

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

CSSHB 346 thru HB 356 341

C S S S H B

3 4 6

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 5/6/88

4/28/88
Mr. President:

FINANCE Committee considered CSSSHB 346 (RES)

authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for elderly persons; efd

and recommended

[] replace with _____ CS _____) [] same title
[] or adopt _____ CS _____) [] 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 ^{DPS}DF&G [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

Paul Frisk (No Pass)

Rick Halford do pass
Chairman signature and recommendation

[] Committee Backup attached

FISCAL NOTE

No. 1

REQUEST:

Revision Date: _____
 Title: An act authorizing the Board of Fisheries to establish noncommercial fishing seasons...
 Sponsor: Adams, Goll
 Requestor: House Resources
 Agency Affected: Public Safety
 BRU: Fish & Wildlife Protection
 Components: Enforcement

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE						

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)

No fiscal impact is anticipated.

JNR
2/10/88
 Prepared by: Captain Conrad G. Seibel *C. Seibel* Phone: 269-5509
 Division: Fish & Wildlife Protection Date: 2/2/88
 Approved by Commissioner: [Signature] Date: 2-10-88
 Agency: Department of Public Safety

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Fish and Game
 Title: Authorizing Bd. of Fish to BRU: Boards
establish fishing areas for children & elderly
 Sponsor: Adams and Goll Components: _____
 Requestor: House Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Beth Stewart Phone: 465-4100
 Division: Boards Date: 2/11/88

Approved by Commissioner: [Signature] Date: 2/11/88
 Agency: Fish and Game

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

DECLASSIFIED

FEB 19 1988

LEGISLATIVE FINANCE

Original sponsors: Adams, Goll
and Wallis

1 IN THE HOUSE BY THE RESOURCES COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 346 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL
6 For an Act entitled: "An Act authorizing the Board of Fisheries to estab-
7 lish noncommercial fishing seasons and areas for
8 elderly persons; and providing for an effective
9 date."

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

11 * Section 1. FINDINGS. The legislature finds that many people 60 years
12 of age and older may need separate seasons and areas in order to continue
13 sport, personal use, or subsistence fishing because they are generally less
14 able to gain access to fishing areas that may be open to all age groups.

15 * Sec. 2. AS 16.05.251(a) is amended to read:

16 (a) The Board of Fisheries may adopt regulations it considers
17 advisable in accordance with the Administrative Procedure Act (AS 44.-
18 62) for

19 (1) setting apart fish reserve areas, refuges, and sanctu-
20 aries in the waters of the state over which it has jurisdiction,
21 subject to the approval of the legislature;

22 (2) establishing open and closed seasons and areas for the
23 taking of fish; if consistent with resource conservation and develop-
24 ment goals, the board may adopt regulations establishing restricted
25 seasons and areas necessary for persons 60 years of age and older to
26 participate in sport, personal use, or subsistence fishing;

27 (3) setting quotas, bag limits, harvest levels, and sex and
28 size limitations on the taking of fish;

29 (4) establishing the means and methods employed in the

1 pursuit, capture, and transport of fish;

2 (5) establishing marking and identification requirements
3 for means used in pursuit, capture, and transport of fish;

4 (6) classifying as commercial fish, sport fish, personal
5 use fish, subsistence fish, or predators or other categories essential
6 for regulatory purposes;

7 (7) watershed and habitat improvement, and management,
8 conservation, protection, use, disposal, propagation, and stocking of
9 fish;

10 (8) investigating and determining the extent and effect of
11 disease, predation, and competition among fish in the state, exercis-
12 ing control measures considered necessary to the resources of the
13 state;

14 (9) prohibiting and regulating the live capture, posses-
15 sion, transport, or release of native or exotic fish or their eggs;

16 (10) establishing seasons, areas, quotas, and methods of
17 harvest for aquatic plants;

18 (11) establishing the times and dates during which the
19 issuance of fishing licenses, permits, and registrations and the
20 transfer of permits and registrations between registration areas is
21 allowed; however, this paragraph does not apply to permits issued or
22 transferred under AS 16.43;

23 (12) regulating commercial, sport, subsistence, and personal
24 use fishing as needed for the conservation, development, and utiliza-
25 tion of fisheries;

26 (13) requiring, in a fishery, observers on board fishing
27 vessels, as defined in AS 16.05.475(d), that are registered under the
28 laws of the state, as defined in AS 16.05.475(c), after making a
29 written determination that an on-board observer program

1 (A) is the only practical data-gathering or enforce-
2 ment mechanism for that fishery;
3 (B) will not unduly disrupt the fishery;
4 (C) can be conducted at a reasonable cost; and
5 (D) can be coordinated with observer programs of other
6 agencies, including the National Marine Fisheries Service, North
7 Pacific Fishery Management Council, and the International Pacific
8 Halibut Commission;
9 (14) establishing nonexclusive, exclusive, and superexclu-
10 sive registration and use areas for regulating commercial fishing.
11 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

RECEIVED APR 27 1988

Alaska State Legislature
House of Representatives

Al Adams
Chairman
Committee on Finance

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

Official Business

DATE: April 27, 1988

TO: Senator Rick Halford, Chair
Senate Finance Committee

FROM: Representative Al Adams, Chair *AAA*
House Finance Committee

RE: House Resources Committee Substitute for House Bill 346, "An Act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for elderly persons; and providing for an effective date.

I would appreciate the Senate Finance Committee hearing the aforementioned bill. Following is a history and summary of the legislation.

This bill would allow the Board of Fisheries to open fishing areas otherwise closed to those age 60 or over if this act was consistent with resource conservation goals. Currently the Board lacks the statutory authority to allow for these exceptions.

This issue was brought to my attention because of an incident on the Unalakleet River where fishing was suspended yet the community and local Fish and Game Department staff realized that continued fishing by the elderly would cause no harm to the resource. The Southern Norton Sound Fish and Game Advisory Committee endorsed passage of legislation that would permit the board to make these exceptions, according to Chairman Weaver Ivanoff. Upon further investigation, it appears the problem has not been limited to this particular area of the state but on occasion has presented problems in Homer and Anchorage.

This knowledge led to my sponsorship of the bill that has taken a change somewhat in form but not in intent since its introduction. The first change involved a sponsor substitute to change the age cut-off for the elderly from age 65 to age 60. This was an important alteration in that it created

consistency with other statutory exceptions for the elderly such as the provisions that allow this age group to cease purchase of hunting, fishing or trapping licenses. According to the Attorney General's office, if there were a constitutional challenge to special treatment of this age group, the consistency of this age cut-off throughout statutes would provide knowledge that this was not an arbitrary choice of age and legal security from an individual section of statute being challenged successfully.

When the bill was in the House Resources Committee in its original form, it provided exceptions for those age 12 or under in addition to the elderly age group. When the issue of a need for legislative findings to support reasons for special treatment of the age 12 and under group emerged, it was found to be difficult to arrive at these justifications. As a result, and with my support, the Resources Committee removed the younger group leaving the provisions for the elderly intact.

Another question that arose during Finance Committee hearing involved whether in the instance of subsistence activities in a boat, whether all of the people participating in the activity would need to be age 60 or over. Norm Cohen of the Office of the Commissioner of Fish and Game has replied that most probably the Board of Fisheries would adopt regulations that limited direct involvement in the subsistence activity to those over age 60. For example, younger people could ride in the boat but not operate it or become involved in setting or pulling the net.

For its length, the bill is relatively simple as shown in the following sectional analysis:

- Sect 1: Findings section that cites the difficulty the elderly may have in access to fishing areas.
- Sect 2: Cites the criteria for the Board of Fisheries to use when establishing regulations that now includes the elderly provision.
- Sect 3: Immediate effective date.

The bill has no fiscal impact.

Please feel free to contact Martha Stewart of my staff if you have further questions. She will also be available to testify at committee hearings in the Senate. I would appreciate any assistance you can offer to expedite this bill's passage.

cc Senator Binkley

Alaska State Legislature

House of Representatives



Official Business

Al Adams
Chairman
Committee on Finance

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

DATE: January 29, 1988

TO: Representative Adelheid Herrmann
Co-chair, House Resources Committee

Representative Sam Cotton
Co-chair, House Resources Committee

FROM: Representative Al Adams, ^{AA}Chair
House Finance Committee

RE: HB 346 "An Act Authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing for an effective date."

I would like to request that HB 346 be scheduled in the Resources Committee at your earliest convenience.

This bill would allow the Board of Fisheries to open closed fishing areas to elderly residents and children under age 12 as long as those decisions meet conservation goals. The type of fishing allowed would be limited to personal use, sport and subsistence fishing.

Concerns emerged in Unalakleet as well as other areas of the state where rivers were closed to fishing but continued sport and subsistence fishing by residents in the aforementioned age groups would not harm conservation efforts. The Board of Fisheries lacked the statutory authority to grant exemptions. This bill would provide it.

Attached is a legal interpretation which supports the constitutionality of the bill. Also attached is a statement from the Department of Fish and Game.

Kotzebue's Fish and Game Advisory Committee and the Southern Norton Sound Fish and Game Advisory Committee have expressed verbal support and will send written endorsement later this month following their next meetings.

HFC Backup

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

January 29, 1988

The Honorable Al Adams
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

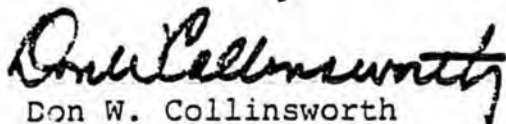
Dear Representative Adams:

The department has reviewed HB 346 authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons, and have the following comments.

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

If the Legislature wishes to give the board this authority, I am certain that the board will consider any proposals it receives for these types of fisheries.

Sincerely,



Don W. Collinsworth
Commissioner

STATE OF ALASKA
THE LEGISLATURE

POUCH • STATE CAPITOL
JUNEAU ALASKA 998
907 485 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1988

SUBJECT: Constitutionality of HB 346
TO: Representative Al Adams
FROM: Edward H. Hein *EH*
 Legislative Counsel

You have asked whether HB 346 is constitutional. The bill authorizes the Board of Fisheries to establish restricted noncommercial fishing seasons and areas for children and elderly persons, if consistent with resource conservation goals and if necessary to assist these two groups to participate in sport, personal use, or subsistence fishing.

The authorization provided in the bill is consistent with the mandate of Art. VIII, secs. 1, 2, 4, and 5 of the Alaska Constitution. These sections provide (emphasis supplied):

SECTION 1. STATEMENT OF POLICY. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

SECTION 2. GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

SECTION 5. FACILITIES AND IMPROVEMENTS. The legislature may provide for facilities, improvements, and services to

Representative Al Adams
Page 2
January 26, 1988

assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

In keeping with this constitutional mandate, the authority given to the Board of Fisheries is clearly for a public purpose and is very narrowly drawn. The exercise of the board's power is subject to two conditions: the establishment of restricted seasons and areas must be consistent with resource conservation goals, and must also be necessary in order to help children and the elderly to participate in noncommercial fishing. In other words, the circumstances must be such that these groups would not be able to participate adequately in fishing without this sort of assistance from the board.

It is envisioned that areas which would be set aside for children and elderly persons would be areas that otherwise would not be open to the public. These would be areas in which the fish stocks could not withstand extensive effort beyond that anticipated by children and the elderly. An example would be a creek in Anchorage that is not currently open to fishing, but which could serve nicely as a place for children to learn how to fish.

Finally, although virtually any law that allows a government agency to give special treatment to certain groups has a potential for abuse, the board is required to exercise its authority in a manner consistent with the constitution. The regulations adopted should not be any more restrictive or discriminatory than necessary to accomplish the goals of the legislation. It is assumed, moreover, that the board will act in accordance with the legal advice of the Attorney General's office.

EHH:bb
wkb2/005



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB 346	SPONSOR Adams & Goll
SHORT TITLE OF BILL An act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing and providing for an effective date.			
DEPARTMENT POSITION Neutral			
PREPARED BY Beth Stewart	DATE 2/11/88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/11/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Board of Fisheries	CONSTITUENT GROUP(S) AFFECTED BY BILL Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Introduced by Adams & Goll

ANALYSIS OF BILL/PROGRAM EFFECTS

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

AMENDMENTS PROPOSED

RECEIVED
FEB 12 1988
LEGISLATIVE FINANCE

formal hearing has been concluded. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460
AS 16.05.380 AS 43.05.080
AS 16.05.390 AS 44.25.020

15 AAC 116.070. FEES, REPORTS, AND LICENSE INVENTORY DUE WHEN LICENSE OFFICER APPOINTMENT EXPIRED, SUSPENDED, OR REVOKED. The reporting and accounting obligations of the license officer, all money collected, except the license officer's commission, and all license inventory are due by the last day of the month following the month during which the license officer appointment expired, was suspended, or was revoked. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.340 AS 16.05.460
AS 16.05.380 AS 43.05.080
AS 16.05.390 AS 44.25.020

**ARTICLE 2.
LICENSING**

Section

- 100. Qualifications for license and proof of qualification
- 110. Persons exempt from licensing requirements
- 120. Refund of license fees
- 130. Lost or destroyed licenses

15 AAC 116.100. QUALIFICATIONS FOR LICENSE AND PROOF OF QUALIFICATION. (a) Only natural persons may be issued licenses under AS 16.05 and this chapter.

(b) An applicant claiming entitlement to a resident license or special status license has the burden of proving to the license officer that he is entitled to the license and shall take an oath administered by the license officer certifying the truthfulness of the applicant's status.

(c) The license officer shall accept as adequate proof of residency an Alaska driver's license, voter registration card, school records, proof of home ownership or rental receipts, tax records, employment records, or court or other governmental agency records, showing that the applicant is a resident. (Eff. 3/25/83, Reg. 85)

Authority: AS 16.05.330 AS 43.05.080
AS 16.05.360 AS 44.25.020
AS 16.05.450

15 AAC 116.110. PERSONS EXEMPT FROM LICENSING REQUIREMENTS. (a) A person who is 60 years of age or older and who has been a resident of Alaska for one year or more, and is currently a resident, may apply for a permanent identification card from the department for purposes of AS 16.05.400. In this subsection, "one year" means any 12-consecutive-month period preceding the date of application.

(b) A person who has lawfully obtained a permanent identification card under (a) of this section is not required to obtain hunting, fishing, or trapping licenses to engage in those activities.

(c) If a person who has been issued a permanent identification card ceases to be a resident of Alaska, that person must surrender the card to the department. (Eff. 3/25/83, Reg. 85; am 6/17/84, Reg. 90)

Authority: AS 16.05.400
AS 43.05.080
AS 44.25.020

15 AAC 116.120. REFUND OF LICENSE FEES. (a) License officers may not refund license fees. A person who wishes a refund of a license fee must apply directly to the department.

(b) A refund of a license fee will be granted by the department only if the licensee or his representative demonstrates that

(1) he or she was unable to make any use of the license as a result of death, or serious, disabling illness or injury occurring after purchase of the license and before the opening of any season for which the license could have been used; in the case of illness or injury, the illness or injury must have lasted until all seasons for which the license could be used are closed;

(2) the opening of all seasons to which the license applied were permanently cancelled, rendering the license unusable at any time during the year for which it was issued; or

(3) other extraordinary circumstances beyond the control and reasonable anticipation of the licensee exist, which the department determines to justify a refund.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 26, 1988

SUBJECT: Constitutionality of HB 346
TO: Representative Al Adams
FROM: Edward H. Hein *EH*
 Legislative Counsel

You have asked whether HB 346 is constitutional. The bill authorizes the Board of Fisheries to establish restricted noncommercial fishing seasons and areas for children and elderly persons, if consistent with resource conservation goals and if necessary to assist these two groups to participate in sport, personal use, or subsistence fishing.

The authorization provided in the bill is consistent with the mandate of Art. VIII, secs. 1, 2, 4, and 5 of the Alaska Constitution. These sections provide (emphasis supplied):

SECTION 1. STATEMENT OF POLICY. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.

SECTION 2. GENERAL AUTHORITY. The legislature shall provide for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

SECTION 4. SUSTAINED YIELD. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.

SECTION 5. FACILITIES AND IMPROVEMENTS. The legislature may provide for facilities, improvements, and services to

January 26, 1988

assure greater utilization, development, reclamation, and settlement of lands, and to assure fuller utilization and development of the fisheries, wildlife, and waters.

In keeping with this constitutional mandate, the authority given to the Board of Fisheries is clearly for a public purpose and is very narrowly drawn. The exercise of the board's power is subject to two conditions: the establishment of restricted seasons and areas must be consistent with resource conservation goals, and must also be necessary in order to help children and the elderly to participate in noncommercial fishing. In other words, the circumstances must be such that these groups would not be able to participate adequately in fishing without this sort of assistance from the board.

It is envisioned that areas which would be set aside for children and elderly persons would be areas that otherwise would not be open to the public. These would be areas in which the fish stocks could not withstand extensive effort beyond that anticipated by children and the elderly. An example would be a creek in Anchorage that is not currently open to fishing, but which could serve nicely as a place for children to learn how to fish.

Finally, although virtually any law that allows a government agency to give special treatment to certain groups has a potential for abuse, the board is required to exercise its authority in a manner consistent with the constitution. The regulations adopted should not be any more restrictive or discriminatory than necessary to accomplish the goals of the legislation. It is assumed, moreover, that the board will act in accordance with the legal advice of the Attorney General's office.

EHH:bb
wkb2/005



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB 346	SPONSOR Adams & Goll
SHORT TITLE OF BILL An act authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons; and providing and providing for an effective date.			
DEPARTMENT POSITION Neutral			
PREPARED BY Beth Stewart	DATE 2/11/88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/11/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Board of Fisheries	CONSTITUENT GROUP(S) AFFECTED BY BILL Fishermen
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

Introduced by Adams & Goll

ANALYSIS OF BILL/PROGRAM EFFECTS

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

STEVE COWPER, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

P.O. BOX 3-2000
JUNEAU, ALASKA 99802
PHONE: (907) 465-4100

January 29, 1988

The Honorable Al Adams
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Adams:

The department has reviewed HB 346 authorizing the Board of Fisheries to establish noncommercial fishing seasons and areas for children and elderly persons, and have the following comments.

In the past, the board has received proposals to establish restricted areas and seasons for people in certain age groups, or for those with physical handicaps. The Attorney General's Office advised the board that those proposals were beyond the scope of their authority. This bill would clarify that authority. In addition, there have been questions about the constitutionality of such arrangements under the exclusive fisheries or equal protection clauses of the Alaska Constitution. To address these concerns, the Attorney General's Office has suggested that the legislation include a set of findings in the bill sufficient to justify the special treatment of these groups.

If the Legislature wishes to give the board this authority, I am certain that the board will consider any proposals it receives for these types of fisheries.

Sincerely,



Don W. Collinsworth
Commissioner

H B

3 4 9

(11)

HOUSE COMMITTEE REPORT

Date referred: 1/22/88

FURTHER REFERRALS:

DATE: 2-8-88

The Finance Committee has considered HB 349

"An Act increasing the membership on the board of directors of the Alaska Railroad Corporation; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 349 (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 1/22/88
- zero with analysis

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] No Rec.
[Signature] NO REC
[Signature] No Recommendation

[Signature]
 Chairman's signature

**STATE OF ALASKA
1988 LEGISLATIVE SESSION**

**BILL VERSION: HB 349
PUBLISH DATE: HOUSE 1/22/88**

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: _____
 Title: An Act increasing the membership on BRU: _____
the board of directors of the ARRC _____
 Sponsor: Cato Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$0	\$0	\$0	\$0	\$0	\$0

CAPITAL	\$0	\$0	\$0	\$0	\$0	\$0
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REVENUE	\$0	\$0	\$0	\$0	\$0	\$0
----------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Compensation, per diem, and other expenditures payable to members of the board of directors of the Alaska Railroad Corporation are the responsibility of the Alaska Railroad Corporation and are not an expenditure of the state of Alaska general fund.

Prepared by: Rep. Bette Cato, Chairman Phone: 465-4858
 Division: House Transportation Committee Date: January 20, 1988

Approved by Commissioner: Rep. Bette Cato, Chairman Date: January 20, 1988
 Agency: House Transportation Committee

Distribution (by preparer):

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

Original sponsor: Cato

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 349 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the membership on the board of
7 directors of the Alaska Railroad Corporation; and
8 providing for an effective date."

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

10 * Section 1. AS 42.40.020(a) is amended to read:

11 (a) The powers of the corporation are vested in the board of
12 directors. The board consists of the commissioner of commerce and
13 economic development, the commissioner of transportation and public
14 facilities, and seven [FIVE] members appointed by the governor. The
15 seven [FIVE] appointed members must be registered voters in the state
16 except as provided in (1) and (2) of this subsection. Except for the
17 commissioners and the member appointed under (5) of this section, a
18 member may not be a state officer or employee. Appointed members
19 shall have the following qualifications:

20 (1) one member of the board shall be a person who has at
21 least 10 years of experience in railroad management; a person who is
22 not a resident of the state may be appointed under this paragraph;

23 (2) one member of the board shall be or have been an execu-
24 tive official of a United States railroad and shall be selected in
25 accordance with any requirements imposed under 49 U.S.C. (Interstate
26 Commerce Act); a person who is not a resident of the state may be
27 appointed under this paragraph;

28 (3) at least one member shall be from each judicial dis-
29 trict directly served by the Alaska Railroad;

1 (4) one member shall have at least five years experience as
2 an owner or manager of a business in the state;

3 (5) one member shall be an employee who is a member of a
4 bargaining unit representing employees of the corporation;

5 (6) one member shall be a resident of Fairbanks;

6 (7) one member shall be a resident of Seward;

7 (8) one member shall be a resident of Anchorage.

8 * Sec. 2. Within 30 days after the effective date of this Act the
9 governor shall appoint two members to the board of directors of the Alaska
10 Railroad Corporation under AS 42.40.020(a) amended by sec. 1 of this Act.

11 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
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A M E N D M E N T

HB 349

Rep. Brown

Page 2, Line 7 ADD

(8) one member shall be a resident of Anchorage.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 349
PUBLISH DATE: HOUSE 1/22/88

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: _____
 Title: An Act increasing the membership on BRU: _____
the board of directors of the ARRC _____
 Sponsor: Cato Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	\$0	\$0	\$0	\$0	\$0	\$0

CAPITAL	\$0	\$0	\$0	\$0	\$0	\$0
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REVENUE	\$0	\$0	\$0	\$0	\$0	\$0
----------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	\$0	\$0	\$0	\$0	\$0	\$0

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Compensation, per diem, and other expenditures payable to members of the board of directors of the Alaska Railroad Corporation are the responsibility of the Alaska Railroad Corporation and are not an expenditure of the state of Alaska general fund.

Prepared by: Rep. Bette Cato, Chairman Phone: 465-4858
 Division: House Transportation Committee Date: January 20, 1988

Approved by Commissioner: Rep. Bette Cato, Chairman Date: January 20, 1988
 Agency: House Transportation Committee

Distribution (by preparer):

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

ALASKA RAILROAD CORPORATION



P.O. Box 7-2111 • Anchorage, Alaska 99510-7069

January 19, 1988

Honorable Bette Cato, Chairman
Transportation Committee
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: House Bill No. 349, An Act Increasing the Membership
on the Board of Directors of the Alaska Railroad
Corporation

Dear ^{Bette} Representative Cato,

Thank you for this opportunity to express our comments on HB 47 which proposes to add two additional directors to the Alaska Railroad Corporation ("ARRC") board.

We've carefully reviewed the bill and enclose our position paper and fiscal note.

Although we do not oppose this legislation, we respectfully request that consideration be given to adding one, not two, additional board members. As our paper explains, we fear that at nine members our board will become too large and unwieldy. By also changing the number of affirmative votes needed for board action from four to five, the problem with tie votes as you and I discussed some time ago will be avoided. This reduction of proposed appointees will also reduce our projected costs by half.

We've asked our legislative representative, Rick Urion, to attend tomorrow's hearing. Should questions or comments arise concerning our proposal which Rick cannot field, we will stand by here to supplement his responses.

Thank you very much.

Sincerely,

Handwritten signature of F. G. Turpin.

F. G. Turpin
President & CEO

cc: House Transportation Committee
James O. Campbell, Chairman, ARRC Board of Directors
Rick Urion

5820L

January 19, 1988

HOUSE BILL NO. 349

An Act Increasing the Membership on the Board of Directors of the Alaska Railroad Corporation

I. Introduction

HB 349 proposes to add two members to the Alaska Railroad Corporation ("ARRC") Board of Directors, one from Seward and one from Fairbanks. The legislation is intended to provide additional representation for railbelt communities on the ARRC board. Although ARRC does not oppose HB 349, we respectfully request that consideration be given to adding one, not two, additional directors to the ARRC board.

II. Discussion

The powers of the Alaska Railroad Corporation are vested in its board of directors. To insure local control of the railroad's important transportation and governmental functions, ARRC's enabling legislation directs that the seven member panel primarily consist of Alaskan residents. The legislation envisions that the board collectively contain a wide range of skills and experience, including railroad management, business, and labor expertise. In addition, each judicial district directly served by the Alaska Railroad must be represented on the board. This provision ensures that railbelt representation will be broad based.

Nonetheless, concern has been raised that the current board does not include a Seward resident. ARRC and Seward community interests have been commercially, geographically, and financially intertwined for many years. Despite the participation of its representative on ARRC's Community Briefing Council which meets to consider railroad/railbelt concerns and common interests, Seward leaders have requested a permanent Seward seat on the ARRC board.

ARRC does not oppose a modification of the Alaska Railroad Corporation Act ("ARCA") which would provide smaller port communities in the railbelt a common representative on its Board of Directors. However, we request that HB 349 be amended as follows:

(7) one member shall be a resident of Seward, [.] Whittier, or Nenana.

This modification would allow other port communities located in the railbelt such as Whittier an opportunity to suggest residents for appointment.

POSITION PAPER / Alaska Railroad Corporation

ARRC Position Paper
House Bill No. 349
January 19, 1988
Page 2

We also request that subsection (6) be deleted. The provision would require that one board member be a resident of Fairbanks. The Fairbanks community is assured adequate representation by an existing provision which requires that all judicial districts served by the Alaska Railroad be represented. For example, Director Frank Chapados is a resident of that Interior city. We fear that at nine members the ARRC board will become too large and unwieldy. An attached fiscal note also demonstrates that the projected costs of two additional board members is \$25,400. These are not insignificant costs which can be reduced by half by amending the bill.

Without other ARCA modifications, a board of eight directors would find themselves at an impasse when tie votes prevent it from taking action. However, A.S. 42.40.160(b) provides that "(f)our affirmative votes are required for board action." By increasing the number of required affirmative votes for affirmative action from four to five, such impasses will never occur. This revision also seems prudent since the pool of available board members will be increased by one should this proposal be accepted.

III. Conclusion

ARRC is not opposed to the appointment of an additional member to its board. However, as discussed above, it respectfully requests that a single director from a port community in the railbelt be added.

5821L

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Telecopier (907) 224-3248

January 19, 1988

THE HONORABLE BETTE CATO
CHAIRMAN, COMMITTEE ON TRANSPORTATION
HOUSE OF REPRESENTATIVES
P. O. Box V
Juneau, AK 99811

Dear Madam Chairman:

The city of Seward welcomes the opportunity to offer testimony on House Bill 349, which would expand the Alaska Railroad Corporation Board from five (5) to seven (7) members, with one member being a resident of Fairbanks and one member a resident of Seward.

As you are aware, since the state has owned the Alaska Railroad, Seward has expressed the wish to have a representative from Seward on the board of directors. It is the city's position that the board should be comprised of individuals who represent the major railbelt communities. As termini of the railroad, and communities that depend in a significant economic way on the activities of the railroad, it is important that Seward and Fairbanks be represented on the board.

Your committee is aware of the wide degree of issues concerning the city of Seward relating to the Alaska Railroad Corporation. The recently published House Transportation Committee FY88 Interim Report on the Alaska Railroad Corporation summarizes the significant issues involving Seward and the Alaska Railroad. Paramount among these is Seward's lack of representation on the board of directors. The interim report well summarizes what we feel would be the benefits to Seward with direct board representation. Simply put, we would have a voice

CITY OF SEWARD, ALASKA
THE HONORABLE BETTE CATO
Page 2

and a vote, which we do not now have, on matters of extreme importance to Seward. We strongly recommend the committee's favorable recommendation on this Bill.

Sincerely,

CITY OF SEWARD, ALASKA


DARRYL SCHAEFERMEYER
INTERIM CITY MANAGER

DS:alm

Enclosures: Overview and Seward
sections of HTC FY88 Interim Report

cy: Council

REVISION DATE: 11/10/87

Railroad Corporation

MEMBER	APPT	REAPPT	TERM
James O. Campbell 826 Overlook Place Anchorage, Ak. 99501 (H) 274-4207 Public/Restricted ~ Chair	84/10/03		89/10/03
Frank X. Chapados 3060 Riverview Drive Fairbanks 99701 (W) 452-7913 (H) 474-0125 Public/Restricted	84/10/03		89/10/03
Myron M. Christy 36 Via Cheparro San Rafael, CA 94904 (W) (415) (H) 461-2828 Mgmt/Executive	84/11/26	86/10/31	91/10/03
Lewis E. Dickinson 4017 North Point Drive Anchorage 99502 (W) 562-2000 (H) 243-1079 Public/Restricted	84/10/03		88/10/03
Mark S. Hickey DOT/PF Juneau 99811 (W) 465-3900 (H) NONE Comm./Mandated	86/12/01		00/00/00
Tony Smith Commissioner, DCED Juneau 99811 (W) 465-2500 (H) NONE Comm./Mandated	87/01/06		00/00/00
Gerald D. Valinske 6910 Chad Street Anchorage 99518 (W) 265-2636 (H) 349-7005 Bargaining Unit	84/10/03	87/11/02	92/10/03

Chapter 40. Alaska Railroad Corporation.

Article

1. Establishment and Organization (§§ 42.40.010 — 42.40.060)
2. Management (§§ 42.40.100 — 42.40.120)
3. Administrative Provisions (§§ 42.40.150 — 42.40.230)
4. Powers and Duties (§§ 42.40.250 — 42.40.310)
5. Corporation Property (§§ 42.40.350 — 42.40.450)
6. Financial Provisions (§§ 42.40.500 — 42.40.540)
7. Bonds (§§ 42.40.600 — 42.40.700)
8. Personnel and Labor Relations (§§ 42.40.705 — 42.40.890)
9. General Provisions (§§ 42.40.900 — 42.40.990)

Cross references. — For legislative findings and purpose in enacting this chapter, see § 1, ch. 153, SLA 1984 in the Temporary and Special Acts; for special reports required, see § 3, ch. 153, SLA 1984 in the Temporary and Special Acts.

Legislative history reports. — For legislative letter of intent relating to ch. 153, SLA 1984 (SCS CSHB 512 (Fin) am S), see 1984 Senate Journal, p. 3221.

Article 1. Establishment and Organization.

Section

10. Establishment of the corporation
20. Board of directors
30. Term of office

Section

40. Vacancies
50. Compensation and expenses
60. Board officers

Sec. 42.40.010. Establishment of the corporation. There is established the Alaska Railroad Corporation. The corporation is a public corporation and is an instrumentality of the state within the Department of Commerce and Economic Development. The corporation has a legal existence independent of and separate from the state. The continued operation of the Alaska Railroad by the corporation as provided in this chapter is considered an essential government function of the state. (§ 2 ch 153 SLA 1984)

Sec. 42.40.020. Board of directors. (a) The powers of the corporation are vested in the board of directors. The board consists of the commissioner of commerce and economic development, the commissioner of transportation and public facilities, and five members appointed by the governor. The five appointed members must be registered voters in the state except as provided in (1) and (2) of this subsection. Except for the commissioners and the member appointed under (5) of this section, a member may not be a state officer or employee. Appointed members shall have the following qualifications:

(1) one member of the board shall be a person who has at least 10 years of experience in railroad management; a person who is not a resident of the state may be appointed under this paragraph;

(2) one member of the board shall be or have been an executive official of a United States railroad and shall be selected in accordance with any requirements imposed under 49 U.S.C. (Interstate Commerce Act); a person who is not a resident of the state may be appointed under this paragraph;

(3) at least one member shall be from each judicial district directly served by the Alaska Railroad;

(4) one member shall have at least five years experience as an owner or manager of a business in the state;

(5) one member shall be an employee who is a member of a bargaining unit representing employees of the corporation.

(b) Except for the commissioners, the members of the board shall be confirmed by a majority of the members of the legislature in joint session. A member appointed by the governor has the full powers and responsibilities of a confirmed board member until the member is rejected by the legislature or the legislature adjourns without confirming the member. (§ 2 ch 153 SLA 1984)

Cross references. — For terms of initial members of board, see § 4, ch. 153, SLA 1984 in the Temporary and Special Acts.

Sec. 42.40.030. Term of office. Except for the commissioner of commerce and economic development and the commissioner of transportation and public facilities, members of the board serve for staggered terms of five years each at the pleasure of the governor. (§ 2 ch 153 SLA 1984)

Sec. 42.40.040. Vacancies. (a) Except for the commissioner of commerce and economic development and the commissioner of transportation and public facilities, a vacancy on the board is filled by appointment by the governor, and the appointment must be confirmed by the members of the legislature in joint session. A member appointed to fill a vacancy holds office for the balance of the term for which the member's predecessor was appointed.

(b) A vacancy on the board does not impair the authority of a quorum of members to exercise the powers and perform the duties of the board.

(c) A member of the board whose term has expired shall serve until a successor has been appointed. (§ 2 ch 153 SLA 1984)

Sec. 42.40.050. Compensation and expenses. (a) An appointed member of the board is entitled to compensation at a rate of \$400 for each day the member is engaged in the actual performance of duties as a member of the board. The board may provide by rule for compensation for partial days during which an appointed member is engaged in actual performance of duties as a member of the board.

1 IN THE HOUSE

BY CATO

2

HOUSE BILL NO. 349

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act increasing the membership on the board of
7 directors of the Alaska Railroad Corporation; and
8 providing for an effective date."

9

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

10

* Section 1. AS 42.40.020(a) is amended to read:

11

(a) The powers of the corporation are vested in the board of
12 directors. The board consists of the commissioner of commerce and
13 economic development, the commissioner of transportation and public
14 facilities, and seven [FIVE] members appointed by the governor. The
15 seven [FIVE] appointed members must be registered voters in the state
16 except as provided in (1) and (2) of this subsection. Except for the
17 commissioners and the member appointed under (5) of this section, a
18 member may not be a state officer or employee. Appointed members
19 shall have the following qualifications:

20

(1) one member of the board shall be a person who has at
21 least 10 years of experience in railroad management; a person who is
22 not a resident of the state may be appointed under this paragraph;

23

(2) one member of the board shall be or have been an execu-
24 tive official of a United States railroad and shall be selected in
25 accordance with any requirements imposed under 49 U.S.C. (Interstate
26 Commerce Act); a person who is not a resident of the state may be
27 appointed under this paragraph;

28

(3) at least one member shall be from each judicial dis-
29 trict directly served by the Alaska Railroad;

1 (4) one member shall have at least five years experience as
2 an owner or manager of a business in the state;

3 (5) one member shall be an employee who is a member of a
4 bargaining unit representing employees of the corporation;

5 (6) one member shall be a resident of Fairbanks;

6 (7) one member shall be a resident of Seward.

7 * Sec. 2. Within 30 days after the effective date of this Act the
8 governor shall appoint two members to the board of directors of the Alaska
9 Railroad Corporation under AS 42.40.020(a)(6) and (7) enacted in sec. 1 of
10 this Act.

11 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

H B

3 5 3

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 5/7/88

4/7/88
Mr. President:

Finance Committee considered HB 353

repurchase of retirement coverage after certain levies

and recommended

replace with _____ CS _____) same title
 or adopt _____ CS _____) 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 ^{DOA}

MEMBERS SIGNING DO PASS

[Signature]
Paul Grish
W. H. ...
[Signature]

OTHER RECOMMENDATIONS

Paul V. Sharoff No Rec

Rich Helford NO REC
Chairman signature and recommendation

Committee Backup attached

1 IN THE HOUSE

BY ULMER

2

HOUSE BILL NO. 353

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to repurchase of retirement coverage
7 after certain levies."

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

9 * Section 1. AS 14.25.063(a) is amended to read:

10 (a) In [FOR PURPOSES OF] this chapter, a member does not have to
11 be reemployed under this system in order to make indebtedness pay-
12 ments. However, except as provided in (d) of this section, a former
13 member must be reemployed under this system in order to make indebted-
14 ness payments. Payments apply first to accrued interest and then to
15 principal.

16 * Sec. 2. AS 14.25.063 is amended by adding a new subsection to read:

17 (d) A former member who received a total refund of the member's
18 contribution account balance because of a levy under AS 09.38.065 or a
19 federal tax levy may make indebtedness payments under this section.

20 * Sec. 3. AS 22.25.041 is amended by adding a new subsection to read:

21 (b) A justice or judge whose contributions have been involun-
22 tarily refunded because of a levy may repay the amount levied together
23 with accrued interest whether or not the justice or judge is on active
24 service. Repayments shall be made under (a) of this section.

25 * Sec. 4. AS 39.35.350(b) is amended to read:

26 (b) An employee may reinstate credited service associated with a
27 refund by repaying the total amount of the refund. A former member
28 who received a total refund of the former member's contribution ac-
29 count balance because of a levy under AS 09.38.065 or a federal tax

1 levy may reinstate credited service in the same manner as an employee.
2 Interest will accrue from the date of the refund until repayment of
3 the refund or retirement, whichever occurs first. Payments will apply
4 first to accrued interest and then to principal.

5 * Sec. 5. Notwithstanding former AS 39.37.130 and 39.37.140, a former
6 member of the Elected Public Officers Retirement System who received an
7 involuntary refund of the individual's account because of a levy may repay
8 the amount levied together with accrued interest. Upon payment of the full
9 amount owing, the former member regains all rights that were terminated
10 because of the refund.

A/B

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to repurchase of retirement coverage after certain levies. BRU: Retirement and Benefits
 Sponsor: Ulmer Components: Retirement and Benefits
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Attached Position Paper

Prepared By: Robert F. Stalnaker, Acting Director Phone: 465-4470
 Division: Retirement and Benefits Date: 1-20-88
 Approved by Commissioner: John M. Andrews Date: 1/21/88
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

OC

POSITION PAPER
HB 353

This bill would allow members participating in Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), Judicial Retirement System (JRS), or the Elected Public Officers' Retirement System (EPORS) to reinstate their retirement account without becoming reemployed under that system in the event they are forced to refund from that system to pay a tax levy, child support, or to comply with a qualified domestic relations order (QDRO). Currently, when a member refunds from the system, they forfeit their right to future benefits from that system. The current law allows members to reinstate refunded service only after they reemploy with an employer covered under the respective system.

The Administration supports this legislation. Passage would provide relief for those members who are forced from the system contrary to their desires and would provide the member with the ability to reinstate their right to a future benefit.

Robert F. Starnaker *RS* 1/20/88
Robert F. Starnaker, Acting Director Date
Division of Retirement & Benefits

John M. Andrews 1/21/88
Commissioner John M. Andrews Date
Department of Administration

DOA Position Paper

SENATE COMMITTEE REPORT

FURTHER L&C
FINANCE

2/18/88

DATE TURNED INTO OFFICE 3-21-88

Mr. President:

State Affairs Committee considered HB 353

repurchase of retirement coverage after certain levies

and recommended

replace with _____ CS _____) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

margin

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 *40*

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Joe Josephson
W. H. H. H. H.
Rich H. H.

J. L. Young *No Rec*

Joe Josephson
Chairman signature and recommendation

Committee Backup attached

Senate SA Report

SENATE COMMITTEE REPORT

FURTHER

FINANCE

3/22/88

DATE TURNED INTO OFFICE

Mr. President:

LABOR AND COMMERCE

Committee considered

HB 353

repurchase of retirement coverage after certain levies

and recommended

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

attached amendment(s) and

Mazout
 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

McKean
Rich Kelly
Hakrenkamp

Tim Kelly - Do Pass
Chairman signature and recommendation

[] Committee Backup attached

Senate L & C Report

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



P.O. Box V
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

February 26, 1988

TO: Senator Mitch Abood, Chair
Senate State Affairs Committee

FROM: Representative *Fran Ulmer*

SUBJECT: House Bill 353

I am requesting that you hold a hearing on House Bill 353, "An Act relating to repurchase of retirement of retirement coverage after certain levies". HB 353 was adopted by the House by a vote of 39-0. It has a zero fiscal note and no opposition.

House Bill 353 affects former members of the Teachers' Retirement System (TRS), the Judicial Retirement System (JRS), the Public Employees' Retirement System (PERS), and Elected Public Officers Retirement System (EPORS). The basic purpose of the bill is to preserve an individual's right to his retirement benefits. HB 353 would allow those former members to make repayments with interest to the retirement fund without having to be re-employed or in active service under the applicable retirement system. This would only be permitted if the entire retirement account balance was levied by a court or agency to pay a claim. Such claims include child support obligations and federal tax levies.

Presently, if a former member's retirement account is levied in total, the account is closed and the former member may not repay the amount refunded unless he/she becomes an active member again. House Bill 353 would allow a former member to repay his/her retirement funds without being re-employed under the system.

In these difficult economic times, there could be many Alaskans who may lose their future retirement benefits and House Bill 353 would provide the opportunity to repurchase those benefits at some time in the future.

Thank you very much for your prompt consideration of this bill.

District 43 - Juneau

Backup From Sponsor

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460

2600 DENALI ST. SUITE 401
ANCHORAGE, ALASKA 99503-2740
PHONE: (907) 277-7504

Public Employees Retirement System
Teachers Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees' Voluntary Dental-Vision-Audio Plan
Supplemental Benefits System
Group Health Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

STEVE COWPER, GOVERNOR

January 20, 1988

Honorable Fran Ulmer
Chair, House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Representative Ulmer:

Re: House Bill 353

In accordance with AS 24.08.036, I am providing the analysis below on House Bill 353. The analysis includes the long-term and short-term impact to the state if the bill is adopted and the impact the bill will have on the actuarial soundness of the Public Employees' Retirement System (PERS), Teachers' Retirement System (TRS), Judicial Retirement System (JRS), and the Elected Public Officers' Retirement System (EPORS) funds.

This legislation would allow a member to repay the amount refunded and reinstate their retirement standing without becoming reemployed in a position covered by that retirement system if they have been forced to refund from their retirement system to satisfy payment(s) for child support, comply with the provisions of a qualified domestic relations order (QDRO) or to comply with a federal tax levy. There will be no fiscal impact of this legislation on the state government or any impact on the retirement funds involved. This legislation will not increase the employer contributions rates.

Sincerely,


R. F. Stalnaker
Acting Director

RFS/DS/bb/9

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 22, 1988

SUBJECT: Sectional analysis of HB 353
(Repurchase of retirement coverage)

TO: Representative Fran Ulmer

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional analysis of the above described bill.

As a preliminary matter, I must advise you that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Secs. 1 and 2 permit a former member of the Teachers' Retirement System (TRS) who received a total refund of the contributions the member made to TRS because of a federal tax levy or a levy under AS 09.38.065 to pay back the amount levied against to TRS. The repayment has the effect of reinstating the former member's rights to retirement benefits. Under AS 09.38, contributions to the Teachers' Retirement System and the Public Employees' Retirement System are exempt from a creditor's efforts to levy against them. Under AS 09.38.065, that general exemption from creditors does not apply to certain kinds of debt, including child support, a limited amount of wages, and state or local taxes.

Sec. 3 permits a judge or justice whose contributions to the Judicial Retirement System (JRS) have been involuntarily refunded because of a levy of any kind to repay the amount levied together with interest to JRS to reinstate membership

Representative Fran Ulmer
Page 2
January 22, 1988

in the system. Contributions to JRS are not protected from levy under AS 09.38.

Sec. 4 permits a former member of the Public Employees' Retirement System (PERS) who received a total refund of contributions because of a levy under AS 09.38.065 or of a federal tax levy to repay the amount of the refund to the system and reinstate membership. Contributions to PERS are protected from levy for other kinds of debt.

Sec. 5 permits members of the Elected Public Officers Retirement System who have received an involuntary refund of the individual account because of a levy of any kind to repay the amount refunded and regain all rights terminated because of the refund.

If I may be of further assistance, please advise.

TBC:gc
WKG1:044

one year following the date an employee first becomes vested, whichever is later. Any outstanding indebtedness existing at the time an employee retires will require an actuarial adjustment to the benefits payable based on the temporary service.

(c) A deferred vested employee on July 1, 1980, is eligible to claim credited service under (a) of this section. To obtain credited service under this section, a deferred vested employee must elect to do so and must verify the period of temporary service before July 1, 1981. When eligibility for temporary service credit has been established, an indebtedness shall be determined as provided in (a) of this section. Interest as prescribed by regulation accrues on that indebtedness beginning July 1, 1981. Any outstanding indebtedness existing at the time a deferred vested employee retires will require an actuarial adjustment to the benefits payable based on the temporary service.

(d) The credited service granted under this section may not be used to satisfy the credited service requirements for normal or early retirement. (§ 29 ch 146 SLA 1980)

Revisor's notes. — Enacted as AS 39.35.156. Renumbered in 1980.

Sec. 39.35.350. Reinstatement of credited service. (a) An employee who receives a refund of contributions in accordance with AS 39.35.200 forfeits corresponding credited service under this chapter.

(b) An employee may reinstate credited service associated with a refund by repaying the total amount of the refund. Interest will accrue from the date of the refund until repayment of the refund or retirement, whichever occurs first. Payments will apply first to accrued interest and then to principal.

(c) Any outstanding indebtedness that exists at the time an employee is appointed to retirement will necessitate an actuarial adjustment to the benefits payable based on service reinstated under this section. (§ 16 ch 143 SLA 1960; am § 3 ch 235 SLA 1968; am § 2 ch 81 SLA 1976; am § 30 ch 128 SLA 1977; am § 84 ch 59 SLA 1982; am § 47 ch 137 SLA 1982)

Sec. 39.35.360. Earlier service. (a) An employee employed before January 1, 1980, who completes three years of credited service with the state after January 1, 1961, for which the employee makes contributions required by this chapter is entitled to credited service for service rendered (1) before January 1, 1961, as an employee of the state and former Territory of Alaska; (2) before January 1, 1961, as an employee of the United States government in Alaska, excluding service in the armed forces of the United States; or (3) after January 1, 1961, as a peace officer, correctional officer, or fireman of a participating political subdivision of the state if the employee is vested and is an

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Legislative history reports. — For report on ch. 83, SLA 1967 (HB 141), see 1967 House Journal, pp. 339-340.

Sec. 22.25.040. Refund of contributions.
 Repealed by § 16 ch 83 SLA 1967.

Editor's note. — The repealed section derived from § 1, ch. 102, SLA 1963.
Legislative history reports. — For

report on ch. 83, SLA 1967 (HB 141), see 1967 House Journal, pp. 339-340.

Sec. 22.25.041. Refund of contributions. A justice or judge who vacates office for any reason and who has not then accrued five years of creditable service under this chapter is entitled to receive a refund of the total amount of contributions, together with interest credited on the amount. If a justice or judge who has received a refund of contributions returns to active service, the justice or judge shall repay within one year the refunded contributions with interest at the prevailing rate to receive credit for the earlier period of service under AS 22.25.010(f). (§ 7 ch 80 SLA 1978)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 22.25.045. Appropriations.
 Repealed by § 42 ch 146 SLA 1980.

Editor's notes. — The repealed section derived from § 13, ch. 83, SLA 1967.

Sec. 22.25.046. Employer contributions. (a) The state court system shall contribute to the judicial retirement system at the rate established by the commissioner of administration. The contribution rate shall be based on the results of an actuarial valuation of the judicial retirement system. The results of the actuarial valuation shall be based on actuarial methods and assumptions adopted by the commissioner of administration.

(b) The contribution rate shall be a percentage which, when applied to the covered compensation of all active members of the judicial retirement system, will generate sufficient money to support, along with contributions from members, the benefits of the judicial retirement system. (§ 8 ch 146 SLA 1980)

Sec. 22.25.048. Accounting and investment. (a) The commissioner of administration shall establish, as a special account in the general fund, a fund for the judicial retirement system and shall maintain accounts and records for the judicial retirement system.

ship service" such as will excuse the payment of arrearages for service prior to June 30, 1955, for participation in the teachers' retirement plan. 1960 Op. Att'y Gen. No. 11.

Bureau of Indian Affairs teaching service should be treated as "outside service" for the purposes of computing "arrearages" and "creditable service" under pro-

visions of the Teachers' Retirement Act. 1960 Op. Att'y Gen. No. 11.

Regulations promulgated by the territorial or State Board of Education governing salaries are not germane to calculations of arrearage forgiveness or creditable service under the Teachers' Retirement System. 1960 Op. Att'y Gen. No. 11.

Sec. 14.25.061. Retroactive indebtedness. (a) A member who was not subject to the provisions of this chapter, but who becomes subject to them because of a legislative change, may elect to receive credit for retroactive membership service by contributing to the retirement fund an amount equal to the contributions the member would have made had the member been subject to the provisions of this chapter for those years of retroactive service after June 30, 1955. Retroactive contributions are not required for retroactive membership service before July 1, 1955. Compound interest at the rate prescribed by regulation shall be added to the retroactive indebtedness from July 1, 1966, or the time of first becoming eligible under this chapter, whichever is later, to the date of payment or the date of retirement, whichever occurs first.

(b) If retroactive indebtedness contributions have been made for retroactive service before July 1, 1955, the member is entitled to a refund of those retroactive membership indebtedness contributions.

(c) A refund of retroactive indebtedness contributions for retroactive service before July 1, 1955 is not subject to the repayment provision of AS 14.25.062. (§ 4 ch 128 SLA 1977; am §§ 8, 9 ch 13 SLA 1980)

Sec. 14.25.062. Reinstatement indebtedness. A teacher who has received a refund of contributions in accordance with AS 14.25.150 is indebted to the retirement fund in the amount of the total refund. Compound interest at the rate prescribed by regulation shall be added to the reinstatement indebtedness from the date of the refund to the date of repayment or the date of retirement, whichever occurs first. (§ 4 ch 128 SLA 1977; am § 10 ch 13 SLA 1980)

Sec. 14.25.063. Payment of indebtedness. (a) For purposes of this chapter, a member does not have to be reemployed under this system in order to make indebtedness payments. However, a former member must be reemployed under this system in order to make indebtedness payments. Payments apply first to accrued interest and then to principal.

(b) Any outstanding indebtedness that exists at the time a member is appointed to retirement will necessitate an actuarial adjustment to the benefits payable based on the member's corresponding service.

(c) If, as a result of service credit claimed for which there is a corresponding indebtedness existing at retirement, the member's retirement benefit is actuarially reduced and the resulting benefit is less than it would have been if the service credit had not been claimed, the retirement benefit shall be equal to the amount it would have been had the service credit never been claimed. (§ 11 ch 13 SLA 1980; am §§ 6, 7 ch 137 SLA 1982)

Sec. 14.25.065. Transmittal of contributions. (a) All contributions deducted in accordance with AS 14.25.050 and 14.25.055 shall be transmitted to the retirement fund no later than 15 days following the close of the payroll period, with the final contributions due for any school year transmitted no later than July 15.

(b) The contributions of employers under AS 14.25.070 must be transmitted to the administrator at the close of each pay period. If the contributions are not submitted within 15 days of the close of each payroll period, interest must be assessed on the outstanding contributions at one and one-half times the most recent actuarially determined rate of earnings for the system from the date that contributions were originally due. In addition, the amount of the contributions and interest may be deducted by the Department of Education from the state funds due the school district and the amount so deducted transmitted to the administrator for deposit in the retirement fund. Amounts due from the University of Alaska and interest as prescribed in this section may be deducted by the commissioner of administration from any state funds due the University of Alaska and the amount deducted transmitted to the administrator for deposit in the retirement fund. (§ 3 ch 84 SLA 1969; am § 4 ch 66 SLA 1973; am § 12 ch 13 SLA 1980)

Sec. 14.25.070. Contributions by employer. An employer shall contribute to the retirement fund an amount equal to the percentage, as certified by the administrator, of the sum total of the base salaries of all teachers that is required in addition to teacher contributions to provide the benefits of this chapter times the sum total of the base salaries paid to teachers by the employer. (§ 8 ch 145 SLA 1955; am § 5 ch 151 SLA 1966; am § 5 ch 138 SLA 1970; am § 5 ch 66 SLA 1973; am § 22 ch 91 SLA 1987)

Effect of amendments. — The 1987 amendment deleted "one-half" preceding "the percentage."

(1) enforceable against exempt property under AS 09.38.065(a)(1);
or

(2) enforceable under an order of a court of bankruptcy under 11 U.S.C. 1301 — 1330 (Bankruptcy Reform Act of 1978).

(d) If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.

(e) The following property, unless exempt without limitation under AS 09.38.015, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982; am § 36 ch 6 SLA 1984)

Effect of amendments. — The 1984 amendment changed the federal statutory reference in paragraph (2) of subsection (c).

Sec. 09.38.050. Increased exemption amount.

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Sec. 09.38.065. Claims enforceable against exempt property.

NOTES TO DECISIONS

Execution on limited entry permit. — Expressions of legislative intent in combination with the clear provisions of the 1982 Exemptions Act are persuasive evidence that the legislature meant what it said in permitting a parent with post

due child support claims to execute against an otherwise exempt limited entry permit. *Anderson v. Anderson*, Sup. Ct. Op. No. 3172 (File No. S-1320), P.2d (1987).

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor

tracing selected by the individual claiming the exemption. (§ 2 ch 62 SLA 1982)

Sec. 09.38.065. Claims enforceable against exempt property.

(a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind to enforce a claim for

(A) child support;

(B) unpaid earnings of up to one month's compensation or the full-time equivalent of one month's compensation for personal services of an employee; or

(C) state or local taxes; and

(2) a creditor may make a levy against exempt property to enforce a claim for

(A) the purchase price of the property or a loan made for the express purpose of enabling an individual to purchase the property and used for that purpose;

(B) labor or materials furnished to make, repair, improve, preserve, store, or transport the property; and

(C) a special assessment imposed to defray costs of a public improvement benefiting the property.

(b) Except as provided in AS 09.38.070 limiting the enforcement of certain security interests, this chapter does not affect any statutory lien or security interest in exempt property.

(c) A creditor having a claim enforceable under (a) of this section against exempt property, before, at the time of, or a reasonable time after making a levy on property of an individual, shall serve on the individual a notice of the levy and of the basis for the creditor's right to make a levy on exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.070. Limitation on enforcement of certain security interests in exempt goods. (a) This section applies to a security interest, except a purchase-money security interest, or a security interest in a motor vehicle, in an item of goods (1) possessed by an individual, (2) being used by that individual or a dependent, and (3) exempt under AS 09.38.020(a) — (d).

(b) Unless the individual, after receiving written notice of the individual's rights under this section, voluntarily surrenders to the secured creditor possession of an item of goods to which this section applies, the creditor may not take possession of the item or otherwise enforce the security interest according to its terms without an order or process of court.

(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization may prescribe appropriate conditions as to payments upon the debt secured

PUBLIC OFFICERS AND EMPLOYEES

transferred to the elected public officers retirement account.

"(d) Upon commencement of participation in this retirement system, any balance in an elected public officer's individual account under AS 39.35 is transferred to his individual account under this section. (§ 8 ch 205 SLA 1975)

"Sec. 39.37.130. Refunds. Upon termination of creditable service, application may be made for a refund of the balance in the individual's account. Upon withdrawal of the balance, all rights to benefits terminate. (§ 8 ch 205 SLA 1975)

"Sec. 39.37.140. Prior service credit. In the event an elected public officer who has withdrawn the balance of his individual account returns to elected public office, he shall receive credit for his prior period or periods of service only if he repays within one year of the date of return all refunded contributions with interest at the prevailing prescribed rate. (§ 8 ch 205 SLA 1975)

"Sec. 39.37.145. Medical benefits. Each person who is entitled to receive a monthly benefit from the retirement system under this chapter shall be provided with major medical insurance coverage. Coverage shall become effective on the same date as retirement benefits commence and cease when the retired employee or survivor is no longer eligible to receive a monthly benefit. The level of

coverage for persons over age 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to those afforded under the federal Old Age Survivor and Disability Insurance Program, if any. (§ 3 ch 245 SLA 1976)

"Sec. 39.37.150. Definitions. In this chapter

"(1) 'elected public officer' means the governor, lieutenant governor, or a member of the legislature;

"(2) 'creditable service' means service as an elected public officer and other service to the state, territory, or political subdivision under which benefits presently accrue under AS 39.35;

"(3) 'membership service' means service as an elected public officer. (§ 8 ch 205 SLA 1975)"

Section 51, ch. 117, SLA 1986, provides: "Notwithstanding former AS 39.37.060('s), the surviving spouse of an elected public officer who has retirement rights under the Elected Public Officers Retirement System is eligible for survivors' benefits under former AS 39.37.060 if the surviving spouse was married to the elected public officer for at least one year immediately preceding the death of the elected public officer. The benefits continue until the remarriage or death of the surviving spouse."

NOTES TO DECISIONS

"Employee retirement system". — The Elected Public Officers Retirement System is an "employee retirement system" within the meaning of Alaska Const., art. XII, § 7, which provides that membership in state employee retirement systems shall constitute a contractual relationship. State ex rel. Hammond v. Allen, Sup. Ct. Op. No. 2278 (File No. 5056), 625 P.2d 844 (1981).

There is no valid basis upon which to distinguish the rights of elected officials in the Elected Public Officers Retirement System from their rights in the public employees' retirement system in the context of Alaska Const., art. XII, § 7. State ex rel. Hammond v. Allen, Sup. Ct. Op. No. 2278 (File No. 5056), 625 P.2d 844 (1981).

Contractual relationship. — The Elected Public Officers Retirement System constitutes a contractual relationship between participants in that program and the state of Alaska, which must be honored by the state. Therefore, all elected

officials who were participating in the Elected Public Officers Retirement System at the time its repeal became effective (October 14, 1976) will be entitled to the benefits provided by that system upon retirement. State ex rel. Hammond v. Allen, Sup. Ct. Op. No. 2278 (File No. 5056), 625 P.2d 844 (1981).

Effective period of ch. 205, SLA 1975. — Walters v. Cease, Sup. Ct. Op. No. 182 (File No. 447), 388 P.2d 263 (1964), which held that the effectiveness of an act passed by the legislature is not suspended during the period between its effective date and its rejection by referendum, clearly establishes that the legislation enacting this chapter, ch. 205, SLA 1975, whatever its import, was in full force from January 1, 1976, its effective date, until October 14, 1976, the date of repeal by referendum. State ex rel. Hammond v. Allen, Sup. Ct. Op. No. 2278 (File No. 5056), 625 P.2d 844 (1981).

Rights not subject to implied condi-

HB

356

HOUSE COMMITTEE REPORT

(11)

Date referred: 2/3/88

FURTHER REFERRALS:

DATE: 2/5/88

The Finance Committee has considered HB 356

"An Act relating to the authority of the Alaska Public Utilities Commission in connection with certain activities of the Alaska Power Authority and in connection with calculating power cost equalization; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 356 (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 1/13/88
- zero fiscal note same as previous zero fiscal note published 1/13/88
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

 Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 356 (FIN)
PUBLISH DATE: HOUSE 1/13/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: APUC Commission authority re APA
and re PCE
Sponsor: Rules Committee by request of
Requestor: Governor

Agency Affected: Commerce & Economic Development
BRU: ADPK
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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	0	0	0	0	0	0
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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	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See attached

Prepared by: T.S. Moninski II Executive Director Phone: 276-6222
Division: Alaska Public Utilities Commission Date: 1/6/88
Approved by Commissioner: [Signature] Date: 1/2/88
Agency: Commerce & Economic Development

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)



January 6, 1988

The proposed legislation amends AS 42.05.431(b), which established the Commission's authority to review and approve wholesale power contracts entered into between the Alaska Power Authority and other public utilities.

When Section .431(b) was enacted in 1986, no fiscal impact was forecasted and the Commission did not receive any additional resources. The expectation was that the Commission would respond to filings pursuant to this section with existing staff. Therefore, no resultant fiscal impact is projected in response to the changes included in this bill.

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Rules Committee

Bill Version: HB 356 FIN
Publish Date: HOUSE 1/13/88

Revision Date: _____
Title: APUC authority in connection with
activities of the Alaska Power Authority

Agency Affected: AK Power Authority
BRU: _____

Sponsor: Rules Committee
Requestor: Governor

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL	(50)	(150)	(19,150)	-0-	-0-	-0-
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REVENUE						
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FUNDING: (Thousands of Dollars)

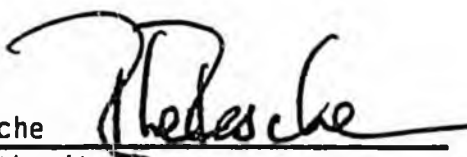
GENERAL FUND						
FEDERAL FUNDS						
OTHER *	(50)	(150)	(19,150)	-0-	-0-	-0-
TOTAL						

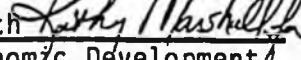
POSITIONS: *Railbelt Energy Fund

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

(See attached page)

Prepared by: Robert E. LeResche  Phone: 465-3575
Division: Alaska Power Authority Date: 1/8/88

Approved by Commissioner: J. Anthony Smith  Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

PROGRAM SUMMARYExpenditures

It is estimated that approximately \$200,000 of additional legal fees will be incurred due to the PUC hearings process.

It is further estimated that the PUC hearings process would delay the Bradley Lake project by a year. The resulting increase in construction costs and interest during construction on the long-term debt would increase the total project costs by an estimated \$19.15 million.

Funding

It is assumed that any additional Bradley expenditures would be funded by the Railbelt Energy Fund.

Economic Impact

In addition to the increased costs described above and below, a delay in the Bradley Lake project would reduce the number of jobs available on the Kenai Peninsula this summer and next.

Impact on Railbelt Electricity Consumers

Not passing this bill would increase the interest rate on the long-term debt for Bradley Lake in two ways. First, debt would have to be issued earlier in the construction schedule (the IDB allocation to Bradley Lake expires on 12/31/90), and completion risk becomes more of a factor. Second and perhaps more important, present law allows the PUC to reopen the contracts at any time in the future. The interest rate penalty from these two factors is estimated to be 1/2 percent. Such a penalty would increase debt service \$750,000 per year, or \$22,500,000 over the life of the bonds.

Additionally, the utilities are expected to incur approximately \$500,000 of legal expenses due to the PUC hearings process. This would be borne by the Railbelt Electricity Consumers.

In summary, the total additional costs incurred from this bill not passing would be approximately \$42,350,000.

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 356 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority of the Alaska
7 Public Utilities Commission in connection with cer-
8 tain activities of the Alaska Power Authority, cer-
9 tain agreements among certain public utilities, and
10 calculating power cost equalization; and providing
11 for an effective date."

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

13 * Section 1. AS 42.05.431 is amended by adding a new subsection to
14 read:

15 (c) Notwithstanding (b) of this section,

16 (1) a wholesale agreement for the sale of power from a
17 project licensed by the Federal Energy Regulatory Commission on or
18 before January 1, 1987, and related contracts for the wheeling, stor-
19 age, regeneration, or wholesale repurchase of power purchased under
20 the agreement, entered into between the Alaska Power Authority and one
21 or more other public utilities or among the utilities after
22 October 31, 1987, and before January 1, 1988, and amendments to the
23 wholesale agreement or related contract, are not subject to review or
24 approval by the commission until all long-term debt incurred for the
25 project is retired; and

26 (2) a wholesale agreement or related contract described in
27 (1) of this subsection may contain a covenant for the public utility
28 to establish, charge, and collect rates sufficient to meet its obliga-
29 tions under the contract; the rate covenant is valid and enforceable.

1 * Sec. 2. AS 42.05.511 is amended by adding a new subsection to read:

2 (d) Validated costs incurred by a utility in connection with the
3 related contracts described in AS 42.05.431(c)(1) must be allowed in
4 the rates charged by the utility. In this subsection, "validated
5 costs" are the actual costs that a utility uses, under the formula set
6 out in related contracts described in AS 42.05.431(c), to establish
7 rates, charges for services and rights, and the payment of charges for
8 services and rights. This subsection does not grant the commission
9 jurisdiction to alter or amend the formula set out in those related
10 contracts.

11 * Sec. 3. AS 44.83.090(b) is amended to read:

12 (b) The authority is not subject to the jurisdiction of the
13 Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-
14 83.010 - 44.83.425] grants the authority [ANY] jurisdiction over the
15 services or rates of a [ANY] public utility or diminishes or otherwise
16 alters the jurisdiction of the Alaska Public Utilities Commission with
17 respect to a [ANY] public utility, including any right the commission
18 may have to review and approve or disapprove contracts for the pur-
19 chase of electricity by a public utility other than wholesale agree-
20 ments and contracts described in AS 42.05.431(c)(1).

21 * Sec. 4. AS 44.83.162 is amended by adding a new subsection to read:

22 (p) In calculating power cost equalization, the commission may
23 not consider validated costs or kilowatt-hour sales associated with a
24 United States Department of Defense facility.

25 * Sec. 5. APPLICABILITY. AS 42.05.431(c), 42.05.511(d), and the amend-
26 ments made to AS 44.83.090(b) by sec. 3 of this Act, do not apply to whole-
27 sale power agreements and related contracts in which the purchasers are
28 required to make excess payments as that term is described in section 29 of
29 the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase

1 of Electric Power signed December 8, 1987.

2 * Sec. 6. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties
3 to the Bradley Lake Hydroelectric Project Agreement for the Sale and Pur-
4 chase of Electric Power signed December 8, 1987, undertake negotiations to
5 amend the agreement, the Alaska Power Authority may not withhold its agree-
6 ment to remove the requirement to make the excess payments as described in
7 section 29 of the wholesale power contract, nor may the Alaska Power Au-
8 thority require concessions from the purchasers as a condition of the
9 removal of the excess payments provision.

10 * Sec. 7. This Act is retroactive to November 1, 1987.

11 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

HOUSE FINANCE COMMITTEE

MEETING OF: _____

SUBJECT: HB 356 #1 KB

MEMBER	YES	NO
ADAMS		X
BOYER		X
BROWN	X	
DAVIS	X	
FRANK		X
GOLL	X	
LARSON		X
POURCHOT		X
RIEGER		X
SWACKHAMMER		X
WALLIS		

PASSED: _____

FAILED: _____

3-7

Attachment 1

AMENDMENT # 1

by BROWN

Limit Enforceability of Covenants to Wholesale Agreement

Amend page 1, line 24 to delete the phrase:

"or related contract"

HOUSE FINANCE COMMITTEE

MEETING OF: _____

SUBJECT: HB 356 # 2 KB

MEMBER	YES	NO
ADAMS		X
BOYER	X	
BROWN	X	
DAVIS	X	
FRANK		X
GOLL	X	
LARSON		X
POURCHOT		X
RIEGER		X
SWACKHAMMER		X
WALLIS		

PASSED: _____

FAILED: _____

Attachment 2

AMENDMENT # 2

by BROWN

Limitation on Automatic Approval of "Any Amendments"

Amend page 1, line 22, and after "contract":

Insert "adopted before January 1, 1996,

HOUSE FINANCE COMMITTEE

MEETING OF: HB 356

SUBJECT: KB # 3A

MEMBER	YES	NO
ADAMS		X
BOYER		X
BROWN	X	
DAVIS	X	
FRANK		X
GOLL	X	
LARSON	X	
POURCHOT	X	
RIEGER	X	
SWACKHAMMER		X
WALLIS		

PASSED: _____

FAILED: _____

AMENDMENT • 3A

(NOTE: substitute for prior Amendment #3)

by BROWN .

Elimination of Excess Payments

page 2, after line 17:

Insert new bill sections to read:

**** Sec. 5. APPLICABILITY. AS 42.05.431(c), 42.05.511(d), and the amendments made to AS 44.83.090(b) by sec. 3 of this Act, do not apply to wholesale power agreements and related contracts in which the purchasers are required to make excess payments as that term is described in Section 29 of the Bradley Lake Hydroelectric Project Agreement for the Sale and Purchase of Electric Power signed December 8, 1987."**

*** Sec. 6. NEGOTIATIONS TO REMOVE EXCESS PAYMENT TERM. If the parties to the Bradley Lake Hydroelectric for the Sale and Purchase of Electric Power signed December 8, 1987 undertake negotiations to amend the agreement, the Alaska Power Authority may not withhold its agreement to remove the requirement to make the excess payments as described in Section 29 of the wholesale power contract, nor may the Alaska Power Authority require concessions from the purchasers as a condition of the removal of the excess payments provision."**

Renumber sections accordingly

Accepted
2-5-88
4

A M E N D M E N T

Offered in the HOUSE:

BY: SUND

TO: CSHB 356 (Judiciary)

PAGE 1 LINE: 21

After "public utilities" add:

"or among* the utilities"

This amendment corrects a drafting error.

HOUSE FINANCE COMMITTEE

MEETING OF: _____

SUBJECT: _____

HB 356 #5

MEMBER	YES	NO
ADAMS		X
BOYER	X	
BROWN	X	
DAVIS	X	
FRANK	X	
GOLL	X	
LARSON	X	
POURCHOT	X	
RIEGER	X	
SWACKHAMMER	X	
<u>WALLIS</u>		

PASSED: _____

FAILED: _____

#5

Adopted
2-5-88
go0168hBg
Cramer

A M E N D M E N T

Offered in the FINANCE COMMITTEE

By Swackhammer

TO: CSHB 356 (Judiciary)

Page 1, line 29, to page 2, line 1:

Delete ", except those disallowed under AS 42.05.381(a),"

-2/5/88

Page 2, line 2:

Delete ", "

HOUSE FINANCE COMMITTEE

MEETING OF: _____

SUBJECT: _____

#6

MEMBER	YES	NO
ADAMS		X
BOYER	X	
BROWN	X	
DAVIS	X	
FRANK	X	
GOLL	X	
LARSON	X	
POURCHOT	X	
RIEGER	X	
SWACKHAMMER	X	
WALLIS		

PASSED: _____

FAILED: _____

#16

Adopted
2-5-88
go0168hBh
Cramer

A M E N D M E N T

Offered in the FINANCE COMMITTEE

TO: CSHB 356 (Judiciary)

Page 2, line 3, after ".":

Insert "In this subsection, "validated costs" are the actual costs that a utility uses, under the formula set out in related contracts described in AS 42.05.431(c), to establish rates, charges for services and rights, and the payment of charges for services and rights. This subsection does not grant the commission jurisdiction to alter or amend the formula set out in those related contracts."

Approved or accepted

HOUSE FINANCE COMMITTEE

MEETING OF: _____

SUBJECT: HB 356 #7

MEMBER	YES	NO
ADAMS		X
BOYER		X
BROWN	X	
DAVIS	X	
FRANK		X
GOLL	X	
LARSON		X
POURCHOT		X
RIEGER		X
SWACKHAMMER		X
WALLIS		

PASSED: _____

FAILED: _____