

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

CSHB 179 thru HB 185 . . . . . 291

CSHB

179

SENATE COMMITTEE REPORT

FURTHER:

5/8/87

DATE TURNED INTO OFFICE 5/16/87

Mr. President:

FINANCE Committee considered CSHB 179(Fin)

extending the termination date of the Board of Psychologist and Psychological Associate Examiners; changing the composition of the board; efd.

and recommended:

replace with CS FOR \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*Paul C. Shantz*  
*Paul Kirk*  
*James W. ...*  
*Rich ...*  
*W. ...*  
*...*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3 DO PASS  
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

*OL*

Bill Version: CSHB 179 (Fin)  
Publish Date: HOUSE 4/23/87

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Commerce & Economic Dev.

Title: An Act extending the termination

BRU: Occupational Licensing

date of the Board of Psychologist & Psych.

Associate Examiners:

Sponsor: House Labor & Commerce

Components: All

Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for continuation of the Board of Psychologist and Psychological Associate Examiners is budgeted in the department's FY 88 operating budget request and is anticipated to be covered primarily through program receipts.

Prepared by: Jennifer Strickler, Management Analyst

Phone: 465-2144

Division: Occupational Licensing

Date: 3/16/87

Approved by Commissioner: JJ Anderson Smith

Date: 3/17/87

Agency: Commerce and Economic Development

Distribution (by preparer):

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

Original sponsor: Labor and Commerce  
Committee

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 179 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act extending the termination date of the Board  
7 of Psychologist and Psychological Associate Examin-  
8 ers; changing the composition of the board; and  
9 providing for an effective date."

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

11 \* Section 1. AS 08.03.010(c)(10) is amended to read:

12 (10) Board of Psychologist and Psychological Associate  
13 Examiners (AS 08.86.010) -- June 30, 1991 [1987].

14 \* Sec. 2. AS 08.86.010 is amended to read:

15 Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is  
16 created a Board of Psychologist and Psychological Associate Examiners.  
17 It consists of three [FOUR] licensed psychologists, a licensed psycho-  
18 logical associate, and one person who has no direct financial interest  
19 in the health care industry.

20 \* Sec. 3. Notwithstanding AS 08.86.010, as amended by sec. 2 of this  
21 Act, the licensed psychologist-members of the Board of Psychologist and  
22 Psychological Associate Examiners who are serving on the board on the  
23 effective date of this Act shall continue to serve the remainder of the  
24 terms to which they were appointed.

25 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA

## THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

HB 179  
AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

January 14, 1987

SUMMARY OF: A Performance Report on the Department of Commerce and Economic Development, Board of Psychologist and Psychological Associate Examiners, December 19, 1986.

### PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Psychologist and Psychological Associate Examiners. Our examination was conducted to determine if the Board has been operating in an efficient, effective manner and whether the Board should be reestablished. The law now specifies that the Board will terminate on June 30, 1987.

### REPORT CONCLUSION

In our opinion, the Board of Psychologist and Psychological Associate Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner are provided by active investigation of complaints and revocation or suspension of licenses when appropriate.

### FINDINGS AND RECOMMENDATION

1. The Board should adhere to regulations concerning Board powers to deny applicants from licensure by examination.

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

December 19, 1986

Audit Control Number

08-1270-87-R

Commissioner, Department of  
Commerce and Economic Development

J. Anthony Smith

Deputy Commissioners, Department of  
Commerce and Economic Development

Greg Baker  
Terry Elder

Members of the Board of Psychologist  
and Psychological Associate Examiners

Chairperson  
Member  
Member  
Member  
Member

Vacant  
Margaret E. Fischer, Ph.D.  
James F. Harper, Ph.D.  
Dennis M. Scholl, Ph.D.  
Linda Olsen-Webber, Ph.D.

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W.  
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE  
BUDGET AND AUDIT COMMITTEE

December 19, 1986

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the  
Alaska Statutes (sunset legislation), the attached report is  
submitted for your review.

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS

December 19, 1986

Audit Control Number

08-1270-87-R



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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## PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Psychologist and Psychological Associate Examiners to determine if the Board has been operating in an efficient and effective manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Psychologist and Psychological Associate Examiners should be reestablished. The law currently specifies that this Board will terminate on June 30, 1987.

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documents of licensees.
3. Interviews with the licensing examiner.
4. Complaints filed with the Division of Occupational Licensing, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General's Opinions applicable to professional boards.

## ORGANIZATION AND FUNCTION

The Board of Psychologist and Psychological Associate Examiners (PPAE) was established under the provisions of Title 8, Chapter 86 of the Alaska Statutes. The Board consists of four licensed psychologists and one public member appointed by the Governor and approved by the Legislature.

The Board regulates licensed psychologists and psychological associates in the State. A psychologist is licensed to use psychological principles, methods, and procedures for the treatment of emotional and mental disorders. A psychological associate is licensed to perform psychological services under the supervision of a licensed psychologist. Legislation recently passed (Chapter 63, SLA 1986) allows a psychological associate who has completed at least five years of licensed practice to petition the Board for certification to practice without supervision.

The Board's duties are basically the following:

1. Examining and issuing licenses to qualified applicants.
2. Establishing or amending rules and regulations necessary and desirable to enforce State statutes.
3. Holding hearings in order to revoke or suspend the license of a person violating the psychologist and psychological associate statutes and regulations.

An applicant may be licensed by passing an exam given by the Board or by credentials. For credentials, an applicant must provide proof of licensure by another authority with equal licensing requirements.

In order to qualify for licensure as a psychologist by examination, an applicant must pass a written examination, have a doctorate degree, and one year of experience. The examination is composed of two parts: an objective national examination composed by the Professional Examination Service and an essay examination composed by the Board.

Psychological associates may qualify for the examination if they have three years supervised experience after obtaining a Master's degree.

## REPORT CONCLUSION

### Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendation presented in this report so the potential impact of policy changes can be evaluated.

### Report Conclusion

In our opinion, the Board of Psychologist and Psychological Associate Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses when appropriate.

However, the following finding describes an area where weaknesses or conflicts exist. We have made a recommendation which, if implemented, will improve the efficiency and effectiveness of the Board.

The Board should adhere to regulations for denying applicants the right to take the psychology examination. Two applicants were improperly denied the right to take the psychology examination.

## FINDINGS AND RECOMMENDATION

### Recommendation No. 1

The Board should adhere to regulations concerning Board powers to deny applicants from licensure by examination.

The Board inappropriately denied a person the right to take the psychology exam based on the allegation of unethical conduct. The Attorney General's Office determined that the Board's action was not authorized under existing statute or regulation.

12 AAC 60.055 permits the Board to deny an applicant for licensure if the applicant has . . .

- (1) been found guilty of incompetence by another state or jurisdiction;
- (2) violated the ethical standards for providers of psychological services as established by another state agency or jurisdiction;
- (3) misrepresented his or her qualifications to the board in any way; or
- (4) been found to be practicing psychological services without a license.

In this instance there was no actual finding or decision by another State agency or jurisdiction.

Similarly, another applicant for licensure by examination was not allowed to take the examination pending the outcome of an investigation by the Division of Occupational Licensing. Board of Psychology regulations do not prohibit a person from taking the psychology exam merely based on an investigation. According to the Licensing Examiner, the Board tabled their decision to act on the application without even reviewing the applicant's file.

Alaska Statute 08.86.070 provides for the Board to impose disciplinary sanctions. Those disciplinary sanctions apply to licensed psychologists and psychological associates. The Board does not have the authority to deny applicants the right to take the psychology examination as long as other minimum requirements are met. Denial of that right cannot be based on mere allegations or outstanding investigations.

## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

- I. The extent to which the board, commission, or program has operated in the public interest.
  - A. The Board has promulgated regulations concerning continuing education requirements. In addition, public hearings have been held to consider regulation changes regarding course requirements for graduate programs in psychology, criteria for practicing psychology without supervision as a psychological associate, and the qualifications for persons performing psychological-related activities that are exempt from licensure. The public is notified about upcoming examinations and meetings and is invited to provide input at Board meetings.
  - B. The Board has developed goals and objectives. Some of the goals the Board achieved in 1986 includes:
    - (1) Reviewing applications for licensure and examination.
    - (2) Conducting examinations twice a year.
    - (3) Reviewing investigative reports.
    - (4) Considering regulatory changes to psychology regulations.
  - C. The Board prepared forms to document continuing education by licensed psychologists.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
  - A. The Board needs to clarify AS 08.86.180 which defines the Board's jurisdiction over the practice of psychology. The statutes which govern the Board prohibit any person, unless they are licensed or exempt, to practice psychology in the State.

to a permit process and allow applicants for licensure by credentials to be issued a temporary permit provided they meet criteria similar to licensing requirements.

- B. The Board has proposed statutory changes to clarify exactly when confidentiality may be waived if a client threatens serious harm to her/himself or to another person, or to property in such a way that a person's life might be in danger. In addition, the Board has proposed legislation to clarify under what conditions the board may impose disciplinary sanctions against a psychologist for lewd conduct.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is invited to attend Board meetings. Notices of meetings and examinations are published in at least 3 major newspapers and a time for public comment is reserved at Board meetings.

V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. Public notices of proposed regulations are published in major newspapers. Public comment to proposed regulations, both written and oral, are considered at Board meetings.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

- A. Most complaints filed with OL allege unlicensed activity. For the most part, these complaints are investigated and resolved in a timely manner. Investigations could be hampered because statutory language concerning licensing exemptions to the practice of psychology is difficult to interpret (see II. A.). Based on records at OL, there were 6 complaints filed at OL in FY 86, 20 filed in FY 85, and 19 filed in FY 84. Currently, only one investigative case is outstanding.
- B. Review of recently closed Ombudsman's case files showed no significant complaints.

APPENDIXES

APPENDIX A  
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL ASSOCIATE EXAMINERS  
REVENUES COMPARED WITH EXPENDITURES  
 For the Fiscal Year Ended June 30, 1986  
 (Unaudited)  
 (Note 1)

Average Revenue (See Schedule 1 and Note 2)	\$ 8,808.00
Expenditures (See Note 3)	<u>22,045.28</u>
Excess of Revenues over Expenditures	<u><u>\$(13,237.28)</u></u>

Schedule 1  
Types of Revenues

<u>Revenues</u>	<u>Amount Prior to 11/20/86</u>	<u>Amount Effective 11/20/86</u>	<u>Collection Time</u>
Application Fee	\$ 25	\$ 20 .	With submittal of application
Examination Fee	\$125	\$ 90	With submittal of application
Credential Review Fee	\$125	\$ 50	With submittal of application
Initial License Fee	\$200	\$200	With submittal of application
License Renewal	\$200	\$200	Every Four Years

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Statement of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is composed of license renewal fees. Licenses are renewed every four years and the last renewal date was June 30, 1985. Because of the renewals, revenues vary substantially every fourth year. Therefore, we averaged revenues collected in fiscal years 83, 84, 85 and 86 in order to obtain a representative amount of average annual revenues collected.

APPENDIX B  
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL  
ASSOCIATE EXAMINERS  
EXAMINATION STATISTICS

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Failed at Least one Section	4	4	4	2	3
Passed	<u>9</u>	<u>5</u>	<u>3</u>	<u>8</u>	<u>4</u>
Total	<u>13</u>	<u>9</u>	<u>7</u>	<u>10</u>	<u>7</u>

APPENDIX C  
BOARD OF PSYCHOLOGIST AND PSYCHOLOGICAL  
ASSOCIATE EXAMINERS  
ADMINISTRATIVE STATISTICS

Schedule 1  
Number of Licenses

As of June 30, 1986

Licensed Psychologists	94
Licensed Psychological Associates	<u>14</u>
Total	<u>108</u>

Schedule 2  
Licenses Issued by Fiscal Year

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Psychologists	7	10	7	12	9
Psychological Associates	<u>2</u>	<u>2</u>	<u>1</u>	<u>2</u>	<u>1</u>
Total	<u>9</u>	<u>12</u>	<u>8</u>	<u>14</u>	<u>10</u>

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

February 6, 1987

Mr. Gerald Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box W  
Juneau, AK 99811

FEB 17 1987

Dear Mr. Wilkerson:

The department agrees that the Board of Psychologist and Psychological Associate Examiners should be continued and concurs with the recommendation that the board should adhere to regulations concerning the board powers to deny applicants from licensure by examination. It should be noted, however, that, although the board initially inappropriately denied an applicant from licensure by examination, an attorney general's opinion was sought prior to the examination and the candidate was permitted to take the examination on schedule.

The issue was whether or not the board has the power to deny a license by examination or licensure by credentials based on allegations of unethical conduct or pending the results of ongoing investigations. Under its current regulations, the board does not have this authority. Since the board has the responsibility to ensure only qualified, competent individuals receive licenses to practice, the department would recommend that the board amend 12 AAC 60.055 to add another section: "(5) is not the subject of an unresolved complaint, review procedure or disciplinary proceeding." There is a current applicant for licensure who has been accused of several counts of sexual misconduct in another state. Under the existing regulation, the board is required to license the applicant. The department believes the public safety will be in danger if this applicant is licensed prior to the allegation being substantiated. Several regulatory boards have similar provisions in statute or regulation.

Thank you again for the opportunity to comment on your findings.

Sincerely,

  
J. Anthony Smith  
Commissioner

JAS/KM/ssC19  
020687b

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 23, 1987

Members of the Legislative Budget  
and Audit Committee:

We have reviewed the Board's response to the preliminary audit report on the Performance Report on the Department of Commerce and Economic Development, Board of Psychologist and Psychological Associate Examiners. Our comments follow.

The Board has proposed regulations requiring a psychological associate (PA) to have 60 credit hours of program study after five years of supervised experience in order to practice unsupervised. In the Board's opinion, 60 credit hours of study is necessary to insure adequate public protection. The Board gave an example of a PA practicing but only seeing three clients per week for a year (three hours) and has three face-to-face supervision sessions each year. We believe the 60 credit hour educational requirement is excessive.

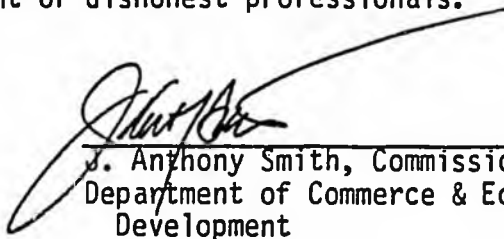
Currently, a PA is required to have a Master's degree (24 credit hours) and three years of weekly supervision and pass a national examination in order to be licensed as a PA. Legislation amending AS 08.86.164 recently passed that allows a PA who has completed at least five years of licensed practice to petition the Board for certification to practice without supervision (monthly contact and quarterly face-to-face meetings). The Board is required to grant the petition if the PA satisfies the criteria established by the Board by regulation. Proposed regulations include requiring the PA to have documented at least five years of supervised practice which included at least an average of 1,500 hours of supervised practice per year. This would prevent a non-experienced PA from being certified to practice unsupervised.

The new legislation also requires the Board to propose regulations defining the academic programs that are required to be included in obtaining the Master's degree. Testimony was given by the Division of Occupational Licensing during the legislative hearings. At the hearings it was stated that the main purpose of the bill was to define an acceptable masters program through regulation so that the Board could agree that a PA can practice psychology after a certain amount of time. Therefore, the Board's definition of programs to be included in a PA's Master's degree along with supervised experience should be adequate to protect the public.

HB 179: An Act extending the termination date of the Board of Psychologist and Psychological Associate Examiners and providing for an effective date.

HB 179 extends the Board of Psychologist and Psychological Associate Examiners from June 30, 1987 to June 30, 1991. In December 1986 the Legislative Budget and Audit Committee issued a performance report on the board which recommended they be reestablished.

The department maintains its support for continuation of the Board of Psychologist and Psychological Associate Examiners and recognizes the important functions they provide. The board has the expertise to evaluate and approve applicants for licensure and provides a mechanism for disciplining incompetent or dishonest professionals.

  
\_\_\_\_\_  
J. Anthony Smith, Commissioner  
Department of Commerce & Economic  
Development

Date: \_\_\_\_\_

SENATE COMMITTEE REPORT

FURTHER: FINANCE

4/28/87

DATE TURNED INTO OFFICE

5/8/75

Mr. President:

LABOR & COMMERCE

Committee considered

CSHB 179(Fin)

extending the termination date of the Board of Psychologist and Psychological Associate Examiners; changing the composition of the board; efd.

and recommended:

[ ] replace with CS FOR ) [ ] same title
[ ] or adopt CS FOR ) [ ] new title

[ ] attached amendment(s) and

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to

[ ] letter of intent adopted

Committee [X] attached or [ ] adopted fiscal note(s)

[ ] new [ ] updated or [X] previous
[ ] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Handwritten signatures of committee members under the 'MEMBERS SIGNING DO PASS' heading.

Blank lines for 'OTHER RECOMMENDATIONS'.

Handwritten signature of the Chairman: Tim Keely - Do Pass

Chairman signature and recommendation

[ ] Committee Backup Attached

HB

184

**HOUSE COMMITTEE REPORT**

(11)

Date referred: 3/18/87

FURTHER REFERRALS:

DATE: 4/3/87  
HB 184

The Finance Committee has considered

"An Act relating to individual tax credits."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

ADAMS Albert H. Adams

FOURCHOT Nat Fourchot

LARSON Ronald L. Larson

GOL Tate Gol

SWACK Ed Swack

HAMMER Ed Hammer

BOYER Mark Boyer

FRANK Frank

WALLIS Ray Wallis

**SIGNING OTHER RECOMMENDATIONS:**

RIEGER Steve Rieger No Recommendation

DAVIS Mark Davis

BROWN Tay Brown No Rec

Albert H. Adams  
Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST \_\_\_\_\_

Bill Version: HB 184

Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Revenue

Title: An Act relating to individual tax credits

BRU: Enforcement

Sponsor: \_\_\_\_\_

Components: Enforcement Operations

Requestor: Finance Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: None required.

Prepared By: Thomas C. Williams

Phone: 465-2366

Division: Enforcement Division

Date: March 27, 1987

Approved by Commissioner: [Signature]

Date: 3/31/87

Agency: Revenue

Distribution (by Agency preparing fiscal note):

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

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

HOUSE BILL NO. 184

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BJLL

6 For an Act entitled: "An Act relating to individual tax credits."

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

8 \* Section 1. AS 43.20.012 is amended to read:

9 Sec. 43.20.012. LIMITATION ON APPLICATION OF CHAPTER; CREDITS.

10 The tax imposed by this chapter does not apply to individuals or to

11 fiduciaries. [HOWEVER, AN INDIVIDUAL MAY FILE A RETURN UNDER THIS

12 CHAPTER IN ORDER TO RECEIVE A TAX CREDIT UNDER AS 43.20.013.]

13 \* Sec. 2. AS 43.05.085 and AS 43.20.013 are repealed.

Alaska State Legislature  
House of Representatives



Official Business

Al Adams  
Chairman  
Committee on Finance

April 2, 1987

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3706

OUT OF SESSION  
P.O. Box 333  
Kotzebue, Alaska 99752  
(907) 442-3320

1024 W. 6th  
Anchorage, Alaska 99501  
(907) 274-0615

MEMORANDUM

TO: Members of the House Finance Committee  
FROM: Representative Al Adams, Chair *AAA*  
SUBJ: HB 184

This bill repeals the statutory authority for political contribution and child care credits. There are two attorney general opinions in your file that speak to the need to remove statutory authority. Although the 1986 opinion suggests that such authority does not need to be removed as long as no appropriation exists to pay for such credits, I feel that repealing the authority is a much cleaner approach. As you know, no funding has been provided for the program in this fiscal year nor is it requested for FY88.

Section 1 of the bill is technical. It removes the sentence that allows people to apply for credits even though the income tax does not apply to individuals.

Section 2 repeals the credit section (AS 43.20.013) and a related technical section (AS 43.05.085) about making lists of those who got credits public.

The bill has no fiscal impact.

Attachments: AG Opinions  
Related Statutes  
Fiscal Note

**Sec. 43.20.012. Limitation on application of chapter; credits.** The tax imposed by this chapter does not apply to individuals or to fiduciaries. However, an individual may file a return under this chapter in order to receive a tax credit under AS 43.20.013. (§ 2 ch 1 SSSLA 1980; am § 2 ch 2 SSSLA 1980)

**Cross references.** — For legislative findings and purpose of the enacting legislation, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the 1980 Tempo-

rary and Special Acts and Resolves. **Effect of amendments.** — The 1980 amendment made this section retroactive to January 1, 1979.

**Sec. 43.20.013. Individual tax credits.** (a) A resident individual is entitled to a tax credit not to exceed \$100 for

(1) a contribution made in a calendar year to a person or organization for use exclusively

(A) for a political campaign for a candidate for

(i) President or Vice President of the United States, whether or not the candidate will be voted on in a primary election in Alaska;

(ii) United States senator from Alaska;

(iii) United States representative from Alaska;

(iv) governor or lieutenant governor of Alaska;

(v) the Alaska legislature;

(vi) delegate to an Alaska constitutional convention;

(vii) electoral confirmation as a judge or justice of a court in Alaska;

or

(viii) municipal office in Alaska; or

(B) by a group seeking to influence the outcome of a ballot proposition or question in Alaska; and

(2) dues paid in a calendar year to a nonprofit organization organized primarily for the purpose of influencing elections in Alaska.

(b) A resident individual is entitled to a tax credit equal to 16 percent of the tax credit claimed by the individual on the federal income tax return of the individual for household and dependent care services necessary for gainful employment.

(c) The commissioner of revenue shall pay the amount of a tax credit allowed by this section to a resident individual who makes a return as provided in AS 43.20.012. A credit under this section shall be paid in the manner provided in AS 43.20.030(e) for the payment of refunds and payment may not be made without an appropriation for that purpose. (§ 2 ch 1 SSSLA 1980; am § 9 ch 1 SSSLA 1980; am § 2 ch 2 SSSLA 1980)

**Cross references.** — For legislative findings and purpose of the enacting legislation, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the Temporary and Special Acts.

**Effect of amendments.** — The first

1980 amendment substituted "\$100" for "\$50" in the introductory language of subsection (a).

The second 1980 amendment made this section retroactive to January 1, 1979.

(5) make recommendations and an annual report to the governor to be transmitted to the legislature concerning the condition, operation and functioning of the department and state laws relating to taxation and tax administration;

(6) adopt a seal and affix it to each order, process, or certificate issued by the commissioner;

(7) keep a record of each order, process, and certificate issued by the commissioner, and keep the record open to public inspection at all reasonable times;

(8) hold hearings and investigations necessary for the administration of state tax and revenue laws;

(9) hear and determine appeals involving income, excise, license, or other taxes levied under state laws and enter orders on the appeals which are final unless reversed or modified by the courts;

(10) require the attendance of witnesses and the production of necessary books, papers, documents, correspondence and other evidence at hearings;

(11) order the taking of depositions before a person competent to administer oaths;

(12) administer oaths and take acknowledgments;

(13) request the attorney general for rulings on the interpretation of the tax and revenue laws administered by the department;

(14) call upon the attorney general to institute actions for recovery of unpaid taxes, fees, excises, additions to tax, penalties and interest;

(15) issue warrants for the collection of unpaid tax penalties and interest and take all steps necessary and proper to enforce full and complete compliance with the tax, license, excise, and other revenue laws of the state;

(16) audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05;

(17) contract to manage the assets of the Alaska Resources Corporation as provided in AS 37.12.075, and administer the outstanding loan portfolio upon dissolution of the corporation. (§ 48-2-9 ACLA 1949; § 7-1-8 ACLA 1949; am § 3 ch 61 SLA 1980; am § 13 ch 161 SLA 1984)

**Effect of amendments.** — The 1984 amendment added paragraph (17).

**Sec. 43.05.085.** List of contributions. The commissioner of revenue shall prepare and furnish to the Alaska Public Offices Commission by July 1 of each year a list containing the total amount of contributions received by each candidate and group for which a credit was received by an individual under AS 43.20.013(a). The commis-

sioner shall also mail a copy of the list to each of the candidates and groups which were recipients of those credited contributions. The list becomes public information under AS 09.25.110 — 09.25.120 on its delivery to the Alaska Public Offices Commission. (§ 4 ch 76 SLA 1974; am § 111 ch 6 SLA 1984; am § 1 ch 10 SLA 1986)

**Effect of amendments.** — The 1984 amendment, substituted "Public Offices" for "Election Campaign" in the first sentence and made a series of internal reference and technical changes throughout the rest of the section.

The 1986 amendment substituted "contributions" for "contributors" in the catchline and rewrote the section.

**Article 2. Fiscal Responsibilities.**

**Section**

140. Bonds

190. [Repealed]

**Sec. 43.05.140. Bonds.** Before taking office, the commissioner of revenue shall furnish a bond to the state. The bond shall be approved by the attorney general and filed with the Department of Administration, and a copy of it shall be filed in the attorney general's office. The bond shall be conditioned that the principal will faithfully discharge the duties of the office, keep a strict, true and correct account of all money disbursed, and that the principal will properly account for it and will pay over to a successor or other person entitled by law to receive it all money or property in the hands or possession of the principal, in accordance with law; or, in default, that the parties executing the bond will pay to the state and others injured all damages, costs, and expenses resulting from the default. The surety on the bond shall be a surety company authorized to transact business in the state. All premiums for the commissioner of revenue's bond shall be paid by the state. The amount of the bond shall be \$200,000, but if the funds in the treasury of the state exceed the amount of the bond given by the commissioner of revenue, or if for any reason the governor and the Department of Administration consider the bond insufficient they shall notify the commissioner of revenue of that fact, and the commissioner of revenue shall give the additional bond with sufficient sureties, within the time and in the amount which the governor and the Department of Administration consider necessary for the safety of the state. (§ 7-1-4 ACLA 1949)

**Editor's notes.** — This section is set out above to correct an error in the main pamphlet.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

September 10, 1986

Hon. Joe Josephson  
Alaska State Senate  
1526 'F' Street  
Anchorage, AK 99501

OFFICE OF THE ATTORNEY GENERAL

ALASKA DEPARTMENT OF LAW

SEP 12 1986

REPLY TO:

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SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 278-3553

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1553

P.O. BOX K-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 455-3600

Re: Child care and political cam-  
paign contributions

Dear Senator Josephson,

You have requested our advice concerning the effect of the legislature's failure to appropriate money to pay "refundable" credits to eligible persons who incur child care expenses or make political campaign contributions. These credits are payable under the provisions of AS 43.20.013. We presume that your question stems from an earlier opinion issued by this office that expressed some doubt whether persons who have already contributed to a political campaign before the credit program was denied funding have a vested right to receive payment of the credit. See 1984 Inf. Op. Att'y Gen. (Aug. 1, 1984; 663-84-0031).

In our 1984 opinion we observed: "So long as AS 43.-20.013 remains state law, individuals who expend money consistent with the law may have a claim against the state for their entitlement." *Id.* at 2. We reaffirm the foregoing statement. The failure of the legislature to fund the credit program will likely result in litigation. The crucial question is whether the litigants will prevail against the state treasury.

It is probable that contributions were made to campaigns before it was known that the legislature did not make a fiscal year 1987 appropriation to pay the credits. These contributors will undoubtedly claim that their right to reimbursement vested upon the date that they submitted proof that they contributed to a political campaign. To the extent that appropriations are available to pay those claims, the contention that the claim represents a vested right may be a good one. However, AS 43.20.-013(c) is very clear that the entitlement is conditioned on the availability of appropriations. AS 43.20.013(c) provides: "payment may not be made without an appropriation for that purpose." Our 1984 opinion can be distinguished by the fact that when that opinion was written, the legislature was attempting to repeal an

Hon. Joe Josephson  
Alaska State Senate  
Re: Child care/political contributions

September 10, 1986  
Page #2

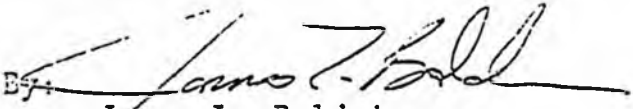
existing appropriation, not refusing to enact new appropriations.  
It is also significant that the contributions are voluntary.

We believe that, absent a valid appropriation to finance the payment of political campaign or child care credits, the failure to appropriate money for the 1987 fiscal year effectively negates any entitlement to reimbursement.

If you have additional questions, do not hesitate to ask.

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By: 

James L. Baldwin  
Assistant Attorney General

JLB/pjg

cc: Hon. Frank Ferguson, Senator  
Alaska State Legislature

Hon. Mary Nordale, Commissioner  
Department of Revenue

# MEMORANDUM

State of Alaska

TO: Hon. Mary Nordale, Commissioner  
Department of Revenue

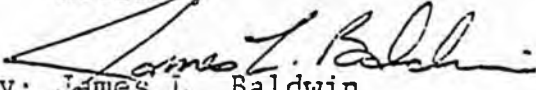
DATE: August 1, 1984

FILE NO: 366-031-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Enactment of appropriation to finance political campaign contribution credits

By:   
James L. Baldwin  
Assistant Attorney General  
Governmental Affairs-Juneau

You have requested our opinion concerning the availability of the appropriation made in chapter 3, SSLA 1980 to pay claims for political contribution credits under AS 43.20.013. That section provides for the refund of money contributed by individuals for use "exclusively for a political campaign for a candidate ... or by a group seeking to influence the outcome of a ballot proposition or question ...." AS 43.20.013(a). In addition, the section provides for the refund of 16 percent of the federal tax credit claimed by the individual for household and dependent care services necessary for gainful employment. AS 43.20.013(b). Apparently, the legislature attempted to prevent the payment of political campaign contributions by amending an earlier appropriation made to finance both political campaign and childcare credits. This action was taken in section 140 of HCS CSSB 409(Fin) am H (Reeng). Section 140 provides:

Sec. 140. Section 1, ch. 3, SSLA 1980 is amended to read:

Section 1. The sum of \$112,042,000 is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978 and

(2) for childcare [1979 AND 1980] tax credits payable under AS 43.20.013.

In section 140, the legislature attempted to accomplish two things. First, it makes the unobligated balance of the \$112,042,000 appropriation available for at least an additional claim year by removing the reference to the 1979 and 1980 claim

years \*/ and, second, it inserted the word "childcare" in the statement of purpose of the appropriation so that the major source of funding for the credit would be sabotaged.

We believe the extension of a lapse date is without question within the legislature's power to appropriate. However, the attempt to radically restrict the objects of expenditure under an existing appropriation is an abuse of the legislature's power because it constitutes an attempt to retroactively amend or repeal AS 43.20.013(a). The Department of Revenue advises that if this amendment is effective, no money remains available to pay refunds to individuals who have made political campaign contributions since 1979. Repeal of the credits established under AS 43.20.013 should be presented to the governor in a separate non-appropriation bill so that all of the safeguards specified by the Alaska Constitution for the enactment of bills into law are operative.

It is significant that AS 43.20.013(a) and (b) provide that individuals are "entitled" to these credits. The credits are commonly referred to as "refundable credits." The refundable credits represent a holdover from the now repealed individual income tax and represent refunds to individuals in the same manner as a refund of excess withholding. See AS 43.20.013(c). The program could be viewed as a reimbursement of money paid by individuals on behalf of the state to third persons, i.e., candidates or day care operators. The credit encourages individuals to directly provide financing for these worthwhile purposes. The program avoids or minimizes a direct state subsidy to these third persons and in effect makes the public a major source of financing for these activities. In return, the state reimburses the public. So long as AS 43.20.013 remains state law, individuals who expend money consistent with the law may have a claim against the state for their entitlement. We believe the legislature cannot retroactively defeat claims for refundable credits for the 1979 and 1980 claim years. See AS 01.10.100(a). We also believe that the legislature may not use its appropriation power to prospectively repeal the entitlement established under AS 43.20.013.

---

\*/ The Department of Revenue has implemented AS 43.20.013 by the adoption of 15 AAC 20.042. These regulations permit an individual to claim a credit under AS 43.20.013 within three years after the year in which the contribution is made. By removing the claim years from the 1980 appropriation, we presume the legislature intended to reappropriate the unobligated balance of the appropriation for the 1984 claim year.

Hon. Mary Nordale, Commissioner  
Department of Revenue  
366-031-85

August 1, 1984  
Page 3

The difficult part of your question concerns the power of the legislature to change the purpose of existing appropriations. It is common for the legislature to make clarifications of the purpose of an appropriation in response to circumstances which permit more effective use of the money. However, an amendment to an appropriation can never conflict with existing law or be used to extinguish an entitlement vested under general law. The Alaska Constitution prohibits the amendment or repeal of substantive law by the enactment of appropriations. Article II, section 13 of the Alaska Constitution provides in relevant part:

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title.

The purpose of the Framers in restricting appropriations bills to appropriations was to avoid the practice of "log-rolling." Alaska Constitutional Convention, Commentary on Legislative Article at 7, Committee Proposal No. 5 (Dec. 14, 1955). Logrolling occurs when a measure which could not command majority legislative support on its own merits is combined with another measure or measures, and cumulatively they obtain passage. It is a particularly insidious practice when it occurs through an appropriations bill, because appropriations bills often come before the legislature for a vote on final passage in a form which cannot be amended. Various courts have noted the evil inherent in the practice. Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977), ("It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation"); Sellers v. Frohmiller, 24 P.2d 666, 669 (Ariz. 1933).

There are other purposes of the "confinement" requirement in appropriations bills. The requirement prevents avoidance of the governor's item veto power by the inclusion, in an appropriation item, of material which actually is a "general law" measure:

The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power of substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation.

Hon. Mary Nordale, Commissioner  
Department of Revenue  
366-031-85

August 1, 1984  
Page #4

Henry v. Edwards, 346 So. 2d 153, 158 (La. 1977).

Judge Carpeneti, in the only Alaska case to address the confinement issue, noted that it is extremely difficult to uncover the proper test to determine when an appropriation goes beyond what is permitted by the constitution. Legislative Budget and Audit Committee v. Hammond, No. 1JU-80-1163 CIV (Alaska Super., July 17, 1980), Memo. Decision at 40. Virtually every court which has been faced with this issue has announced that it should be decided on a "case by case" basis. As the Supreme Court of Nebraska said in deciding a confinement case:

All authorities are in agreement that it is impossible to fix exact limits in the area of constitutional separation of powers. All states approach the problem on a case-by-case basis.

State ex rel. Meyer v. State Board of Equalization and Assessment.

The Alaska Supreme Court has not yet decided a case raising a claim that particular amendment of an existing appropriation violates the constitutional requirement that bills for appropriations be confined to appropriations. There are cases construing the single subject rule, which is also found in article II, section 13, e.g., Short v. State, 600 P.2d 20 (Alaska 1979). However, because of the distinction between appropriation bills and other bills, the Alaska cases construing the single subject rule are of very little value in interpreting the confinement requirement. Legislative Budget and Audit, No. 1JU-80-1163 CIV at 42.

Appropriations bills may and almost always do include appropriations for several purposes. By definition they embrace many unrelated subjects. For this reason, the cases interpreting the single subject rule are of little direct assistance in interpreting the confinement requirement. It is probable that the Alaska Supreme Court would not automatically apply its single subject rule analysis to a confinement case, but would adopt a rule appropriate to confinement cases.

In Biles v. Department of Public Welfare, 403 A.2d 1341 (Pa. Comm. 1979), the court announced the following test for determining the propriety of material inserted in an appropriations Act:

To be constitutional the language in an appropriation bill must be germane to the appropriations,

Hon. Mary Nordale, Commissioner  
Department of Revenue  
366-031-85

August 1, 1984  
Page #5

must not conflict with existing law, and it must not extend beyond the life of the appropriations bill itself.

Biles, 403 A.2d at 1343. While observing that the Biles test is "superficially attractive," Judge Carpeneti modified it because he felt "the test does not go far enough." Legislative Budget and Audit, No. 1JU-80-1163 CIV at 43. He reasoned that under the Biles test, the legislature could enact or repeal general law through an appropriations bill, and do so session after session, and completely render the confinement requirement meaningless.

After a careful review of relevant authority, the superior court expressed its view of the confinement provision by announcing the following test to be used in evaluating conditions added to appropriations:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is, appropriate, to an appropriation bill.

Legislative Budget and Audit, No. 1JU-80-1163 Mem. Decision at 44-45 (emphasis added, footnotes omitted).

Every instance where language is challenged in an appropriations bill is a new case which must be examined separately. Courts applying what appear to be similar tests to apparently similar facts reach opposite conclusions. Compare Welden v. Ray, 229 N.W.2d 706, 710 (Iowa 1975), with Henry v. Edwards, 346 So. 2d 153, 159-165 (La. 1977). We contend that the legislature may not indirectly repeal AS 43.20.013(a) by the amendment of the purpose of an appropriation. The constitution requires the legislature to place such a measure before the governor in a separate bill. Therefore, we believe you may ignore the purported amendment which limits the purposes for which the appropriation may be spent. We also find that there is no legislative intent to make the lapse date extension nonseverable from the other amendments contained in section 140. Under these circumstances, we believe the presumption of severability set out in AS 01.10.-030 controls.

JLE/pjg

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

HOUSE BILL NO. 184

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to individual tax credits."

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

8 \* Section 1. AS 43.20.012 is amended to read:

9

Sec. 43.20.012. LIMITATION ON APPLICATION OF CHAPTER; CREDITS.

10

The tax imposed by this chapter does not apply to individuals or to

11

fiduciaries. [HOWEVER, AN INDIVIDUAL MAY FILE A RETURN UNDER THIS

12

CHAPTER IN ORDER TO RECEIVE A TAX CREDIT UNDER AS 43.20.013.]

13

\* Sec. 2. AS 43.05.085 and AS 43.20.013 are repealed.

HB

184-S

Date of 4/9/87 5-Day Notice  
In Accordance with Uniform Rule 23

SENATE COMMITTEE REPORT

FURTHER:

4/9/87

DATE TURNED INTO OFFICE 4/23/87

Mr. President:

FINANCE Committee considered HB 184

individual tax credits.

and recommended:

replace with \_\_\_\_\_ CS FOR \_\_\_\_\_ )  same title  
 or adopt \_\_\_\_\_ CS FOR \_\_\_\_\_ )  new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

letter of intent adopted \_\_\_\_\_

Committee  attached or  adopted fiscal note(s)

new  updated or  previous  
 zero  fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]  
[Signature]  
[Signature]  
[Signature]  
Carl Frank

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature] DO PASS  
Chairman signature and recommendation

Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 184  
Publish Date: HOUSE 4/6/87

REQUEST \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to individual tax credits

Agency Affected: Revenue  
BRU: Enforcement

Sponsor: \_\_\_\_\_  
Requestor: Finance Committee

Components: Enforcement Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: None required.

Prepared By: Thomas C. Williams  
Division: Enforcement Division

Phone: 465-2366  
Date: March 27, 1987

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 3/31/87

Distribution (by Agency preparing fiscal note):

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

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2

HOUSE BILL NO. 184

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FIFTEENTH LEGISLATURE - FIRST SESSION

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13 \* Sec. 2. AS 43.05.085 and AS 43.20.013 are repealed.

# Alaska State Legislature

## House of Representatives

Al Adams

Chairman  
Committee on Finance

April 16, 1987

Official Business

WHILE IN SESSION  
P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
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1024 W. 6th  
Anchorage, Alaska 99501  
(907) 274-0615

### MEMORANDUM

TO: Members of the Senate Finance Committee

FROM: Representative Al Adams, <sup>APA</sup> Chair  
House Finance Committee

SUBJ: HB 184

This bill repeals the statutory authority for political contribution and child care credits. There are two attorney general opinions in your file that speak to the need to remove statutory authority. Although the 1986 opinion suggests that such authority does not need to be removed as long as no appropriation exists to pay for such credits, I feel that repealing the authority is a much cleaner approach. As you know, no funding has been provided for the program in this fiscal year nor is it requested for FY88.

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The bill has no fiscal impact.

Attachments: AG Opinions  
Related Statutes  
Fiscal Note

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

September 10, 1986

Hon. Joe Josephson  
Alaska State Senate  
1526 'F' Street  
Anchorage, AK 99501

OFFICE OF THE ATTORNEY GENERAL

Re: Child care and political campaign contributions

Dear Senator Josephson,

You have requested our advice concerning the effect of the legislature's failure to appropriate money to pay "refundable" credits to eligible persons who incur child care expenses or make political campaign contributions. These credits are payable under the provisions of AS 43.20.013. We presume that your question stems from an earlier opinion issued by this office that expressed some doubt whether persons who have already contributed to a political campaign before the credit program was denied funding have a vested right to receive payment of the credit. See 1984 Inf. Op. Att'y Gen. (Aug. 1, 1984; 663-84-0031).

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REPLY TO:

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PHONE: (907) 455-2600

Hon. Joe Josephson  
Alaska State Senate  
Re: Child care/political contributions

September 10, 1986  
Page #2

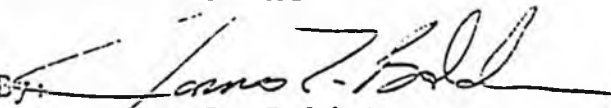
existing appropriation, not refusing to enact new appropriations. It is also significant that the contributions are voluntary.

We believe that, absent a valid appropriation to finance the payment of political campaign or child care credits, the failure to appropriate money for the 1987 fiscal year effectively negates any entitlement to reimbursement.

If you have additional questions, do not hesitate to ask.

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:   
James L. Baldwin  
Assistant Attorney General

JLB/pjg

cc: Hon. Frank Ferguson, Senator  
Alaska State Legislature

Hon. Mary Nordale, Commissioner  
Department of Revenue

# MEMORANDUM

State of Alaska

TO: Hon. Mary Nordale, Commissioner  
Department of Revenue

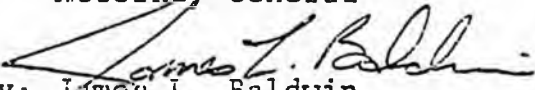
DATE: August 1, 1984

FILE NO.: 366-031-85

TELEPHONE NO.: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Enactment of appropriation to finance political campaign contribution credits

By:   
James L. Baldwin  
Assistant Attorney General  
Governmental Affairs-Juneau

You have requested our opinion concerning the availability of the appropriation made in chapter 3, SSLA 1980 to pay claims for political contribution credits under AS 43.20.013. That section provides for the refund of money contributed by individuals for use "exclusively for a political campaign for a candidate ... or by a group seeking to influence the outcome of a ballot proposition or question ...." AS 43.20.013(a). In addition, the section provides for the refund of 16 percent of the federal tax credit claimed by the individual for household and dependent care services necessary for gainful employment. AS 43.20.013(b). Apparently, the legislature attempted to prevent the payment of political campaign contributions by amending an earlier appropriation made to finance both political campaign and childcare credits. This action was taken in section 140 of HCS CSSB 409(Fin) am H (Reeng). Section 140 provides:

Sec. 140. Section 1, ch. 3, SSLA 1980 is amended to read:

Section 1. The sum of \$112,042,000 is appropriated from the general fund to the Department of Revenue

(1) for refunds to individuals and fiduciaries for income taxes paid after December 31, 1978 for all or part of a tax year occurring after December 31, 1978 and

(2) for childcare [1979 AND 1980] tax credits payable under AS 43.20.013.

In section 140, the legislature attempted to accomplish two things. First, it makes the unobligated balance of the \$112,042,000 appropriation available for at least an additional claim year by removing the reference to the 1979 and 1980 claim

years \*/ and, second, it inserted the word "childcare" in the statement of purpose of the appropriation so that the major source of funding for the credit would be sabotaged.

We believe the extension of a lapse date is without question within the legislature's power to appropriate. However, the attempt to radically restrict the objects of expenditure under an existing appropriation is an abuse of the legislature's power because it constitutes an attempt to retroactively amend or repeal AS 43.20.013(a). The Department of Revenue advises that if this amendment is effective, no money remains available to pay refunds to individuals who have made political campaign contributions since 1979. Repeal of the credits established under AS 43.20.013 should be presented to the governor in a separate non-appropriation bill so that all of the safeguards specified by the Alaska Constitution for the enactment of bills into law are operative.

It is significant that AS 43.20.013(a) and (b) provide that individuals are "entitled" to these credits. The credits are commonly referred to as "refundable credits." The refundable credits represent a holdover from the now repealed individual income tax and represent refunds to individuals in the same manner as a refund of excess withholding. See AS 43.20.013(c). The program could be viewed as a reimbursement of money paid by individuals on behalf of the state to third persons, i.e., candidates or day care operators. The credit encourages individuals to directly provide financing for these worthwhile purposes. The program avoids or minimizes a direct state subsidy to these third persons and in effect makes the public a major source of financing for these activities. In return, the state reimburses the public. So long as AS 43.20.013 remains state law, individuals who expend money consistent with the law may have a claim against the state for their entitlement. We believe the legislature cannot retroactively defeat claims for refundable credits for the 1979 and 1980 claim years. See AS 01.10.100(a). We also believe that the legislature may not use its appropriation power to prospectively repeal the entitlement established under AS 43.20.013.

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\*/ The Department of Revenue has implemented AS 43.20.013 by the adoption of 15 AAC 20.042. These regulations permit an individual to claim a credit under AS 43.20.013 within three years after the year in which the contribution is made. By removing the claim years from the 1980 appropriation, we presume the legislature intended to reappropriate the unobligated balance of the appropriation for the 1984 claim year.

Hon. Mary Nordale, Commissioner  
Department of Revenue  
366-031-85

August 1, 1984  
Page #3

The difficult part of your question concerns the power of the legislature to change the purpose of existing appropriations. It is common for the legislature to make clarifications of the purpose of an appropriation in response to circumstances which permit more effective use of the money. However, an amendment to an appropriation can never conflict with existing law or be used to extinguish an entitlement vested under general law. The Alaska Constitution prohibits the amendment or repeal of substantive law by the enactment of appropriations. Article II, section 13 of the Alaska Constitution provides in relevant part:

Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title.

The purpose of the Framers in restricting appropriations bills to appropriations was to avoid the practice of "logrolling." Alaska Constitutional Convention, Commentary on Legislative Article at 7, Committee Proposal No. 5 (Dec. 14, 1955). Logrolling occurs when a measure which could not command majority legislative support on its own merits is combined with another measure or measures, and cumulatively they obtain passage. It is a particularly insidious practice when it occurs through an appropriations bill, because appropriations bills often come before the legislature for a vote on final passage in a form which cannot be amended. Various courts have noted the evil inherent in the practice. Flanders v. Morris, 558 P.2d 769, 772 (Wash. 1977), ("It is obvious why a legislator would hesitate to hold up the funding of the entire state government in order to prevent the enactment of a certain provision, even though he would have voted against it if it had been presented as independent legislation"); Sellers v. Frohmiller, 24 P.2d 666, 669 (Ariz. 1933).

There are other purposes of the "confinement" requirement in appropriations bills. The requirement prevents avoidance of the governor's item veto power by the inclusion, in an appropriation item, of material which actually is a "general law" measure:

The legislature cannot by location of a bill give it immunity from executive veto. Nor can it circumvent the Governor's veto power of substantive legislation by artfully drafting general law measures so that they appear to be true conditions or limitations on an item of appropriation.

Hon. Mary Nordale, Commissioner  
Department of Revenue  
366-031-85

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Page #4

Henry v. Edwards, 346 So. 2d 153, 158 (La. 1977).

Judge Carpeneti, in the only Alaska case to address the confinement issue, noted that it is extremely difficult to uncover the proper test to determine when an appropriation goes beyond what is permitted by the constitution. Legislative Budget and Audit Committee v. Hammond, No. 1JU-80-1163 CIV (Alaska Super., July 17, 1980), Memo. Decision at 40. Virtually every court which has been faced with this issue has announced that it should be decided on a "case by case" basis. As the Supreme Court of Nebraska said in deciding a confinement case:

All authorities are in agreement that it is impossible to fix exact limits in the area of constitutional separation of powers. All states approach the problem on a case-by-case basis.

State ex rel. Meyer v. State Board of Equalization and Assessment.

The Alaska Supreme Court has not yet decided a case raising a claim that particular amendment of an existing appropriation violates the constitutional requirement that bills for appropriations be confined to appropriations. There are cases construing the single subject rule, which is also found in article II, section 13, e.g., Short v. State, 600 P.2d 20 (Alaska 1979). However, because of the distinction between appropriation bills and other bills, the Alaska cases construing the single subject rule are of very little value in interpreting the confinement requirement. Legislative Budget and Audit, No. 1JU-80-1163 CIV at 42.

Appropriations bills may and almost always do include appropriations for several purposes. By definition they embrace many unrelated subjects. For this reason, the cases interpreting the single subject rule are of little direct assistance in interpreting the confinement requirement. It is probable that the Alaska Supreme Court would not automatically apply its single subject rule analysis to a confinement case, but would adopt a rule appropriate to confinement cases.

In Biles v. Department of Public Welfare, 403 A.2d 1341 (Pa. Comm. 1979), the court announced the following test for determining the propriety of material inserted in an appropriations Act:

To be constitutional the language in an appropriation bill must be germane to the appropriations,

must not conflict with existing law, and it must not extend beyond the life of the appropriations bill itself.

Biles, 403 A.2d at 1343. While observing that the Biles test is "superficially attractive," Judge Carpeneti modified it because he felt "the test does not go far enough." Legislative Budget and Audit, No. 1JU-80-1163 CIV at 43. He reasoned that under the Biles test, the legislature could enact or repeal general law through an appropriations bill, and do so session after session, and completely render the confinement requirement meaningless.

After a careful review of relevant authority, the superior court expressed its view of the confinement provision by announcing the following test to be used in evaluating conditions added to appropriations:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is, appropriate, to an appropriation bill.

Legislative Budget and Audit, No. 1JU-80-1163 Mem. Decision at 44-45 (emphasis added, footnotes omitted).

Every instance where language is challenged in an appropriations bill is a new case which must be examined separately. Courts applying what appear to be similar tests to apparently similar facts reach opposite conclusions. Compare Welden v. Ray, 229 N.W.2d 706, 710 (Iowa 1975), with Henry v. Edwards, 346 So. 2d 153, 159-165 (La. 1977). We contend that the legislature may not indirectly repeal AS 43.20.013(a) by the amendment of the purpose of an appropriation. The constitution requires the legislature to place such a measure before the governor in a separate bill. Therefore, we believe you may ignore the purported amendment which limits the purposes for which the appropriation may be spent. We also find that there is no legislative intent to make the lapse date extension nonseverable from the other amendments contained in section 140. Under these circumstances, we believe the presumption of severability set out in AS 01.10.-030 controls.

**Sec. 43.20.012. Limitation on application of chapter; credits.** The tax imposed by this chapter does not apply to individuals or to fiduciaries. However, an individual may file a return under this chapter in order to receive a tax credit under AS 43.20.013. (§ 2 ch 1 SSSLA 1980; am § 2 ch 2 SSSLA 1980)

**Cross references.** — For legislative findings and purpose of the enacting legislation, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the 1980 Tempo-

rory and Special Acts and Resolves.

**Effect of amendments.** — The 1980 amendment made this section retroactive to January 1, 1979.

**Sec. 43.20.013. Individual tax credits.** (a) A resident individual is entitled to a tax credit not to exceed \$100 for

(1) a contribution made in a calendar year to a person or organization for use exclusively

(A) for a political campaign for a candidate for

(i) President or Vice President of the United States, whether or not the candidate will be voted on in a primary election in Alaska;

(ii) United States senator from Alaska;

(iii) United States representative from Alaska;

(iv) governor or lieutenant governor of Alaska;

(v) the Alaska legislature;

(vi) delegate to an Alaska constitutional convention;

(vii) electoral confirmation as a judge or justice of a court in Alaska;

or

(viii) municipal office in Alaska; or

(B) by a group seeking to influence the outcome of a ballot proposition or question in Alaska; and

(2) dues paid in a calendar year to a nonprofit organization organized primarily for the purpose of influencing elections in Alaska.

(b) A resident individual is entitled to a tax credit equal to 16 percent of the tax credit claimed by the individual on the federal income tax return of the individual for household and dependent care services necessary for gainful employment.

(c) The commissioner of revenue shall pay the amount of a tax credit allowed by this section to a resident individual who makes a return as provided in AS 43.20.012. A credit under this section shall be paid in the manner provided in AS 43.20.030(e) for the payment of refunds and payment may not be made without an appropriation for that purpose. (§ 2 ch 1 SSSLA 1980; am § 9 ch 1 SSSLA 1980; am § 2 ch 2 SSSLA 1980)

**Cross references.** — For legislative findings and purpose of the enacting legislation, see § 1, ch. 1, SSSLA 1980, and § 1, ch. 2, SSSLA 1980, in the Temporary and Special Acts.

1980 amendment substituted "\$100" for "\$50" in the introductory language of subsection (a).

The second 1980 amendment made this section retroactive to January 1, 1979.

**Effect of amendments.** — The first

(5) make recommendations and an annual report to the governor to be transmitted to the legislature concerning the condition, operation and functioning of the department and state laws relating to taxation and tax administration;

(6) adopt a seal and affix it to each order, process, or certificate issued by the commissioner;

(7) keep a record of each order, process, and certificate issued by the commissioner, and keep the record open to public inspection at all reasonable times;

(8) hold hearings and investigations necessary for the administration of state tax and revenue laws;

(9) hear and determine appeals involving income, excise, license, or other taxes levied under state laws and enter orders on the appeals which are final unless reversed or modified by the courts;

(10) require the attendance of witnesses and the production of necessary books, papers, documents, correspondence and other evidence at hearings;

(11) order the taking of depositions before a person competent to administer oaths;

(12) administer oaths and take acknowledgments;

(13) request the attorney general for rulings on the interpretation of the tax and revenue laws administered by the department;


(14) call upon the attorney general to institute actions for recovery of unpaid taxes, fees, excises, additions to tax, penalties and interest;

(15) issue warrants for the collection of unpaid tax penalties and interest and take all steps necessary and proper to enforce full and complete compliance with the tax, license, excise, and other revenue laws of the state;

(16) audit reports, payments, and payments due relating to royalty and net profits under oil and gas contracts, agreements, or leases under AS 38.05;

(17) contract to manage the assets of the Alaska Resources Corporation as provided in AS 37.12.075, and administer the outstanding loan portfolio upon dissolution of the corporation. (§ 48-2-9 ACLA 1949; § 7-1-8 ACLA 1949; am § 3 ch 61 SLA 1980; am § 13 ch 161 SLA 1984)

*Effect of amendments. — The 1984 amendment added paragraph (17).*

 **Sec. 43.05.085. List of contributions.** The commissioner of revenue shall prepare and furnish to the Alaska Public Offices Commission by July 1 of each year a list containing the total amount of contributions received by each candidate and group for which a credit was received by an individual under AS 43.20.013(a). The commis-

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sioner shall also mail a copy of the list to each of the candidates and groups which were recipients of those credited contributions. The list becomes public information under AS 09.25.110 — 09.25.120 on its delivery to the Alaska Public Offices Commission. (§ 4 ch 76 SLA 1974; am § 111 ch 6 SLA 1984; am § 1 ch 10 SLA 1986)

Effect of amendments. — The 1984 amendment substituted "Public Offices" for "Election Campaign" in the first sentence and made a series of internal reference and technical changes throughout the rest of the section.

The 1986 amendment substituted "contributions" for "contributors" in the catchline and rewrote the section.

Article 2. Fiscal Responsibilities.

- Section 140. Bonds
- 190. (Repealed)

Sec. 43.05.140. Bonds. Before taking office, the commissioner of revenue shall furnish a bond to the state. The bond shall be approved by the attorney general and filed with the Department of Administration, and a copy of it shall be filed in the attorney general's office. The bond shall be conditioned that the principal will faithfully discharge the duties of the office, keep a strict, true and correct account of all money disbursed, and that the principal will properly account for it and will pay over to a successor or other person entitled by law to receive it all money or property in the hands or possession of the principal, in accordance with law; or, in default, that the parties executing the bond will pay to the state and others injured all damages, costs, and expenses resulting from the default. The surety on the bond shall be a surety company authorized to transact business in the state. All premiums for the commissioner of revenue's bond shall be paid by the state. The amount of the bond shall be \$200,000, but if the funds in the treasury of the state exceed the amount of the bond given by the commissioner of revenue, or if for any reason the governor and the Department of Administration consider the bond insufficient they shall notify the commissioner of revenue of that fact, and the commissioner of revenue shall give the additional bond with sufficient sureties, within the time and in the amount which the governor and the Department of Administration consider necessary for the safety of the state. (§ 7-1-4 ACLA 1949)

Editor's notes. — This section is set out above to correct an error in the main pamphlet.

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: HB 184  
Publish Date: \_\_\_\_\_

REQUEST \_\_\_\_\_  
Revision Date: \_\_\_\_\_  
Title: An act relating to individual tax credits  
Sponsor: House Finance  
Requestor: Finance

Agency Affected: Revenue  
BRU: Administrative Services

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

No fiscal impact.

Prepared By: Ervin B. Jones  
Division: Administrative Services

Phone: 465-2313  
Date: 3/31/87

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 4/1/87

- Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary

14B

185

# HOUSE COMMITTEE REPORT

(11)

Date referred: 3/18/87

FURTHER REFERRALS:

DATE: 5/9/87

The Finance Committee has considered HB 185

"An Act repealing certain state loan programs and making miscellaneous changes to other state loan programs; and providing for an effective date."

**RECOMMENDATIONS:**

- replace with CS HB 185 (Fin)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

ADAMS Al Adams

POURCHOT Pat Pourchot

LARSON Ronald Larson

WALLIS Kay Wallis

BROWN Tay Brown

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

GOLL Peter Goll

SWACK-HAMMETT Swack-Hammett NO REC

BOYER Mark Boyer NO REC

RIEGER Steve Rieger No Recommendation

FRANK Frank NO REC

DAVIS Mike Davis NO REC

Al Adams  
Chairman's signature

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

No. 1

REQUEST: \_\_\_\_\_

Bill Version CSHB 185 (Fin.)  
Publish Date: HOUSE 3/18/87

Revision Date: \_\_\_\_\_

Agency Affected: Commerce & Econ. Dev.

Title: Repealing inactive loan programs  
& making miscellaneous changes to loan

BRU: Investments  
programs

Sponsor: Rules Committee

Components: Economic Development

Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached



Prepared by: Paul B. Arnoldt, Director  
Division: Investments

Phone: 465-2510  
Date: \_\_\_\_\_

Approved by Commissioner: J. Anthony Smith  
Agency: Commerce and Economic Development

Date: 2/26/87

Distribution (by preparer):

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)  
Senate Secretary  
5403W22387a

Attachment to Fiscal Note for HB 185

Section 5 of this bill would repeal the mandatory six to ten year forgiveness of interest contained in AS 16.10.525.

The assumptions used in developing this fiscal note are as follows:

1. An effective date of July 1, 1987.
2. \$3.1 million will be loaned out in FY 88 as proposed in the budget submitted to the Legislature.

While this fiscal note depicts no additional income during FY's 87-92, a significant increase in revenues to the Fisheries Enhancement Revolving Loan Fund will be realized in subsequent years.

Under the current law, interest is forgiven for at least the first six years, and as much as ten years. Under this bill, interest could be deferred up to ten years but not forgiven. If \$3.1 million in loans are made in FY 88 as anticipated, an additional \$2.2 million in interest would be collected over the life of those loans that would not have been collected under current statutes. (As a reference, \$1 million in loans would result in an additional \$723,000 in interest being collected.)

If this bill had been in effect since the inception of the Fisheries Enhancement Loan Fund, the State of Alaska would have received an additional \$38.1 million in interest over the life of the \$52.7 million already loaned out.

It is important to note that our analysis of fisheries enhancement portfolios indicates that our borrowers are financially strong and could have made the additional interest payments required under this bill.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 185 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act repealing certain state loan programs; creat-  
7 ing an economic development revolving loan fund; and  
8 making miscellaneous changes to other state loan  
9 programs; and providing for an effective date."

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

11 \* Section 1. AS 16.10.500 is amended to read:

12 ARTICLE 9. SALMON [FISHERIES] ENHANCEMENT LOAN PROGRAM.

13 Sec. 16.10.500. DECLARATION OF POLICY. It is the policy of the  
14 state, under AS 16.10.500 - 16.10.560, to promote the enhancement of  
15 the state's salmon fisheries by means of grants for organizational and  
16 planning purposes to regional associations described in AS 16.10.510  
17 which have qualified under AS 16.10.380, and by means of long-term,  
18 low interest loans for hatchery planning, construction, and operation  
19 [AND FOR PLANNING AND IMPLEMENTATION OF ENHANCEMENT AND REHABILITATION  
20 ACTIVITIES INCLUDING, BUT NOT LIMITED TO, LAKE FERTILIZATION AND  
21 HABITAT IMPROVEMENT].

22 \* Sec. 2. AS 16.10.505 is amended to read:

23 Sec. 16.10.505. SALMON [FISHERIES] ENHANCEMENT [REVOLVING] LOAN  
24 FUND. There is created within the Department of Commerce and Economic  
25 Development a loan [REVOLVING] fund to be known as the salmon [FISHER-  
26 IES] enhancement [REVOLVING] loan fund. The fund shall be used to  
27 carry out the purposes of AS 16.10.500 - 16.10.560 and for no other  
28 purpose. All principal and interest payments and all money chargeable  
29 to principal or interest that is collected through liquidation by

1 foreclosure or other process on loans made under AS 16.10.500 - 16.-  
2 10.620, shall be paid into the salmon enhancement revolving loan fund.

3 \* Sec. 3. AS 16.10.507(a) is amended to read:

4 (a) There is established as a special account within the salmon  
5 [FISHERIES] enhancement revolving loan fund the foreclosure expense  
6 account. This account is established as a reserve from fund equity.

7 \* Sec. 4. AS 16.10.510 is amended to read:

8 Sec. 16.10.510. POWERS AND DUTIES OF THE DEPARTMENT [COMMIS-  
9 SIONER]. The department [COMMISSIONER] may

10 (1) make loans to permit holders, qualified under AS 16.-  
11 10.400 - 16.10.475 [AS 16.10.400 - 16.10.470, INCLUDING THOSE HOLDERS  
12 ISSUED PERMITS BEFORE JUNE 24, 1977], for the preconstruction activ-  
13 ities [PLANNING], construction, and operation of salmon hatchery  
14 facilities;

15 (2) make loans. [TO QUALIFIED REGIONAL ASSOCIATIONS WHICH  
16 HAVE FORMED A NONPROFIT CORPORATION OR A LOCAL NONPROFIT CORPORATION  
17 APPROVED BY A QUALIFIED REGIONAL ASSOCIATION,] for preconstruction  
18 activities necessary to obtain a salmon hatchery permit under AS 16.-  
19 10.400 - 16.10.475;

20 (3) designate agents and delegate powers to them as neces-  
21 sary;

22 (4) adopt regulations necessary to carry out its [HIS]  
23 functions;

24 (5) establish loan terms [AMORTIZATION PLANS FOR REPAYMENT  
25 OF LOANS, NOT TO EXCEED 30 YEARS];

26 (6) [ESTABLISH THE RATE OF INTEREST FOR LOANS NOT TO EXCEED  
27 NINE AND ONE-HALF PERCENT A YEAR;

28 (7)] establish regional and local offices and advisory  
29 groups to carry out, or assist in carrying out, the duties and

1 authority of the department [COMMISSIONER];

2 (7) [(8) REPEALED

3 (9)] make grants for organizational and planning purposes to  
4 qualified regional associations that [WHICH] have formed a nonprofit  
5 corporation, in amounts not exceeding \$100,000 per region [AND UP TO  
6 AN ADDITIONAL \$100,000 ON A 50/50 CASH MATCHING BASIS WITH THE REGION-  
7 AL ASSOCIATIONS WHICH HAVE AN AUTHORIZED ROYALTY ASSESSMENT UNDER  
8 AS 16.10.530 OR 16.10.540. THE STATE PORTION OF THE MATCHING SHARE  
9 SHALL BE AVAILABLE WHEN A FINAL VOTE FOR ASSESSMENTS IS MADE UNDER  
10 AS 16.10.530 OR 16.10.540. THIS PROVISION ALSO APPLIES TO QUALIFIED  
11 REGIONAL ASSOCIATIONS WHICH HAVE FORMED A NONPROFIT CORPORATION BEFORE  
12 JUNE 24, 1977;

13 (10) MAKE LOANS TO QUALIFIED REGIONAL ASSOCIATIONS WHICH  
14 HAVE FORMED A NONPROFIT CORPORATION OR TO LOCAL NONPROFIT CORPORATIONS  
15 APPROVED BY QUALIFIED REGIONAL ASSOCIATIONS FOR PLANNING AND IMPLEMEN-  
16 TATION OF FISHERIES ENHANCEMENT AND REHABILITATION ACTIVITIES INCLUD-  
17 ING, BUT NOT LIMITED TO, LAKE FERTILIZATION AND HABITAT IMPROVEMENT].

18 \* Sec. 5. AS 16.10 is amended by adding new sections to read:

19 Sec. 16.10.515. LOAN ELIGIBILITY. (a) In order to be eligible  
20 for a salmon hatchery preconstruction loan, the applicant must be a  
21 nonprofit corporation whose permit application under AS 16.10.400 -  
22 16.10.475 has been accepted or approved by the Department of Fish and  
23 Game.

24 (b) In order to be eligible for a salmon hatchery construction  
25 or operation loan, the applicant must be a nonprofit corporation and  
26 hold a permit under AS 16.10.400 - 16.10.475 for the project for which  
27 funding is requested.

28 Sec. 16.10.518. LOAN TERMS. (a) All loans shall be secured by  
29 collateral satisfactory to the department, including a first deed of

1 trust, an assignment of lease and leasehold improvements, an assign-  
2 ment of future revenue from the sale of aquaculture products, or tax  
3 assessments from fishermen collected under AS 43.76.

4 (b) The interest rate on loans made under AS 16.10.500 - 16.-  
5 10.560 is nine and one-half percent a year.

6 (c) The maximum loan term is 30 years.

7 \* Sec. 6. AS 16.10.520(a) is repealed and reenacted to read:

8 (a) The total of all loans for a single salmon hatchery made to  
9 a regional aquaculture association or to a nonprofit corporation whose  
10 hatchery project has been approved by a regional aquaculture associa-  
11 tion may not exceed \$10,000,000 in a single fiscal year.

12 \* Sec. 7. AS 16.10.520(b) is repealed and reenacted to read:

13 (b) The total of all loans for a single salmon hatchery made to  
14 a nonprofit corporation not approved by a regional aquaculture asso-  
15 ciation may not exceed \$1,000,000 in a single fiscal year.

16 \* Sec. 8. AS 16.10.560 is amended to read:

17 Sec. 16.10.560. DEFINITIONS. In AS 16.10.500 - 16.10.560

18 (1) "commissioner" means the commissioner of commerce and  
19 economic development;

20 (2) "department" means the Department of Commerce and  
21 Economic Development;

22 (3) "regional aquaculture association" means an association  
23 that has been certified by the commissioner of fish and game as qual-  
24 ified under AS 16.10.380;

25 (4) "salmon hatchery" means a private, nonprofit facility,  
26 holding a permit under AS 16.10.400 - 16.10.475, for the artificial  
27 incubation of salmon eggs, which may include means for the rearing of  
28 juvenile salmon, for release in the natural waters of the state for  
29 common use.

1 \* Sec. 9. AS 26.15.040(d) is amended to read:

2 (d) [MONEY LOANED SHALL BE DELIVERED TO THE BORROWER IN THE FORM  
3 OF A WARRANT DRAWN ON THE TREASURY, VOUCHERED IN THE MANNER PRESCRIBED  
4 FOR STATE DISBURSING OFFICERS, AND CHARGED AGAINST THE ALASKA WORLD  
5 WAR II VETERANS' REVOLVING FUND. EACH VOUCHER SHALL BE APPROVED BY  
6 THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT OR ANY BONDED  
7 DEPUTY AUTHORIZED TO ACT AS A CERTIFYING OFFICER.] Upon repayment of  
8 loans by installments, or otherwise, in accordance with the prescribed  
9 terms, or upon liquidation by foreclosure or other process, or upon  
10 receipt of interest [OR OTHER REVENUE], the money so received shall be  
11 turned over to the commissioner of revenue for deposit in the Alaska  
12 World War II veterans' revolving fund.

13 \* Sec. 10. AS 26.15.040(d) is amended to read:

14 (d) Upon repayment of loans by installments, or otherwise, in  
15 accordance with the prescribed terms, or upon liquidation by foreclo-  
16 sure or other process, or upon receipt of interest, the money so  
17 received shall be turned over to the commissioner of revenue for  
18 deposit in the general [ALASKA WORLD WAR II VETERANS' REVOLVING] fund.

19 \* Sec. 11. AS 26.15.040(e) is amended to read:

20 (e) If a loan made under the veterans' loan program [(a)(3) OF  
21 THIS SECTION] is assigned by the borrower or if the real property that  
22 secures a loan made under the veterans' loan program [FORMER (a)(2) OR  
23 UNDER (a)(4) OF THIS SECTION] is transferred by the borrower, the  
24 commissioner of commerce and economic development shall allow the  
25 assignee or transferee to assume the outstanding indebtedness on the  
26 loan unless the commissioner determines in writing that the credit of  
27 the assignee or transferee is not satisfactory to assure repayment of  
28 the loan. The assignee or transferee may assume the outstanding  
29 indebtedness on the loan at the existing interest rate on the loan.

1 An assignee or transferee is eligible for more than one type of loan,  
2 but the total may not exceed \$125,000 at any one time.

3 \* Sec. 12. AS 27.09.010(a) is amended to read:

4 (a) There is established in the Department of Commerce and  
5 Economic Development the mining loan fund. [THE DEPARTMENT MAY MAKE  
6 LOANS FROM THE FUND TO UNDERWRITE ADVANCED MINERAL EXPLORATION, DEVEL-  
7 OPMENT, OR MINING IN THE STATE.]

8 \* Sec. 13. AS 27.09.010(b) is repealed and reenacted to read:

9 (b) The mining loan fund is a revolving loan fund. Upon repay-  
10 ment of loans by installments, or otherwise, in accordance with the  
11 prescribed terms, or upon liquidation by foreclosure or other process,  
12 or upon receipt of interest, the money so received shall be deposited  
13 in the mining loan fund.

14 \* Sec. 14. AS 27.09.010(b) is amended to read:

15 (b) [THE MINING LOAN FUND IS A REVOLVING FUND.] Upon repayment  
16 of loans by installments, or otherwise, in accordance with the pre-  
17 scribed terms, or upon liquidation by foreclosure or other process, or  
18 upon receipt of interest, the money so received shall be deposited in  
19 the general [MINING LOAN] fund.

20 \* Sec. 15. AS 27.09.050 is amended to read:

21 Sec. 27.09.050. REGULATIONS. The department may adopt regu-  
22 lations in accordance with the Administrative Procedure Act (AS 44.62)  
23 to administer this chapter. [REGULATIONS ADOPTED UNDER THIS SECTION  
24 SHALL BE PREPARED AFTER CONSULTATION WITH THE DEPARTMENT OF NATURAL  
25 RESOURCES OR AFTER CONSULTATION WITH A PERSON WHO, IN THE OPINION OF  
26 THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT OR A DESIGNEE,  
27 HAS BROAD EXPERIENCE IN AND IS HIGHLY QUALIFIED IN ADVANCED MINERAL  
28 EXPLORATION, DEVELOPMENT, AND MINING.]

29 \* Sec. 16. AS 41.98.175(a) is amended to read:

1 (a) In addition to uses of fund money authorized in AS 41.98.-  
2 170, money of the fund shall be used [UTILIZED] to make grants to  
3 municipalities of up to one-half the nonfederal share of costs of  
4 projects described in AS 41.98.170 which are initiated by a municipal-  
5 ity [, AND LOANS OF AMOUNTS NECESSARY TO ENABLE MUNICIPALITIES TO MAKE  
6 OPTION PAYMENTS ON PARKS AND OPEN SPACE LAND FOR THE ACQUISITION OF  
7 WHICH FEDERAL FUNDS ARE ANTICIPATED].

8 \* Sec. 17. AS 44.33 is amended by adding a new section to read:

9 Sec. 44.33.024. SPECIAL ACCOUNT ESTABLISHED. There is estab-  
10 lished as a special account, administered by the Department of Com-  
11 merce and Economic Development, the foreclosure expense account. The  
12 department may expend money appropriated to the foreclosure expense  
13 account when necessary to protect the state's security interest in  
14 collateral on loans made by the department, or to defray expenses  
15 incurred during foreclosure proceedings after a default by an obligor.

16 \* Sec. 18. AS 44.33.245(a) is amended to read:

17 (a) The department may

18 [(1) MAKE LOANS FOR THE CONSTRUCTION, RENOVATION, AND  
19 EQUIPPING OF CHILD CARE FACILITIES, INCLUDING PRIVATE NONPROFIT CHILD  
20 CARE FACILITIES;

21 (2)] adopt regulations necessary to carry out the pro-  
22 visions of AS 44.33.240 - 44.33.275.

23 \* Sec. 19. AS 44.33.255(d) is amended to read:

24 (d) All principal and interest payments, and all money charge-  
25 able to principal or interest that is collected through liquidation by  
26 foreclosure or other process on loans made under AS 44.33.240 - 44.-  
27 33.275, shall be paid into the child care facility revolving loan  
28 fund.

29 \* Sec. 20. AS 44.33.255(d) is amended to read:

1 (d) All principal and interest payments, and all money charge-  
2 able to principal or interest that is collected through liquidation by  
3 foreclosure or other process on loans made under AS 44.33.240 - 44.-  
4 33.275, shall be paid into the general [CHILD CARE FACILITY REVOLVING  
5 LOAN] fund.

6 \* Sec. 21. AS 45.88.030(d) is amended to read:

7 (d) Upon repayment of loans by installments, or otherwise, in  
8 accordance with the prescribed terms, or upon liquidation by foreclo-  
9 sure or other process, or upon receipt of interest, the money so  
10 received [ALL PRINCIPAL AND INTEREST PAYMENTS ON LOANS MADE UNDER THIS  
11 CHAPTER] shall be paid into the alternative [TECHNOLOGY AND] energy  
12 revolving loan fund.

13 \* Sec. 22. AS 45.88.030(d) is amended to read:

14 (d) Upon repayment of loans by installments, or otherwise, in  
15 accordance with the prescribed terms, or upon liquidation by foreclo-  
16 sure or other process, or upon receipt of interest, the money so  
17 received shall be paid into the general [ALTERNATIVE ENERGY REVOLVING  
18 LOAN] fund.

19 \* Sec. 23. AS 45.89.030(h) is amended to read:

20 (h) Upon repayment of loans by installments, or otherwise, in  
21 accordance with the prescribed terms, or upon liquidation by foreclo-  
22 sure or other process, or upon receipt of interest, the money so  
23 received [AMOUNTS REPAID ON A LOAN MADE UNDER THIS SECTION] shall be  
24 deposited to the residential energy conservation fund.

25 \* Sec. 24. AS 45.89.030(h) is amended to read:

26 (h) Upon repayment of loans by installments, or otherwise, in  
27 accordance with the prescribed terms, or upon liquidation by foreclo-  
28 sure or other process, or upon receipt of interest, the money so  
29 received shall be deposited to the general [RESIDENTIAL ENERGY

1 CONSERVATION] fund.

2 \* Sec. 25. AS 45.90.010 is amended to read:

3 Sec. 45.90.010. CREATION OF A TOURISM REVOLVING FUND. There is  
4 created in the Department of Commerce and Economic Development a  
5 tourism revolving fund. All principal and interest payments, and all  
6 money chargeable to principal or interest that is collected through  
7 liquidation by foreclosure or other process on loans made under this  
8 chapter, shall be paid into the tourism revolving fund.

9 \* Sec. 26. AS 45.90.010 is amended to read:

10 Sec. 45.90.010. LOAN REPAYMENTS. [CREATION OF A TOURISM REVOLV-  
11 ING FUND. THERE IS CREATED IN THE DEPARTMENT OF COMMERCE AND ECONOMIC  
12 DEVELOPMENT A TOURISM REVOLVING FUND.] All principal and interest  
13 payments, and all money chargeable to principal or interest that is  
14 collected through liquidation by foreclosure or other process on loans  
15 made under this chapter, shall be paid into the general [TOURISM  
16 REVOLVING] fund.

17 \* Sec. 27. AS 45.95.020(d) is amended to read:

18 (d) [MONEY LOANED SHALL BE DELIVERED TO THE BORROWER IN THE FORM  
19 OF A WARRANT DRAWN ON THE TREASURY, VOUCHERED IN THE MANNER PRESCRIBED  
20 FOR STATE DISBURSING OFFICERS, AND CHARGED AGAINST THE SMALL BUSINESS  
21 REVOLVING LOAN FUND. EACH VOUCHER SHALL BE APPROVED BY THE COMMIS-  
22 SIONER OR ANY BONDED DEPUTY AUTHORIZED TO ACT AS A CERTIFYING OFFI-  
23 CER.] Upon repayment of loans by installments, or otherwise, in  
24 accordance with the prescribed terms, or upon liquidation by foreclo-  
25 sure or other process, or upon receipt of interest [OR OTHER REVENUE],  
26 the money so received shall be turned over to the commissioner of  
27 revenue for deposit in the small business revolving loan fund.

28 \* Sec. 28. AS 45.95.020(d) is amended to read:

29 (d) Upon repayment of loans by installments, or otherwise, in

1 accordance with the prescribed terms, or upon liquidation by foreclo-  
2 sure or other process, or upon receipt of interest, the money so  
3 received shall be turned over to the commissioner of revenue for  
4 deposit in the general [SMALL BUSINESS REVOLVING LOAN] fund.

5 \* Sec. 29. AS 45 is amended by adding a new chapter to read:

6 CHAPTER 96. ECONOMIC DEVELOPMENT REVOLVING LOAN FUND.

7 Sec. 45.96.010. CREATION OF ECONOMIC DEVELOPMENT REVOLVING LOAN  
8 FUND. There is created in the department an economic development  
9 revolving loan fund to carry out the purposes of this chapter, includ-  
10 ing the administration of a revolving loan fund qualified to receive  
11 revolving loan fund grants from the United States Economic Development  
12 Administration (EDA) under Title IX of the Public Works and Economic  
13 Development Act of 1965, as amended (42 U.S.C. 3121 et seq.). All  
14 money granted to the state by the United States Economic Development  
15 Administration, all money appropriated to the fund, all principal and  
16 interest payments, and all money chargeable to principal or interest  
17 that is collected through liquidation by foreclosure or other process  
18 on loans made under this chapter, shall be paid into the economic  
19 development revolving loan fund.

20 Sec. 45.96.020. SPECIAL ACCOUNT ESTABLISHED. (a) There is  
21 established as a special account within the economic development  
22 revolving loan fund the foreclosure expense account. This account is  
23 established as a reserve from fund equity.

24 (b) The commissioner may expend money credited to the foreclo-  
25 sure expense account when necessary to protect the state's security  
26 interest in collateral on loans made under AS 45.96.030 or to defray  
27 expenses incurred during foreclosure proceedings after a default by an  
28 obligor.

29 Sec. 45.96.030. POWERS AND DUTIES OF THE DEPARTMENT. (a) The

1 department may

2 (1) accept United States Economic Development Administra-  
3 tion revolving fund grants;

4 (2) make loans to eligible applicants under the United  
5 States Economic Development Administration Long-Term Economic Deteri-  
6 oration (LTED) and Sudden and Severe Economic Dislocation (SSED)  
7 programs;

8 (3) designate agents and delegate powers to them as neces-  
9 sary;

10 (4) adopt regulations necessary to carry out its functions  
11 and to administer programs under United States Economic Development  
12 Administration guidelines, including regulations to establish reason-  
13 able fees for services provided;

14 (5) establish amortization plans for the repayment of loans  
15 that may include extensions; and

16 (6) charge and collect the fees established under this  
17 subsection.

18 (b) The commissioner of administration shall separately account  
19 for all fees and collection charges that the department deposits in  
20 the general fund. The annual estimated balance in the account may be  
21 used by the legislature to make appropriations to the department to  
22 carry out the purposes of this chapter.

23 Sec. 45.96.040. DISPOSAL OF PROPERTY ACQUIRED BY DEFAULT OR  
24 FORECLOSURE. The department shall dispose of property acquired  
25 through default or foreclosure on a loan made under this chapter.  
26 Disposal shall be made in a manner that serves the best interests of  
27 the state and may include the amortization of payments over a period  
28 of years.

29 Sec. 45.96.500. DEFINITIONS. In this chapter

1 (1) "commissioner" means the commissioner of commerce and  
2 economic development;

3 (2) "department" means the Department of Commerce and  
4 Economic Development.

5 \* Sec. 30. AS 45.98.010 is amended to read:

6 Sec. 45.98.010. CREATION OF HISTORICAL DISTRICT REVOLVING LOAN  
7 FUND. There is created in the Department of Commerce and Economic  
8 Development a historical district revolving loan fund. Upon repayment  
9 of loans made under this chapter by installments, or otherwise, in  
10 accordance with the prescribed terms, or upon liquidation by foreclo-  
11 sure or other process, or upon receipt of interest, the money so  
12 received shall be deposited to the historical district revolving loan  
13 fund.

14 \* Sec. 31. AS 45.98.010 is amended to read:

15 Sec. 45.98.010. LOAN REPAYMENTS. [CREATION OF HISTORICAL DIS-  
16 TRICT REVOLVING LOAN FUND. THERE IS CREATED IN THE DEPARTMENT OF  
17 COMMERCE AND ECONOMIC DEVELOPMENT A HISTORICAL DISTRICT REVOLVING LOAN  
18 FUND.] Upon repayment of loans made under this chapter by install-  
19 ments, or otherwise, in accordance with the prescribed terms, or upon  
20 liquidation by foreclosure or other process, or upon receipt of inter-  
21 est, the money so received shall be deposited to the general [HISTOR-  
22 ICAL DISTRICT REVOLVING LOAN] fund.

23 \* Sec. 32. AS 45.98.030 is amended to read:

24 Sec. 45.98.030. POWERS AND DUTIES OF THE DEPARTMENT. For pur-  
25 poses of administering this chapter, the Department of Commerce and  
26 Economic Development may

27 (1) [PRESCRIBE THE FORM AND PROCEDURE FOR SUBMITTING LOAN  
28 APPLICATIONS UNDER THIS CHAPTER;

29 (2)] designate agents and delegate powers to them as is

1 necessary;

2 (2) [(3) IN CONSULTATION WITH THE HISTORIC SITES ADVISORY  
3 COMMITTEE,] adopt regulations necessary to carry out its functions [,  
4 INCLUDING REGULATIONS FOR THE PROCESS OF PLAN APPROVAL BY THE COMMIT-  
5 TEE];

6 (3) [(4)] establish amortization plans for the repayment of  
7 loans not to exceed 30 years.

8 \* Sec. 33. AS 16.10.320(b), 16.10.520(c), 16.10.520(e), 16.10.540;  
9 AS 26.15.010(b), 26.15.010(c), 26.15.030(c)(6), 26.15.030(c)(7), 26.15.-  
10 040(a), 26.15.040(b), 26.15.040(c), 26.15.050, 26.15.060, 26.15.130,  
11 26.15.140, 26.15.160; AS 27.09.020, 27.09.030, 27.09.040, 27.09.045,  
12 27.09.060(1), 27.09.060(2), 27.09.060(4), 27.09.060(6); AS 41.30; AS 41.-  
13 98.175(b), 41.98.175(c); AS 44.33.020(5), 44.33.245(b), 44.33.255(a),  
14 44.33.255(b), 44.33.255(c), 44.33.260; AS 44.62.330(a)(46); AS 45.88.-  
15 020(a)(1), 45.88.020(b), 45.88.020(c), 45.88.030(a), 45.88.030(b), 45.88.-  
16 030(c), 45.88.030(e), 45.88.500; AS 45.89.030(a), 45.89.030(b), 45.89.-  
17 030(c), 45.89.030(d), 45.89.030(e), 45.89.030(f), 45.89.030(g), 45.89.-  
18 030(i), 45.89.030(j), 45.89.030(k), 45.89.500(3), 45.89.500(4); AS 45.90.-  
19 020(a)(1), 45.90.020(a)(4), 45.90.020(b), 45.90.030; AS 45.92; AS 45.94;  
20 AS 45.95.010(b), 45.95.010(c), 45.95.020(a), 45.95.020(e), 45.95.030,  
21 45.95.070; AS 45.98.020, 45.98.040(1), 45.98.040(2), 45.98.040(3), 45.98.-  
22 040(4); and secs. 3 and 4, ch. 156, SLA 1984, are repealed.

23 \* Sec. 34. AS 26.15.090, 26.15.095; AS 27.09.010(a), 27.09.015, 27.09.-  
24 060(5); AS 44.33.240, 44.33.242; AS 45.88.010, 45.88.015; AS 45.89.010,  
25 45.89.015; AS 45.90.015; AS 45.95.060, 45.95.065; and AS 45.98.015 are  
26 repealed.

27 \* Sec. 35. Sections 1 - 9, 11 - 13, 15, 16, 18, 19, 21, 23, 25, 27, 29,  
28 30, 32, and 33 of this Act take effect immediately under AS 01.10.070(c).

29 \* Sec. 36. Sections 10, 14, 17, 20, 22, 24, 26, 28, 31, and 34 of this

1 Act take effect July 1, 1988.

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March 31, 1987

SECTIONAL ANALYSIS  
HB 185

"AN ACT REPEALING CERTAIN STATE LOAN PROGRAMS AND MAKING MISCELLANEOUS CHANGES TO OTHER STATE LOAN PROGRAMS; AND PROVIDING FOR AN EFFECTIVE DATE."

PREPARED BY  
DIVISION OF INVESTMENTS  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Salmon Enhancement Loans

Sec. 1. Article 9. Housekeeping: The title is amended for clarity and consistency.

AS 16.10.500. Housekeeping: The word salmon is being added for clarity and consistency.

AS 16.10.500. Program Amendment: Eliminates enhancement and rehabilitation activities as they are not prudent to lend on since they do not produce revenue for debt service or operating costs. These activities can be funded by the regional's enhancement tax or surplus fish revenues.

Sec. 2. AS 16.10.505. Housekeeping: The word salmon is being added for consistency.

Sec. 3. AS 16.10.507(a). Housekeeping: The word salmon is being added for consistency.

Sec. 4. AS 16.10.510. Housekeeping: The powers and duties of the section were given to the department, rather than the commissioner, to be consistent with other loan programs.

AS 16.10.510(1). Housekeeping: This section adds clarifying language consistent with the rest of the chapter and removes obsolete references.

AS 16.10.510(2). Housekeeping: This section removes qualifying language which is moved to AS 16.10.515 under Section 5.

AS 16.10.510(2). Program amendment: Removes the requirement that a nonprofit corporation must be approved by a regional aquaculture association in order to be eligible to receive a preconstruction loan.

AS 16.10.510(4). Housekeeping: Updates reference to previously changed item.

AS 16.10.510(5). Housekeeping: This section adds updated language and removes specific loan term language which is moved to AS 16.10.518(c) under Section 5.

AS 16.10.510(6). Housekeeping: This section removes specific interest rate language which is moved to AS 16.10.518(b) under Section 5.

AS 16.10.510(7). Housekeeping: Removes reference to previously changed item.

AS 16.10.510(9). Housekeeping: Removes language for 50/50 matching grant, as royalty assessments are unconstitutional and no longer contained in the chapter.

AS 16.10.510(10). Program Amendment: Eliminates enhancement and rehabilitation activities as they are not prudent to lend on since they do not produce revenue for debt service or operating costs. These activities can be funded by the regional's enhancement tax or surplus fish revenues.

Sec. 5. AS 16.10.515. Housekeeping: The LOAN ELIGIBILITY section was created to consolidate all eligibility requirements.

AS 16.10.518. Housekeeping: The LOAN TERMS section was created to consolidate all loan terms.

AS 16.10.518(d) Program Amendment: This section has two changes:

1. Principal: Current law mandates a six to ten year principal deferment for each loan during which no payments can be collected. The new language allows, but does not require, deferment of principal up to ten years. An example of no deferment could be a shortfall in revenues that requires an operating loan that could be paid back from the following year's revenue. Having to wait a minimum of six years for such a repayment is an unnecessary subsidy.
2. Interest: Current law requires interest forgiveness during the initial six to ten year period of each loan. The new language allows, but does not require,

a deferment of interest up to ten years, with the deferred interest being collected over the remaining term of the loan. Hatchery pro formas show that successful facilities will have more than adequate cash flow at full production to recapture deferred interest. This would eliminate the major subsidy now required under this program.

Sec. 6. AS 16.10.520(a). Housekeeping: This section puts a \$10,000,000 limit on the total capital loans made to a regional, or to a nonregional approved by a regional, for a single salmon hatchery. This limit was not previously clear due to ambiguous language.

Sec. 7. AS 16.10.520(b). Housekeeping: This section puts a \$2,000,000 limit on the total capital loans made to a nonregional not approved by a regional for a single salmon hatchery. This limit was not previously clear due to ambiguous language.

Sec. 8. AS 16.10.560. Housekeeping: The words "department" and "regional aquaculture association" and their definitions have been added and the definition of "salmon hatchery" has been clarified.

#### Veterans' Loans

Sec. 9. AS 26.15.040(d). Housekeeping: This section repeals language relating to the procedures to be followed in disbursing loan funds. As the department has not made loans under this program since 1980, this procedural language is now obsolete and unnecessary. Also, if the department were making new loans, the procedures outlined would not necessarily be the appropriate ones to follow.

Sec. 10. AS 26.15.040(e). Housekeeping: This section removes a specific statutory cite reference which is being repealed (Sec. 21) and replaces it with a more general reference to "the veterans' loan program." Language setting out certain eligibility criteria under the program is also being relocated here due to the repeal (Sec. 21) of the statute containing this language.

#### Mining Loans

Sec. 11. AS 27.09.010. Program Amendment: This section removes the authority of the department to make mining loans.

AS 27.09.010. Housekeeping: This section clarifies language related to the establishment of the revolving loan fund and deposits into the fund.

Sec. 12. AS 27.09.050. Program Amendment: This section removes the requirement that the department consult with the Department of Natural Resources or other highly qualified person when regulations are prepared.

Outdoor Recreational, Open Space,  
and Historic Properties

Sec. 13. AS 41.98.175(a). This section does not affect the Department of Commerce and Economic Development.

Child Care Facility Loans

Sec. 14. AS 44.33.245(a). Program Amendment: This section removes authority for the department to make child care facility loans.

Sec. 15. AS 44.33.255(d). Housekeeping: This section adds the requirement that all monies received through liquidation of child care facility loans be deposited into the child care facility revolving loan fund.

Alternative Energy Loans

Sec. 16. AS 45.88.030(d). Housekeeping: This section adds the requirement that all monies received through liquidation of alternative energy loans be deposited into the alternative energy revolving loan fund. The section also removes reference to the Alternative Technology loan program which was sunsetted in 1984.

Residential Energy Conservation Loans

Sec. 17. AS 45.89.030(h). Housekeeping: This section adds the requirement that all monies received through liquidation of residential energy conservation loans be deposited in the residential energy conservation revolving loan fund.

### Small Business Loans

Sec. 18. AS 45.95.020(d). Housekeeping: This section repeals language relating to the procedures to be followed in disbursing loan funds. As the department has not made loans under this program since 1980, this procedural language is now obsolete and unnecessary. Also, if the department were making new loans, the procedures outlined would not necessarily be the appropriate ones to follow.

### Historical District Loans

Sec. 19. AS 45.98.010. Housekeeping: This section adds the requirement that all monies received through liquidation of historical district loans be deposited in the historical district revolving loan fund.

Sec. 20. AS 45.98.030. Housekeeping: This section removes language referencing the form and procedure for submitting loan applications and consulting with the Historic Sites Advisory Committee.

### Repealed Statutes

Sec. 21. AS 16.10.320(b). Commercial Fishing. Housekeeping: This section repeals requirements which are now obsolete due to changes in federal laws.

AS 16.10.520(c). Salmon Enhancement. Housekeeping: Repeals collateral requirements; this section was modified for clarity and added to Section 5.

AS 16.10.520(e). Salmon Enhancement. Housekeeping: Repeals the section that ties the amount that can be lent to an annual appropriation. Loan limits are already established in the chapter (secs. 6 and 7) and are further limited by the amount of money available in the revolving loan fund.

AS 16.10.525. Salmon Enhancement. Program Amendment: Repeals the section dealing with the initial period of a loan; see Section 5.

AS 16.10.540. Salmon Enhancement. Housekeeping: Repeals the requirements for taking an assignment of voluntary tax assessments; this authority has been added under Section 5.

AS 26.15. Veterans'. Housekeeping: All repealed statutes for this program are obsolete and unnecessary due to the inactive status of the program. These include those referring to eligibility, the various types of loans originally authorized, and certain administrative procedures.

AS 27.09. Mining. Program Amendment: All repealed 27.09 statutes are those referring to loan eligibility, terms and definitions which are no longer necessary because the authority to make mining loans is removed in Sec. 11.

AS 41.30. Area Redevelopment. These sections do not affect the Department of Commerce and Economic Development.

AS 41.98.175(b) and (c). Outdoor Recreational, Open Space and Historic Properties. These sections do not affect the Department of Commerce and Economic Development.

AS 44.33. Child Care Facility. Program Amendment: All repealed 44.33 statutes are those referring to loan eligibility and terms which are no longer necessary because the authority to make child care facility loans is removed in Sec. 14.

AS 44.62.330(a)(46). Fisheries Enhancement. Program Amendment: This is the only loan program subject to the appeal requirements of the Administrative Procedure Act. The department currently has regulations establishing an appeal process for all its loan programs, including Fisheries Enhancement. This process has been successful in all other loan programs administered by the department.

AS 45.88. Alternative Energy. Program Amendment: These repeal the lending authority of the department for this program.

AS 45.89. Residential Energy Conservation. Program Amendment: These repeal the lending authority of the department for this program.

AS 45.90.020(a)(1) and (4), and (b); and AS 45.90.030. Tourism. Housekeeping: These statutes, relating to eligibility and various loan limitations such as the maximum loan amounts, collateral requirements, interest rate, etc., are obsolete and unnecessary due to the inactive status of the program.

AS 45.92. Fishery Product Guarantee. These sections do not affect the Department of Commerce and Economic Development.

AS 45.94. Forest Product Guarantee. These sections do not affect the Department of Commerce and Economic Development.

AS 45.95. Small Business. Housekeeping. All repealed 45.95 statutes relating to eligibility, loan limitations, etc. are obsolete and unnecessary due to the inactive status of the program.

AS 45.98. Historical District. Program Amendment. These repeal the lending authority of the department for this program.

Secs. 3 and 4, ch. 156 SLA 1984. Tourism and Small Business. Program Amendment: These sections require the cash balance of these revolving loan funds to be transferred annually to the general fund. As continuing appropriations, these sections are arguably illegal under recent court decisions. If this bill passes, it is recommended that similar language for all repealed loan funds be inserted into the budget bill each year. This recommendation is set out and explained in the Governor's transmittal letter.

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1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 185

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act repealing certain state loan programs and  
7 making miscellaneous changes to other state loan  
8 programs; and providing for an effective date."

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

10 \* Section 1. AS 16.10.500 is amended to read:

11 ARTICLE 9. SALMON [FISHERIES] ENHANCEMENT LOAN PROGRAM.

12 Sec. 16.10.500. DECLARATION OF POLICY. It is the policy of the  
13 state, under AS 16.10.500 -- 16.10.560, to promote the enhancement of  
14 the state's salmon fisheries by means of grants for organizational and  
15 planning purposes to regional associations described in AS 16.10.510  
16 which have qualified under AS 16.10.380, and by means of long-term,  
17 low interest loans for hatchery planning, construction, and operation  
18 [AND FOR PLANNING AND IMPLEMENTATION OF ENHANCEMENT AND REHABILITATION  
19 ACTIVITIES INCLUDING, BUT NOT LIMITED TO, LAKE FERTILIZATION AND  
20 HABITAT IMPROVEMENT].

21 \* Sec. 2. AS 16.10.505 is amended to read:

22 Sec. 16.10.505. SALMON [FISHERIES] ENHANCEMENT REVOLVING LOAN  
23 FUND. There is created within the Department of Commerce and Economic  
24 Development a revolving fund to be known as the salmon [FISHERIES]  
25 enhancement revolving loan fund. The fund must [SHALL] be used to  
26 carry out the purposes of AS 16.10.500 -- 16.10.560 and for no other  
27 purpose.

28 \* Sec. 3. AS 16.10.507(a) is amended to read:

29 (a) There is established as a special account within the salmon

1 [FISHERIES] enhancement revolving loan fund the foreclosure expense  
2 account. This account is established as a reserve from fund equity.

3 \* Sec. 4. AS 16.10.510 is amended to read:

4 Sec. 16.10.510. POWERS AND DUTIES OF THE DEPARTMENT [COMMIS-  
5 SIONER]. The department [COMMISSIONER] may

6 (1) make loans to permit holders, qualified under AS 16.-  
7 10.400 -- 16.10.475 [16.10.470, INCLUDING THOSE HOLDERS ISSUED PERMITS  
8 BEFORE JUNE 24, 1977], for the preconstruction activities [PLANNING],  
9 construction, and operation of salmon hatchery facilities;

10 (2) make loans [TO QUALIFIED REGIONAL ASSOCIATIONS WHICH  
11 HAVE FORMED A NONPROFIT CORPORATION OR A LOCAL NONPROFIT CORPORATION  
12 APPROVED BY A QUALIFIED REGIONAL ASSOCIATION,] for preconstruction  
13 activities necessary to obtain a salmon hatchery permit under AS 16.-  
14 10.400 -- 16.10.475;

15 (3) designate agents and delegate powers to them as neces-  
16 sary;

17 (4) adopt regulations necessary to carry out its [HIS]  
18 functions;

19 (5) establish loan terms [AMORTIZATION PLANS FOR REPAYMENT  
20 OF LOANS, NOT TO EXCEED 30 YEARS];

21 (6) establish the rate of interest for loans [NOT TO EXCEED  
22 NINE AND ONE-HALF PER CENT A YEAR];

23 (7) establish regional and local offices and advisory  
24 groups to carry out, or assist in carrying out, the duties and author-  
25 ity of the department [COMMISSIONER];

26 (8) [Repealed, sec. 77, ch 106, SLA 1980.]

27 (9) make grants for organizational and planning purposes to  
28 qualified regional associations that [WHICH] have formed a nonprofit  
29 corporation, in amounts not exceeding \$100,000 per region [AND UP TO

1 AN ADDITIONAL \$100,000 ON A 50/50 CASH MATCHING BASIS WITH THE REGION-  
2 AL ASSOCIATIONS WHICH HAVE AN AUTHORIZED ROYALTY ASSESSMENT UNDER AS  
3 16.10.530 OR 16.10.540. THE STATE PORTION OF THE MATCHING SHARE SHALL  
4 BE AVAILABLE WHEN A FINAL VOTE FOR ASSESSMENTS IS MADE UNDER AS 16.-  
5 10.530 OR 16.10.540. THIS PROVISION ALSO APPLIES TO QUALIFIED REGION-  
6 AL ASSOCIATIONS WHICH HAVE FORMED A NONPROFIT CORPORATION BEFORE JUNE  
7 24, 1977;

8 (10) MAKE LOANS TO QUALIFIED REGIONAL ASSOCIATIONS WHICH  
9 HAVE FORMED A NONPROFIT CORPORATION OR TO LOCAL NONPROFIT CORPORATIONS  
10 APPROVED BY QUALIFIED REGIONAL ASSOCIATIONS FOR PLANNING AND IMPLEMEN-  
11 TATION OF FISHERIES ENHANCEMENT AND REHABILITATION ACTIVITIES INCLUD-  
12 ING, BUT NOT LIMITED TO, LAKE FERTILIZATION AND HABITAT IMPROVEMENT].

13 \* Sec. 5. AS 16.10 is amended by adding new sections to read:

14 Sec. 16.10.515. LOAN ELIGIBILITY. (a) In order to be eligible  
15 for a salmon hatchery preconstruction loan, the applicant must be a  
16 nonprofit corporation whose permit application under AS 16.10.400 --  
17 16.10.475 has been accepted or approved by the Department of Fish and  
18 Game.

19 (b) In order to be eligible for a salmon hatchery construction  
20 or operation loan, the applicant must be a nonprofit corporation and  
21 hold a permit under AS 16.10.400 -- 16.10.475 for the project for  
22 which funding is requested.

23 Sec. 16.10.518. LOAN TERMS. (a) All loans must be secured by  
24 collateral satisfactory to the department, including a first deed of  
25 trust, an assignment of lease and leasehold improvements, an assign-  
26 ment of future revenues from the sale of aquaculture products, or tax  
27 assessments from fishermen collected under AS 43.76.010 -- 43.76.040.

28 (b) The interest rate on loans made under AS 16.10.500 -- 16.-  
29 10.560 is nine and one-half percent a year.

1 (c) The maximum loan term is 30 years.

2 (d) The department may defer principal and interest payments up  
3 to 10 years for the purpose of allowing the borrower to establish  
4 sufficient cash flow while brood stock or harvest schedules are being  
5 developed.

6 \* Sec. 6. AS 16.10.520(a) is repealed and reenacted to read:

7 (a) The total of all preconstruction and construction loans for  
8 a single salmon hatchery made to a regional aquaculture association or  
9 to a nonprofit corporation whose hatchery project has been approved by  
10 a regional aquaculture association may not exceed \$10,000,000.

11 \* Sec. 7. AS 16.10.520(b) is repealed and reenacted to read:

12 (b) The total of all preconstruction and construction loans for  
13 a single salmon hatchery made to a nonprofit corporation not approved  
14 by a regional aquaculture association may not exceed \$2,000,000.

15 \* Sec. 8. AS 16.10.560 is amended to read:

16 Sec. 16.10.560. DEFINITIONS. In AS 16.10.500 -- 16.10.560

17 (1) "commissioner" means the commissioner of commerce and  
18 economic development;

19 (2) "department" means the Department of Commerce and  
20 Economic Development;

21 (3) "regional aquaculture association" means an association  
22 that has been certified by the commissioner of fish and game as quali-  
23 fying under AS 16.10.380;

24 (4) "salmon hatchery" means a private, nonprofit facility,  
25 holding a permit under AS 16.10.400 -- 16.10.475, for the artificial  
26 incubation of salmon eggs, which may include means for the rearing of  
27 juvenile salmon, for release in the natural waters of Alaska for  
28 common use.

29 \* Sec. 9. AS 26.15.040(d) is amended to read: