partial abatement in approximately 50% of the appeals of assessments under all tax laws.

the amount determined to be due by the final administrative decision of the department pending appeal to the court.

When an appeal is filed in court, the Appellate Rules of the Alaska Courts come into play. Appellate Rules 602(c) and 204(d) grant the appealing taxpayer the right to stay the administrative decision by filing an approved supersedeas bond for the amount of a potential judgment. ^{4/} Any legislation aimed at removing the superior court's power to approve the filing of a supersedeas bond in lieu of payment of the disputed taxes would have to provide for amending these Appellate Rules. This can be done, but only by a two-thirds vote of the members of each house. Alaska Const. Art. IV, sec. 15.

You should also be aware that a number of other statutory provisions would be affected by a prepayment requirement. An example is AS 43.20.270 which provides that the department may collect taxes by distraint and sale from a taxpayer who has not appealed from the assessment.

I. CONSTITUTIONALITY OF REQUIRING PAYMENT OF DISPUTED TAXES PRIOR TO FINAL DETERMINATION OF TAX LIABILITY

The obligation to pay taxes is purely a statutory creation. The methods by which the state may assess and collect a tax, as well as taxpayer remedies, are controlled by the express wording of the taxing statutes. The state legislature has discretion to set the conditions precedent to any refund, limited only by constitutional considerations of due process. See generally 71 Am. Jur. 2d, State and Local Taxation, secs. 596,608 (1973).

The due process clause of the Alaska Constitution is set out in Article I, Section 7 and provides: "No person shall be deprived of life, liberty, or property, without due process of law..." The core of this guarantee is the right to notice and a hearing when

^{4/} This may be why the Department of Revenue has not generally enforced its regulation requiring payment of disputed taxes pending appeal. We know of one case in which the Department asked the superior court to require full payment of taxes in lieu of a supersedeas bond but the court approved a bond in accordance with the Appellate Rules.

state action threatens the deprivation of some material right. Matanuska Maid, Inc. v. State, 620 P.2d 182 (1980). The language of the parallel federal due process guarantee, contained in the fifth and fourteenth amendments, is identical to that contained in the Alaska Constitution.

Under the applicable federal tax procedures, a taxpayer is given the choice of appealing through administrative procedures to Tax Court or going directly to federal district court. A taxpayer may appeal to Tax Court without paying disputed taxes and on to the Court of Appeals upon paying a bond. However, full payment of all disputed taxes is a prerequisite to going directly to federal district court, since jurisdiction over tax matters in the district courts exists only for actions "for the recovery of taxes alleged to have been erroneously or illegally assessed or collected," 28 U.S.C. sec. 1346. The requirement that a taxpayer pay the disputed taxes in full as a precondition of judicial review has been challenged on due process grounds and upheld by the federal courts. Johnston v. Comm'r of Int. Rev., 429 F.2d 804 (6th Cir. 1970) (due process not violated where taxpayer was barred from administrative appeal and had to pay full disputed tax amount to challenge tax in federal court); see, Flora v. United States, 357 U.S. 63 (1958).

Thus, while a taxpayer who disputes an assessment is guaranteed some right to a notice and hearing on the disputed amount, it is unlikely that the hearing must occur prior to any attempt at collection of the taxes assessed by the taxing authority. Both federal courts and courts in other states have held that due process is satisfied by the provision for a hearing after payment of taxes on the taxpayer's liability for taxes it alleges are wrongfully collected. See e.g., Phillips v. Comm'r of Int. Rev., 283 U.S. 589 (1931); Johnston v. Commissioner of Internal Revenue, 429 F.2d 804 (6th Cir. 1970); Cohen v. U.S., 297 F.2d 760 (9th Cir. 1962); State Tax Commission v. Yavapai County, 29 P. 2d 733 (Ariz. 1934); Anderson Bros. Corp. v. Stone, 85 So. 2d 767 (Miss. 1956); see generally 72 Am Jur 2d, State and Local Taxation, sec. 786 (1973).

The Alaska Courts have not addressed the issue of prepayment of taxes. While the Alaska courts certainly look to federal precedent, they are not limited to these rulings, since the provisions of the state constitution may have broader safeguards than the federal standards. Shagloak v. State, 597 P.2d 142 (Alaska 1979). However, based on the federal precedent and other caselaw cited above, we believe that the Alaska Supreme Court would uphold,

against due process challenge, a statutory requirement that taxes be paid at some point in the appeal process as a prerequisite to further review. 5/

You have asked, however, at what point in the process we believe prepayment would be "appropriate". As a matter of policy the choice of when to require full payment is of course up to the legislature. However, as a legal matter, we believe that the likelihood of any successful challenge to a prepayment requirement would decrease in direct proportion to the number of procedural safeguards available for use by the taxpayer prior to required payment. Thus, we believe that imposition of the requirement at the conclusion of the formal hearing is the least vulnerable point. However, we have found nothing to suggest that payment could not be required after the informal conference or possibly even earlier as long as there remains notice and an opportunity for a hearing to challenge the tax at some reasonable stage of the proceedings.

II. APPLICATION OF THE PREPAYMENT REQUIREMENT TO CURRENTLY PENDING CASES

It is our opinion that a change in the taxing procedures to require a prepayment of disputed tax liabilities could legally be applied to appeals that are currently pending at the administrative level. A taxpayer might attempt to challenge the application of any prepayment requirement to existing cases on the grounds that such an application would be unconstitutionally retroactive. However, we do not believe such a challenge would succeed.

5/ We think, however, that a small taxpayer appealing corporate income tax assessments under 43.20 might challenge a prepayment requirement on due process or other grounds. An argument that a specific taxpayer cannot afford to pay the full, assessed amount before appeal and would therefore be irreparably harmed by strict application of the prepayment requirement might be receptively received by a court. In such a case, the court could decide to stay the application of the prepayment statute or reduce the amount required to be paid on due process grounds or as an exercise of its general equitable powers. It would be unlikely, however, to hold the statute unconstitutional on its face.

A retroactive 6/ statute is "one which gives to pre-enactment conduct a different legal effect from that which it would have had without the passage of the statute," Norton v. Alcoholic Beverage Control Board, 695 P. 2d 1090, 1093 (Alaska 1985) citing Hochman, The Supreme Court and the Constitutionality of Retroactive Legislation, 73 Harv. L. Rev. 692 (1960). While this definition might lead to arguments over whether applying a statutory change to require prepayment of disputed taxes to pending cases is a retroactive application, the argument would be largely irrelevant. Procedural changes that do not effect substantive rights may be retroactively applied. Matanuska Maid, Inc. v. State, 620 P.2d 182, 187 (Alaska 1980). The theory behind the constitutional prohibition against retroactivity is that a statute should not operate to deprive a person of vested rights. However, for over a century, the rule has been that no party has a vested right in any statutory remedy. See The Collector (Brainard) v. Hubbard, 79 U.S. 1 (1871) cited in Bidwell V. Scheele, 355 P.2d 584, 586 (Alaska 1960).

Thus, in the Bidwell case, the Alaska Supreme Court held that the repeal of a statute requiring a person bringing a claim of title to lands against the holder of tax title to pay the equivalent of the sale price of the lands into the court should be applied to a pending action. The purchaser had no right in the previous procedure. Similarly, a taxpayer has no right to the present tax appeal procedures that permit a full appeal prior to any requirement to pay disputed liabilities.

The intent to apply a change in the tax appeal procedures to pending cases, however, would have to be stated expressly in the statute. AS 01.10.090 provides: "No statute is retrospective unless expressly declared therein." The statute need not use the specific word, "retrospective" but the legislature must clearly express its intent. See also, AS 01.10.100 (repeal or amendment of a law does not extinguish existing rights unless act expressly so states).

III. ESCROW OF DISPUTED TAX LIABILITIES

While your opinion request asks only whether payments received under a prepayment scheme must be escrowed, further conversations suggest you are also interested in the legislature's

6/ Legislation may be referred to as either retroactive or retrospective; for our purposes the terms are synonymous.

authority to set up some sort of procedure for holding the prepaid amounts for future refund pending resolution of tax disputes. Thus, we perceive your question to be whether or not the decision to escrow these sums may legally be left to the legislature.

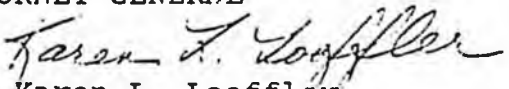
As to the first part of your question, we have found nothing that would require the state to escrow disputed tax liabilities. The federal government, for example, does not escrow the amounts it collects pending district court tax proceedings. ^{7/} Moreover, the contrary view, if applied to all tax disputes, might seriously impair a government's ability to function.

It is more difficult to respond to your inquiry concerning the validity of a mechanism for holding funds for possible repayment in the event the state does not prevail on its tax claims. There are many different methods that could be proposed for holding the disputed funds, and, while we believe that the legislature has broad discretion to choose among these methods, we think that there could be problems associated with some of them. See, e.g., 1982 Op. Att'y Gen. No. 13 (Nov. 30) (discussing dedicated funds prohibition as it applies to various types of funding mechanisms). In short, we think that a valid procedure for holding disputed funds for possible refund could be devised, however, we cannot give any more specific advice without more information.

We hope that this answers your immediate questions. We will be happy to assist you in any further questions you might have.

Sincerely yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Karen L. Loeffler
Assistant Attorney General

KLL/ma

^{7/} As a practical matter, however, Alaska's situation does not resemble that of the federal government. While the latter operates from a deficit, we do not. Thus, the need to reserve disputed funds could differ.

ALASKA DEPARTMENT OF REVENUE
TAX ACCOUNTS RECEIVABLE SUMMARY

January 27, 1986

TAX TYPE	STATUTE	VALUE OF ACCOUNTS (A)	NOTICES OF ASSESSMENT	APPEALED	DELINQUENT AND ASSIGNED	CURRENTLY NOT COLLECTABLE
OIL & GAS CORP INC	AS 43.21	\$526,772,908.17	\$.00	\$512,075,822.99	\$14,697,085.18	\$.00
OIL & GAS PRODUCTION	AS 43.55	324,527,153.90	.00	305,381,467.08	19,145,686.82	.00
CORPORATE INCOME	AS 43.20	69,176,297.80	5,397,996.48	62,532,919.02	1,094,023.02	151,359.28
INDIVIDUAL INCOME	AS 43.20	11,347,827.74	270,248.46	2,669,881.90	8,036,651.75	371,045.63
FISHERIES	AS 43.75	8,757,028.01	48,060.42	1,415,850.94	6,829,572.39	463,544.26
MOTOR FUEL	AS 43.40	3,860,528.83	137,954.22	1,535,943.79	2,185,737.86	892.96
BUSINESS LIC GR RCPT	AS 43.70	3,156,662.83	.00	2,664,285.70	364,685.32	127,691.81
INDIVIDUAL WITHHOLD	AS 43.20	2,210,965.67	156.44	7,614.84	1,899,890.53	303,303.86
MINING	AS 43.65	1,811,998.67	979,553.57	832,445.10	.00	.00
OIL & GAS PROPERTY	AS 43.56	1,186,349.32	57,559.39	386,930.57	741,859.36	.00
SALMON ENHANCEMENT	AS 43.76	496,708.54	68,793.22	43,687.78	384,027.54	.00
FIDUCIARY INCOME	AS 43.20	203,100.18	.00	184,228.30	18,871.88	.00
SEAFOOD MARKETING	AS 16.51	148,537.66	2,469.83	8,146.73	133,784.40	4,136.70
LIQUOR EXCISE	AS 43.60	54,912.90	.00	487.87	54,425.03	.00
TOBACCO (CIGARETTE)	AS 43.50	22,432.79	.00	4,498.12	17,934.67	.00
ESTATE	AS 43.31	9,793.36	5,827.05	.00	3,966.31	.00
COIN OPERATED DEVICE	AS 43.35	6,200.25	.00	.00	6,064.02	136.23
WHSL CANNED SALMON	AS 43.80	2,250.00	.00	2,250.00	.00	.00

TOTAL TAX RECEIVABLES (A)	\$953,751,656.62	\$6,968,619.08	\$889,746,660.73	\$55,614,266.08	\$1,422,110.73
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PERCENT OF TOTAL VALUE	100.00%	0.73%	93.29%	5.83%	0.15%
PERCENT OF WORKABLE VALUE				97.51%	2.49%

TAX TYPE	STATUTE	NUMBER OF ACCOUNTS (B)	NOTICES OF ASSESSMENT	APPEALED	DELINQUENT AND ASSIGNED	CURRENTLY NOT COLLECTABLE
INDIVIDUAL INCOME	AS 43.20	1,554	35	267	1,024	228
CORPORATE INCOME	AS 43.20	861	196	425	206	34
INDIVIDUAL WITHHOLD	AS 43.20	673	4	5	450	214
OIL & GAS PRODUCTION	AS 43.55	499	0	482	17	0
MOTOR FUEL	AS 43.40	411	46	151	209	5
FISHERIES	AS 43.75	269	9	54	166	40
BUSINESS LIC GR RCPT	AS 43.70	198	0	48	91	59
SALMON ENHANCEMENT	AS 43.76	97	8	21	68	0
SEAFOOD MARKETING	AS 16.51	60	5	7	46	2
OIL & GAS CORP INC	AS 43.21	36	0	34	2	0
OIL & GAS PROPERTY	AS 43.56	34	6	5	23	0
ESTATE	AS 43.31	15	8	1	6	0
LIQUOR EXCISE	AS 43.60	15	2	1	12	0
COIN OPERATED DEVICE	AS 43.35	13	0	0	11	2
MINING	AS 43.65	10	2	8	0	0
FIDUCIARY INCOME	AS 43.20	9	0	7	2	0
TOBACCO (CIGARETTE)	AS 43.50	7	1	3	3	0
WHSL CANNED SALMON	AS 43.80	3	0	3	0	0

TOTAL TAX ACCOUNTS (B)	4,764	322	1,522	2,336	584
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PERCENT OF TOTAL ACCOUNTS	100.00%	6.76%	31.95%	49.03%	12.26%
PERCENT OF WORKABLE ACCOUNTS				80.00%	20.00%

ALASKA DEPARTMENT OF REVENUE
TAX ACCOUNTS RECEIVABLE SUMMARY
January 27, 1986

NOTES: _____

- A. The value of receivables reported, especially those in appeal status, are still subject to some review and correction.

At the end of October, 1985, the Enforcement Division completed the consolidation of all receivables on to a new computer based accounts receivable system, giving the Department the ability to generate summary statistics of tax receivables. Upon review of these statistics, certain anomalies have been identified, some of which have resulted in correction of reported receivables. In a few instances keypunch errors have been identified. In a few other cases unposted payments have been identified, most notably involving those assessments under appeal.

The Enforcement and Audit Divisions are working to reconcile what the accounts receivable system shows in appeal status with what Audit's conference staff shows in appeal status. As that reconciliation is conducted the number of accounts and the aggregate value of those accounts may change.

In addition, several accounts related to a settlement announced January 13, 1986 have not yet been posted although payment was received January 15, 1986.

- B. The number of accounts identifies the number of actual billings, not the number of taxpayers. A single taxpayer may have billings for several different tax periods and/or for several different tax types. Accordingly, the actual number of taxpayer appeal cases will be less than the number of accounts identified on this summary.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

POUGH S
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

OFFICE OF THE COMMISSIONER

January 30, 1986

The Honorable Al Adams
Chairman
House Finance Subcommittee on Oil and Gas
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: Expedite Collection of
Disputed Taxes

Dear Representative Adams:

A proposal has been raised in the Interim Report of the House Finance Subcommittee on Oil and Gas (January 17, 1986) to require prepayment of disputed taxes at some stage in the appeal process in order to expedite the collection of disputed taxes. We appreciate the opportunity afforded us to comment on this issue.

The Department of Revenue is concerned that the proposal will have a detrimental impact on its operations, emphasis, and ability to litigate tax challenges. Rather than expedite resolution of tax disputes, it is the Department's view that the prepayment requirement concerning disputed taxes will create delays. The adverse impact will be greater the earlier the prepayment requirement is imposed. Additionally, the prepayment proposal will affect taxpayers other than oil and gas companies if it is imposed on the corporation net income tax under AS 43.20 et. seq.

Instead, we believe the collection of disputed taxes can be expedited more successfully through approaches other than the prepayment requirement. These approaches have been recently adopted and their effect is already being felt.

In this letter, we outline the handling of disputed tax controversies by examining the assessment and appeal process, discussing the reasons for delays, and the effect the prepayment requirement may have on the various levels of the Department's appeal process.

I. The Assessment And Appeal Process

There are two levels of administrative appeal within the Department, the informal conference and the formal hearing. Appeal after the formal hearing decision is to Alaska Superior Court. The appeal process can proceed through the courts to the U.S. Supreme Court. Final resolution of the appeal occurs after exhaustion or waiver of judicial appeal rights. It is only then that the disputed taxes must be paid if the final determination is against the taxpayer.

A. The Assessment Level Of Review

The Audit Division is responsible for reviewing tax returns and monitoring taxpayers through audits to insure that taxable income is properly calculated and reported. If the Division determines that an adjustment is required, it will inform the taxpayer that either more taxes are owed or a refund is warranted. If more taxes are due, an assessment notice will be issued.

As a practical matter, assessments are often made as the three year statute of limitations is about to expire. These assessments are often high as compared to the final adjusted assessment made during the appeal period. The reason is that auditors must make an aggressive although reasonable evaluation in order to insure that the State receives the money it is entitled to. They cannot later amend the assessment after the statute of limitations for assessments has expired except under limited circumstances. The taxpayer has the right to appeal an assessment within 60 days of being notified of an assessment.

1. Reasons For Delay

There are two primary reasons for delay during the assessment period. Assessments often are made as the three year statute of limitations is about to expire because audits of taxpayers, especially large multi-state and multi-national taxpayers, can take years to complete. Other audits underway may deal with the same issue or taxpayer. It is not an administratively sound practice to litigate the same issue for each taxpayer for each tax year. Accordingly, a delay may occur to allow a "lead" audit to proceed to completion.

2. Prepayment after Assessment

As a practical matter, if prepayment were required after the assessment, taxpayers might not be as cooperative in providing the information during the three year audit period, or in waiving the statute of limitations. This lack of cooperation would require the department to employ more discovery devices (subpoenas, summons, interrogatories, depositions, etc.), which would be costly in both time and money.

B. Informal Conference

The informal conference is the first level of review of a challenged assessment. A conference officer discusses the assessment with the taxpayer through correspondence, in-person, or through telephone conferences. Unlike the formal hearing in which the Appeals Section does take an adversary role on behalf of the Audit Division, the purpose of the informal conference is to provide an opportunity for discussion. As a result of this nonadversarial approach, the expertise

of the Appeals Section, and its ability to settle cases, nearly 90% of all assessment disputes are resolved at the informal conference level of review.

1. Reasons For Delay

There are a number of reasons for delay at the informal conference level. Many of these reasons are identical to those experienced at the assessment level. The time frame for holding an informal conference may vary, depending on the complexity of the issues, stays and consolidations of appeal, the availability of the pertinent officials of the taxpayer, the number of informal conference officers, etc.. A great deal of the assessment actions have been stayed until resolution of certain basic issues. Staying appeal cases allows the Department to screen similar cases and proceed with the "best" test case.

2. Prepayment after Informal Conference

If prepayment of disputed taxes is required after the informal conference decision, the nature of the informal conference will become adversarial. Part of the reason for this change in atmosphere is that attorneys will be forced to enter the tax appeal process at an earlier stage of review.

C. Formal Hearing

The formal hearing is the administrative trial level for tax disputes. A Department of Revenue hearing examiner is appointed by the Commissioner to serve as a hearing officer for the appeal. A formal hearing is often preceded by a prehearing conference, briefing, and discovery requests. Full due process safeguards are provided with adequate notice and full opportunity to be heard by an impartial hearing officer. A formal hearing decision is issued after the record is closed and reviewed.

1. Delays In The Formal Hearing Process

Delays have occurred in the formal hearing process for some of the same reasons previously mentioned. In addition, the nature of the hearing process in affording both the taxpayer and the Audit Division the full opportunity to explain their respective cases causes delays. Additionally, since the Hearing Examiner Section handles not only tax appeals but other revenue appeals, staff limitations and backlogs of cases contribute to delays. Delays have also resulted because of stays pending resolution of a number of tax cases before the courts, both at the federal and state levels.

2. Prepayment of Disputed Taxes After Formal Hearing

Payment after formal hearing occurs, of course, if the taxpayer does not appeal to the Superior Court. Prepayment as a condition or prerequisite for judicial action may require the creation of a different form of action. In other words, instead of an appeal, a taxpayer would file an original action claiming a refund. The Superior Court would not be limited to review of the formal administrative record, but would, in effect, try the case de novo. The Department's concerns about such a procedure are two-fold: one, delays of substantial periods would be encountered; and, two, the Court's decisions on tax issues would not be based upon the administrative record, but upon new findings of fact and conclusions of law. In effect, contested cases will have two trials with potentially differing results, creating confusion in the interpretation of Alaska's tax law.

D. Other State's Assessment And Appeal Processes

We are unaware of any state that requires prepayment of disputed income taxes during the administrative appeal process, although some require payment at later levels of judicial review. State Tax Review Agencies: Organization and Practices, Federation of Tax Administrators Research Report No. 79 (December 1978). The prepayment requirement for disputed taxes is often limited to certain types of taxes that would therefore effect a limited group of taxpayers. See In the Matter of the Tax Appeal of Simpson Mannor, Inc., 548 P.2d 246 (Haw. 1976) (excise taxpayers required to pay before proceeding to Tax Appeals Court, although net income, real property, public service company and bank franchise taxpayers could appeal without prepayment of disputed taxes).

II. Alternative means to Expedite Collections Of Disputed Taxes

There are a number of alternatives to prepayment of disputed taxes, many of which we have implemented to expedite the collection process for appealed taxes.

At the audit level, assessments are progressing at a more rapid rate. The major reason for this change is that through experience, advanced marketing data, familiarity with the various taxpayers' businesses, and clarification of legal issues and positions, audits are shorter in duration and more thorough. Also, resolution of certain issues has resulted in fewer contested issues.

At the informal conference level, a major breakthrough in the dam of backlogged cases was the judicial resolution of the constitutionality of the separate accounting methodology under AS 43.21 et. seq.. ARCO v. State of Alaska, Department of Revenue, Alaska Supreme Ct. Op. No. 2965 (August 16, 1985, appeal dismissed by the U.S. Supreme Ct on January 13, 1986. Now, other issues that were stayed pending the resolution of the constitutional issues are progressing through informal conferences.

Another major change is the transfer of the informal conference functions to the Appeals Section of the Audit Division. The Appeals Section has five conference staff members who are attorneys, CPAs, or audit staff with extensive years of experience in tax matters.

At the formal hearing level, the Alaska Supreme Court's resolution of various tax issues has greatly impacted the number of cases or issues stayed at the formal hearing level of appeal. The reduction in the backlog of cases and additional staff should enable the Hearing Examiner Section to be able to issue a decision within six months of closure of a hearing by the end of 1986.

Another major change affecting the collection of disputed tax monies was the increase in the tax interest rate. AS 43.05.225 was amended in 1982 by raising the interest rate on delinquent taxes from eight percent to twelve percent. As a result, taxpayers no longer have the disincentive to pay and then to use the disputed taxes on other investment opportunities while the appeal is pending.

III. Summation

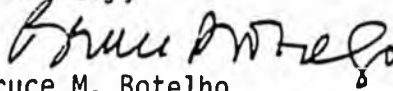
We have strong concerns that the requirement to prepay disputed taxes at some level in the review process will not expedite the resolution of disputed tax cases. Rather, we think it could impair the strategy and ability of the Department to defend its assessments and may create an adversary relationship that could permeate the assessment and appeal process, end the practice of voluntary compliance, hamper the ability of the Department to obtain needed information, diminish the Department's success rate in defending its assessments and decisions, delay the resolution process, and require additional staff at every level of the assessment and appeal process.

We believe that expedition of collecting disputed taxes is better accomplished through other approaches, many of which are currently being implemented. Greater experience and knowledge at the audit level in administering the new tax programs, a more proficient appeals staff, negotiated settlements of cases at the informal conference level,

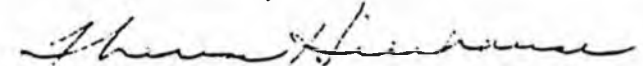
The Honorable Al Adams
January 30, 1986
Page 6

reduction of the backlog of appeals at the formal hearing level, and recent Alaska Supreme Court cases have and will greatly expedite the resolution of disputed tax cases. An increase in the interest rate has already spurred early payment of disputed taxes. These changes should insure earlier payment of taxes owed the State.

Sincerely,



Bruce M. Botelho
Deputy Commissioner, Taxation



Theresa Hillhouse
Revenue Chief Hearing
Examiner

cc: Members of the House Finance Committee

Karen L. Loeffler
Shelly J. Higgins
Oil and Gas Section
Department of Law

BB:TH:mkw
86-14

**HOUSE
COMMITTEE REPORT**

(11)

Date referred: 3/14/86

FURTHER REFERRALS:

DATE: 3-27-86

The FINANCE Committee has considered HB 561

"An Act relating to public use cabins; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS HB 561 (Finance) same title
 new title

and recommends do pass

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

Celbert P. Adams
Mike Szymanski
Jim Dwyer
Pat Fouchat
Ripley
Steve [unclear]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

Adopt no Rec.

Celbert P. Adams
Chairman

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 3/24/86

REQUEST

Bill/Resolution No. : CS HB 561 (FIN)
 Title : Recreational cabin program

Sponsor : Clocksia
 Requestor : House Finance Committee
 Date of Request : 3/24/86

FISCAL DETAIL

Agency Affected : Dept. of Natural Resources
 BRU : Parks & Recreation Management

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		22.5	22.5	22.5	22.5	22.5
SUPPLIES		22.5	22.5	22.5	22.5	22.5
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		45.0	45.0	45.0	45.0	45.0

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

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS		0	0	0	0	0
OTHER		45.0	45.0	45.0	45.0	45.0
TOTAL		45.0	45.0	45.0	45.0	45.0

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

See attached analysis

Prepared by : Al Adams, Chair ^{APA} Phone : 465-3706
 Division : House Finance Committee Date : 3/24/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Fiscal Note
CS HB 561 (Finance)

This fiscal note provides a more reasonable estimate of program receipts. Additionally, expenses are limited to revenues generated by charging fees for the use of the cabins. If additional revenues are generated in future years, the Department may seek additional operating funds through the annual budget process.

Funds are divided equally between supplies and contractual since these are the only expenses that the department can not be expected to absorb within normal budget appropriations. These funds will be used to purchase supplies needed to renovate cabins and to pay necessary cabin labor and air fare to remote sites.

Each cabin is expected to generate approximately \$3,000 in fees. This fiscal note assumes that 15 cabins will generate this much in FY 87. The original fiscal note assumed 24 cabins would generate \$3,000, but only 12 are currently in operation. It is very unlikely that 12 additional cabins will be renovated in time to generate an additional \$36,000 in FY 87.

HOUSE FINANCE COMMITTEE
LETTER OF INTENT
FOR
CS HB 561 (FINANCE)

It is the intent of the Legislature that citizens of the State and visitors to the State be able to enjoy the natural environment to the greatest extent possible. The establishment of new public cabins may be particularly appropriate in areas of heavy recreational interest or use. In more remote locations public use cabins should be established only after consideration of the weather and physical environment in the surrounding area, and the reasons the area is most often used. Public cabins should be established on a priority basis with more remote cabins being added to the system only after a specific need for public facility is determined. Such need shall be based on Department findings and public comment from users and residents of the area.



Al Adams, Chair
House Finance Committee

Original sponsors: Clocksin, Szymanski,
Shultz, et al

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 561 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public use cabins; and providing
7 for an effective date."

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

9 * Section 1. LEGISLATIVE PURPOSE. The legislature determines that it
10 is in the public interest to create the Alaska Public Use Cabin System and
11 place within that system cabins owned or built by the state on the reserved
12 or unreserved public land of the state and that the system be managed for
13 the benefit of the residents of the state and visitors to the state.

14 * Sec. 2. AS 41.21.020(a) is amended to read:

15 (a) The Department of Natural Resources shall

16 (1) develop a continuing plan for the conservation and
17 maximum use in the public interest of the scenic, historic, archaeo-
18 logic, scientific, biological, and recreational resources of the
19 state;

20 (2) plan for and develop a system of state parks and recre-
21 ational facilities, to be established as the legislature authorizes
22 and directs;

23 (3) acquire by gift, purchase, or transfer from state or
24 federal agencies, or from individuals, corporations, partnerships or
25 associations, land necessary, suitable and proper for roadside, pic-
26 nic, recreational, or park purposes;

27 (4) control, develop and maintain state parks and recre-
28 ational areas;

29 (5) provide for the acquisition, care, control,

1 supervision, improvement, development, extension, and maintenance of
2 public recreational land, and make necessary arrangements, contracts,
3 or commitments for the improvement and development of land acquired
4 under AS 41.21.010 - 41.21.040;

5 (6) adopt, in accordance with this section and the Adminis-
6 trative Procedure Act (AS 44.62), regulations governing the use and
7 designating incompatible uses within the boundaries of state park and
8 recreational areas to protect the property and to preserve the peace;

9 (7) cooperate with the United States and its agencies and
10 local subdivisions of the state to secure the effective supervision,
11 improvement, development, extension, and maintenance of state parks,
12 state monuments, state historical areas, and state recreational areas,
13 and secure agreements or contracts for the purpose of AS 41.21.010 -
14 41.21.040;

15 (8) encourage the organization of state public park and
16 recreational activities in the local political subdivisions of the
17 state;

18 (9) provide for consulting service designed to develop
19 local park and recreation facilities and programs;

20 (10) provide clearing-house services for other state agen-
21 cies concerned with park and recreation matters; and

22 (11) perform other duties as are prescribed by executive
23 order or by law;

24 (12) maintain memorials to Alaska veterans located in state
25 parks;

26 (13) adopt, in accordance with the Administrative Procedure
27 Act (AS 44.62), regulations governing the use of the Chena River State
28 Recreation Area and designating incompatible uses within the boundar-
29 ies of the Chena River State Recreation Area in accordance with

1 AS 41.21.490₁

2 (14) manage the cabins owned by the state under AS 41.-
3 21.880.

4 * Sec. 3. AS 41.21 is amended by adding a new section to article 7 to
5 read:

6 Sec. 41.21.880. PUBLIC USE CABINS. (a) There is established a
7 system of public use cabins to be managed by the commissioner and
8 called the Alaska Public Use Cabin System. The commissioner shall
9 publicize the existence of the public use cabins and may establish a
10 reservation system for the cabins.

11 (b) The commissioner shall establish a fee schedule for the use
12 of the cabins. Fees collected under this subsection shall be de-
13 posited in the general fund. The commissioner of administration shall
14 separately account for fees collected and deposited by the commis-
15 sioner of natural resources under this subsection. The annual esti-
16 mated balance in the account may be appropriated by the legislature to
17 the Department of Natural Resources to carry out the purposes of this
18 section. In establishing the fees, the commissioner shall consider

19 (1) the cost to the state of building, renovating, and
20 maintaining the cabins;

21 (2) the cost of administering reservations and collecting
22 the fees charged for use of the cabins; and

23 (3) the public interest.

24 (c) Cabins that were constructed on public land without proper
25 authority and that have been or will be acquired by the state may be
26 renovated by the commissioner for inclusion in the Alaska Public Use
27 Cabin System. Within available appropriations, the commissioner may
28 build or acquire cabins for inclusion in the cabin system. Under
29 state contracting procedures the commissioner may contract for the

1 construction, rehabilitation, operation, and maintenance of cabins
2 within the system.

3 (d) The commissioner may cooperate with local groups and with
4 state and federal agencies to maintain and improve the cabin system.
5 The commissioner shall evaluate existing and potential cabin sites and
6 conduct resource planning and public review in the process of des-
7 ignating cabins into the system. The commissioner may develop an
8 operational plan for the renovation, construction, or removal of
9 cabins.

10 (e) A person using a public use cabin may not recover damages
11 from the state for an injury arising out of the use of the public use
12 cabin unless the injury was caused by the gross negligence of the
13 state.

14 (f) In establishing and managing a public use cabin system on
15 state game refuges, critical habitat areas, and game sanctuaries
16 established under AS 16.20, the commissioner shall obtain the concur-
17 rence of the commissioner of fish and game.

18 (g) The commissioner shall make an annual report to the legisla-
19 ture on the costs, occupancy rates, fees collected, the number and
20 location of cabins in the system, and other information considered
21 relevant by the commissioner.

22 (h) In this section, "public use cabins" includes cabins desig-
23 nated by the commissioner that

24 (1) were constructed on state land without proper authority
25 of law and that have been acquired by the state in the past or that
26 are acquired by the state in the future and meet minimum standards for
27 safety and liability requirements; or

28 (2) are cabins owned by the state and used for temporary
29 recreational use.

1 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
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Original sponsors: Clocksin, Szymanski,
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7 ignating cabins into the system. The commissioner may develop an
8 operational plan for the renovation, construction, or removal of
9 cabins.

10 (e) A person using a public use cabin may not recover damages
11 from the state for an injury arising out of the use of the public use
12 cabin unless the injury was caused by the gross negligence of the
13 state.

14 (f) In establishing and managing a public use cabin system on
15 state game refuges, critical habitat areas, and game sanctuaries
16 established under AS 16.20, the commissioner shall obtain the concur-
17 rence of the commissioner of fish and game.

18 (g) The commissioner shall make an annual report to the legisla-
19 ture on the costs, occupancy rates, fees collected, the number and
20 location of cabins in the system, and other information considered
21 relevant by the commissioner.

22 (h) In this section, "public use cabins" includes cabins desig-
23 nated by the commissioner that

24 (1) were constructed on state land without proper authority
25 of law and that have been acquired by the state in the past or that
26 are acquired by the state in the future and meet minimum standards for
27 safety and liability requirements; or

28 (2) are cabins owned by the state and used for temporary
29 recreational use.

1 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
2 10.070(c).
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ADOPTED

A M E N D M E N T

Offered in the HOUSE

By Rieger

TO: ~~CSHB 561(Res)~~

~~Page 4, after line 5, insert~~ a new subsection to read:

"(e) A person using a public use cabin may not recover damages from the state for an injury arising out of the use of the public use cabin unless the injury was caused by the gross negligence of the state."

Reletter remaining subsections.



Alaska State Legislature


HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

PUBLIC USE CABINS

Letter of Intent for CSHB 561 (Res)
Resources Committee

It is the intent of the Legislature that citizens of the State and visitors to the State be able to enjoy the natural environment to the greatest extent possible. The establishment of new public cabins may be particularly appropriate in areas of heavy recreational interest or use. In more remote locations public use cabins should be established only after consideration of the weather and physical environment in the surrounding area, and the reasons the area is most often used. Public cabins should be established on a priority basis with more remote cabins being added to the system only after a specific need for a public facility is determined. Such need shall be based on Department findings and public comment from users and residents of the area.


Representative Dick Shultz, Co-Chair

Fiscal note provided for the bill on BNR

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 03-13-86

REQUEST
 Bill/Resolution No. : HB 561
 Title : Establishing an Alaskan Recreation Cabin Program
 Sponsor : Rep. Clocksin
 Requestor : House Resources
 Date of Request : 03-13-86

FISCAL DETAIL
 Agency Affected : Natural Resources
 BRU : Parks & Recreation Mgmt
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-	6.6	10.0			
TRAVEL	-	2.5	2.5			
CONTRACTUAL	-	48.3	44.4			
SUPPLIES	-	42.0	43.0			
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		99.4	99.9			

CAPITAL						
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REVENUE		72.0	96.0			
---------	--	------	------	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		99.4	99.9			
FEDERAL FUNDS						
OTHER						
TOTAL		99.4	99.9			

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Personal Services - inspection & maintenance of cabins by field personnel
 Contractual - rehabilitation of public cabins using local labor.
 Supplies - building materials for cabins.

Revenue - FY 87 based on operation of 24 cabins; FY 88 - 36 cabins.

Prepared by: Fred Vreeman Phone: 762-4506
 Division: Parks & Outdoor Recreation Date: 03-13-86

Approved by Commissioner: Thomas J. Smith, Deputy Date: 3/13/86
 Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

The Honorable Dick Shultz
Co-Chair, Resources Committee
Alaska State House
P.O. Box V
Juneau, AK 99811

February 28, 1986

Dear Representative Shultz:

I am writing to suggest some amendments to HB 561, on public use cabins. Yesterday my staff presented these amendments to your staff and to Representative Clocksin's, and I am now submitting them for the Committee's consideration.

The department strongly supports the concept of the proposed bill. After adopting regulations for privately owned cabins on state land in 1984, we have made an important new beginning for cabins on state land. The bill before you will allow the people of the state to make beneficial use of abandoned and unauthorized cabins and may help reduce recreational and land disposal pressures statewide. The bill also provides our citizens better access to public lands and resources.

Contrary to a recent newspaper editorial, there is no conflict between HB 561 and SB 269, also under consideration by the committee. The intent of HB 561 is to establish a public cabins system for general public use, a very different goal from that in SB 269. Although the department does not support the passage of SB 269, I believe that both bills could be passed by the Legislature without conflict.

The purpose of each suggested amendment is given on the attached pages. I have also provided a marked-up copy of the original bill incorporating the proposed amendments.

HOW IN
RESOURCES
C.S.

Please contact me or my staff if you have questions or comments.

Sincerely,

Esther C. Wunnicke
for Esther C. Wunnicke
Commissioner

cc: Rep. Clocksin



Alaska Environmental Lobby, Inc.

204 N. Franklin Street, Suite 3 Juneau, Alaska 99801

907-586-2345

TESTIMONY ON HB 561 - Public Use Cabins
2/28/86 by Kate Pendleton

Good morning. The Alaska Environmental Lobby would like to express it's support of HB 561. We feel this bill would provide for convenient, remote recreational experiences while minimizing resource conflicts.

Much of the driving force behind the land disposal program is the public's desire for those "fabled" Alaskan experiences. Everyone wants a wilderness cabin. While the remote parcel and homestead programs will fill some of that demand, the number and size of land disposals in the future will eventually eliminate the wilderness character and locally deplete the subsistence resources which draw people to these areas. And as a practical matter, only a relative few will be able to take advantage of these programs.

An alternative way to provide recreational opportunities is to adopt HB 561. This would provide the public with a smorgasboard of superior recreational opportunities presently unavailable. Unlike most remote parcels which will probably remain undeveloped for many years and remote cabins which are frequently used only a few days each year, public use cabins will likely receive substantial use.

The popular US Forest Service Cabin system which was begun in 1954 now includes over 200 cabins statewide. Many of the cabins are used 12 months of the year and are accessible by a variety of means such as hiking, cross-country skiing, dog mushing, snow machines, boat and plane. In 1985, statistics for cabins in Yakutat, Admiralty Island and the Juneau area report use by 4,321 visitors. There was heavy request for the very popular walk-in cabins that are close to Juneau. The Forest Service has not been building cabins because of the high cost, but does work with volunteer groups such as the Taku Conservation Society to build and maintain cabins within the system. The current charge for overnight use of a cabin is \$10.

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • SITKA GROUP, SIERRA CLUB
KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY
DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY
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SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL

Page 2

Testimony on HB 561

We envision a system with a wide variety of cabins and locations, something to appeal to all, from hikers looking for a weekend trip near Anchorage to those seeking a week long, remote experience deep in the heart of the Alaska Range. A carefully planned and managed system would be able to provide, for a reasonable fee, use of a cabin and an opportunity to take advantage of Alaska's vast and beautiful public lands.

Actually the environmental and resource impacts at each public cabin site will probably be greater than for less used private lands. However, management problems could be resolved through adequate language addressing issues such as location and resource impacts. We are especially concerned about cabin use in areas of critical habitat. In addition, we would hope that serious consideration would be given to the impact of motorized vehicle access in these areas. We would expect the Commissioner to consider the wishes and concerns of local residents and users, and other state residents by means of a public comment, as the system is developed.

The increasing interest and demand for recreational opportunities demonstrates the desire for a public cabin system around the state for short-term use. We feel that HB 561 would provide for those needs and make good use of the abandoned and unauthorized cabins in the state.

Lawmakers consider state cabin system

By BRUCE SCANDLINO
The Associated Press

JUNEAU — Backpackers, fishermen and hunters would be able to hang their hats in about 100 state-owned recreational cabins around Alaska, if a new legislative proposal becomes law.

The state program would be modeled after a cabin system run by the U.S. Forest Service in Alaska, said Sen. Joe Josephson, an Anchorage Democrat who is one of the sponsors of the proposal.

But such a program could face tough opposition from Senate President Don Bennett, a Fairbanks Republican who has fought against the state takeover of once-private cabins.

Josephson said he planned to unveil his proposal Wednesday. An identical measure was introduced Tuesday in the House by Majority Leader Don Clocksin, D-Anchorage, and more than a dozen co-sponsors.

The proposal would create

the Alaska Public Use Cabin System and set aside money for the state to refurbish private cabins it has recently taken over.

A 1984 regulation change said people who built so-called "trespass cabins" on state land could register them in exchange for lifetime title to the property.

But unregistered cabins are being taken over by the state, under that rule. The state could eventually take over dozens of unclaimed cabins, said Neil Johannsen, director of the state Division of Parks.

He said the proposal would require about \$100,000 annually to set up a reservation system — and pay for remodeling cabins. About 15 to 20 cabins could be added to the system every year, Johannsen said. It would cost between \$10 and \$15 a night to reserve a cabin.

Johannsen pegged the average remodeling cost at \$2,000 to \$3,000 per cabin, and said the program could pay for

itself within three years.

Many of the newly refurbished cabins would be located in Southcentral Alaska, since that's where dozens of unclaimed cabins are located, Johannsen said.

"The trick is to initially make sure you concentrate on quality cabins in high-demand areas," he said.

Of the 177 forest service cabins in Alaska, 140 are located in the Tongass National Forest of Southeast Alaska. The rest are in the Chugach National Forest of Southcentral Alaska.

Johannsen said the state already operates about 30 cabins in Alaska, several near Nancy Lake north of Anchorage. But the emphasis is turning away from building new cabins, which cost up to \$15,000 each.

The state could operate as many as 100 cabins within five years, under the plan, Johannsen said.

Josephson said the proposal should not scare people

who already own cabins in Alaska.

"Cabin owners will be unaffected by this bill, and even those with trespass cabins are being granted lifetime permits," he said. "Only unclaimed trespass cabins and those with expiring permits will become part of the system."

Bennett said it's not the state's business to takeover and manage cabins once owned by private citizens.

"I think we're better off to let the people own them and decide if they want to rent them out," Bennett said Tuesday. "That way, it doesn't cost anything to manage."

Burglar strikes home twice, steals gold dust and jewelry

crimestoppers/274-STOP

A house along Rabbit Creek Road was burglarized twice between November 25 and November 30. Both times entry was made through windows. The burglar was apparently familiar with the dog, the alarm system and the contents of the home.

Taken in the first burglary was a small, square, blue safe with wheels, weighing between 100 to 150 pounds. In the latter break-in, a second safe was

opened. More than 200 ounces of gold dust, gold nuggets and silver ingots, along with a quantity of coins, watches, jewelry and personal items were stolen with the two safes.

To date, Crimestoppers information has led to the arrest of 22 people in connection with more than 100 burglaries. Should your information lead to an arrest and indictment, you would be eligible for up to \$1,000 in cash.

Official works on bid to hold Alaska summit

The Associated Press

JUNEAU — Alaska's still in the running as a site for the next summit meeting between President Ronald Reagan and Soviet Leader Mikhail Gorbachev, but it's too early to count on winning the campaign, says an Alaska official in Washington.

The Senate State Affairs Committee last week passed a resolution encouraging an Alaska summit after hearing a status report on the bid from John Kats, Gov. Bill Sheffield's Washington representative.

Kats told the committee over a telephone hook-up that State Department officials have slowed efforts to find a site because the summit, originally planned for sometime this summer, has been postponed until autumn.

They cautioned us not to be too optimistic or too raise

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CHAPTER 65.
PERSONAL USE CABIN PERMITS

Section

- 10. Applicability
- 20. Applications
- 30. Application fee
- 40. Renewals
- 50. Permit decision
- 60. Density within state game refuges and critical habitat areas
- 70. Conflicting applications
- 80. Ownership and removal
- 90. Conditions of permit
- 100. Appeals
- 110. Public use cabins
- 900. Definitions

11 AAC 65.010. **APPLICABILITY.** This chapter applies to the issuance of personal use cabin permits for unauthorized cabins placed on state land before August 1, 1984. Cabins built on state land after August 1, 1984 will not be authorized. A permit under this chapter does not convey an interest in state land or establish a preference right for the lease or purchase of state land. It is the express intent of this chapter to phase out the use of unauthorized cabins on state land, and where appropriate, convert them to public use. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.020. **APPLICATIONS.** (a) An application for a permit to use an existing cabin on state land must

(1) be received by the department during a 60-day application period established by the department and announced by public notice; the application period will be open for one time only by geographic location;

(2) be made on a form provided by the department;

(3) be complete and correct to the best of the applicant's knowledge;

(4) contain a description of the cabin and site;

(5) contain a description of the proposed use of the cabin and site;

(6) be signed and dated by the applicant or, in the case of a group of applicants, by the applicant's authorized agent.

(b) An application made under this section must include the following:

(1) a \$25 application fee;

(2) identification of the cabin site on a United States Geological Survey map at 1:63,360 scale (1" to 1 mile) or its equivalent;

(3) a photograph (print) of the cabin taken within the past year;

(4) documentation demonstrating historic use and occupancy;

(5) documentation of any prior investments in the cabin; and

(6) any other information required by the director. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.030. **APPLICATION FEE.** The application fee required by 11 AAC 65.020 is not refundable. However, if the department determines that an application made under this chapter should have been made under a different chapter, the application fee may be applied to an application made under another chapter. (Eff. 12/16/84, Reg. 62)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.040. **RENEWALS.** (a) Application for renewal of a permit must be made in writing at least 90 days, but not more than 180 days, before the expiration of the permit.

(b) A permit will be renewed if the continued use complies with 11 AAC 65.050 - 11 AAC 65.900.

(c) A permit issued and renewed under this chapter is valid only during the lifetime of the original holder of that permit. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.050. PERMIT DECISION. (a) The department will issue and renew an applicant's cabin permit if the director finds in writing that the application is for a cabin that complies with AS 38.04.035(4) and does not conflict with the public interest criteria as described in (b) of this section.

(b) No permit will be issued for a cabin on state land

(1) where a subdivision or agricultural sale has occurred or is anticipated or scheduled during the term of the permit;

(2) where homesteads are proposed for future disposal, unless the disposal is not anticipated within the term of the permit;

(3) if the land has been selected under the authority of the Municipal Entitlement Act, AS 29.18;

(4) in state park units, land managed under an interagency land management agreement, land classified as reserved use, or where the issuance of a permit would interfere with significant public recreational use;

(5) that is shoreland, submerged land, or tideland;

(6) that serves an important ecological function, or is especially sensitive to human disturbance, as determined by the department;

(7) located close to a center of population;

(8) where material extraction, timber sales, mining, or intensive recreational facility development is scheduled or anticipated during the term of the permit;

(9) overlying a mining location or mineral lease if the department determines that a cabin may interfere with development of the mining location or mineral lease during the term of the permit;

(10) under application or proposed for a public facility or highway right-of-way unless it is clear that the intended use will not occur during the term of the permit;

(11) for which a Native allotment application is on record with the Bureau of Land Management, or on land validly selected under the Alaska Native Claims Settlement Act;

(12) accessible by road within legislatively designated state game refuge or critical habitat area;

(13) in a legislatively designated state game sanctuary;

(14) where the cabin is used as a permanent residence; or

(15) if the department determines that the proposed use may more appropriately be allowed under another chapter of this title. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.060. DENSITY WITHIN STATE GAME REFUGES AND CRITICAL HABITAT AREAS. Densities and configurations of public cabins within state game refuges and critical habitat areas will be determined based upon habitat type, wildlife seasonal use patterns, wildlife sensitivity to disturbance, and the applicant's proposed type and season of use. Permits will be issued if the density and configuration of cabins and associated uses are not found in conflict with (1) the public interest during the term of the permit, (2) the maintenance or enhancement of fish and wildlife populations and their habitats, or (3) general public use. (Eff. 12/16/84, Reg. 92)

Authority: AS 16.20.050 AS 38.04.900
AS 16.20.250 AS 38.05.020
AS 38.04.035 AS 41.21.020

11 AAC 65.070. CONFLICTING APPLICATIONS. If the director determines that two or more applications for the same cabin are equally valid, the department will choose the permittee by lottery from the valid applications received. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.080. OWNERSHIP AND REMOVAL. (a) Except as otherwise provided in (b) or (c) of this section, a cabin subject to this chapter is the personal property of the

permittee, and remains so for the term of the permit.

(b) A cabin not applied for under this chapter becomes the property of the state if not removed within 60 days after notice by the department.

(c) Upon revocation or expiration of a permit, including renewals of it, or if an application was made but no permit issued, the cabin becomes the property of the state if not removed within 60 days after notice by the department. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
 AS 38.04.900 AS 41.21.020

11 AAC 65.090. CONDITIONS OF PERMIT.
A permit issued under this chapter

(1) is valid for a period of up to six years;

(2) may include site-specific conditions of use, such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas, by the Department of Fish and Game;

(3) is not valid unless signed by an authorized individual within the Department of Fish and Game if the permit is for a cabin located within a state game refuge or critical habitat area;

(4) is not valid unless an annual rental fee of \$100 is timely received by the department;

(5) is not valid unless the permit is signed by the applicant or applicant's authorized agent; and

(6) will contain the following general stipulations and conditions:

(A) the permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

(B) the permit is revocable immediately upon violation of any of its terms, conditions, or stipulations, upon nonpayment of fees, or upon failure to comply with any other applicable statutes and regulations;

(C) the permit is not transferable or assignable;

(D) the permit must be displayed in general view on the cabin at all times;

(E) no additions to or enlargements of the cabin are allowed, except for routine maintenance and upkeep;

(F) all garbage and foreign debris brought into, or placed on, the cabin site must be removed by the permittee unless otherwise authorized by the director;

(G) the state must be held harmless from all claims, demands, suits, loss, liability, and expense for injury to, or death of, a person arising out of or connected with the uses covered by the permit;

(H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director; this approval may not be unreasonably withheld;

(I) the cabin may not be used for a commercial activity or as a permanent residence;

(J) no new road or trail across state land is authorized under the permit, and access must be consistent with the provisions of 11 AAC 96;

(K) no restriction or interference with public access to or across state land is allowed;

(L) the permit does not relieve the permittee of the responsibility of securing other necessary state, federal, or local permits or authorizations; and

(M) the department reserves the right to require measures to mitigate disruptions to public use of the area, and to fish and wildlife populations and their habitats, which may be created by the permittee, or occur as a direct result of the permittee's failure to comply with the terms of the permit or any

applicable law. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.100. APPEALS. (a) The department will publish notice of its intent to issue a permit under this chapter in a newspaper of general circulation in the vicinity of the area covered by the permit.

(b) A person who disagrees with a permit decision by the director, or a permit decision by the Department of Fish and Game in the case of a cabin on a state game refuge or critical habitat area, may appeal to the commissioner of the department or to the commissioner of the Department of Fish and Game, as appropriate. The appeal must be in writing and must be received at the office of the appropriate commissioner within 30 days after the date of the decision. A decision of a commissioner is the final administrative decision, but does not exhaust an appellant's judicial remedies. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

11 AAC 65.110. PUBLIC USE CABINS. As of December 17, 1984, the department will consider making available for public use, any cabin for which a permit is not issued under this chapter. (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035
AS 38.05.020

11 AAC 65.900. DEFINITIONS. As used in this chapter,

(1) "applicant" means an individual or group of individuals at least 18 years old who have resided in Alaska not less than one year immediately preceding the date of application and does not include an organization, association, or corporation;

(2) "authorized agent" means an individual who is the designated agent for a group of individuals who are applicants, and is one of the applicants;

(3) "cabin" means a permanent structure in existence as of August 1, 1984, consisting of at least four walls and a roof, and used for eating

and sleeping; the word includes a separate sanitary device or outhouse, and storage area or cache;

(4) "commercial" means an action or operation that generates income from the buying, selling, renting, bartering, or trading of goods or services relating to use of a cabin;

(5) "department" means the Department of Natural Resources;

(6) "director" means the director of the division of land and water management of the Department of Natural Resources;

(7) "shoreland" means land belonging to the state, which is covered by nontidal water that is navigable under the laws of the United States and extends up to the ordinary high water mark as modified by accretion, erosion, or reliction;

(8) "state" means the State of Alaska;

(9) "submerged land" means land covered by tidal water between the line of mean low water and seaward to a distance of three geographical miles or further as may be properly claimed by the state; and

(10) "tideland" means land which is periodically covered by tidal water between the elevations of mean high and mean low tides (Eff. 12/16/84, Reg. 92)

Authority: AS 38.04.035 AS 38.05.020
AS 38.04.900 AS 41.21.020

FACT SHEET
CONCERNING PERSONAL USE CABIN PERMITS

1. Q. - Who can apply for a permit?
A. - Any group or person 18 or older who claims an interest in an existing cabin may apply. Applications from corporations, agencies, or organizations will not be accepted.
2. Q. - What if I own a cabin used for a permanent residence or a commercial purposes such as set netting, guiding or air charter, can I get a permit?
A. - Not under this program. However the state will accept an application under other available state programs such as a negotiated lease.
3. Q. - Will permits be issued to all persons in a group who apply for one cabin?
A. - Only one permit will be issued. The group must designate an agent. The group may change the agent at any time provided the new agent was one of the original group applicants.
4. Q. - How many cabins or improvements can I apply for?
A. - Only one per applicant(s) (Permits will include an outhouse and cache as well as the cabin).
5. Q. - Do I have to be a resident to apply?
A. - Yes, you must have resided in Alaska at least one year prior to filing an application.
6. Q. - Will permits be issued within a state park unit?
A. - No.
7. Q. - How much money will a permit cost me?
A. - Initial application fee - \$25.00 (non-refundable)
Annual rental fee - \$100.00/year
8. Q. - If I have a cabin and apply do I automatically get the permit?
A. - Not necessarily. A permit will be issued if your continued use is found not to conflict with the public interest during the period of the permit.
9. Q. - If I apply and my application is denied, can I appeal the decision?
A. - You will have the opportunity to appeal any denial.

10. Q. - If I do not appeal the denial, or my appeal is rejected, can I remove the cabin?
- A. - Yes. You will be given a sixty-day period to remove the cabin. If the cabin is not removed, the department will pursue abatement action.
11. Q. - When can I apply for this permit?
- A. - When specific areas to be opened to permitting have been identified and advertised by the department.
12. Q. - Will there be any future application periods?
- A. - Not after the initial sixty-day filing period allowed each geographic area. This is a one-time only opportunity for those that claim an interest in a cabin in each of these areas. Permits for use of other authorized public use cabins will be available later.
13. Q. - If I receive a permit, how long is it good for?
- A. - Permits will be issued for a maximum of six years. They may be renewed only if at each renewal they are determined by the state not to conflict with the public interest. This six year renewal procedure is good for the lifetime of the permittee(s) only.
14. Q. - Can permits be transferred to someone else?
- A. - No.
15. Q. - Must I convey my cabin to the State of Alaska?
- A. - No. The cabin remains the personal property of the permittee for the term of the permit. If the permit is revoked, expires or is not renewed, the cabin becomes the property of the state if not removed within 60 days of notice by the department.
16. Q. - What if several people own an interest in the cabin?
- A. - All may apply, however, the group must designate a responsible agent. The group may change its agent at any time, but the agent must be one of those on the original application.

17. Q. - What if two or more conflicting applications are received for the same cabin?
- A. - Only one permit will be issued. The state will apply a list of criteria to each application to determine who should receive the permit. If the criteria determination is unsuccessful, there will be a drawing to determine the successful permittee.
18. Q. - Can I build a new cabin, or add on to an existing one once I receive my permit?
- A. - No. Only routine maintenance of an existing cabin is allowed.
19. Q. - If my improvement is destroyed after the permit is issued, can I rebuild it?
- A. - Yes, but only with the concurrence of the Department of Natural Resources.
20. Q. - Does the permit grant me any rights to the land that the cabin is on?
- A. - No, the permit is an authorization to use the cabin but does not convey any interest or preference to the land.
21. Q. - If I do not apply, then what?
- A. - Your cabin will be an unauthorized use of state land and will be converted to public use or removed. Prior to that action, you will be given sixty days to remove the cabin.
22. Q. - What happens if I built my cabin after August 1, 1984?
- A. - A permit will not be issued and abatement action will be taken by the department.
23. Q. - What happens to cabins not applied for - can I apply for one of them?
- A. - Not at this time. However, permits will be issued at a later date for use of public cabins under a separate program.
24. Q. - Does this program apply to all state lands?
- A. - Yes, although only specific geographic areas will be opened to application at one time. This will reduce the workload at any one time and allow for permits to be issued in a timely manner.

APPLICATION FOR PERSONAL USE CABIN PERMIT

NAME OF APPLICANT OR AGENT _____ AGE: _____ DATE OF APPLN: _____

MAILING ADDRESS: _____ PHONE: (H) _____

_____ (W) _____

other applicants claiming an interest (if any); _____

CABIN LOCATION: _____ Section, _____ Township _____ Range, _____ Meridian.

NAME OF DESIGNATED AREA (IF ANY) _____

CABIN: size of primary cabin; _____

when constructed; _____ length of use _____

other structures present and size; _____

primary purpose of cabin; _____

seasons of use requested _____ fall, _____ winter, _____ spring, _____ summer.

DOCUMENTATION REQUIRED *Photo (print) of improvement taken in the past 12 months.
OF APPLICANT:

*1:63,360 USGS map showing cab

*Documentation of use, i.e.,
receipts of use or transporta-
tion, correspondence, affida-
vits from others attesting to
your use, etc.

*Application filing fee \$25.00.

If a prior application for this cabin has been made under another state program,
please check the program(s); State - _____ preference right, _____ lease, _____ permit;

Federal - _____ homestead, _____ T&M site, _____ Native allotment, _____ headquarters site.

SPECIAL STIPULATIONS/CONDITIONS

(A) this permit does not convey an interest in state land or grant any preference right for the lease or purchase of state land;

(B) the permit is revocable immediately upon violation of any of its terms, conditions, stipulations, non-payment of fees, or upon failure to comply with any other applicable statutes and regulations;

(C) the permit is not transferable or assignable;

(D) the permit must be displayed in general view on the cabin at all times;

(E) no additions to or enlargements of the cabin are allowed except for routine maintenance and upkeep;

(F) all garbage and foreign debris brought onto, or placed on the cabin site shall be removed by the permittee unless otherwise authorized by the director;

(G) the state shall be held harmless from any and all claims, demands, suits, loss, liability, and expense for injury to, or death of, persons arising out of or connected with the uses covered by this permit;

(H) if the cabin is destroyed or damaged beyond repair, rebuilding the structure is not authorized without prior written approval of the director;

(I) the cabin may not be used for a commercial activity or as a permanent residence;

(J) no new roads or trails across state land are authorized under the permit and access must be consistent with the provisions of 11 AAC 96;

(K) no restrictions or interference with public access to or across state land is allowed;

(L) this permit does not relieve the permittee of the responsibility of securing other necessary state, federal or local permits or authorizations;

(M) the department reserves the right to require measures to mitigate disruptions to public use of the area, fish and wildlife populations and their habitats, which may be created by the project, or occur as a direct result of the permittee's failure to comply with the terms of this permit or any applicable law; and

(N) the permit may include site-specific conditions of use such as seasonal use restrictions determined appropriate by the department and, on game refuges and critical habitat areas by the Department of Fish and Game.

(O) other special stipulations or conditions:

PERSONAL USE CABIN PERMIT

ADL/LAS Number: _____ Cabin Site Number: _____

Issued to: _____

Address: _____

CABIN LOCATION: _____ Section, _____ Township, _____ Range, _____ Meridian.

DESCRIPTION OF CABIN: _____

TERM OF PERMIT: _____

_____ Seasonal use only, from _____ until _____ of each year.

I hereby agree to all stipulations and conditions included in this permit and further agree that upon revocation or expiration of this permit including renewals, the cabin herein permitted shall become the property of the State of Alaska if not removed within 60 days of notice by the department.

DATE

PERMITTEE'S SIGNATURE

Permission is hereby granted to the above permittee to occupy and use the cabin herein described for the purposes stated, upon the conditions and stipulations identified in this permit.

DATE

REGIONAL MANAGER, DIV. OF LAND AND WATER MANAGEMENT
DEPARTMENT OF NATURAL RESOURCES

DATE

DEPARTMENT OF FISH AND GAME

Offered: 3/14/86
Referred: Finance

Original sponsors: Clocksin, Szymanski,
Shultz, et al

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 561 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to public use cabins; and providing
7 for an effective date."

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11 place within that system cabins owned or built by the state on the reserved
12 or unreserved public land of the state and that the system be managed for
13 the benefit of the residents of the state and visitors to the state.

14 * Sec. 2. AS 41.21.020(a) is amended to read:

15 (a) The Department of Natural Resources shall

16 (1) develop a continuing plan for the conservation and
17 maximum use in the public interest of the scenic, historic, archaeo-
18 logic, scientific, biological, and recreational resources of the
19 state;

20 (2) plan for and develop a system of state parks and recre-
21 ational facilities, to be established as the legislature authorizes
22 and directs;

23 (3) acquire by gift, purchase, or transfer from state or
24 federal agencies, or from individuals, corporations, partnerships or
25 associations, land necessary, suitable and proper for roadside, pic-
26 nic, recreational, or park purposes;

27 (4) control, develop and maintain state parks and recre-
28 ational areas;

29 (5) provide for the acquisition, care, control,

1 41.21.490;

2 (14) manage the cabins owned by the state under AS 41.-
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13 administration of a program receipts account, subject to legislative
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18 the fees charged for use of the cabins; and

19 (3) the public interest.

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21 authority and that have been or will be acquired by the state may be
22 renovated by the commissioner for inclusion in the Alaska Public Use
23 Cabin System. Within available appropriations, the commissioner may
24 build or acquire cabins for inclusion in the cabin system. Under
25 state contracting procedures the commissioner may contract for the
26 construction, rehabilitation, operation, and maintenance of cabins
27 within the system.

28 (d) The commissioner may cooperate with local groups and with
29 state and federal agencies to maintain and improve the cabin system.

CORRECTION

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

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22 and directs;

23 (3) acquire by gift, purchase, or transfer from state or
24 federal agencies, or from individuals, corporations, partnerships or
25 associations, land necessary, suitable and proper for roadside, pic-
26 nic, recreational, or park purposes;

27 (4) control, develop and maintain state parks and recre-
28 ational areas;

29 (5) provide for the acquisition, care, control,

1 supervision, improvement, development, extension, and maintenance of
2 public recreational land, and make necessary arrangements, contracts,
3 or commitments for the improvement and development of land acquired
4 under AS 41.21.010 - 41.21.040;

5 (6) adopt, in accordance with this section and the Adminis-
6 trative Procedure Act (AS 44.62), regulations governing the use and
7 designating incompatible uses within the boundaries of state park and
8 recreational areas to protect the property and to preserve the peace;

9 (7) cooperate with the United States and its agencies and
10 local subdivisions of the state to secure the effective supervision,
11 improvement, development, extension, and maintenance of state parks,
12 state monuments, state historical areas, and state recreational areas,
13 and secure agreements or contracts for the purpose of AS 41.21.010 -
14 41.21.040;

15 (8) encourage the organization of state public park and
16 recreational activities in the local political subdivisions of the
17 state;

18 (9) provide for consulting service designed to develop
19 local park and recreation facilities and programs;

20 (10) provide clearing-house services for other state agen-
21 cies concerned with park and recreation matters; and

22 (11) perform other duties as are prescribed by executive
23 order or by law;

24 (12) maintain memori ls to Alaska veterans located in state
25 parks;

26 (13) adopt, in accordance with the Administrative Procedure
27 Act (AS 44.62), regulations governing the use of the Chena River State
28 Recreation Area and designating incompatible uses within the boundar-
29 ies of the Chena River State Recreation Area in accordance with AS

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21 authority and that have been or will be acquired by the state may be
22 renovated by the commissioner for inclusion in the Alaska Public Use
23 Cabin System. Within available appropriations, the commissioner may
24 build or acquire cabins for inclusion in the cabin system. Under
25 state contracting procedures the commissioner may contract for the
26 construction, rehabilitation, operation, and maintenance of cabins
27 within the system.

28 (d) The commissioner may cooperate with local groups and with
29 state and federal agencies to maintain and improve the cabin system.

1 The commissioner shall evaluate existing and potential cabin sites and
2 conduct resource planning and public review in the process of des-
3 ignating cabins into the system. The commissioner may develop an
4 operational plan for the renovation, construction, or removal of
5 cabins.

6 (e) In establishing and managing a public use cabin system on
7 state game refuges, critical habitat areas, and game sanctuaries
8 established under AS 16.20, the commissioner shall obtain the concur-
9 rence of the commissioner of fish and game.

10 (f) The commissioner shall make an annual report to the legisla-
11 ture on the costs, occupancy rates, fees collected, the number and
12 location of cabins in the system, and other information considered
13 relevant by the commissioner.

14 (g) In this section, "public use cabins" includes cabins desig-
15 nated by the commissioner that

16 (1) are constructed on state land without proper authority
17 of law and that have been acquired by the state in the past or that
18 are acquired by the state in the future and meet minimum standards for
19 safety and liability requirements; or

20 (2) are cabins owned by the state and used for temporary
21 recreational use.

22 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).

Introduced: 2/11/86
Referred: Resources and
Finance

BY CLOCKSIN, SZYMANSKI, SHULTZ,
PETTYJOHN, BOUCHER, COTTEN, DAVIS,
GOLL, GRUENBERG, KOPONEN, M.M. MILLER,
NAVARRE, PIGNALBERI AND POURCHOT

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3 recreational land, and make necessary arrangements, contracts, or
4 commitments for the improvement and development of land acquired under
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9 recreational areas to protect the property and to preserve the peace;

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