

LEGISLATIVE FINANCE-HOUSE/SENATE FINANCE COMM. FILES 8879

HB 541 cont., HB 556 542

133

CSHB 541 (Resources)
Department of Revenue Comments
House Finance Committee
April 19, 1990

The committee is considering CSHB 541 (Resources), which currently embodies a number of provisions suggested by the Department of Revenue. The legislation will improve the process for resolving disputes between the state and the oil industry over back taxes and royalties.

Specifically, the provisions prohibiting extra confidentiality in settlements, requiring documentation of settlements, and the legislative oversight provision together provide for less secrecy and more accountability than under the law today. This is good public policy. We note that these provisions apply to tax and royalty disputes, but not to pipeline tariff disputes.

Additionally, the interest provisions improve the "back-taxes" resolution by removing a disincentive to pay -- or an incentive to drag out a dispute as long as possible. The current interest provision is outdated and needs revision; the rate should follow the market. The department would prefer that the interest rate be uniform for all taxpayers and all tax types.

The department does not support the notification provisions in sections 3 (AS 43.05.060(b)) and 4 (AS 43.05.070(c)). First, program

responsibility should clearly reside in a single program. To require notification is to imply shared responsibility; shared responsibility means loss of accountability. Second, good managers will invoke the procedures outlined here in appropriate cases, whether or not the provisions are in statute; bad managers will avoid these guidelines -- or give them pro forma compliance -- whether or not the provisions are in statute. Attached is a proposed amendment deleting this provision; for consistency, it is deleted from the royalty provision as well as the tax provisions.

Finally, although the department is comfortable with the internal review provisions in the bill, the department does not support the seven day restriction on the ability to approve an agreement. The provision may be too restrictive in some cases, and would not be long enough in others. Again, program responsibility must reside with the program manager. The attached amendment would delete this provision from the two tax provisions, and, for consistency, also from the royalty provision.

A. LB& A Report on Tax Matters

Sec. 1: This section amends AS 24.20.271 by adding a new subsection to require the Legislative Auditor to audit and report periodically on annually to the Legislature on the resolution of disputed royalty and tax payments, and to report periodically on tax functions.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 541 (Resources)

Page 1, line 9:

Delete "the Department of Revenue"

Insert "those departments"

Page 1, line 10:

Delete "that audit"

Insert "its audits"

Page 2, line 23:

Delete "annually"

Insert "periodically"

Page 2, line 25, after "Revenue":

Delete ", including the department's resolution of disputed taxes;

(B) prepare a report summarizing the results of the
audit that may contain information made confidential by S 43.-
05.230 and a version of the report edited for the public"

Page 3, line 1:

Delete "(C)"

Insert "(B)"

Page 3, lines 1 - 2:

Delete "and the unedited report prepared under (B) of this paragraph"

Page 3, line 3, after "session":

Insert ";

(1) annually

(A) conduct an audit of the resolution of disputed royalties by the Department of Natural Resources and disputed taxes by the Department of Revenue;

(B) prepare a report summarizing the results of the audits that may contain information made confidential by AS 43.-05.230 and a version of the report edited for the public; and"

(C) submit the audit and the unedited report prepared under (B) of this paragraph to the legislature not later than the first day of the regular legislative session"

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 541 (Resources)

Page 3, line 8, after "more":

Insert "and that relates to a calendar year that is five or more years before the current year"

Page 3, line 17, after "more":

Insert "and that relates to a calendar year that is five or more years before the current year"

Page 4, line 19, after "more":

Insert "and that relates to a calendar year that is five or more years before the current year"

Page 4, line 29, after "more":

Insert "and that relates to a calendar year that is five or more years before the current year"

Page 5, line 29, after "more":

Insert "and that relates to a calendar year that is five or more years before the current year"

Page 6, line 8, after "more":

Insert "and that relates to a calendar year that is five or more years before the current year"

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

April 18, 1990

The Honorable Ronald L. Larson
Co-Chairman, House Finance Committee
and

The Honorable Lyman F. Hoffman
Co-Chairman, House Finance Committee

Dear Co-Chairmen Larson and Hoffman:

The Division of Legislative Audit Division has reviewed CS for House Bill No. 541 (Resources). The bill provides for this Division's involvement in the review of the Department of Revenue's resolution of disputed taxes and also for performance audits of the Department of Revenue tax functions. We support the involvement of the Audit Division in this area, as does Senator Kerttula, Chairman of the Legislative Budget and Audit Committee.

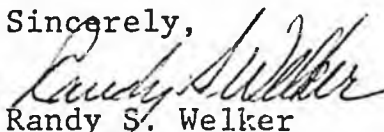
We have proposed amending language to Section 1 of the bill to better define the requirements for audit review. The amended language is enclosed for your consideration. The proposed language requires periodic performance audits of the tax functions of the Department of Revenue as opposed to annual audits. The Department has a variety of tax programs, and we would envision conducting a detailed review annually of one or two specific programs. On a rotating basis, we would cover all tax programs. This will lessen the impact on the Audit Division and better fit the purpose of performance audits.

The proposed language also includes the resolution of disputed royalties by the Department of Natural Resources along with the resolution of disputed taxes by the Department of Revenue.

Finally, we have also enclosed a fiscal note to accompany this amended language. The fiscal note provides for two Auditor positions, most likely positioned in Anchorage to implement the new responsibilities.

If we can provide any additional information, please contact me at 465-3830.

Sincerely,



Randy S. Welker
Legislative Auditor
Division of Legislative Audit

Enclosure

(10) periodically

(A) conduct a performance audit of the tax functions of the Department of Revenue and submit the audit to the legislature not later than the first day of the regular legislative session;

(11) annually

(A) conduct an audit of the resolution of disputed royalties by the Department of Natural Resources and disputed taxes by the Department of Revenue;

(B) prepare a report summarizing the results of the audits that may contain information made confidential by AS 43.05.230 and a version of the report edited for the public; and "

(C) submit the audit and the unedited report prepared under (B) of this paragraph to the legislature not later than the first day of the regular legislative session

**Synopsis of CS HB 541 (Res) Relating to Oil and Gas Revenue Disputes
(With Amendments)**

A. LB& A Report on Tax Matters:

Sec. 1: This section amends AS 24.20.271 by adding a new subsection to require the Legislative Auditor to audit and report annually to the Legislature on tax functions, including the resolution of disputed taxes.

B. Internal, Independent Review of Major Oil & Gas Settlements:

Sec. 2: To ensure that major settlements of the State's royalty litigation under AS 38.05 are in the public interest, this section requires the Commissioner of Natural Resources, before settling any royalty dispute involving a claim greater than \$10 million for a calendar year five years or more prior to the current year, to obtain an independent, internal review of the proposed settlement by an individual who was not involved in negotiating the settlement.

(The review will specify initial objectives and how they are met and will consider how the settlement affects other outstanding disputes. Additionally, this section provides that: the Commissioner shall notify the Governor when negotiations have begun; there shall be a minimum of 14 days between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement; no settlement shall extend confidentiality otherwise provided by law; and full documentation shall be maintained for review.)

Secs. 3 and 4: To ensure that major settlements of the State's tax litigation under AS 43.05.060 or AS 43.05.070 are in the public interest, these identical sections require the Commissioner of Revenue, before settling any tax dispute involving amounts greater than \$10 million for a tax year five years or more prior to the current year, to obtain an independent, internal review of the proposed settlement by an individual who was not involved in negotiating the settlement.

(The review will specify initial objectives and how they are met and will consider how the settlement affects other outstanding disputes. Additionally, this section provides that: the Commissioner shall notify the Governor when negotiations have begun; there shall be a minimum of seven days between the time the Commissioner receives a final settlement offer and the date s/he approves the settlement; no settlement shall extend confidentiality otherwise provided by law; and full documentation shall be maintained for review.)

C. Interest Provisions on Outstanding Oil & Gas Taxes:

Sec. 5: This section amends AS 43.05.225 to change the interest rates for outstanding oil and gas taxes (paid under AS 43.55, AS 43.56, AS 43.57, former AS 43.21, or former AS 43.58) from 12% interest to a floating interest rate five percentage points above the annual rate charged by member banks for advances by the 12th Federal Reserve District and compounded quarterly.

Sec. 6: This amendment to AS 43.05.280 maintains State refunds of overpayments on taxes other than oil and gas taxes at 12%.

Sec. 7: This section amends AS 43.05.280 to change the interest rates for State refunds of overpayments on oil and gas taxes (paid under AS 43.55, AS 43.56, AS 43.57, former AS 43.21, or former AS 43.58) from 12% simple interest to a floating interest rate three percentage points above the annual rate charged by member banks for advances by the 12th Federal Reserve District and compounded quarterly.



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

To: Rep. Lyman Hoffman, Co-Chair
House Finance Committee

Date: April 9, 1990

From: Rep. Cliff Davidson, Co-Chair
House Resources Committee

A handwritten signature in dark ink, appearing to be "Cliff Davidson", written over the name in the "From:" field.

Re: HB 541 (Dealing with Oil and Gas Revenue Disputes)

The House Resources Committee passed HB 541 out to the House Finance Committee. In my estimation, this bill is an important piece of legislation that will cure many of the problems in the system of reviewing oil and gas revenue dispute settlements. Specifically, this bill does four things. CSHB 541 (Res):

== requires the Commissioner of Revenue (tax) or Natural Resources (royalty) to conduct an independent, internal review of every major settlement (introduced by Speaker Cotten and endorsed by Commissioner of Revenue Malone);

== requires Legislative Budget and Audit to review settlements and prepare an annual report to the Legislature on the status of outstanding cases (submitted by Dept. of Revenue);

== sets out in statute that no settlement shall extend taxpayer confidentiality beyond the existing statutory provisions (submitted by Dept. of Revenue and Rep. Menard);

== changes interest rates on outstanding oil and gas taxes from 12% simple to a floating interest rate keyed to the federal funds rate and compounded quarterly (modified from Rep. Gruenberg's HB 519; recommended and re-drafted by Dept. of Revenue).

Attached are a synopsis and a copy of the bill with suggestions for minor changes consistent with the intent of the Resources Committee, along with materials on the major features of the bill with suggestions for alternatives to some of the key provisions.

With upwards of \$5 billion involved in outstanding oil and gas revenue disputes, this is an area worthy of our efforts. At this late date, we need top-quality handling in your committee. I am hopeful, therefore, that you will take on the task of seeing this bill quickly through to the floor.

From the desk of

Richard A. Fineberg
Juneau, Alaska 99801

401 8th St. - Apt. 206
tel 907 / 463-3568

To: Representative Cliff Davidson
Co-Chair, House Resources Committee

Date: April 2, 1990
(rev. #2)

Representative Curt Menard
Co-Chair, House Resources Committee

Re: Comments on HB 541 (Oil & Gas Settlement Review)

You have now heard testimony for three days on measures dealing with oil and gas revenue disputes. I believe the most important of these bills is HB 541 (Cotten), which provides straight-forward statutory guidelines for review of settlements for a tax or royalty claim greater than \$10 million, on the books for at least one year and involving a year at least five years prior to the current year.

Industry representatives have opposed HB 541. More surprisingly, the Departments of Law and Natural Resources have also expressed reservations. Since this bill simply codifies review procedures the Commissioner would use to pass judgement on settlements of this importance, lack of departmental support is surprising. While some of the arguments against HB 541 have merit at first glance, I believe these arguments are answerable.

As I understand them, industry and department staffs have raised five major points concerning HB 541. These arguments, along with the response to each, follow:

1. The Commissioner could circumvent this statute simply by hiring someone to do what the Commissioner wants.

Response: The rubber-stamp problem is unavoidable and is no reason not to enact this statute. The fact is, at this time there are no guidelines in place to govern this major policy area. With codified procedures in place specifying internal, independent review, you are certainly less likely to see a rubber-stamp settlement than without such procedures. (To cure the rubber-stamp problem by setting up an independent review process outside the department was considered and rejected during the drafting of HB 541 because such a proposal would add a new layer to an already complicated process.)

2. The existence of a review procedure would undermine the negotiators' status with its industry counterparts.

Response: It is not clear why this is review would undermine the settlement process. HB 541 merely sets out in statute a review similar to what a Commissioner should do before taking a major policy step. Industry negotiators must be aware that settlements involving hundreds of millions of dollars are public policy issues that can and should be reviewed by elected public officials before they are put into place.

3. A settlement of this kind of case is too complex to be reviewed in 14 days.

Response: (A) In fact, I conducted a review similar to the one set out in HB 541 in the 1988 ARCO income tax settlement. That review required less than 14 days. (B) Nothing in the proposed statute prevents the Commissioner from beginning the independent review earlier; the 14 day hiatus specified in HB 541 is simply a cooling off-period, not a review mechanism.

4. The Commissioner of Natural Resources has already specified that she will get a "second opinion" from the litigating attorneys in the royalty litigation.

Response: (A) Even if this were true, what about future commissioners? Shouldn't matters of this magnitude have statutory guidelines? (B) Nothing in the proposed review framework prevents the Commissioner from seeking the counsel of the litigating attorneys; the review framework established by HB 541 simply guarantees the litigating team a sounding board to present its viewpoint. This is necessary because policy makers have sometimes discounted the opinions of litigating attorneys in previous settlements because the attorneys were felt to have a vested interest in continued litigation.

5. This review will not contribute to public review by putting more information into the public record.

Response: This statute was designed to improve policy execution, not development or review. However, it is possible to amend this legislation by requiring

the Commissioner to make a summary of a major settlement public. (Since settlements covered by HB 541 involve tax years five years prior, such a provision should not jeopardize current market information.)

The Department of Revenue has proposed adding sections pertaining to interest rates and legislative oversight measures for HB 541. While legislative oversight can improve the State's policy formulation and review, the essence of HB 541 deals with policy execution. Post-settlement legislative review is no substitute for statutory guidelines for the execution of major oil and gas revenue dispute settlements.

This analysis supports the conclusion that the need for codified, internal, independent review of major oil and gas revenue disputes outweighs the arguments against HB 541. In view of the amounts at issue in outstanding cases and the documented questions concerning past settlements, I believe HB 541 should be enacted this year.

From the desk of


Richard A. Fineberg
Juneau, Alaska 99801

401 8th St. - Apt. 208
tel 907 / 463-3568

To: Rep. Sam Cotten
Speaker of the House

Date: April 3, 1990

Re: Oil & Gas Revenue Disputes (Follow-up to Yesterday's Conversation)

In response to my concern about the failure to reference litigation guidelines (along with the implication that they were no longer in effect) in the four pages on the royalty case released to you and Senator Kelly last October 17, you noted your reliance on Wil Condon and his litigation team. Wilson does not determine royalty litigation policy; he carries it out. The Working Group rightly regards him as a contract attorney -- albeit a very sage and experienced one.

As you know, the Commissioner of Natural Resources has created a special settlement team that is working actively to settle the State's royalty litigation. The Commissioner of has informed House Resources that she has no intention of establishing an independent review procedure for this important case. Instead, she writes:

initial review of settlement offers will be undertaken by the settlement team I have appointed. . . . Any recommendations toward settlement for this group will be reviewed by the litigation team and its consultants. . . . That team, which has undertaken the most extensive analysis of and aggressive posture toward royalty obligations . . . would provide the most extensive "second opinion" on proposed settlements or settlement offers [*emphasis added*].

In my estimation, the Commissioner's blueprint is no substitute for the internal, independent review that HB 541 would mandate. Her plan has two basic problems:

First, settlements tend to develop a momentum of their own, as we have seen in the past. This happens because a settling team is liable to become enamored of its own settlement, and also because a bureaucratic group that works at length on a project naturally wants to complete that project.

What about the so-called "second opinion" by the litigating attorneys? If the litigating attorneys do not approve the settlement, their wisdom is liable to be dismissed on

one of two grounds: "Of course they want to litigate: They're lawyers." Or: "These lawyers just don't want to see their rice bowl broken." I've seen that happen at critical junctures in both of the major settlements with which I am familiar.

Note that the Commissioner's letter to the Resources Committee indicates that the State's litigating attorneys exhibit a most aggressive posture toward royalty obligations. As you and I both know, Wilson is, by nature, rather cautious (it was Condon, for example, who pushed the 1982 TAPS settlement). I admire Wilson and respect for the work of his team. But I can tell you that if he does not approve of a settlement, his view is liable to be dismissed as one of those litigating attorneys. Moreover, if he is not apprised of a settlement's particulars in time, his admirably cautious nature will prevent him from expressing strong opposition. This, in my estimation, is a very real danger.

This is not an outsider's opinion: in addition to serving on the Royalty Litigation Working Group from its inception through early 1989, I worked closely with Wilson and his team in Los Angeles and Anchorage on three separate projects in 1987 and 1988.

With hundreds of millions of dollars riding on royalty disputes with individual companies and \$1.3 billion in outstanding claims (excluding punitive damages), the independent, internal review mandated by HB 541 seems like a wise precaution. The history of previous settlements demonstrates the need for this measure.

cc: Rep. Mike Navarre

What should the State choose for
Interest rates on taxes due?

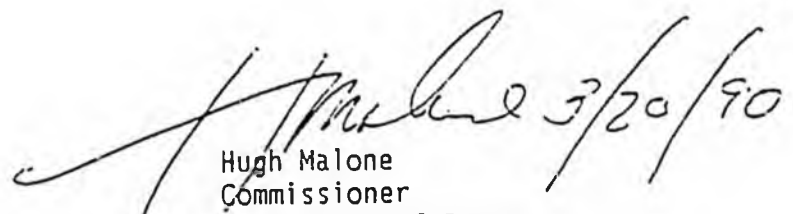
Presently, delinquent taxes pay interest at a fixed rate of 12% simple interest. Generally, this is a great deal less than what a taxpayer would have paid if he borrowed the money at a bank.

I would recommend that the rate on delinquent taxes be tied to the market.

I believe that a floating rate 5% points above the federal reserve rate, as set out in AS 45.45.010(b) would work well for delinquent taxes.

A lower rate, say 3% points above the federal reserve rate, should apply to any refunds. This would give a taxpayer an incentive to get the issue resolved, but would not put the state at risk if a taxpayer overpaid.

A similar differential approach is used by the U.S. Treasury Department.


Hugh Malone
Commissioner
Department of Revenue

Attachment: (1) Compound interest chart
(2) Historic Federal Reserve discount rate

COMPOUND INTEREST - AN INCENTIVE TO PAY

\$100,000 + interest from 1/1/80 to 1/1/90.
 Showing total amounts which would be due at one, 5, and 10 years.

	<u>1/1/81</u>	<u>1/1/85</u>	<u>1/1/90</u>
12% simple	\$112,000	\$160,000	\$220,000
12% compound	112,000	176,234	310,584
20% simple	120,000	200,000	300,000
20% compound	120,000	248,832	619,174
Floating Rate 5% above Federal Reserve (AS 45.45.010(b) compounded annually */	116,800	207,140	356,980

*/ These amounts were calculated using the following yearly rates for the federal reserve rate and adding 5% to each rate to reach the rate called for in AS 45.45.010(b). These rates are for illustration purposes only:

Federal Reserve Rate Average weighted by days for period indicated.	First year @ 11.8 Next 4 years @ 10.4 Last 5 years @ 6.5
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See attachment for actual base federal reserve rates during this period.

FEDERAL RESERVE BANK OF SAN FRANCISCO
 101 MARKET STREET, SAN FRANCISCO, CALIFORNIA 94105

"DISCOUNT RATE" ON ADVANCES TO MEMBER BANKS UNDER SECTIONS 13 AND 13A OF THE FEDERAL RESERVE ACT IN EFFECT AT THE FEDERAL RESERVE BANK OF SAN FRANCISCO

March 12, 1990

The following is a list of rates of interest on our advances to, and discounts for, member banks and other depository institutions under Sections 13 and 13a of the Federal Reserve Act. Each rate (also referred to as the "discount rate") was in effect until the next date indicated.

Effective Date			Rate (% per annum)	Effective Date			Rate (% per annum)
			Days				Days
1976	January	19	5-1/2	1981	May	5	15 1/4
	November	22	5-1/4		November	2	18 1/4
1977	September	2	5-3/4		December	4	32 1/2
	October	26	6	1982	July	20	22 3/4
1978	January	13	6-1/2		August	2	13 1/2
	May	11	7		August	16	14 1/2
	July	3	7-1/4		August	27	11 1/2
	August	21	7-3/4		October	11	45 1/2
	September	22	8		November	22	42 1/2
	October	15	8-1/2		December	14	22 1/2
	November	2	9-1/2	1984	April	13	28 1/2
1979	July	20	10		November	21	22 1/2
	August	20	10-1/2		December	24	33 1/2
	September	19	11	1985	May	21	14 3/4
	October	8	12	1986	March	7	28 3/4
1980	February	15	4 1/2		April	21	45 1/2
	May	29	10 3/4		July	11	8 1/2
	June	13	15 1/2		August	21	4 1/2
	July	29	45 1/2	1987	September	9	38 1/4
	September	26	60 1/2	1988	August	9	33 1/4
	November	17	52 1/2	1989	February	24	19 1/2
	December	5	18 1/2				310 1/2
			25 1/2				to 1-1-90

From March, 1980 through November, 1981, surcharges were applied at various times on advances to certain depository institutions. The Federal Reserve Bank expresses no opinion on the applicability of the basic discount rate or surcharge to any transaction governed by a Federal or state usury or usury pre-emption statute.

*current rate

Note: Number of days at each rate is handwritten on this chart

Amc

Lenient laws give oil industry a good tax stall

It's a wonder the oil companies complain so much about Alaska taxes and royalties. They don't pay much of them anyway.

The Legislature is beginning to wrestle again with the problem of how to make oil companies pay the billions of dollars they owe us. The companies' dilatory tactics in administrative hearings and in court have choked the state's revenue flow and put our accounts years behind schedule.

Platoons of lawyers are tied up in eternal litigation, but that's only today's problem. The logjam sends the wrong signal to



Fred Pratt

all businesses, telling them Alaska is a place where they can stall the government forever, and where the government and courts can't resolve sophisticated business questions.

According to a legislative report last month, the state and Alaska oil companies have more than \$4.4 billion in taxes, royalties and pipeline tariff cases, not counting interest due. That only includes North Slope oil royalties through 1986, and income taxes only through 1985.

This concerns other businesses as well. Mining companies are embroiled in similar disputes, and whatever "solution" the Legislature devises will be read as a sign of Alaska's business climate for the 1990s.

The first steps should probably be to change lenient state laws that allow the large companies to profit from delaying their tax payments so long.

California requires taxpayers to prepay their taxes in order to challenge state assessments, for instance, but we do not. One change might be to require prepayment at some point during a lengthy major assessment appeal.

Late tax payments in Alaska bear only a 12 percent interest rate, and that's simple interest, not compounded. At times of high interest rates the companies are essentially borrowing operating income from the state at lower than market rates when they delay payments to us.

House Bill 519, one of five related bills considered in House Resources Committee hearings last week, would raise the interest rate to 20 percent. Another solution might be to put disputed payments in escrow accounts, where the money wouldn't be available for the Legislature to spend.

With an escrow account our politicians wouldn't spend the money and later be faced with repaying it if they lose in court. That's the situation that impelled former Gov. Jay Hammond and the 1981 Legislature to repeal the separate accounting of corporate income tax, even when it was later found to be constitutional.

HB 519 would also require oil companies to pay up their back taxes before they can buy new state oil leases. That would be OK as long as they want our new oil leases badly enough, but Alaska oil leases haven't been too hot an item for the past five years.

Another provision in HB 519 would establish an office of administrative adjudication for tax disputes, headed by an administrative law judge. That could be a move in the right direction, building a judicial expertise in business matters.

Most large corporations are chartered in Delaware for two reasons: Delaware's corporate and tax laws are favorable, and Delaware's chancery court is skilled and experienced in resolving cases of corporate law that would overwhelm most state judges who handle business cases between drunken drivers and divorces.

We might not want to be another Delaware, but we should insist on a top quality judiciary and bureaucracy. As Delaware shows, efficient government can be a "resource" every bit as valuable to our economy as gold or oil.

Free-lance journalist Fred Pratt has been covering Alaska business and politics for the past 18 years.

Clock ticking on settlement review procedures

(Editor's note: The writer worked on oil and gas matters for the Governor's Office from 1987 through October 1989 and served on the Administration's Royalty Litigation Working Group. Earlier this year, he prepared a report to the Legislature on oil and gas revenue disputes. The column is adapted from testimony before the House Resources Committee March 21, 1990.)

Last October, the Natural Resources Commissioner Lennie Gursuch released four pages of information on the State's North Slope royalty oil litigation case. This long-running court struggle centers around the State's effort to determine what Alaska North Slope oil was actually worth when it was sold for every month that royalties have been paid since August 1977, when the first North Slope oil royalty payments came in.

The documents listed for the first time the amounts by which the State claims 15 North Slope producers have underpaid their royalties. The total came to \$902 million, including interest. Of this amount, 93 percent was divided among the three major Prudhoe Bay producers — ARCO, BP and Exxon. In addition, the State estimated that purchasers of the State's royalty oil, who agreed to adjust their payments when the case was settled, would be liable for an additional \$378 million on the same basis.

Moreover, the State is seeking treble damages against three producers — ARCO, Sohio (now wholly owned by BP) and Chevron. The State alleges that these producers misrepresented the basis for their royalty payments through negligence or fraud, thereby breaching contractual and fiduciary (trust) responsibilities to the State.

For years, this case was known as "Amerinda Hess," so call for the first of the defendants. But Amerinda Hess, which only owed about \$300,000 — an almost imperceptible fraction of the amounts at issue — quickly settled its claim. As a result, the State's case is now simply known as "royalty litigation."

Whatever the name, three other small producers have already agreed to abide by the outcome. That still leaves \$898 million at issue — plus the \$378 million from royalty purchasers — excluding the claim

Richard A. Fineberg

Praise the Pipe and Pass the Money

for treble damages.

The royalty litigation trial is scheduled to begin sometime in the spring of 1991 in Juneau — if it comes to trial. The State is also trying to settle the case out of court.

In many ways, settlement makes a lot of sense. This case has cost over \$30 million to prepare, with costs rising as trial approaches. A supplemental appropriation for unanticipated expense in preparing the case for trial added \$7.4 million to the case budget for the current fiscal year. However, these costs pale beside the potential gain to the state from successful resolution, either by trial or by settlement.

How does the State go about settling such a mammoth case? The Commissioner of Natural Resources has created a special, three-person settlement team that is working actively toward settlement, but past settlement of major tax claims — along with the 1985 settlement of the trans-Alaska Pipeline rate case — have called the State's settlement process into question.

This is a rather unusual area of public policy. If you get a traffic ticket, you pay the penalty or go to court. If you receive a traffic ticket when you are drunk, the penalty is also clear. And if you rack up a specific number of infractions, you lose your license to drive. But if you are one of the small number of taxpaying corporations that habitually underpay their tax and royalty bills by millions of dollars, year after year, and if you then stonewall the tax auditors, the sanctions are not at

all clear. The typical outcome is a settlement negotiated in the absence of clear statutory guidelines, and in secrecy that erodes the checks and balances that normally safeguard the public interest.

In view of the magnitude of the royalty case and the troubled history of other oil and gas settlements, it's surprising that there are no procedures in place to insure an independent review of any settlement that might be negotiated by the settlement team.

Nor are any formal review procedures contemplated.

Last month, the Commissioner of Natural Resources informed the Legislature that she has no intention of establishing an independent review procedure for this important case. In response to a legislative request, the Commissioner responded that:

"... initial review of settlement offers will be undertaken by the settlement team I have appointed. . . . Any recommendations toward settlement for this group (sic) will be reviewed by the litigation team and its consultants. . . . That team, which has undertaken the most extensive analysis of and aggressive posture toward royalty obligations. . . . would provide the most extensive 'second opinion' on proposed settlements or settlement offers."

In other words, the Commissioner intends to rely first on the settling team to review its own settlement and to rely second on the litigating attorneys to blow the whistle if the litigators don't like the settlement. I believe this plan has two

basic problems:

First, settlements tend to develop a momentum of their own, a phenomenon those of us close to the settlement process have seen in the past. This happens because the settling team is liable to become enamored of its own settlement, and also because a bureaucratic group that works at length on a project naturally wants to see results. With hundreds of millions of dollars riding on disputes with individual companies, independent review — not review by the settling team — seems like a wise precaution.

What about the so-called "second opinion" by the litigating attorneys? This review will protect the public interest only if the recommendations are heeded. But if the litigating attorneys do not approve the settlement, their wisdom is liable to be dismissed on one of two grounds: "Of course they want to litigate: They're lawyers." or "These lawyers just don't want to see their rice bowl broken."

The seeds for ignoring the second opinion are already planted: Note that the Commissioner's recent letter to the Legislature indicated that the State's litigating attorneys exhibit a "most aggressive posture" toward royalty obligations.

With upwards of \$3 billion outstanding in taxes — most of it involving the North Slope (and, presumably, the same, few major producers) — there is a similar need for an internal review procedure for tax settlements. In September, 1988, the Administration's Oil & Gas Subcabinet commissioned the creation of independent review procedures. After thirteen months, draft procedures from the Governor's Office finally found their way to the Department of Revenue, where they have languished for the last six months.

A proposal introduced earlier this session by the Speaker of the House (HB 511) would create a statutory requirement for internal, independent review of major oil and gas settlements in both the tax and royalty arenas. The proposal has cleared the House Resources Committee and is now in the Finance Committee. It remains to be seen whether the House leadership can push this bill through before the curtain falls on the current legislative session.

The legislative clock will stop ticking, but settlement negotiations will continue

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to... agreements,
 compromises... Natural Resources and Revenue."
 Sponsor: Repr. Cotten
 Requestor: House Resources

Agency Affected: Department of Law
 BRU: Oil and Gas Spacial Projects
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3612
 Division: Administrative Services Date: March 21, 1990
 Approved by Commissioner: Richard I. Pegues / FBI Date: March 21, 1990
 Agency: Douglas B. Baily, Attorney General
Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 541

This bill amends AS 38.05.035 to require that if the commissioner of natural resources enters into negotiations to compromise or settle a dispute between the department and a person as to a royalty or net profit payment involving a claim that totals, with applicable penalty and interest, \$10,000,000 or more, the commissioner shall advise the commissioner of revenue and the attorney general that negotiations have commenced, not later than 14 days after the commencement of negotiations.

This bill also amends AS 43.05.070 to require that if the Department of Revenue enters into negotiations to compromise or settle a tax dispute between the department and a taxpayer involving a claim that totals, with applicable penalty and interest, \$10,000,000 or more, the commissioner of revenue shall advise the commissioner of natural resources and the attorney general that negotiations have commenced, not later than 14 days after the negotiations commenced.

In effect, the bill institutionalizes the notification process to be followed whenever the Departments of Natural Resources or Revenue seek to settle major royalty or tax claims. Inasmuch as notification is a normal part of business, there should not be a fiscal impact for the Department of Law.

FISCAL NOTE

REQUEST:

Revision Date: 3/27/90
 Title: Revenue and DNR Agreements and Settlements
 Sponsor: Rep. Cotten, Rep. Navarre
 Requestor: House Resources

Agency Affected: Natural Resources
 BRU: Petroleum Management
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0- *	-0- *	-0- *	-0- *	-0- *	-0- *

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

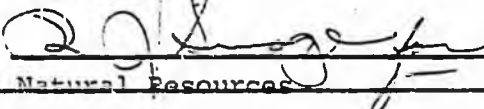
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

* If the independent appraisal of a proposed settlement, as required by this bill, is completed by an employee of the Department of Natural Resources there would likely be no additional cost. If the appraisal is completed by a consultant, there would be additional costs. Costs for consulting services would depend on the topic of the settlement and the degree of technical expertise required for review.

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 3/27/90

Approved by Commissioner:  Date: 3/27/90
 Agency: Department of Natural Resources

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to certain
agreements & settlements by DNR & DOR
Sponsor: Cotten, Navarre
Requester: _____

Agency Affected: _____
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE	See analysis.					

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See attached.

Prepared by: Charles L. London
Division: Oil and Gas Audit
Approved by Commissioner: [Signature]
Agency: REGULAF

Phone: 277-5627
Date: March 22, 1990
Date: 3/20/90

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

Fiscal Note
HB 541
March 22, 199

Analysis

This bill would establish a review and or a 14 day cooling off period for agreements and settlements of tax and royalty disputes in excess of \$10 million entered into by the Department of Revenue or the Department of Resources.

The aim of this bill is to provide additional assurance that the State receives the maximum expected value from oil and gas tax and royalty revenue.

HB

B

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SENATE FINANCE COMMITTEE REPORT

DATE: 5/6/90

FURTHER:

DATE TURNED INTO OFFICE: 5/8/90

The Finance Committee considered
Guidelines for litigation settlement

CSHB 541 (Finance)

and recommended:

replace with 5 CS CSHB 541 (Fin)
 or adopt _____ CS _____
 attached amendment(s)
 _____ letter of intent adopted

same title
 new title
 technical
title change
(HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

fiscal note(s) _____
LAA 106.3
Dept/Date: _____

zero fiscal note(s) _____

appropriation-no fiscal note

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]

APPROVES PREVIOUS:

fiscal note(s) _____
Dept/Date: _____

zero fiscal note(s) _____

OTHER RECOMMENDATIONS:

[Signature] No Rec
[Signature] No Rec
[Signature] No Rec

1. [Signature]

2. _____

Co-Chairs: Signatures and Recommendations

Adopted

FISCAL NOTE

CC

REQUEST:

Revision Date: _____
Title: Act Relating to Oil
and Gas Litigation and Settlement
Sponsor: Rep. Cotten, Navarre

Affected Agency: Legislative Audit Division
BRU: Legislative Budget and
Audit Committee
Components: Legislative Audit Division

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services	106.3	109.7	112.6	116.2	119.5	123.3
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	106.3	109.7	112.6	116.2	119.5	123.3

CAPITAL						
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REVENUE						
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	106.3	109.7	112.6	116.2	119.5	123.3
Federal Fund						
Other						
TOTAL	106.3	109.7	112.6	116.2	119.5	123.3

POSITIONS:

Full-Time	2	2	2	2	2	2
Part-Time						
Temporary						

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: Randy Welker *Randy Welker* Phone: 465-3830
Division: Division of Legislative Audit Date: 4/18/90

Approved By: _____ Date: _____
Agency: _____

**DISTRIBUTION
LEGISLATIVE
LEGISLATIVE :**

Changes in SCS CS HB 541 (FA)
have no fiscal impact.
This fiscal note is
appropriate. 5/8/90 ml

**REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY(IES)**

Original sponsor(s): REP. COTTEN, Navarre, Davidson, Gruenberg, Boyer,
Sharp

1 IN THE HOUSE BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 541 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain agreements, compromises,
7 and settlements entered into by the Departments of
8 Natural Resources and Revenue; to legislative audit
9 of those departments and the release of a report of
10 the audits, that may include or refer to confidential
11 information, to the legislature and public; and to
12 collection and payments of royalties from state
13 resources, the interest rate on unpaid taxes and
14 royalties from state resources, and the interest rate
15 on overpaid taxes."

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

17 * Section 1. AS 24.20.271 is amended to read:

18 Sec. 24.20.271. POWERS AND DUTIES. The legislative audit divi-
19 sion shall

20 (1) conduct a performance post-audit of boards and com-
21 missions designated in AS 44.66.010 and of those programs and activ-
22 ities of agencies subject to termination as determined in the manner
23 set out in AS 44.66.020 and 44.66.030, and submit the audit, together
24 with a written report, not later than the first day of the regular
25 session of the legislature convening in each year set out with refer-
26 ence to boards, commissions, or agency programs whose activities are
27 subject to termination as prescribed in AS 44.66;

28 (2) audit at least once every three years the books and
29 accounts of all custodians of public funds and all disbursing officers

1 of the state;

2 (3) at the direction of the Legislative Budget and Audit
3 Committee, conduct performance post-audits on any agency of state
4 government;

5 (4) cooperate with state agencies by offering advice and
6 assistance as requested in establishing or improving the accounting
7 systems used by state agencies;

8 (5) require the assistance and cooperation of all state
9 officials and other state employees in the inspection, examination,
10 and audit of state agency books and accounts;

11 (6) have access at all times to the books, accounts, re-
12 ports, or other records, whether confidential or not, of every state
13 agency;

14 (7) ascertain, as necessary for audit verification, the
15 amount of agency funds on deposit in any bank as shown on the books of
16 the bank; a [NO] bank may not be held liable for making information
17 required under this paragraph available to the legislative audit
18 division;

19 (8) complete studies and prepare reports, memoranda, or
20 other materials as directed by the Legislative Budget and Audit Com-
21 mittee;

22 (9) have direct access to any information related to the
23 management of the University of Alaska and have the same right of
24 access as exists with respect to every other state agency;

25 (10) periodically

26 (A) conduct a performance audit of the tax functions
27 of the Department of Revenue; and

28 (B) submit the audit to the legislature not later than
29 the first day of the next regular legislative session;

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(11) annually

(A) conduct an audit of the resolution of disputed royalties by the Department of Natural Resources and the resolution of disputed taxes by the Department of Revenue under AS 43.05.060 and 43.05.070; and

(B) prepare a report summarizing the results of the audit and submit the audit and the report to the legislature not later than the first day of the next regular legislative session; the legislative auditor may disclose information made confidential by AS 43.05.230 to a committee of the legislature meeting in executive session if the committee has adopted procedures to protect the confidentiality of the information.

* Sec. 2. AS 38.05.035 is amended by adding new subsections to read:

(g) If the department enters into negotiations to compromise or settle a dispute between the department and a person as to a royalty or net profit payment involving a claim that totals, with applicable interest, \$10,000,000 or more, the commissioner shall, not later than 14 days after commencement of negotiations, advise the governor that negotiations have commenced, and shall provide notice to the governor at least once during each subsequent 30-day period that the negotiations continue.

(h) If the department proposes to compromise or settle a dispute between the department and a person as to a royalty or net profit payment involving a claim that totals, with applicable interest, \$10,000,000 or more, the commissioner may not enter into an agreement to compromise or settle the dispute without first reviewing the proposed compromise or settlement with the governor.

(i) The commissioner may not enter into a settlement or compromise of a dispute between the department and a person as to a royalty

1 or net profit payment if the settlement or compromise provides that
2 information relevant to the settlement or compromise, or the terms of
3 the settlement or compromise, are confidential beyond the confiden-
4 tiality otherwise provided for by law.

5 (j) The commissioner shall maintain for review full documenta-
6 tion of a settlement or compromise of a dispute between the department
7 and a person as to a royalty or net profit payment.

8 * Sec. 3. AS 38.05.145 is amended by adding a new subsection to read:

9 (c) Payment of the royalty to the state under the provisions of
10 AS 38.05.145 - 38.05.181 becomes due on the date and in the manner
11 specified in the lease or in a regulation adopted by the commissioner,
12 and, if not paid when it becomes due, bears interest at the rate
13 specified in the royalty agreement or as otherwise provided by law.

14 * Sec. 4. AS 43.05.060 is amended by adding new subsections to read:

15 (b) If the department enters into negotiations to resolve a tax
16 dispute between the department and a taxpayer involving a claim that
17 totals, with applicable penalty and interest, \$10,000,000 or more, the
18 commissioner shall, not later than 14 days after commencement of
19 negotiations, advise the governor that negotiations have commenced,
20 and shall provide notice to the governor at least once during each
21 subsequent 30-day period that the negotiations continue.

22 (c) If the department proposes to enter into an agreement under
23 (a) of this section to resolve a tax dispute between the department
24 and a taxpayer involving a claim that totals, with applicable penalty
25 and interest, \$10,000,000 or more, the commissioner may not enter into
26 the agreement without first reviewing the proposed agreement with the
27 governor.

28 (d) In making an agreement under (a) of this section, neither
29 the department nor the attorney general may agree that information

1 relevant to the agreement, or the terms of the agreement, are confi-
2 dential beyond the confidentiality otherwise provided for by law. The
3 department must maintain for review full documentation of the agree-
4 ment.

5 * Sec. 5. AS 43.05.070 is amended by adding new subsections to read:

6 (c) If the department enters into negotiations to compromise or
7 settle a tax dispute between the department and a taxpayer involving a
8 claim that totals, with applicable penalty and interest, \$10,000,000
9 or more, the commissioner shall, not later than 14 days after com-
10 mencement of negotiations, advise the governor that negotiations have
11 commenced, and shall provide notice to the governor at least once
12 during each subsequent 30-day period that the negotiations continue.

13 (d) If the department proposes to compromise or settle a tax
14 dispute between the department and a taxpayer involving a claim that
15 totals, with applicable penalty and interest, \$10,000,000 or more, the
16 commissioner may not enter into the agreement without first reviewing
17 the proposed compromise or settlement agreement with the governor.

18 (e) In compromising a tax or penalty under this section, neither
19 the department nor the attorney general may agree that information
20 relevant to the compromise, or the terms of the compromise, are confi-
21 dential beyond the confidentiality otherwise provided for by law. The
22 department must maintain for review full documentation of the compro-
23 mise.

24 * Sec. 6. AS 43.05.225 is amended to read:

25 Sec. 43.05.225. INTEREST ON TAXES. Unless otherwise provided,
26 when a tax levied in this title is not paid on or before the date
27 prescribed for its payment, [BECOMES DELINQUENT] it bears interest at
28 the rate of 12 percent a year.

29 * Sec. 7. AS 43.05.280(a) is amended to read:

1 (a) Simple interest [INTEREST] shall be allowed and paid on any
2 overpayment of a tax under this title at the rate prescribed in
3 AS 43.05.225.
4

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 8, 1990

SUBJECT: SCS CSHB 541 (Finance) "C" version
TO: Senator Drue Pearce
FROM: Jack Chenoweth
Legislative Counsel

The subject of the legislation is administration of certain of the state's revenue laws.

The measure now before the Senate Finance Committee for consideration addresses the following:

The key provisions of this bill are bill section 2, applicable to disputed royalties, and bill sections 4 and 5, applicable to disputed taxes. These are parallel provisions. In summary, if the royalty or tax dispute involves \$10 million or more, penalty and interest included, and negotiations to resolve, compromise, or settle the dispute are undertaken, the responsible commissioner (Natural Resources for royalties, Revenue as to taxes)

- (1) must advise the governor within 14 days that negotiations have commenced, and keep the governor advised at 30 day intervals;
- (2) must present to and review with the governor the proposed resolution, compromise, or settlement before affixing signature;
- (3) may not enter into a resolution, compromise, or settlement agreement if that agreement extends confidentiality as to information in or the terms of the agreement beyond what is authorized by law;
- (4) must maintain the pertinent records of the resolution, compromise, or settlement agreement available for review.

Senator Drue Pearce
Page 2
May 8, 1990

Bill section 1 amends the duties of the legislative auditor

(1) to require that official to periodically conduct performance audits of the tax functions of the Department of Revenue, and to report those audits during the next legislative session [page 2, lines 25 - 28]; and

(2) to require completion of annual audits of royalty and tax disputes and reporting them to legislative committees in executive session with appropriate safeguards to protect confidentiality [page 3, lines 1 - 12].

Bill section 3, applicable to interest due on delinquent royalty, spells out that a royalty payment "becomes due on the date and in the manner specified in the lease or [applicable] regulation" [page 4, lines 10 - 11] and that, if not paid when due, draws interest as provided in the royalty agreement or otherwise as provided by law [page 4, line 11 - 13].

Bill section 6, applicable to interest due on delinquent taxes, makes a technical drafting change.

Bill section 7, applicable to interest payable by the state on overpaid taxes, clarifies that the interest payable is simple interest.

JC:mi
wkmi6/094

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

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Senator Drue Pearce

Page 2

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JC:mi
wkmi6/094



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

April 3, 1989

MEMORANDUM

TO:

ATTN:

FROM: Ginny Fay *GF*
Legislative Analyst

RE: Incentives to Settle Outstanding Corporate Tax Liabilities
Research Request 89.328

You requested information regarding procedures in other states to encourage settlement of state income tax liabilities. You are interested in changing Alaska's collection, interest, and penalties procedures for businesses that are deficient in paying their state income taxes. You asked that we discuss means of accomplishing this in light of practices at the federal level and in other states. Additionally, you wanted to know if other states have special tax courts and/or administrative judges to handle tax liability cases. You asked if other states required or allowed prepayment of liabilities pending the outcome of tax litigation. You are particularly interested in California's constitution and statutes that require prepayment of any disputed tax liabilities.

The major conclusions reached in this memorandum are that the Alaska Legislature could encourage prompt settlement of tax deficiencies by changing AS 43.05.225 to specify an interest rate greater than the present 12 percent simple interest charge. Interest could be tied to a floating financial indicator--such as the short-term Treasury Bill rate or Prime rate charged by major banks--plus some premium (perhaps three to five percent). Doing so would ensure that a business owing the state back-taxes does not receive use of its tax deficiency at a below market rate of interest. Alternatively, Alaska could adopt a procedure similar to California, where any disputed tax liabilities must be prepaid in order to have judicial standing.

Further incentive could be provided by charging compound interest on the outstanding deficiency (including penalties and interest charges). Presently, a business can pay off the principal of a deficiency owed the state and indefinitely appeal its case in court without paying any interest on outstanding penalty or interest charges. A compound interest provision could discourage this practice. Another incentive would be to specify that penalty and interest charges must be paid before the principal of the deficiency can be reduced.

Interest Rate and Penalty Schedules

Alaska Statute 43.05.225 specifies a 12 percent (simple) interest rate to be charged on delinquent taxes. AS 43.05.220 assigns an additional civil penalty of five percent of the delinquency per month for failure pay taxes or file the proper forms. The penalty may not exceed 25 percent of the outstanding deficiency. Interest and penalty charges begin to accrue from the due date of the return (in cases of failure to file) or from the date the return is filed (in cases of underpayment of taxes). Conversely, the state is required to begin paying 12 percent annual interest on any overpayment of corporate income taxes if the taxpayer does not receive a return within 90 days of filing. None of the national tax organizations we contacted were able to supply a central compilation of interest and penalty charges in other states.

90
DAY RATE
+ 3%
+ 2%

The Internal Revenue Service (IRS) charges a variable interest rate on delinquent taxes based on the short-term federal Treasury Bill rate for a given quarter. For deficiencies, the rate charged is the 90 day T-Bill rate plus three percentage points. For overpayments (refunds), it is the T-Bill rate plus two points. The IRS date of claim provisions are the same as Alaska's. (Attachment A is House Research Agency memorandum 87.313, which includes copies of the relevant Alaska and federal laws.) Alaska is a signatory to the federal Tax Economic Fiscal Responsibility Act (TEFRA), which allows the state's Department of Revenue (DOR) to adopt most provisions of the IRS Tax Code. Alaska's treatment of deficiencies and refunds is an obvious departure from the IRS approach.

According to Carl Meyer, DOR chief of Audit Appeals, one factor that acts as a disincentive for prompt settlement and payment of outstanding tax deficiencies is the simple interest rate charged by the state. A taxpayer must appeal a state assessment of tax deficiency within 60 days of the mailing date of the department's notice of action (see Attachment B for details of the appeals procedure). Once a request for appeal is filed, it is common for a corporation to pay off the principal of the deficiency pending the outcome of the appeal process.

The problem with this is that the state's assessment of back-taxes (following an audit) generally occurs several months after the company has filed its return. Thus, a delinquent taxpayer owes the principal of the deficiency as well as interest accrued and any penalty charges assessed by the DOR.¹ Under

¹In Alaska, corporations are required to prepay their estimated tax liability on a quarterly basis. Corporations may file for an extension of up to six months on their annual return deadline. If a subsequent DOR audit reveals that the corporation prepaid less than 90 percent of its annual tax liability, DOR assesses a penalty of up to 25 percent of the outstanding deficiency. Thus it is common for deficient taxpayers to have accrued substantial penalty and interest charges before filing an appeal.

April 3, 1989
Page 3

current statute, corporations may prepay the principal of their deficiency pending the outcome of their appeal without accruing further interest liability on already outstanding interest and penalty charges--effectively stopping the meter on its liability. On the other side of the issue, once DOR has received payment of the deficient principal, the agency is likely to be much more amenable to delays in the appeal process and has less incentive to settle the case promptly.

For overpayments of tax liability, the 12 percent annual interest rate paid by the state is an above (current) market rate of return for a corporation. ~~Thus financial incentives in cases of disputed tax assessments appear to be weighted in the taxpayer's favor.~~ Depending on one's viewpoint, this may or may not be a desirable statutory objective. Relative to Alaska's statutes, the IRS Tax Code provides greater incentive to settle disputes promptly.

Tax Courts and Administrative Procedures in Alaska and Other States

In Alaska, the administrative process for taxpayers protesting assessments, penalties or other actions by the DOR occurs at the agency level. Any taxpayer is entitled to a formal hearing before the commissioner's office within 90 days of filing an appeal. Taxpayers are encouraged to settle disagreements at an informal conference prior to the formal hearing.

If a taxpayer disagrees with the formal hearing decision, within 30 days of the decision, he/she must file an appeal with the Superior Court in the district in which he/she resides. Department of Law (DOL) attorneys represent the state in court. In most cases, the court record and subsequent decision on the merits of the appeal is based entirely on information produced at the agency hearing. To introduce new material for review by the court, the taxpayer must file a motion for a de novo trial, which the courts have traditionally been very reluctant to accept.²

Other states have established a variety of agencies and review procedures for revenue department rulings. Attachment C contains a comprehensive state by state compilation of these agencies and descriptions of each state's appeal procedures. In two states and the District of Columbia, special tax courts with judicial status have been established. Administrative review boards, which provide a review of tax rulings before any recourse to the courts, have

²A de novo trial means trying a matter anew; the same as if it had not been heard before and as if no decision had been previously rendered.

April 3, 1989

Page 4

been set up in twenty states. Four states require an independent review by a commission or board which performs administrative functions other than tax review but does not administer the tax in dispute. In the remaining states (including Alaska), the tax collecting agency itself conducts the review. Eleven states have more than one administrative review agency, where a separate property tax review board has been established to handle property tax appeals. Seven states have instituted small claims procedures to handle some taxpayer complaints.

According to Carl Meyer, the appeal process in Alaska works fairly efficiently. It is likely that establishment of a special tax appeals court would simply create a large backlog of cases by adding to the DOL workload. Auditors from DOR would have to educate DOL attorneys on the accounting complexities of each case instead of only those that are appealed to the Superior Court.

Prepayment of Liabilities Pending the Outcome of Tax Litigation

In Alaska, tax deficiencies, penalties and interest need not be paid prior to appealing a tax deficiency. For federal taxes, once the IRS has conducted an audit of a tax return and issued a notice of deficiency to the taxpayer, he/she has 90 days in which to appeal the case to a U.S. Tax Court. If the case is appealed, the IRS cannot issue an assessment until the case is decided in court, but the taxpayer may prepay the deficiency pending the outcome of the case. (There is no suspension of interest accrual until all charges are paid). If the case is not appealed, the IRS issues an assessment (after the 90 day period is up) which must be paid. Once payment is made, the taxpayer has six months in which to file an original action in federal District Court for a refund. In layman's terms, a taxpayer must pay before he/she can sue for a refund.

In California, all taxpayers can dispute state tax assessments. In order to dispute a tax assessment in California, however, a taxpayer must have paid the disputed tax. According to Glenn Rigby, chief counsel, California Franchise Tax Board, this feature tends to discourage challenges to tax assessments and is in marked contrast to Alaska's procedure. As mentioned above, in Alaska disputed taxes do not have to be paid and the simple, fixed interest rate charged essentially results in a relatively low-interest loan to corporations while taxes are in dispute. Prepayment of taxes encourages rapid settlement. California's prepayment requirement is established in state constitution as well as statutorily. See Attachment D for pertinent sections.

According to Linda Spencer, staff attorney with the National Association of Tax Administrators (NATA), most states allow prepayment of tax deficiencies and many require full payment of all charges before allowing a taxpayer to file

April 3, 1989
Page 5

suit for a refund. None of the national tax organizations contacted had compiled a centralized list of state laws or regulations governing prepayment of tax liabilities pending the outcome of litigation. Attachment E contains two articles sent by NATA on this issue.

* * *

I hope we have provided enough information for your purposes; these are technical issues. If you have further questions, I suggest you call Carl Meyer at 465-2343. He is very knowledgeable on this subject and patient in explaining the intricacies of tax provisions.

Attachments

SENATE CS FOR CS FOR HOUSE BILL NO. 54J (Resources)COMMENTS ON THE INTEREST PROVISION

HB 541 provides that the interest on taxes -- currently 12% simple interest -- be changed (1) to track the market rate, and (2) to compound. The market tracking provision is five points above the federal reserve rate. At today's rate, this provision would not change the nominal rate at all. (Today's federal reserve rate is 7%; five points above that rate is 12%)

The compounding provision would bring interest on taxes in line with good business practice. Interest would accrue on the entire outstanding liability, rather than only on the principal. A House Research Agency memorandum dated April 3, 1989 concludes that a compound interest provision is an incentive to settle outstanding tax liabilities.

YOU DON'T PUT MONEY IN A SAVINGS ACCOUNT THAT DOESN'T PAY INTEREST ON ACCRUED INTEREST.

YOU COULD NOT BUY A HOUSE WITH A SIMPLE INTEREST PROVISION

IF YOU CHARGE A BRAKE JOB TO YOUR EXXON CREDIT CARD, AND INCUR FINANCE CHARGES, THE FINANCE CHARGE WILL BE BASED ON THE TOTAL BALANCE, NOT JUST THE PRINCIPAL!

The Department's most recent tax assessment summary shows that outstanding taxes and interest total about \$2.9 billion. About half of that is accrued interest. Should the State carry these amounts at simple interest? No bank, financial institution, or even consumer credit card company would do so. Nor would the IRS. The following table shows the difference it would make.

INTEREST UNDER CURRENT LAW AND HB 541

<u>Assessment 4/30/90</u>	<u>Interest in One Year (Millions)</u>	
	Current Law	HB 541
Tax Assessed:	\$1,415	\$169.8
Interest Accrued:	<u>1,464</u>	<u>0</u>
Total:	\$2,879	\$361.3
EFFECTIVE ANNUAL INTEREST RATE	5.9%	12.55%

Taxpayers, by the returns they file, claim they do not owe these disputed amounts. If so, changing to compound interest will not affect them. But if it turns out that they do in fact owe some of these disputed amounts, the State should not carry the debt at an effective interest rate of 5.9%.

HB 541

(NOW IN SENATE FINANCE COMMITTEE)

REQUIRES ACTION NOW

- REQUIRES MARKET INTEREST RATE TO BE PAID ON BACK TAXES
(See below)
 - IMPROVES ACCOUNTABILITY AND LEGISLATIVE OVERSIGHT FOR TAX PROGRAM
 - ADOPTS LEGISLATIVE RESEARCH STAFF RECOMMENDATIONS FOR EXPEDITING TAX PAYMENTS (House Research Agency Memorandum April 3, 1989)
-

INTEREST PAYMENTS UNDER CURRENT LAW AND UNDER HB 541

	<u>Current Law</u>	<u>HB 541</u>
NOMINAL RATE (Today)	12%	12.55%
EFFECTIVE RATE (Today's Outstanding Liabilities)	5.9%	12.55%

Department of Revenue, May 8, 1990

Alaska State Legislature



Speaker of the House of Representatives

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

Memorandum

TO: Senator John Binkley
Senator Rick Uehling
Co-Chairmen, Senate Finance Committee

FROM: Representative Sam Cotten
Speaker of the House

DATE: May 8, 1990

RE: CSHB 541 (Finance)
An Act relating to certain agreements, compromises, and settlements entered into by the Departments of Natural Resources and Revenue; to legislative audit of those departments and the release of a report of the audits, that may include or refer to confidential information, to the legislature and public; and to collection and payments of royalties from state resources, the interest rate on unpaid taxes and royalties from state resources, and the interest rate on overpaid taxes

Your assistance in moving the captioned bill from the Senate Finance Committee to the Senate floor for action this session would be appreciated.

If you have any questions about the bill, please do not hesitate to contact me or Bill Miles of my staff. Thank you for your consideration of this request.

HB

556

HOUSE COMMITTEE REPORT

File

(11)

Date Referred: March 15, 1990

FURTHER REFERRALS:

Date of Committee Action: 4/11/90

The FINANCE Committee considered:

HB 556

HOUSE BILL NO. 556

DISASTER PREPAREDNESS

"An Act relating to disaster relief and preparedness."

RECOMMENDATIONS:

- be replaced with CS HB 556 (FIN) the same title
- have 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):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note Education zero fiscal note(s) 3/15/90/ Military & VET. AFFAIR
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not Pass No Rec Amend

Ronald J. Carson CARSON
Charles Swackhammer SWACKHAMMER
John Brown BROWN
Walter Koponen KOPONEN
Barbara Barnes BARNES
Dick Shultz SHULTZ
Roll E. Phillips PHILLIPS
John Wimer WIMER
John A. Rieger RIEGER

	Do Not Pass	No Rec	Amend

Ronald J. Carson CARSON
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Disaster Relief and preparedness
 Sponsor: Gruenbera
 Requestor: Gruenbera

Agency Affected: Education
 BRU: Education Finance & Support Services
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mary Hakala
 Division: Commissioner's Office

Phone: 465-2800
 Date: 3/9/90

Approved by Commissioner: William G. Demmert
 Agency: Education

Date: 3/9/90

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

Adopted

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to Disaster relief and preparedness
Sponsor: Rep. Gruenberg
Requestor: House HESS

Agency Affected: DMVA
BRU: Disaster Planning and Control
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill will have no fiscal impact on DMVA

Prepared by: Jeff Morrison, Director Phone: 465-4600
Division: Administrative and Support Services Date: 3/13/90
Approved by Commissioner John W. Schaeffer Date: 3/13/90
Agency: Military and Veterans Affairs

Distribution (by preparer):

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

Adopted

Original sponsor(s): REP. GRUENBERG, Larson, Foster, Finkelstein

IN THE HOUSE

BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 556 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to disaster emergencies and disaster and emergency relief and preparedness."

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

* Section 1. AS 26.23.020(c) is repealed and reenacted to read:

(c) If the governor finds that a disaster has occurred or that a disaster is imminent or threatened, the governor shall, by proclamation, declare a condition of disaster emergency. The disaster emergency remains in effect until the governor finds that the danger has passed or the disaster has been dealt with so that the emergency no longer exists. The governor may terminate the disaster emergency by proclamation. A proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution. The proclamation must indicate the nature of the disaster, the area threatened or affected, and the conditions that have brought it about or that make possible the termination of the disaster emergency.

* Sec. 2. AS 26.23 is amended by adding a new section to read:

Sec. 26.23.025. THE LEGISLATURE AND DISASTER EMERGENCIES. (a) The provisions of this section apply when the governor declares a condition of disaster emergency under AS 26.23.020(c) and in response to the disaster the governor proposes to expend

(1) more than \$1,000,000 of the assets of the disaster relief fund under AS 26.23.300(b);

(2) more than \$500,000 of the assets of the disaster relief

fund under AS 26.23.300(c); or

(3) an amount from the disaster relief fund that exceeds the unallocated balance of the fund.

(b) When the governor declares a condition of disaster emergency while the legislature is in session, concurrently with the issuance of the proclamation the governor shall prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(1) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

(2) a supplemental appropriation to provide money necessary to cope with the disaster.

(c) When the governor declares a condition of disaster emergency while the legislature is not in session, concurrently with the issuance of the disaster emergency proclamation the governor shall

(1) convene a special session of the legislature under this subsection within five days unless the presiding officers of both the house of representatives and the senate agree that a special session should not be convened and so advise the governor in writing; and

(2) prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(A) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

(B) a supplemental appropriation to provide money necessary to cope with the disaster.

(d) If the declaration of a disaster emergency occurs while the

legislature is in session, or if a special session is held, actions taken by the governor under this chapter that are not ratified by a concurrent resolution adopted during that session are void.

(e) If the legislature does not convene in special session under (c)(1) of this section, the governor may act under this chapter in a manner that is consistent with the financing plan submitted.

(f) The legislature, by concurrent resolution, may terminate a disaster emergency at any time.

* Sec. 3. AS 26.23.040(a) is amended to read:

(a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

(1) prevention and minimization of injury and damage caused by disasters;

(2) prompt and effective response to disasters;

(3) emergency relief;

(4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;

(5) recommendations for

(A) zoning, building, and other land use controls;

(B) [,] safety measures for securing mobile homes or other nonpermanent or semi-permanent structures; [,] and

(C) other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;

(8) [PREPARATION AND DISTRIBUTION TO THE APPROPRIATE STATE AND LOCAL OFFICIALS OF CATALOGS OR EXTRACTS LISTING FEDERAL, STATE, AND PRIVATE ASSISTANCE PROGRAMS;

(9)] organization of manpower and chains of command;

(9) [(10)] coordination of federal, state, and local disaster activities;

(10) [(11)] coordination of the state emergency plan with the disaster plans of the federal government; and

(11) [(12)] other matters necessary to carry out the purposes of this chapter.

* Sec. 4. AS 26.23.040(e) is amended to read:

(e) The Alaska division of emergency services shall

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of a disaster emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) [PROVIDE FOR MOBILE SUPPORT UNITS;

(6)] establish and operate, or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate, training [AND PUBLIC INFORMATION] programs;

(6) [(7)] MAKE SURVEYS OF INDUSTRIES, RESOURCES, AND FACILITIES IN THE STATE, BOTH PUBLIC AND PRIVATE, AS ARE NECESSARY TO CARRY OUT THE PURPOSES OF THIS CHAPTER;

(8)] plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties;

(7) [(9)] establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(8) [(10)] ESTABLISH A REGISTER OF MOBILE AND CONSTRUCTION EQUIPMENT AND TEMPORARY HOUSING AVAILABLE FOR USE IN A DISASTER EMERGENCY;

(11)] prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(9) [(12)] cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response and recovery;

(10) [(13)] develop and carry out procedures and policies to effectively employ disaster relief funds made available by the governor's authority or by special legislative action; these procedures shall include application and documentation by disaster victims or applicants, review, verification and funding approval, and processing of appeals;

(11) [(14)] do other things necessary or proper for the implementation of this chapter.

* Sec. 5. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to money [FUNDS] regularly appropriated to state and local agencies. The second recourse

shall be to money [FUNDS] available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations [ANY LIMITATION] imposed by AS 37.07.080(e),

(1) transfer and spend money appropriated for other purposes; or

(2) [, IN SITUATIONS INVOLVING NATURAL DISASTERS,] borrow money [FROM THE UNITED STATES GOVERNMENT OR OTHER PUBLIC OR PRIVATE SOURCES] for a term not to exceed two years.

* Sec. 6. AS 26.23.050(a) is amended to read:

(a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. A [AN INCORPORATED] municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

* Sec. 7. AS 26.23.060(c) is amended to read:

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that political subdivision [CITY] in the work of disaster prevention, preparedness, response, and recovery.

* Sec. 8. AS 26.23.080 is amended to read:

Sec. 26.23.080. [COMMUNITY] DISASTER LOANS. Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a political

subdivision [LOCAL GOVERNMENT] of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the political subdivision [LOCAL GOVERNMENT], for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant political subdivision [LOCAL GOVERNMENT];

(2) determine the amount needed by any applicant political subdivision [LOCAL GOVERNMENT] to restore or resume its governmental functions, and to certify the amount to the federal government; [HOWEVER, AN APPLICATION AMOUNT MAY NOT EXCEED 25 PER CENT OF THE ANNUAL OPERATING BUDGET OF THE APPLICANT FOR THE FISCAL YEAR IN WHICH THE MAJOR DISASTER OCCURRED;]

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the political subdivision [LOCAL GOVERNMENT] is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

* Sec. 9. AS 26.23.090(b) is amended to read:

(b) The governor is authorized to make financial grants, the total of federal and state shares not to exceed the maximum amount authorized by 42 U.S.C. 5178(f) for grants payable to individuals and families [\$5,000], to an individual or family in any single major disaster declared by the President, to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster that cannot otherwise adequately be met from other means of assistance.

* Sec. 10. AS 26.23.110(a) is amended to read:

(a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to a political subdivision [ANY LOCAL GOVERNMENT] for the purpose of removing debris or wreckage from publicly or privately owned land or water.

* Sec. 11. AS 26.23.110(b) is amended to read:

(b) Authority under (a)(1) of this section may not be exercised unless the affected political subdivision [LOCAL GOVERNMENT], corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal.

* Sec. 12. AS 26.23.210 is amended to read:

Sec. 26.23.210. RELATIONSHIP TO CIVIL DEFENSE LAWS [STATUTE].

(a) AS 26.20 (civil defense) [THE ALASKA CIVIL DEFENSE STATUTE (AS 26.20),] applies to preparedness, response, and recovery from disasters caused by enemy attack and other hostile military or paramilitary action.

(b) The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and [NONMILITARY] manmade disasters other than disasters listed in (a) of this section.

* Sec. 13. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a [ANY] natural or [NONMILITARY] man-made cause including, [BUT NOT LIMITED TO,] fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, equipment failure, or shortage of food, water, fuel, or clothing, or the release of oil or a hazardous substance if the release requires [REQUIRING] prompt action to avert environmental danger or damage;

* Sec. 14. AS 26.23.230(3) is amended to read:

(3) "emergency" has the meaning given in 42 U.S.C. 5122 (Disaster Relief and Emergency Act [OF 1974]);

* Sec. 15. AS 26.23.230(5) is amended to read:

(5) "political subdivision" means

(A) a [HOME RULE OR GENERAL LAW BOROUGH OR CITY INCLUDING A UNIFIED] municipality;

(B) [,] an unincorporated village; [,] or

(C) another [OTHER] unit of local government;

* Sec. 16. AS 26.23.230(6) is amended to read:

(6) "temporary housing" has the meaning given in the federal Disaster Relief and Emergency Act [OF 1974 (P.L. 93-288, 88 STAT. 143)];

* Sec. 17. AS 26.23 is amended by adding new sections to read:

ARTICLE 2. DISASTER RELIEF FUND.

Sec. 26.23.300. DISASTER RELIEF FUND. (a) There is in the Office of the Governor a disaster relief fund. The Department of Revenue is custodian of the fund.

(b) Subject to the restrictions of (d) of this section, the

governor may, without additional legislative authorization, expend not more than \$1,000,000 of the assets of the disaster relief fund for the following purposes:

(1) to implement provisions of law relating to disaster relief in the case of a disaster;

(2) to alleviate the effects of a disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate.

(c) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend during a fiscal year not more than \$500,000 of the assets of the disaster relief fund to prevent or minimize the effects of an event that occurs in the state and that, in the determination of the governor, poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action.

(d) The governor shall present to the legislature an annual accounting of money expended from the disaster relief fund.

(e) The governor shall adopt regulations to carry out the provisions of this section.

ARTICLE 3. FUEL EMERGENCY.

Sec. 26.23.400. FUEL EMERGENCY FUND. There is established in the Office of the Governor the fuel emergency fund. When the governor determines that a shortage of fuel is sufficiently severe to justify state assistance, the governor may make a grant from the fuel emergency fund to a political subdivision to purchase emergency supplies of fuel.

* Sec. 18. AS 26.23.090(c), AS 44.19.048, 44.19.049, 44.19.050, and 44.19.052 are repealed.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 9, 1990

SUBJECT: Draft CSHE 556()
TO: Representative Max F. Gruenberg, Jr.
FROM: Jack Chenoweth
Legislative Counsel

The draft requested is enclosed.

Please note that nothing in the draft is dispositive of the legislature's role in ratifying the governor's proposed financing plan if the disaster occurs while the legislature is in session. To cover that, you might revise proposed AS 26.23.025(d) to read:

(d) If the declaration of a disaster emergency occurs while the legislature is in session, or if a special session is held, actions taken by the governor under this chapter that are not ratified by a concurrent resolution adopted during that session are void.

JBC:pl
WKP4/038

*House Finance members:
Please consider the above language
as an amendment in place of the language
on p 229 - p 323 in the 4/9 proposed C/S.
Thanks.
MGP
Am#2
Adpt.
4/10/90*

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 4, 1990

#2
Adopt

SUBJECT: Constitutional questions and drafting
concerns re draft CSHB 556

TO: Representative Max F. Gruenberg, Jr.

FROM: Jack Chenoweth
Legislative Counsel

In the attached draft, proposed AS 26.23.025(g) is offered by way of a response to Representative Martin's request for inclusion of this kind of provision. I have to caution that I think the inclusion is of questionable constitutionality.

This office recently examined the issue of a legislator's physical presence in chambers as a condition for participation in the proceedings. This office concluded:

. . . I cannot say with certainty that the Alaska Supreme Court would reject an effort by the legislature to provide for participation by teleconference for a member under its authority to adopt uniform rules of procedure. However, such a ruling would be a tremendous extension of the current state of the law on the subject and I believe that it is very unlikely that the court would be willing to go that far. The rule that a member must be physically present to vote in a legislative body is a strong tradition of parliamentary law supported by policy considerations I expect a court would still find to be valid, including public verification of the identity of the person voting, verification that the person is not under the influence of another, and observation of the person's apparent competency.

Additionally, when the legislature authorized teleconferencing for state boards and commissions, it explicitly required that those participating have access to all materials that will be considered at the meeting. AS 44.62.310(a). These provisions, then, are the basis of the language appearing in

Representative Max F. Gruenberg, Jr.
Page 2
April 4, 1990

subsection (g). Nevertheless, despite the circumscriptions and the cautions, it is by no means certain--for the reasons noted in the quotation above--that a legislator's participation in a special session convened to consider a disaster emergency by means of a teleconference connection would receive judicial sanction. This is a grey area.

* * *

I'm concerned about the "fit" between the new "loan regulation" provision, AS 26.23.320 in this draft, and existing AS 44.19.048(b)(2)--AS 26.23.300(b)(2) of this draft. Under sec. 300(b)(2), the governor enjoys the right to set "terms . . . [considered] appropriate" for grants and loans from the disaster relief fund. Along comes proposed AS 26.23.320 giving the adjutant general, a subordinate officer, loan management authority through adoption of regulations. May I suggest that there is an inconsistency in this that deserves further attention.

JBC:mi
wkmi6/070

Enclosure

STATE OF ALASKA
THE LEGISLATURE

FOUCH Y. STATE CAPITOL
UNEAU ALASKA 99511
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 4, 1990

SUBJECT: Calling a special session
TO: Representative Max F. Gruenberg, Jr.
FROM: Tamara Brandt Cook
Director
Division of Legal Services *TBC*

The governor is authorized to call the legislature into special session under article II, section 9 which provides

SECTION 9. SPECIAL SESSIONS. Special sessions may be called by the governor or by vote of two-thirds of the legislators. The vote may be conducted by the legislative council or as prescribed by law. At special sessions called by the governor, legislation shall be limited to subjects designated in his proclamation calling the session, to subjects presented by him, and the reconsideration of bills vetoed by him after adjournment of the last regular session. Special sessions are limited to thirty days.

The state constitution also provides in article III, section 17:

SECTION 17. CONVENING LEGISLATURE. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session.

You have asked whether the authority granted to the governor under article III, section 17 is entirely independent from the authority granted under article II, section 9 with respect to the calling of a special session. While the precise question has not been addressed by the court, it seems to me that the two sections must be read in conjunction. Article II, section 9 contains details regarding the special session that are not contained in the other provision, including restrictions on subjects that may be considered and

Representative Max F. Gruenberg, Jr.

Page 2

April 4, 1990

a 30-day special session limit. From the discussion contained in the minutes of the Alaska Constitutional Convention, it seems clear that the members of the convention expected the requirements set out in article II, section 9 to apply to all special sessions. (Alaska Constitutional Convention Proceedings, Part 3, Pages 1685-1698)

Under article III, section 17 the authority of the governor to convene the legislature is reaffirmed, but this provision sets out the general scope of this authority to convene the legislature, one house, or both houses in joint session. Although it may also be cited as authority to convene a special session, clearly it comes into play in situations other than the convening of a special session. (Abood v. Gorsuch, 703 P.2d 1158 (Alaska 1985)) When a special session is convened, however, both the constitutional provisions can be read in harmony and each can be given effect. To read article III, section 17 as providing completely separate authority for the governor to call a special session would be to render the restrictions (that the subjects to be considered are limited to those designated by the governor and to vetoes; that the session is limited to 30 days) contained in article II, section 9 ineffective. This is a result not likely to be acceptable to the court. Note also that the question of a conflict between the provisions was considered during the constitutional convention and dismissed. (Alaska Constitutional Convention Proceedings, Part 3, page 2120, attached)

TBC:pl
WKP4/015

Enclosure

HB

556

SENATE FINANCE COMMITTEE REPORT

DATE: 4/25/90

DATE TURNED INTO OFFICE: 5/7/90

The Finance Committee considered

CSHB 556 (Finance)

"An Act relating to disaster emergencies and disaster and emergency relief and preparedness."

and recommended:

- replace with CS CSHB 556 (Finance)
- or adopt _____ CS _____
- attached amendment(s)
- _____ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) DMAYA 3/13/90
DCE 3A/90

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

SIGNING DO PASS:

[Signature]
[Signature]

OTHER RECOMMENDATIONS:

Jim Duncan No Rec
Paul F. Shaffer No Rec

1. [Signature] No Rec

2. [Signature]

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to Disaster relief and preparedness
Sponsor: Rep. Gruenberg
Requestor: House HESS

Agency Affected: DMVA
BRU: Disaster Planning and Control
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill will have no fiscal impact on DMVA

Prepared by: Jeff Morrison, Director Phone: 465-4600
Division: Administrative and Support Services Date: 3/13/90
Approved by Commissioner John W. Schaeffer Date: 3/13/90
Agency: Military and Veterans Affairs

Distribution (by preparer):

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

Changes in CSHB 556 (Fin)
have no fiscal impact.
This fiscal note is
appropriate. 5/7/90

Adopted

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Disaster Relief and preparedness

Agency Affected: Education
BRU: Education Finance & Support Services

Sponsor: Gruenbera
Requestor: Gruenbera

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Marv Hakala Phone: 465-2800
 Division: Commissioner's Office Date: 3/9/90
 Approved by Commissioner: William G. Demmert Date: 3/9/90
 Agency: Education

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

Changes in CSB CSHB 556 (Fin) have no fiscal impact. This fiscal note is appropriate. 5/7/90

Adopted

Original sponsor(s): REP. GRUENBERG, Larson, Foster, Finkelstein

IN THE HOUSE

BY THE FINANCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 556 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to disaster emergencies and disaster and emergency relief and preparedness."

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

* Section 1. AS 26.23.020(c) is repealed and reenacted to read:

(c) If the governor finds that a disaster has occurred or that a disaster is imminent or threatened, the governor shall, by proclamation, declare a condition of disaster emergency. The disaster emergency remains in effect until the governor finds that the danger has passed or the disaster has been dealt with so that the emergency no longer exists. The governor may terminate the disaster emergency by proclamation. A proclamation of disaster emergency may not remain in effect longer than 30 days unless extended by the legislature by a concurrent resolution. The proclamation must indicate the nature of the disaster, the area threatened or affected, and the conditions that have brought it about or that make possible the termination of the disaster emergency.

* Sec. 2. AS 26.23 is amended by adding a new section to read:

Sec. 26.23.025. THE LEGISLATURE AND DISASTER EMERGENCIES. (a) The provisions of this section apply when the governor declares a condition of disaster emergency under AS 26.23.020(c) and in response to the disaster the governor proposes to expend

(1) more than \$1,000,000 of the assets of the disaster relief fund under AS 26.23.300(b);

(2) more than \$500,000 of the assets of the disaster relief

fund under AS 26.23.300(c); or

(3) an amount from the disaster relief fund that exceeds the unallocated balance of the fund.

(b) When the governor declares a condition of disaster emergency while the legislature is in session, concurrently with the issuance of the proclamation the governor shall prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(1) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

(2) a supplemental appropriation to provide money necessary to cope with the disaster.

(c) When the governor declares a condition of disaster emergency while the legislature is not in session, concurrently with the issuance of the disaster emergency proclamation the governor shall

(1) convene a special session of the legislature under this subsection within five days unless the presiding officers of both the house of representatives and the senate agree that a special session should not be convened and so advise the governor in writing; and

(2) prepare and deliver to the presiding officers of the legislature and to the persons who chair the finance committees in each house of the legislature

(A) a financing plan relating to the source or sources of money available from sources identified in AS 26.23.050(b) that the governor proposes to use to cope with the disaster; or

(B) a supplemental appropriation to provide money necessary to cope with the disaster.

(d) If the declaration of a disaster emergency occurs while the

legislature is in session, or if a special session is held, actions taken by the governor under this chapter that are not ratified by a concurrent resolution adopted during that session are void.

(e) If the legislature does not convene in special session under (c)(1) of this section, the governor may act under this chapter in a manner that is consistent with the financing plan submitted.

(f) The legislature, by concurrent resolution, may terminate a disaster emergency at any time.

* Sec. 3. AS 26.23.040(a) is amended to read:

(a) The Alaska division of emergency services shall prepare and maintain a state emergency plan and keep it current. The plan may include provisions for

(1) prevention and minimization of injury and damage caused by disasters;

(2) prompt and effective response to disasters;

(3) emergency relief;

(4) identification of geographical areas, municipalities, cities or villages especially vulnerable to a disaster;

(5) recommendations for

(A) zoning, building, and other land use controls;

(B) [,] safety measures for securing mobile homes or other nonpermanent or semi-permanent structures; [,] and

(C) other preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(6) assistance to local officials in designing local emergency action plans;

(7) authorization and procedures for the construction of temporary works designed to protect against or mitigate danger, damage, or loss from a disaster;

(8) [PREPARATION AND DISTRIBUTION TO THE APPROPRIATE STATE AND LOCAL OFFICIALS OF CATALOGS OR EXTRACTS LISTING FEDERAL, STATE AND PRIVATE ASSISTANCE PROGRAMS;

(9)] organization of manpower and chains of command;

(9) [(10)] coordination of federal, state, and local disaster activities;

(10) [(11)] coordination of the state emergency plan with the disaster plans of the federal government; and

(11) [(12)] other matters necessary to carry out the purposes of this chapter.

* Sec. 4. AS 26.23.040(e) is amended to read:

(e) The Alaska division of emergency services shall

(1) determine requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of a disaster emergency;

(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and interjurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) [PROVIDE FOR MOBILE SUPPORT UNITS;

(6)] establish and operate, or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate, training [AND PUBLIC INFORMATION] programs;

(6) [(7)] MAKE SURVEYS OF INDUSTRIES, RESOURCES, AND FACILITIES IN THE STATE, BOTH PUBLIC AND PRIVATE, AS ARE NECESSARY TO CARRY OUT THE PURPOSES OF THIS CHAPTER;

CORRECTION

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

(8) [PREPARATION AND DISTRIBUTION TO THE APPROPRIATE STATE AND LOCAL OFFICIALS OF CATALOGS OR EXTRACTS LISTING FEDERAL, STATE, AND PRIVATE ASSISTANCE PROGRAMS;

(9)] organization of manpower and chains of command;

(9) [(10)] coordination of federal, state, and local disaster activities;

(10) [(11)] coordination of the state emergency plan with the disaster plan federal government; and

(11) [(12)] other matters necessary to carry out the purposes of this chapter.

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(2) procure and pre-position supplies, medicines, materials, and equipment;

(3) adopt standards and requirements for local and inter-jurisdictional disaster plans;

(4) periodically review local and interjurisdictional disaster plans;

(5) [PROVIDE FOR MOBILE SUPPORT UNITS;

(6)] establish and operate, or assist political subdivisions, their disaster agencies, and interjurisdictional disaster agencies to establish and operate, training [AND PUBLIC INFORMATION] programs;

(6) [(7)] MAKE SURVEYS OF INDUSTRIES, RESOURCES, AND FACILITIES IN THE STATE, BOTH PUBLIC AND PRIVATE, AS ARE NECESSARY TO CARRY OUT THE PURPOSES OF THIS CHAPTER;

(8)] plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon by the parties;

(7) [(9)] establish a register of persons with types of training and skills important in disaster prevention, preparedness, response, and recovery;

(8) [(10)] ESTABLISH A REGISTER OF MOBILE AND CONSTRUCTION EQUIPMENT AND TEMPORARY HOUSING AVAILABLE FOR USE IN A DISASTER EMERGENCY;

(11)] prepare, for issuance by the governor, orders, proclamations, and regulations as necessary or appropriate in coping with disasters;

(9) [(12)] cooperate with the federal government and any public or private agency or entity in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparedness, response and recovery;

(10) [(13)] develop and carry out procedures and policies to effectively employ disaster relief funds made available by the governor's authority or by special legislative action; these procedures shall include application and documentation by disaster victims or applicants, review, verification and finding approval, and processing of appeals;

(11) [(14)] do other things necessary or proper for the implementation of this chapter.

* Sec. 5. AS 26.23.050(b) is amended to read:

(b) Whenever, and to the extent that, money is needed to cope with a disaster, the first recourse shall be to money [FUNDS] regularly appropriated to state and local agencies. The second recourse

shall be to money [FUNDS] available in the disaster relief fund or the oil and hazardous substance release response fund, as appropriate. If money available from these sources is insufficient, and if the governor finds that other sources of money to cope with the disaster are not available or are insufficient, the governor may, notwithstanding the limitations [ANY LIMITATION] imposed by AS 37.07.080(e),

(1) transfer and spend money appropriated for other purposes; or

(2) [, IN SITUATIONS INVOLVING NATURAL DISASTERS,] borrow money [FROM THE UNITED STATES GOVERNMENT OR OTHER PUBLIC OR PRIVATE SOURCES] for a term not to exceed two years.

* Sec. 6. AS 26.23.060(a) is amended to read:

(a) Each political subdivision in the state is within the jurisdiction of, and shall be served by, the Alaska division of emergency services. A [AN INCORPORATED] municipality also may be served by a local or interjurisdictional agency responsible for disaster preparedness and coordination of response.

* Sec. 7. AS 26.23.060(c) is amended to read:

(c) Each political subdivision that does not have a disaster agency and has not made arrangements to secure or participate in the services of a disaster agency shall designate a liaison officer to facilitate the cooperation and protection of that political subdivision [CITY] in the work of disaster prevention, preparedness, response, and recovery.

* Sec. 8. AS 26.23.080 is amended to read:

Sec. 26.23.080. [COMMUNITY] DISASTER LOANS. Whenever, at the request of the governor, the President has declared a major disaster to exist in this state, the governor may

(1) upon the governor's determination that a political

subdivision [LOCAL GOVERNMENT] of the state will suffer a substantial loss of tax and other revenue from the disaster and has demonstrated a need for financial assistance to perform its governmental functions, apply to the federal government, on behalf of the political subdivision [LOCAL GOVERNMENT], for a loan; the governor may receive and disburse the proceeds of any approved loan to any applicant political subdivision [LOCAL GOVERNMENT];

(2) determine the amount needed by any applicant political subdivision [LOCAL GOVERNMENT] to restore or resume its governmental functions, and to certify the amount to the federal government; [HOWEVER, AN APPLICATION AMOUNT MAY NOT EXCEED 25 PER CENT OF THE ANNUAL OPERATING BUDGET OF THE APPLICANT FOR THE FISCAL YEAR IN WHICH THE MAJOR DISASTER OCCURRED;]

(3) recommend to the federal government, based upon review by the governor, the cancellation of all or any part of repayment when, for the first three full fiscal years following the major disaster, the revenue of the political subdivision [LOCAL GOVERNMENT] is insufficient to meet its operating expenses, including additional disaster-related expenses of a municipal operation character.

* Sec. 9. AS 26.23.090(b) is amended to read:

(b) The governor is authorized to make financial grants [, THE TOTAL OF FEDERAL AND STATE SHARES NOT TO EXCEED \$5,000,] to an individual or family [IN ANY SINGLE MAJOR DISASTER DECLARED BY THE PRESIDENT,] to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by the [A MAJOR] disaster that cannot otherwise adequately be met from other means of assistance. The governor may make a grant to an individual and family under this subsection as follows:

(1) when the President declares a major disaster, the

governor may make a grant of an amount whose total of federal and state shares does not exceed the maximum amount authorized by 42 U.S.C. 5178(f) for grants payable to individuals and families;

(2) when the President does not declare a major disaster but the governor declares a disaster emergency, the governor may make a grant of an amount not to exceed \$5,000.

* Sec. 10. AS 26.23.110(a) is amended to read:

(a) When the governor has declared a disaster emergency, or the President, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor may

(1) through the use of state agencies, clear from publicly or privately owned land or water, debris and wreckage that may threaten public health, safety, or property;

(2) apply for and accept funds from the federal government and use those funds to make grants to a political subdivision [ANY LOCAL GOVERNMENT] for the purpose of removing debris or wreckage from publicly or privately owned land or water.

* Sec. 11. AS 26.23.110(b) is amended to read:

(b) Authority under (a)(1) of this section may not be exercised unless the affected political subdivision [LOCAL GOVERNMENT], corporation, organization, or individual unconditionally authorizes the removal of the debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, first agrees to indemnify the state government against claims arising from the removal.

* Sec. 12. AS 26.23.210 is amended to read:

Sec. 26.23.210. RELATIONSHIP TO CIVIL DEFENSE LAWS [STATUTE].

(a) AS 26.20 (civil defense) [THE ALASKA CIVIL DEFENSE STATUTE (AS 26.20),] applies to preparedness, response, and recovery from

disasters caused by enemy attack and other hostile military or paramilitary action.

(b) The provisions of this chapter, other than AS 26.23.130, apply to preparedness, response, and recovery in cases of natural and [NONMILITARY] manmade disasters other than disasters listed in (a) of this section.

* Sec. 13. AS 26.23.230(1) is amended to read:

(1) "disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a [ANY] natural or [NONMILITARY] man-made cause, including

(A) [, BUT NOT LIMITED TO,] fire, flood, earthquake, landslide, mudslide, avalanche, wind-driven water, weather condition, tsunami, volcanic activity, epidemic, air contamination, blight, infestation, explosion, riot, [EQUIPMENT FAILURE;] or shortage of food, water, fuel, or clothing;

(B) [, OR] the release of oil or a hazardous substance, if the release requires [REQUIRING] prompt action to avert environmental danger or damage; and

(C) equipment failure, if the failure is not a predictably frequent or recurring event or preventable by adequate equipment maintenance or operation;

* Sec. 14. AS 26.23.230(3) is amended to read:

(3) "emergency" has the meaning given in 42 U.S.C. 5122 [Disaster Relief and Emergency Act [OF 1974)];

* Sec. 15. AS 26.23.230(5) is amended to read:

(5) "political subdivision" means

(A) a [HOME RULE OR GENERAL LAW BOROUGH OR CITY INCLUDING A UNIFIED] municipality;

(B) [,] an unincorporated village; [,] or
(C) another [OTHER] unit of local government;

* Sec. 16. AS 25.23.230(6) is amended to read:

(6) "temporary housing" has the meaning given in the federal Disaster Relief and Emergency Act [OF 1974 (P.L. 93-288, 88 STAT. 143)];

* Sec. 17. AS 26.23 is amended by adding new sections to read:

ARTICLE 2. DISASTER RELIEF FUND.

Sec. 26.23.300. DISASTER RELIEF FUND. (a) There is in the Office of the Governor a disaster relief fund. The Department of Revenue is custodian of the fund.

(b) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization expend not more than \$1,000,000 of the assets of the disaster relief fund for the following purposes:

(1) to implement provisions of law relating to disaster relief in the case of a disaster;

(2) to alleviate the effects of a disaster by making grants or loans to persons or political subdivisions on terms the governor considers appropriate or by other means the governor considers appropriate.

(c) Subject to the restrictions of (d) of this section, the governor may, without additional legislative authorization, expend during a fiscal year not more than \$500,000 of the assets of the disaster relief fund to prevent or minimize the effects of an event that occurs in the state and that, in the determination of the governor, poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action.

(d) The governor shall present to the legislature an annual

accounting of money expended from the disaster relief fund.

(e) The governor shall adopt regulations to carry out the provisions of this section.

ARTICLE 3. FUEL EMERGENCY.

Sec. 26.23.400. FUEL EMERGENCY FUND. There is established in the Office of the Governor the fuel emergency fund. When the governor determines that a shortage of fuel is sufficiently severe to justify state assistance, the governor may make a grant from the fuel emergency fund to a political subdivision to purchase emergency supplies of fuel.

* Sec. 18. AS 26.23.090(c), AS 44.19.048, 44.19.049, 44.19.050, and 44.19.052 are repealed.


STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 12, 1990

SUBJECT: CSHB 556 (Finance) -- sectional analysis
TO: Representative Max F. Gruenberg, Jr.
FROM: Jack Chenoweth
Legislative Counsel 

The following summarizes the principal provisions of CSHB 556 (Finance) amending the Alaska Disaster Act, AS 26.-23, and repealing related provisions.

This bill revises the Alaska Disaster Act in order to put the statutory authority for state planning, response, and assistance in the event of a disaster emergency on a sound basis. After giving attention to the respective roles of the governor and the legislature in responding to a disaster emergency declaration, the balance of the bill revises and updates key provisions applicable to the state's preparedness and response mechanisms.

* * *

The relationship between the executive branch and the legislative branch in responding to disasters is addressed in the bill's first two sections.

Bill section 1 defines the essential elements of the governor's role in declaring a disaster emergency and initiating the response of the state government's executive branch. After removing from this subsection all references to the legislature's role in responding to a disaster emergency and establishing those in a separate section (AS 26.23.025, added in the next following bill section), the section revises the section stylistically, shifting the description of the governor's responsibilities from the passive to the active voice. Significant substantive changes are not otherwise made.

Bill section 2 describes the legislature's role in formulating a disaster emergency response:

-- Subsection (a) should be read in conjunction with AS 26.23.300, set out later in the measure as part of bill section 17. It limits the operation of the section on legislative involvement to those instances in which the governor proposes to spend (1) more than \$1,000,000 from the disaster relief fund as grants and loans to alleviate the effects of a disaster; (2) more than \$500,000 from the fund if "an event . . . occurs in the state . . . that, in the determination of the governor, poses a direct and imminent threat of a disaster of sufficient magnitude and severity to justify state action" (see page 10, lines 13 - 16); or (3) an amount from the fund that exceeds the fund's unallocated balance.

-- Subsection (b) directs that, if the disaster emergency is declared while the legislature is in session, the governor is to submit a financing plan identifying sources of appropriated money that the governor intends to use to respond to the disaster or a supplemental appropriation.

-- Subsection (c) directs that, if the disaster emergency is declared while the legislature is not in session, the governor is to call for a legislative special session and submit the same documents; if within five days of the governor's call the presiding officers determine that a special session should not be convened, the governor is not to convene one.

-- Subsection (d) provides that actions of the governor in response to a disaster emergency not approved by concurrent resolution of the legislature at a regular or special session are void.

-- Subsection (e) authorizes the governor to proceed under his proposed financing plan if the legislature, not in session, does not convene in a special session.

-- Following current law (AS 26.23.020), subsection (f) allows the legislature to terminate a disaster emergency at any time by concurrent resolution.

* * *

The remainder of the bill makes a series of technical and substantive changes whose inclusion had been suggested by the division of emergency services, drafting corrections, and substantive changes intended to better define the rela-