

LEGISLATIVE FINANCE-HOUSE / SENATE FINANCE COMM. FILES 8879

SB 288 cont. - SB 299 649

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STATE OF ALASKA  
 DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
 DIVISION OF OCCUPATIONAL LICENSING  
 Summary of Investigative Activity for FY 1988

Opening inventory	147	
Complaints filed	<u>106</u>	
		253
Closed without action	(161)	
Closed active	( 1)	
License actions	( <u>31</u> )	
Total complaints closed		(193)
Closing inventory		<u>60</u>

	Licensees	Complaints
Revoked	10	21
Suspended	1	1
Denied	1	1
Probation	2	3
Reprimand	1	1
Dismiss	5	4

Revoked	Brown, Palmer, Poulson, Saxon, Gentry, Cotro-Manes, Walton, Jones, Crowell, Thomas
Suspended	Stephens
Denied	Armbruster
Probation	Rockstad, Harness
Reprimanded	Batchelor
Dismissed	Tapley, Walrath, Morgan, Rough, Wilson

Note--the numbers of cases closed do not match exactly with the names shown above because four individuals had multiple complaints filed against them and because three complaints resulted in multiple license actions.

FY 87

License Actions Taken

Shoultz, Rita	Accusation withdrawn.	070386
Clark, Terri	Accusation withdrawn.	071686
Smith, Linda	Statement of Issues dismissed.	071686
Lange, William	Associate broker license application withdrawn.	081586
Mathis, Joe	Salesman license denied; uncontested.	081586
Rutledge, John	Broker license denied; uncontested.	081586
Shafer, Gene	Associate broker license denied; uncontested.	081586
Price, William	Salesman license revoked; reinstated; contested.	091986
Ballard, Edrie	Broker license revoked; uncontested.	091986
Lange, William	Salesman license retained; contested.	112286
Hanson, Ted	Salesman license retained; contested.	112286
West, Robert	Salesman license granted; contested.	112286
Koch, Larry	Broker license revoked; contested.	011687
Green, Janet	Salesman license revoked; uncontested.	011687
Pahoresky, Herbert	Salesman license reinstated; contested.	011687
Rockstad, Lynn	Salesman license retained; NSF; contested.	011687
Jackson, Carol	Salesman license retained; NSF; contested.	011687
Wyatt, Sarah	Salesman license revoked; NSF; uncontested.	020787
West, Jo Nyla	Salesman license revoked; NSF; uncontested.	020787
Boyd, Biff	Salesman license revoked; NSF; uncontested.	020787
Sayer, Robert	Broker license revoked; NSF; uncontested.	020787
Hennings, Kerry	Salesman license revoked; NSF; uncontested.	020787

License Complaints Summary

Opening Inventory	164	
Filed	<u>106</u>	
		270
Closed without action	(74)	
Closed active	(36)	
License actions	<u>(13)</u>	
Total closed		<u>(123)</u>
Closing inventory		<u>147</u>

Surety Claims Summary

Opening Inventory	44	
Filed	<u>45</u>	
		89
Paid	(11)	
Dismissed	( 6)	
Denied	<u>( 5)</u>	
Total Closed		<u>(22)</u>
Closing Inventory		<u>67</u>

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State of Alaska  
Department of Commerce & Economic Development  
Division of Occupational Licensing  
Alaska Real Estate Commission  
Real Estate Surety Fund

We have compiled the accompanying statements of receipts and disbursements of the Alaska Real Estate Commission, Real Estate Surety Fund, for the years ended June 30, 1987 and 1986, in accordance with standards established by the American Institute of Certified Public Accountants.

Our compilation was limited to presenting in the form prescribed by the Alaska Real Estate Commission, information that is the representation of management. We have not audited or reviewed the financial statements referred to above and, accordingly, do not express an opinion or any other form of assurance on them.

The financial statements are presented in accordance with the requirements of the Alaska Real Estate Commission which differ from generally accepted accounting principles. Accordingly, these financial statements are not designed for those who are not informed about such differences.

*Touche Ross & Co.*

Certified Public Accountants  
April 14, 1988

STATE OF ALASKA  
 DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
 DIVISION OF OCCUPATIONAL LICENSING  
 ALASKA REAL ESTATE COMMISSION  
REAL ESTATE SURETY FUND

STATEMENTS OF RECEIPTS AND DISBURSEMENTS

	<u>Year ended June 30,</u>	
	<u>1987</u>	<u>1986</u>
<b>RECEIPTS:</b>		
Licensee fees	\$ 26,840	\$266,960
Recoveries of claims paid	18,468	8,009
Claim filing fees	9,250	8,750
Exam fees from ETS	3,745	
Educational reimbursements	<u>2,166</u>	<u>635</u>
<b>TOTAL RECEIPTS</b>	<u>60,469</u>	<u>284,354</u>
<b>DISBURSEMENTS:</b>		
Educational	126,239	136,703
Claims paid	160,804	52,357
Filing fee reimbursements	4,750	500
Hearing	3,156	5,072
Licensee fee reimbursements	1,135	750
NSF adjustments to licensee fee receipts	320	2,125
Reimbursement of recoveries of claims paid		<u>2550</u>
<b>TOTAL DISBURSEMENTS</b>	<u>296,404</u>	<u>200,057</u>
<b>EXCESS (DEFICIENCY) OF RECEIPTS OVER DISBURSEMENTS</b>	<u>\$(235,935)</u>	<u>\$ 84,297</u>

See accountants' compilation report  
 and note to statements of receipts and disbursements.

STATE OF ALASKA  
DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
DIVISION OF OCCUPATIONAL LICENSING  
ALASKA REAL ESTATE COMMISSION  
REAL ESTATE SURETY FUND

NOTE TO STATEMENTS OF RECEIPTS AND DISBURSEMENTS

YEARS ENDED JUNE 30, 1987 AND 1986

A. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES:

Organization -

The Real Estate Surety Fund is a designated fund within the General Fund of the State of Alaska. The primary purpose of the Fund is to reimburse consumers who have suffered losses because of the unlawful actions of a licensee. There is a statutory limitation of \$50,000 per licensee on such reimbursements. In addition, there is a \$10,000 cap, including interest paid, per transaction. The Fund may not exceed \$500,000. Amounts in the Fund in excess of \$250,000 may be appropriated for real estate educational purposes. The fund did not exceed \$500,000 at June 30, 1987 or 1986.

A portion of the initial licensee fee is deposited to the fund. Every other year, licensees are required to renew their licenses, and a portion of this renewal fee is also deposited to the fund.

Basis of reporting -

The Fund prepares financial statements using the cash receipts and disbursements basis of accounting. This policy recognizes revenue when received rather than when earned, and expenses when paid rather than when obligations are incurred. The financial statements are not intended to comply with generally accepted accounting principles.

April 14, 1988

State of Alaska  
Department of Commerce & Economic Development  
Division of Occupational Licensing  
3601 C Street, Suite 722  
Anchorage, Alaska 99503

At your request, we have performed the procedures enumerated below with respect to the receipts and disbursements of the Real Estate Commission, Real Estate Surety Fund, of the above-referenced Department and Division of the State of Alaska for the years ended June 30, 1987 and 1986. It is understood that this report is solely for the information of the Real Estate Commission for management practices and is not to be used for any other purpose.

Because the procedures listed below do not constitute an examination made in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to below. Had we performed additional procedures, or had we made an examination of the financial statements in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the accounts and items specified below and does not extend to any financial statements of the Real Estate Surety Fund taken as a whole.

#### STATEMENTS OF RECEIPTS AND DISBURSEMENTS

We have compiled statements, attached to this report, of receipts and disbursements of the fund for the years ended June 30, 1987 and 1986.

##### Receipts -

Lois Waugh, Licensing Examiner for the period under investigation, provided us with a summary of receipts by day (receipt batches). In some cases, Lois did not have the information available. For example, summaries were not available for the period July 1, 1985 through September 10, 1985. In those cases, we obtained the information through Philanne Bennett, Fiscal Officer for the Department of Commerce in Juneau. Receipt batches were sequentially numbered. We accounted for all numbers except receipt number 800002. Neither the Anchorage office nor the Juneau office were able to locate this receipt batch. The receipt batches were totaled to arrive at gross receipts.

Based on information obtained through discussions with Grayce Oakley, Executive Secretary, Alaska Real Estate Commission, we classified the receipts into categories as follows:

\$40 - Old renewal fee (Note: Per statutes, all renewal fees for this period should have been at the \$80 level. However, our work revealed amounts in this category of \$40 and \$880 for fiscal year ended June 30, 1987 and 1988, respectively).

\$80 - Initial licensee fees and renewal fees.

\$250- Surety claim filing fees.

Odd Amounts - Claim reimbursements from licensees and miscellaneous items which are mainly reimbursements for educational materials provided to licensees.

While performing the classification procedure, some discrepancies were located between summaries and detail. In those cases, the detail was examined to see which was correct and, if necessary, an adjustment was made to the summary receipt batch total.

Where the composition of a batch was not immediately evident, we referred to a listing of the amounts individually. Again, in some instances, Lois (Anchorage) did not have the information, and we obtained it from Philanne (Juneau). Where a gross amount on a batch receipt was divisible by \$80.00, we assigned the whole batch to the \$80.00 category (licensee fees). We discussed this procedure with Grayce Oakley. She concurred that it would not result in any material misclassifications. In addition, we checked the back-up on the larger receipt batches of this kind of receipt to determine that the composition was indeed all \$80.00 amounts.

We obtained, from the Alaska Real Estate Commission's annual reports to the State, the number of new licenses issued for each fiscal year. Since fiscal year 1986 was a renewal year, we also obtained the number of active license renewals for that year and prepared the following analysis.

	<u>1987</u>	<u>1986</u>
Number of new licenses issued	260	540
Number of active license renewals		<u>2,492</u>
Rate per statutes	\$ <u>80</u>	\$ <u>3,032</u> <u>80</u>
Expected licensee fee receipts	20,800	242,560
Per receipt batch information	<u>26,840</u>	<u>266,960</u>
Difference	<u>\$ 6,040</u>	<u>\$ 24,400</u>

The above indicates that the licensee receipts may be overstated for each year or that the issue and renewal numbers taken from the annual report are incorrect. No attempts were made at reconciling these differences. Discussions with Grayce Oakley indicate there should be some allowance made for untabulated sales of educational materials for each year.

Surety claims filing fees

Grayce Oakley provided us with beginning and ending claim filing numbers for each fiscal year. Based on this information, we calculated the expected receipts from claim filing fees as follows:

	<u>1987</u>	<u>1986</u>
Number of claims filed	48	37
Claim filing fee per statutes	\$ 250	\$ 250
Expected receipts	12,000	9,250
Per receipt batch information	<u>9,250</u>	<u>8,750</u>
Difference	<u>\$(2,750)</u>	<u>\$ (500)</u>

No explanation was available for these discrepancies.

Recoveries of claims paid

Grayce Oakley provided us a listing of recoveries from licensees maintained by the Anchorage office, which we summarized. This was compared to information obtained in Juneau (see Exhibit 1).

DISBURSEMENTS:

Disbursements are compiled from information obtained in Juneau; Anchorage retains information only for claims paid.

Juneau provided a report "Special Period Audit Trail Report." This report lists transactions individually by collocation and account code. From this report, we requested supporting documentation for disbursements in excess of \$100.00. The primary form of documentation was invoices. On occasion documentation given to us consisted only of a memo from James Magowan, or in one case from Betty Robertson. We did not include this type of back-up in the documentation available category; rather we classified such expenditures as documentation unavailable. For those disbursements, which had back-up available, we examined the documentation to determine if authorization for this specific disbursement was noted and, if so, whose authorization was present.

A summary of documentation requested appears below. A summary of authorizations appears on page 5.

	<u>1987</u>	<u>\$</u>	<u>1986</u>	<u>\$</u>
Total disbursements	\$296,404		\$200,057	
Documentation requested	264,218	89	178,314	89
Documentation unavailable	<u>19,263</u>	<u>5</u>	<u>17,175</u>	<u>10</u>
Documentation available and examined	<u>\$244,955</u>	<u>84</u>	<u>\$161,139</u>	<u>79</u>

Breakdown of documentation unavailable category:

	<u>1987</u>	<u>1986</u>
No documentation, authorization or other paperwork available	\$14,608	\$13,494
Memos from James Magowan	4,655	2,363
Memos from Betty Robertson		1,318
	<u>\$19,263</u>	<u>\$17,175</u>

Components of disbursements are as follows:

	<u>1987</u>	<u>1986</u>
Disbursements:		
Claims paid	\$160,804	\$ 52,357
Educational	126,239	136,703
Filing fee reimbursements	4,750	500
Hearing	3,156	5,072
Licensee fee reimbursements	1,135	750
NSF adjustments to licensee fee receipts	320	2,125
Reimbursement of recoveries of claims paid		2550
Total disbursements	<u>\$296,404</u>	<u>\$200,057</u>

Authorization for disbursements took the following form:

Claims paid: All claims paid had the executed proposed decision attached and the amounts disbursed agreed to the proposed decision (see Exhibits 2 and 3 for a listing of claims paid).

Payroll expenditures within the Educational category: From the payroll registers in Juneau, we determined which individual's salaries were being charged to the fund. In both 1987 and

1986, varying percentages of James Magowan, Joseph Koss, Lois Waugh and Terry McGillivary's salaries have been charged to the fund. Juneau retrieved the personnel action forms on these individuals, and we examined them for Real Estate Surety Fund allocations. Additional payroll charges entered, by journal entry, were charged to the fund. Per discussion with Philanne Bennett, these additional charges were the result of a study performed by James Magowan.

Other charges: Authorization was in the form of signatures or initials on invoices or memos signed by James Magowan. Following is a breakdown of the types of authorizations found for expenditures other than claims or payroll:

	<u>1987</u>	<u>%</u>	<u>1986</u>	<u>%</u>
Magowan	\$14,442	56	\$53,380	60
Walrod	4,350	17	27,181	31
McGillivary	2,776	11		
Magowan/Walrod			1,827	2
No authorization (see Exhibit 4)	<u>4,038</u>	<u>16</u>	<u>6,663</u>	<u>7</u>
Documentation provided for disbursements other than claims or payroll	<u>\$25,606</u>	<u>100</u>	<u>\$89,051</u>	<u>100</u>

RECONCILIATION OF RECEIPT INFORMATION TO JUNEAU:

We compared the receipt information obtained through examination of the batch receipts to information obtained from Juneau. Juneau records certain disbursements as debits to the revenue accounts. These items are claim payments, licensee fee reimbursements, and claim reimbursement refunds. These amounts are reflected in collocation code number 08-53-8-025. For purposes of this report, these amounts have been included in disbursements.

Juneau's records indicate the following:

	<u>1987</u>	<u>1986</u>
Receipts per report:		
"Reconciliation of other Reserve Accounts"	\$(23,133)	\$242,068
Add:		
Claims paid, including filing fee reimbursement	94,554	52,857
Licensee fee refunds	1,135	750
NSF adjustments to licensee fee receipts	320	2,125
Reimbursements of recoveries of claims paid		<u>2,550</u>
Gross receipts per Juneau reports	72,876	300,350
Gross receipts per receipt batches reviewed	<u>60,469</u>	<u>284,354</u>
Difference	<u>\$(12,407)</u>	<u>\$(15,996)</u>

FUND BALANCE:

Juneau reports the following fund balance information:

For year ended June 30, 1986:

Collocation Code 08-53-8-004 (Hearing Costs)

Beginning balance, July 1, 1985	\$541,530	
Receipts FYE June 30, 1986	0	
Disbursements FYE June 30, 1986	<u>(5,072)</u>	

Balance, June 30, 1986		\$536,458
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Collocation Code 08-53-8-020 (Training Costs)

Beginning balance, July 1, 1985	(130,428)	
Receipts FYE June 30, 1986	0	
Disbursements FYE June 30, 1986	<u>(136,703)</u>	

Balance, June 30, 1986		(267,131)
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Collocation Code 08-53-8-025 (Receipts)

Beginning balance, July 1, 1985	54,487	
Disbursements FYE June 30, 1986	0	
Receipts FYE June 30, 1986	<u>242,068</u>	

Balance, June 30, 1986		<u>296,555</u>
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Combined ending fund balance, June 30, 1986		<u>\$565,882</u>
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For year ended June 30, 1987:

Collocation Code 08-53-8-004 (Hearing Costs)

Beginning balance July 1, 1986	\$536,458	
Receipts FYE June 30, 1987	0	
Disbursements FYE June 30, 1987	<u>(3,156)</u>	

Balance, June 30, 1987		\$533,302
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Collocation Code 08-53-8-020 (Training Costs)

Beginning balance, July 1, 1986	(267,131)	
Receipts FYE June 30, 1987	0	
Disbursements FYE June 30, 1987	<u>(126,138)</u>	

Balance, June 30, 1987		(393,269)
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Collocation Code 08-53-8-025 (Receipts)

Beginning Balance, July 1, 1986	296,555
Disbursements FYE June 30, 1987	0
Receipts FYE 6/30/87	<u>(23,133)</u>
Balance, June 30, 1987	<u>273,422</u>
Combined ending fund balance June 30, 1987	<u>\$413,455</u>

As discussed above, it is important to note that Juneau treats certain disbursements as debits to the collocation code 08-53-8-025 (Receipts). These items are claim payments, licensee fee reimbursements, NSF adjustments, and claim reimbursement refunds. For purposes of this report, and the statement of receipts and disbursements, these amounts have been included as disbursements.

The fund balance indicated above was obtained from Juneau's records. Our review disclosed that this may not be an accurate balance; items noted were:

The 1987 Special Audit Trail Report indicates \$81,000 in additional claim payments (see Exhibit 3) that were to be charged to the fiscal year ended 1986 fund balance. These amounts are not included in either the fiscal year ended 1986 or 1987 fund balance reconciliations reported above. These amounts are included as fiscal year ended 1987 claim payments made on the statement of receipts and disbursements included with this report.

Our reconciliation of receipt information indicates that the receipt information per Juneau may be incorrect (see previous sections).

SUGGESTIONS FOR IMPROVEMENT OF THE ACCOUNTABILITY OF THE FUND

Communication

The Anchorage office has inadequate accounting information. We believe this is due to a lack of communication.

Juneau provided us with a report labeled "Special Audit Trail Report." This report shows detail regarding document number, payee (vendor), transaction type, warrant number, fiscal year ended, collocation code, accounts charged, date of transaction, and amount of transaction. If this report was available on a periodic basis, preferably monthly, Anchorage could review the information and compare it to what they have accumulated during the same time period. If there were discrepancies or unexplained charges, they could be resolved in a timely manner.

We suggest that the report "Reconciliation of Other Reserve Accounts," which shows the yearly activity in summary form by collocation code, be provided to the Anchorage office for their examination and information. To clearly show the performance of the fund, the annual report should include a financial statement for the fund.

Receipts

The Anchorage office has detail information regarding receipts; however, they do not summarize it or use it to corroborate the information processed by Juneau. We recommend that this information be summarized and used in the comparative procedures discussed above.

Claims Paid

Warrants for claims are prepared by Juneau upon the receipt of an approved proposed decision. Warrants should not be ordered until the specified appeal period has lapsed. Warrants are remitted to the Anchorage office for disbursement. We recommend that prior to disbursement, the claim file should be reviewed to determine that a prior payment has not been made. In addition, to prevent any other type of unauthorized disbursement, we recommend that the proposed decision and file be reviewed at this time to determine if subsequent action, such as an appeal, deems payment at this time inappropriate.

Reimbursement of Claim Filing Fee

Effective October 10, 1984, a \$250 claim filing fee was required. The statutes state that the claim filing fee is to be reimbursed if the claim is approved. During our work, we noted several claims were paid without the \$250 filing fee reimbursement. To comply with statutes, we suggest that the filing fee be reimbursed where appropriate.

Disbursement Authorization

During our work we noted several disbursements which had no authorization for payment. In addition, the remaining disbursements had a variety of authorizations. It is very important that all disbursements made, be properly authorized first. The authorization should be by an individual who is familiar with the fund and the statutes regarding the fund. We suggest that a listing be made of individuals who may authorize disbursements. This listing should be sent to Juneau for their use. An authorization form should be developed. This form should be filled out for every disbursement. Juneau should be instructed not to make disbursements without a properly executed authorization form. In this manner, the fund will not be charged inappropriately.

*Touche Ross & Co.*

Certified Public Accountants

ALASKA REAL ESTATE COMMISSION  
REAL ESTATE SURETY FUND

RECOVERIES OF CLAIMS PAID

EXHIBIT 1

YEAR ENDED JUNE 30, 1987 AND 1986

<u>Claim Number</u>	<u>Broker</u>	<u>Amounts Recovered</u>	
		<u>1987</u>	<u>1986</u>
<u>Recoveries per Anchorage Office</u>			
81-046	Mary Peterson*		\$ 100
83-011	William Price*	\$ 4,000	
83-031	Michael Buss*	900	66
83-045	Ben Waldrop	4,297	
84-090	Chris Ryherd*	800	
84-102	Homer Beedle*	1,233	
84-108	Walter Hanni		1,259
84-117	Ralph Cook*	3,585	2,500
85-021	Ken Calhoon	1,740	
86-004	Ben Shennum	1,015	
Not Available	Barbara Tanner		2,550
Not Available	Camillie Davis*	1,198	750
Not Available	Johnson		1,000
Not Available	Barry Shennum*	100	
		<u>18,868</u>	<u>8,225</u>
Adjustments - Amounts not traceable to receipt batches:			
83-011	Michael Buss	200	66
84-090	Chris Ryherd	200	
Not Available	Camillie Davis		<u>150</u>
Total receipts on recoveries of claims paid		<u>\$18,468</u>	<u>\$ 8,009</u>

\* Information obtained in Anchorage office agrees to receipt batch information. Items not so noted were obtained through examination of receipt batch detail.

ALASKA REAL ESTATE COMMISSION  
REAL ESTATE SURETY FUND

CLAIMS PAID

EXHIBIT 2

YEAR ENDED JUNE 30, 1986

<u>Claim Number</u>	<u>Claimant</u>	<u>Date Proposed Decision Signed</u>	<u>Warrant Number</u>	<u>Date Issued</u>	<u>Amounts Paid</u>
<u>Claims paid per 1986 Special Audit Trail Report</u>					
83-103	Janet Mischler	12/10/85	20316265	02/11/86	\$ 13,035
83-105	John Godfrey	12/14/85	20316266	02/11/86	11,876
83-114	Michael Balanger*	12/14/85	20316264	02/11/86	4,594
83-120	Gary Morrell*	12/14/85	20316263	02/11/86	6,116
84-032	Beverly Thompson	03/06/85	20191458	11/01/85	82
84-058	Charles Jones*	Not Available	20311485	02/18/86	193
84-085	Wilburn Evans	05/27/86	20476916	06/25/86	10,000
84-089	Erlinda Gonzalez*	12/14/85	20316262	02/11/86	4,157
84-090	Robert Miller*	02/10/86	20415134	05/02/86	6,430
84-116	Jim Martin/AHFC	11/05/85	20306559	02/11/86	827
84-117	Kurt Kramer*	12/06/85	20316261	02/11/86	5,719
85-003	Dietmar Kubb*	12/06/85	20316260	02/11/86	12,055
85-007	Mary Dean*	09/11/85	20315168	09/18/85	3,511
Subtotal					78,595
Less funds not disbursed:					
83-103	Janet Mischler		20316265		(13,035)
83-105	John Godfrey		20316266		(11,876)
84-116	Jim Martin/AHFC		20306559		(827)
					52,857
Less filing fee reimbursements included in above amounts					
					500
Total claims paid					<u>\$ 52,357</u>

\* Information agrees to information obtained from the Anchorage office.

ALASKA REAL ESTATE COMMISSION  
REAL ESTATE SURETY FUND

Touche Ros

CLAIMS PAID

EXHIBIT 3

YEAR ENDED JUNE 30, 1987

<u>Claim Number</u>	<u>Claimant</u>	<u>Date Proposed Decision Signed</u>	<u>Warrant Number</u>	<u>Date Issued</u>	<u>Amounts Paid</u>
<u>Claims paid per 1987 Special Audit Trail Report</u>					
84-070	Anna Montgomery	11/21/86	20747162	02/02/87	\$ 10,000
84-085	Wilburn Evans*	01/16/87	20756561	02/02/87	10,000
84-100	Vera Angles	01/16/87	20728573	02/02/87	9,616
84-102	Estelita Quiere*	09/19/86	20611525	10/08/86	1,483
85-008	Larry Nicholas*	01/16/87	20728570	02/02/87	1,472
85-010	Claude Harter*	11/21/86	20670792	12/02/86	10,250
85-012	Lyle Dickey*	11/22/86	20670793	12/02/86	3,750
85-071	Rodney Clark	08/19/86	20611528	10/08/86	5,316
85-022	Mary Finstad*	01/16/87	20728572	02/02/87	2,543
86-004	Mary Solstad*	01/16/87	20728568	02/02/87	4,417
86-005	James Thomas*	09/19/86	20611526	10/08/86	10,250
86-009	Stanley	N/A	20810087	N/A	250
86-018	George Hunziker*	01/16/87	20728569	02/02/87	10,250
86-021	Ken Strain*	01/16/87	20728571	02/02/87	2,815
86-023	Donald McDermott*	09/19/86	20611527	10/08/86	10,250
86-033	Norma Gentry	09/19/86	20611529	10/08/86	1,392
86-041	John Jorgen	N/A	20796374	N/A	250
Not avail.	Kathleen Hamb	N/A	20674794	N/A	250
Subtotal					94,554
Add: Disbursements from "1987 Special Period Audit Trail Report," not included in Juneau's fund balance reconciliation:					
84-091	Pat Burke*		20676229		10,000
84-093	Roger Head*		20676230		20,000
85-011	Chris Brown*		20676228		20,250
86-016	City Mortgage*		20676231		10,250
86-017	Robert Buell*		20676233		10,250
86-022	Gary Gerling*		20676232		10,250
Subtotal					175,554
Less funds not disbursed:					
84-085	Wilburn Evans		20476916		10,000
Less filing fee reimbursements included in above amounts					4,750
Total claims paid					<u>\$160,804</u>

\* Information agrees to information obtained from Anchorage office.

ALASKA REAL ESTATE COMMISSION  
REAL ESTATE SURETY FUND

BREAKDOWN OF NO AUTHORIZATION AMOUNTS BY PAYEE

EXHIBIT 4

YEARS ENDED JUNE 30, 1987 AND 1986

	<u>1987</u>	<u>1986</u>
RMRS	\$2,000	
Frontier Travel	960	
Wang Laboratories	408	\$5,000
Anchorage Telephone	254	
Going Places		1,031
Municipality (phone bill)		428
Individual amounts less than \$200	<u>416</u>	<u>204</u>
	<u>\$4,038</u>	<u>\$6,663</u>

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
Title: An Act relating to the Real Estate Commission BRU: Occupational Licensing  
Sponsor: Senator Sturquilewski Components: \_\_\_\_\_  
Requestor: Senate Labor & Commerce

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	17.5	17.5	17.5	17.5	17.5	17.5
TRAVEL	3.5	3.5	3.5	3.5	3.5	3.5
CONTRACTUAL	2.0	2.0	2.0	2.0	2.0	2.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	7.7	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>31.7</b>	<b>24.0</b>	<b>24.0</b>	<b>24.0</b>	<b>24.0</b>	<b>24.0</b>

CAPITAL	0	0	0	0	0	0
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REVENUE	19.8	17.5	18.5	23.4	22.9	26.3
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR	31.7	24.0	24.0	24.0	24.0	24.0
<b>TOTAL</b>	<b>31.7</b>	<b>24.0</b>	<b>24.0</b>	<b>24.0</b>	<b>24.0</b>	<b>24.0</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

**ANALYSIS :** (Attach a separate page if necessary) The bill beefs up present real estate licensing requirements by adding consumer protection provisions to AS 08.88. Specifically, the bill provides the Real Estate Commission authority to establish minimum education requirements prior to licensure; and to establish continuing education requirements for license renewal. (CONTINUED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144  
Division: Occupational Licensing Date: 2/21/90

Approved by Commissioner: Larry Northrup Date: 21 Feb 90  
Agency: Department of Commerce & Economic Development

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

**CONTINUATION OF FISCAL NOTE ANALYSIS - SSSB 228**

The new provisions of the bill will require considerable staff resources in reviewing course outlines for approval, reviewing instructor resumés for approval, interviewing instructor candidates, and visiting course presentations, and responding to licensee inquiries regarding education requirements. This fiscal note provides for an additional one-half time position to assist with the new prelicensing and continuing education requirements.

**PERSONAL SERVICES:** \$17.5

One Seasonal Occupational Licensing Examiner I  
12 months (half days), GGU, Range 12A

**TRAVEL:** \$ 3.5

Funding will provide transportation and per diem to visit and review course presentations in various locations throughout the State.

**CONTRACTUAL SERVICES:** \$ 2.0

Funding provides for printing, advertising, postage, and communication costs.

**SUPPLIES:** \$ 1.0.

Funding will provide standard office supplies.

**EQUIPMENT:** (One time costs) \$ 7.1

Telephone line and equipment	.6
DP/WP Computer terminal	2.2
Desk	.7
Chair	.2
Calculator	.2
File Cabinet	.6
Typewriter	.7
Workstation/modular furniture	2.5

**REVENUES:** The revenues shown for each year are based on fees to be charged for prelicensing education, continuing education, and recertification.

**FY 91: Prelicensing -**

25 offerings of the 20-hour prelicensing course	
20 hours x \$15 x 25	\$ 7,500
40 instructors @ \$250 for initial certification	
40 x \$250	10,000
10 offerings of the 15-hour broker course	
15 hours x \$15 x 10	<u>2,250</u>
<b>FY 91 TOTAL:</b>	<b><u>\$19,750</u></b>

**FY 92: Prelicensing -**

13 offerings of the 20-hour prelicensing course	
20 hours x \$15 x 13	\$ 3,900
20 instructors @ \$250 for initial certification	
20 x \$250	5,000
5 offerings of the 15-hour broker course	
15 hours x \$15 x 5	<u>1,100</u>

Subtotal: \$10,000

25 offerings of the 20-hour continuing education course	
20 hours x \$15 x 25	\$ <u>7,500</u>

FY 92 TOTAL: \$17,500

**FY 93: Prelicensing -**

13 offerings of the 20-hour prelicensing course	
20 hours x \$15 x 13	\$ 3,900
20 instructors @ \$250 for initial certification	
20 x \$250	5,000
5 offerings of the 15-hour broker course	
15 hours x \$15 x 5	<u>1,100</u>

Subtotal: \$10,000

**Recertification:**

25 offerings of the 20-hour prelicensing course	
20 hours x \$10 x 25	\$ 5,000
40 instructors @ \$50 for recertification	
40 x \$50	2,000
10 offerings of the 15-hour broker course	
15 hours x \$10 x 10	<u>1,500</u>

Subtotal: \$ 8,500

FY 93 TOTAL: \$18,500

**FY 94: Prelicensing -**

13 offerings of the 20-hour prelicensing course	
20 hours x \$15 x 13	\$ 3,900
20 instructors @ \$250 for initial certification	
20 x \$250	5,000
5 offerings of the 15-hour broker course	
15 hours x \$15 x 5	<u>1,100</u>

Subtotal: \$10,000

**Recertification:**

13 offerings of the 20-hour prelicensing course	
20 hours x \$10 x 13	\$ 2,600
20 instructors @ \$50 for recertification	
20 x \$50	5,000
5 offerings of the 15-hour broker course	
15 hours x \$10 x 5	<u>750</u>
Subtotal:	\$ 8,350

25 offerings of the 20-hour continuing education course	
20 hours x \$10 x 25	<u>\$ 5,000</u>

**FY 94 TOTAL:** \$23,350

**FY 95: Prelicensing -**

13 offerings of the 20-hour prelicensing course	
20 hours x \$15 x 13	\$ 3,900
20 instructors @ \$250 for initial certification	
20 x \$250	5,000
5 offerings of the 15-hour broker course	
15 hours x \$15 x 5	<u>1,100</u>
Subtotal:	\$10,000

**Recertification:**

38 offerings of the 20-hour prelicensing course	
20 hours x \$10 x 38	\$ 7,600
60 instructors @ \$50 for recertification	
60 x \$50	3,000
15 offerings of the 15-hour broker course	
15 hours x \$10 x 15	<u>2,250</u>
Subtotal:	\$12,850

**FY 95 TOTAL:** \$22,850

**FY 96: Prelicensing -**

13 offerings of the 20-hour prelicensing course	
20 hours x \$15 x 13	\$ 3,900
20 instructors @ \$250 for initial certification	
20 x \$250	5,000
5 offerings of the 15-hour broker course	
15 hours x \$15 x 5	<u>1,100</u>
Subtotal:	\$10,000

**Recertification:**

40 offerings of the 20-hour prelicensing course	
20 hours x \$10 x 40	\$ 8,000
60 instructors @ \$50 for recertification	
60 x \$50	3,000
15 offerings of the 15-hour broker course	
15 hours x \$10 x 15	<u>2,250</u>
Subtotal:	\$13,250
15 offerings of the 20-hour continuing education course	
20 hours x \$10 x 15	\$ 3,000
FY 96 TOTAL:	<u>\$26,250</u>

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SENATE COMMITTEE REPORT

FURTHER

5/6/89

DATE TURNED INTO OFFICE 5/2/90

Mr. President:

Finance

Committee considered

SB 297

licensing, sale, transportation, importation, and possession of alcoholic beverages; relating to local option election ballots; efd

and recommended

- replace with \_\_\_\_\_ CS SB 297 (Fin) )  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title
- attached amendment(s) and  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

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

FISCAL NOTE(S) <sup>2: DOR; Gov</sup>  zero  fiscal impact  appropriation no FN

new  updated  previous

same as previous fiscal note(s) published \_\_\_\_\_

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*[Handwritten signatures]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

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\_\_\_\_\_

Chair: signature and recommendation

Committee Backup attached

R/0 SFC 2-2-90

STATE OF ALASKA  
1990 LEGISLATIVE SESSION

BILL VERSION: SB 297  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Dept. of Revenue  
Title: Licensing, sale, transportation, importation, & Possession of alcoholic beverages,  
local option ballots BRU: Alcoholic Beverage Control Board  
Requestor: Sen. Finance Comm. Components: \_\_\_\_\_  
Sponsor: Sen. Binkley

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Depending on the number of local option elections to ban sale and importation or possession of alcoholic beverages, this legislation would produce postage cost reductions under (b) (1) in Section 9. Mailing to licensees under current law - 444 licensees  
Mailing under this legislation - 39 licensees

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638  
Division: Alcoholic Beverage Control Board Date: 12/14/89

Approved by Commissioner: Hugh Malone Date: 12/14/89  
Agency: Department of Revenue

Distribution (by preparer):

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

Changes in CSSB 297 (Fin) have no fiscal impact. This fiscal note is appropriate. 2/2/90

7/0 JFC 2-2-90

### FISCAL NOTE

**REQUEST:**

Revision Date: 12/7/89 Agency Affected: Office of the Governor  
 Title: An act relating to licensing, sale, transportation, importation, and possession of alcoholic beverages BRU: Division of Elections  
 Sponsor: Binkley Components: I - Elections  
 Requestor: Labor & Commerce

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

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: Linda Edgeworth Phone: 465-4611  
 Division: Division of Elections Date: 12/7/89

Approved by Commissioner: [Signature] (Acting) Date: 12-11-89  
 Agency: Division of Elections

**Distribution (by preparer):**

- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
- Changes in CSSB 297 (Fin) have no fiscal impact. This fiscal note is appropriate. 2/2/90 mww



REQUEST: FISCAL NOTE

Revision Date: \_\_\_\_\_ Agency Affected: DOT&PF  
 Title: An Act relating to licensing, sale, transportation, BRU: Engineering & Operations Standards  
 Importation, and possession of alcoholic beverages: ...  
 Sponsor: Binkley Components:  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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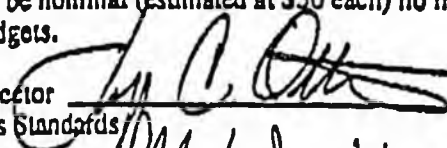
FUNDING: (THOUSANDS OF DOLLARS)

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

POSITIONS:

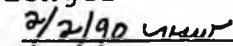
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: The bill would require the department to post signs at community boundaries indicating that said community prohibits the importation or possession (as appropriate) of alcoholic beverages. This provision only applies when the community is on the connected highway system, thus the number of communities expected to be posted will be small. As the cost of these signs will be nominal (estimated at \$50 each) no increased fiscal cost is shown. These signs will be covered within existing budgets.

Prepared by: Jeffery C. Ottesen, Director  Phone: 465-2951  
 Division: Engineering and Operations Standards Date: May 7, 1989

Approved by Mark S. Hickey, Commissioner:  Date: 5/8/89  
 Agency: Department of Transportation and Public Facilities

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

CSSB 297 (Fin) removes reference to DOT. This note is no longer pertinent. 2/2/90 

6-0314E .  
Ford  
1/31/90

ADOPTED by SFC  
2/2/90

Original sponsor(s): SEN. BINKLEY

page 18  
Sec 27, 28, 29  
DELETED

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 297 (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 licensing, sale, transportation,  
7 importation, and possession of alcoholic beverages;  
8 local option election ballots; possession of products  
9 designed for brewing or distilling; and providing for  
10 an effective date."

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

12 \* Section 1. AS 04.11.150(a) is amended to read:

13 (a) Except as provided under (h) of this section, a package  
14 store license authorizes the holder to sell alcoholic beverages to a  
15 person in response to a verbal solicitation for purchase received from  
16 the person present on the licensed premises, and if authorized by the  
17 board, to sell alcoholic beverages [OR] in response to a written  
18 solicitation made by a person known to the licensee for a purchase to  
19 be received by the person making the solicitation. An authorization  
20 by the board to sell alcoholic beverages in response to a written  
21 solicitation is valid only for the calendar year in which it is is-  
22 sued.

23 \* Sec. 2. AS 04.11.150(h) is amended to read:

24 (h) A package store licensee, agent, or employee may not ship  
25 more than 12 [EIGHTEEN] liters of distilled spirits within a monthly  
26 period to a purchaser off the licensed premises if the shipment is to  
27 an area that has restricted the sale of alcoholic beverages under  
28 AS 04.11.490, 04.11.492, or 04.11.500.

29 \* Sec. 3. AS 04.11.190(b) is amended to read:

1 (b) If a majority of the voters vote "yes" on either of the  
2 questions [QUESTION] set out in AS 04.11.492(a), the local governing  
3 body of a municipality shall apply for a community liquor license to  
4 operate a beverage dispensary or package store, [OR BOTH,] depending  
5 on which type of premises were specified on the ballot. Unless pro-  
6 hibited by the results of an earlier local option election, a local  
7 governing body may also apply on its own motion for a community liquor  
8 license.

9 \* Sec. 4. AS 04.11.320 is amended to read:

10 Sec. 04.11.320. DENIAL OF NEW LICENSES AND PERMITS. (a) An  
11 application requesting issuance of a new license shall be denied if

12 (1) the board finds, after review of all relevant informa-  
13 tion, that issuance of the license would not be in the best interests  
14 of the public;

15 (2) issuance of the license is prohibited by AS 04.11.390,  
16 relating to residency, or AS 04.11.410, relating to location of prem-  
17 ises near churches and schools;

18 (3) the application has not been completed in accordance  
19 with AS 04.11.260;

20 (4) issuance of the license would violate the restrictions  
21 pertaining to the particular license imposed under this title;

22 (5) issuance of the license is prohibited under this title  
23 as a result of an election conducted in accordance with AS 04.11.502;

24 (6) the requirements of AS 04.11.420 - 04.11.450 relating  
25 to zoning, ownership and location of the license, and the identity and  
26 financing of a licensee have not been met;

27 (7) the licensed premises are to be located in a municipal-  
28 ity, the type of license sought is a beverage dispensary or package  
29 store license, and that type of license is already in effect in the

1 municipality under a community liquor license, unless the new license  
2 is to become effective after the community liquor license is no longer  
3 effective, whether as the result of a local option election or other-  
4 wise;

5 (8) the authority sought is authority to operate a beverage  
6 dispensary or package store under a community liquor license for  
7 premises to be located in a municipality where the authority sought is  
8 already held by a private licensee under a beverage dispensary or  
9 package store license, unless the community liquor license is to  
10 become effective after the privately held license is no longer effec-  
11 tive, whether as the result of a local option election or otherwise;

12 (9) issuance of the license is prohibited under AS 04.11.-  
13 400(a) or prohibition of issuance of the license is found necessary  
14 under AS 04.11.400(b);

15 (10) the application contains false statements of material  
16 fact;

17 (11) the license is sought for the sale of alcoholic bever-  
18 ages in a first or second class city in which there are no licensed  
19 premises at the time of application unless a majority of the voters in  
20 a local option election conducted in accordance with AS 04.11.502 have  
21 voted "yes" ["NO"] on the question set out in AS 04.11.490, [OR HAVE  
22 VOTED "YES" ON A QUESTION SET OUT IN AS] 04.11.492, or 04.11.500;

23 (12) the license is sought for the sale of alcoholic bever-  
24 ages in an established village in which there are no licensed premises  
25 at the time of application unless a majority of the voters in a local  
26 option election conducted in accordance with AS 04.11.502 have voted  
27 "yes" ["NO"] on the question set out in AS 04.11.490 or [HAVE VOTED  
28 "YES" ON THE QUESTION SET OUT IN AS] 04.11.500.

29 (b) An application requesting issuance of a new permit shall be

1 denied if

2 (1) the board finds, after review of all relevant informa-  
3 tion, that issuance of the permit would not be in the best interests  
4 of the public;

5 (2) the board finds that any of the statements made in the  
6 application are untrue;

7 (3) the application has not been completed in accordance  
8 with AS 04.11.260;

9 (4) the permit is sought for the sale of alcoholic bever-  
10 ages in a first or second class city or established village in which  
11 there are no licensed premises at the time of application unless a  
12 majority of the voters in a local option election conducted in accor-  
13 dance with AS 04.11.502 have voted "yes" ["NO"] on the question set  
14 out in AS 04.11.490.

15 \* Sec. 5. AS 04.11.490 is amended to read:

16 Sec. 04.11.490. PROHIBITION OF THE SALE OF ALCOHOLIC BEVERAGES.

17 (a) The following question, appearing alone, may be placed before the  
18 voters of a municipality or an established village in accordance with  
19 AS 04.11.502: "Shall the sale of alcoholic beverages be allowed in . .  
20 . . . (name of municipality or village) [BE PROHIBITED]? (yes or no)".

21 (b) If a majority of the voters vote "no" ["YES"] on the ques-  
22 tion set out in (a) of this section, the board shall be notified  
23 immediately after certification of the results of the election and  
24 thereafter the board may not issue, renew, or transfer between holders  
25 or locations a license for licensed premises located within the bound-  
26 aries of a municipality and in unincorporated areas within five miles  
27 of the boundaries of the municipality or within the perimeter of an  
28 established village. Licenses that may not be renewed because of a  
29 local option election held under this section are void 90 days after

1 the results of the election are certified. A license that will expire  
2 during the 90 days after the results of a local option election under  
3 this section are certified may be extended, until it is void under  
4 this subsection, by payment of a prorated portion of the annual li-  
5 cense fee.

6 (c) If a majority of the voters vote "yes" ["NO"] on the ques-  
7 tion set out in (a) of this section or vote "yes" on a question set  
8 out in AS 04.11.492 or 04.11.500 in an election conducted in accor-  
9 dance with AS 04.11.502 after an election in which the voters voted  
10 "no" ["YES"] on the question set out in (a) of this section, the board  
11 shall be notified immediately after certification of the results of  
12 the election. Thereafter, the prohibitions imposed under (b) of this  
13 section on the issuance, renewal, or transfer of licenses between  
14 holders and location as a result of the earlier election are removed  
15 except insofar as those prohibitions are imposed in accordance with  
16 the results of the subsequent election.

17 \* Sec. 6. AS 04.11.492(a) is repealed and reenacted to read:

18 (a) Either but not both of the following two questions, appear-  
19 ing alone, may be placed before the voters of a municipality under  
20 AS 04.11.502;

21 (1) "shall alcoholic beverages be sold in . . . . (name  
22 of municipality) only by a bar operated by (name of municipality)?  
23 (yes or no)"; or

24 (2) "Shall alcoholic beverages be sold in . . . . (name  
25 of municipality) only by a liquor store operated by (name of munici-  
26 pality)? (yes or no)."

27 \* Sec. 7. AS 04.11.492(b) is amended to read:

28 (b) If a majority of the voters vote "yes" on either of the  
29 questions [QUESTION] set out in (a) of this section, the board shall

1 be notified immediately after certification of the results of the  
2 election and thereafter may not issue, renew, or transfer between  
3 holders or locations a license for licensed premises located within  
4 the boundaries of a municipality and in unincorporated areas within  
5 five miles of the boundaries of the municipality, with the exception  
6 of a beverage dispensary or package store operated under a community  
7 liquor license held by the municipality. Licenses in effect are void  
8 90 days after the results of the election are certified. A license  
9 that will expire during the 90 days after the results of a local  
10 option election under this section are certified may be extended,  
11 until it is void under this subsection, by payment of a prorated  
12 portion of the annual license fee.

13 \* Sec. 8. AS 04.11.492(c) is amended to read:

14 (c) If a majority of the voters vote "no" on either of the  
15 questions [QUESTION] set out in (a) of this section or vote "no"  
16 ["YES"] on a question set out in AS 04.11.490, or 04.11.496, or vote  
17 "yes" on a question set out in AS 04.11.500 in an election conducted  
18 in accordance with AS 04.11.502 after an election in which the voters  
19 voted "yes" on either of the questions [QUESTION] set out in (a) of  
20 this section, the board shall be notified immediately after a certi-  
21 fication of the results of the election. The prohibitions imposed  
22 under (b) of this section on the issuance, renewal, or transfer of  
23 licenses between holders and locations as a result of the earlier  
24 election are removed 90 days after the results of the election are  
25 certified except insofar as those prohibitions are imposed under [IN  
26 ACCORDANCE WITH] the results of the subsequent election.

27 \* Sec. 9 AS 04.11.492 is amended by adding new subsections to read:

28 (d) In preparing the ballot for an election on either of the two  
29 questions set out in (a) of this section, the local governing body

1 shall include an explanation of the authority to sell alcoholic beverages  
2 given to a beverage dispensary licensee, if the question listed  
3 in (a)(1) of this section is on the ballot, or on explanation of the  
4 authority to sell alcoholic beverages given to a package store li-  
5 censee, if the question listed in (a)(2) of this section is on the  
6 ballot.

7 (e) In this section,

8 (1) "bar" means a beverage dispensary;

9 (2) "liquor store" means a package store.

10 \* Sec. 10. AS 04.11.496 is amended to read:

11 Sec. 04.11.496. PROHIBITION OF SALE AND IMPORTATION OF ALCOHOLIC  
12 BEVERAGES. (a) The following question, appearing alone, may be  
13 placed before the voters of a municipality or an established village  
14 in accordance with AS 04.11.502: "Shall the sale and importation of  
15 alcoholic beverages be allowed [PROHIBITED] in . . . . (name of  
16 municipality or village)? (yes or no)."

17 (b) If a majority of the voters vote "no" ["YES"] on the ques-  
18 tion set out in (a) of this section, a person, beginning on the first  
19 day of the month following certification of the results of the elec-  
20 tion, may not knowingly send, transport, or bring an alcoholic bever-  
21 age into the municipality or established village, unless the alcoholic  
22 beverage is sacramental wine to be used for bona fide religious pur-  
23 poses based on tenets or teachings of a church or religious body, is  
24 limited in quantity to the amount necessary for religious purposes,  
25 and is dispensed only for religious purposes by a person authorized by  
26 the church or religious body to dispense the sacramental wine. The  
27 board shall be notified immediately after certification of the results  
28 of the election and thereafter may not issue, renew, or transfer  
29 between holders or locations a license for licensed premises located

1 within the boundaries of the municipality and within unincorporated  
2 areas within five miles of the boundaries of the municipality or  
3 within the perimeter of the established village. Licenses that may not  
4 be renewed because of a local option election held under this section  
5 are void 90 days after the results of the election are certified. A  
6 license that will expire during the 90 days after the results of a  
7 local option election under this section are certified may be ex-  
8 tended, until it is void under this subsection, by payment of a pro-  
9 rated portion of the annual license fee.

10 (c) If a majority of the voters vote "yes" ["NO"] on the ques-  
11 tion set out in (a) of this section or vote "yes" on the questions set  
12 out in AS 04.11.492 or 04.11.500 in an election conducted in accor-  
13 dance with AS 04.11.502 after an election in which the voters voted  
14 "no" ["YES"] on the question set out in (a) of this section, the  
15 prohibition on the importation of alcoholic beverages and the prohibi-  
16 tion on the issuance, renewal, or transfers of licenses between hold-  
17 ers and locations, imposed as a result of the earlier election in  
18 which the voters voted "no" ["YES"] on the question set out in (a) of  
19 this section are removed effective on the first day of the month  
20 following certification of the results of the election except as those  
21 prohibitions continue to be imposed in accordance with the results of  
22 the subsequent election.

23 \* Sec. 11. AS 04.11.498(a) is amended to read:

24 (a) The following question, appearing alone, may be placed  
25 before the voters of a municipality or an established village in  
26 accordance with AS 04.11.502: "Shall the possession of alcoholic  
27 beverages be allowed [PROHIBITED] in . . . . (name of municipality  
28 or village)? (yes or no)."

29 \* Sec. 12. AS 04.11.498(b) is amended to read:

1 (b) If a majority of the voters of an established village vote  
2 "no" ["YES"] on the question set out in (a) of this section, and the  
3 sale of alcoholic beverages, or the sale and importation of alcoholic  
4 beverages, has been previously prohibited in the established village  
5 in accordance with AS 04.11.490 or 04.11.496, a person, beginning on  
6 the first day of the month following certification of the results of  
7 the election, may not knowingly possess an alcoholic beverage in the  
8 established village, unless the alcoholic beverage is wine to be used  
9 for bona fide religious purposes based on tenets or teachings of a  
10 church or religious body, is limited in quantity to the amount neces-  
11 sary for religious purposes, and is dispensed only for religious  
12 purposes, by a person recognized by the church or religious body as  
13 authorized to dispense the wine. The board shall be notified immedi-  
14 ately after certification of the results of the election and there-  
15 after may not issue, renew, or transfer between holders or locations a  
16 license for licensed premises located within the perimeter of the  
17 established village as defined in AS 04.21.080(b)(8).

18 \* Sec. 13. AS 04.11.498(c) is amended to read:

19 (c) If a majority of the voters of an established village vote  
20 "no" ["YES"] on the question set out in (a) of this section and the  
21 sale of alcoholic beverages, or the sale and importation of alcoholic  
22 beverages, has not been previously prohibited in the established  
23 village in accordance with AS 04.11.490 or 04.11.496, a person [,  
24 BEGINNING 90 DAYS AFTER CERTIFICATION OF THE RESULTS OF THE ELECTION,]  
25 may not knowingly possess an alcoholic beverage in the established  
26 village, unless the person is licensed by the board or the alcoholic  
27 beverage is wine to be used for bona fide religious purposes based on  
28 tenets or teachings of a church or religious body, is limited in  
29 quantity to the amount necessary for religious purposes, and is

1 dispensed only for religious purposes by a person recognized by the  
2 church or religious body as authorized to dispense the wine. If there  
3 are licensed premises within the established village, the prohibition  
4 is effective beginning 90 days after the results of the election are  
5 certified. If there are no licensed premises within the established  
6 village, the prohibition is effective beginning 60 days after the  
7 results of the election are certified. The board shall be notified  
8 immediately after certification of the results of the election and  
9 thereafter may not issue, renew, or transfer between holders or lo-  
10 cations a license for licensed premises located within the perimeter  
11 of the established village [AS DEFINED IN AS 04.21.080(b)(8)]. Li-  
12 censes that may not be renewed because of a local option election held  
13 under this section are void 90 days after the results of the election  
14 are certified. A license that will expire during the 90 days after  
15 the results of a local option election under this section are certi-  
16 fied may be extended until it is void under the section, by payment of  
17 a prorated portion of the annual license fee.

18 \* Sec. 14. AS 04.11.498(d) is amended to read:

19 (d) If a majority of the voters of a municipality vote "no"  
20 ["YES"] on the question set out in (a) of this section, and the sale  
21 of alcoholic beverages, or the sale and importation of alcoholic  
22 beverages, has been previously prohibited in the municipality in  
23 accordance with AS 04.11.490 or 04.11.496, an ordinance is adopted  
24 that becomes effective beginning on the first day of the month follow-  
25 ing certification of the results of the election, and a person may not  
26 knowingly possess an alcoholic beverage in the municipality, unless  
27 the alcoholic beverage is wine to be used for bona fide religious  
28 purposes based on tenets or teachings of a church or religious body,  
29 is limited in quantity to the amount necessary for religious purposes,

1 and is dispensed only for religious purposes, by a person recognized  
2 by the church or religious body as authorized to dispense the wine.  
3 The board shall be notified immediately after certification of the  
4 results of the election and thereafter may not issue, renew, or trans-  
5 fer between holders or locations a license for licensed premises  
6 located within the boundaries of the municipality and within unincor-  
7 porated areas within five miles of the boundaries of the municipality.

8 \* Sec. 15. AS 04.11.498(e) is amended to read:

9 (e) If a majority of the voters of a municipality vote "no"  
10 ["YES"] on the question set out in (a) of this section and the sale of  
11 alcoholic beverages, or the sale and importation of alcoholic bever-  
12 ages, has not been previously prohibited in the municipality in accor-  
13 dance with AS 04.11.490 or 04.11.496, an ordinance is adopted that  
14 provides that [BECOMES EFFECTIVE BEGINNING 90 DAYS AFTER CERTIFICATION  
15 OF THE RESULTS OF THE ELECTION, AND] a person may not knowingly pos-  
16 sess an alcoholic beverage in the municipality, unless the alcoholic  
17 beverage is wine to be used for bona fide religious purposes based on  
18 tenets or teachings of a church or religious body, is limited in  
19 quantity to the amount necessary for religious purposes, and is dis-  
20 pensed only for religious purposes by a person recognized by the  
21 church or religious body as authorized to dispense the wine. The  
22 board shall be notified immediately after the adoption of the ordi-  
23 nance and thereafter may not issue, renew, or transfer between holders  
24 or locations a license for licensed premises located within the bound-  
25 aries of the municipality and within unincorporated areas within five  
26 miles of the boundaries of the municipality. If there are licensed  
27 premises within the municipality, the prohibition is effective begin-  
28 ning 90 days after the results of the election are certified. If  
29 there are no licensed premises within the municipality, the

1 prohibition is effective beginning 60 days after the results of the  
2 election are certified. Licenses that may not be renewed because of a  
3 local option election held under this section are void 90 days after  
4 the results of the election are certified. A license that will expire  
5 during the 90 days after the results of a local option election under  
6 this section are certified may be extended, until it is void under  
7 this section, by payment of a prorated portion of the annual fee.

8 \* Sec. 16. AS 04.11.498(f) is amended to read:

9 (f) If a majority of the voters vote "yes" ["NO"] on the ques-  
10 tion set out in (a) of this section or [VOTE "YES" ON] the question  
11 [QUESTIONS] set out in AS 04.11.492 or 04.11.500 in an election con-  
12 ducted in accordance with AS 04.11.502 after an election in which the  
13 voters voted "no" ["YES"] on the question set out in (a) of this  
14 section, the prohibition on the possession of alcoholic beverages is  
15 removed effective 90 days after the results of the election are cer-  
16 tified except as those prohibitions continue to be imposed in accor-  
17 dance with the results of the subsequent election.

18 \* Sec. 17. AS 04.11.500(a) is repealed and reenacted to read:

19 (a) One but not more than one of the following three questions,  
20 appearing alone, may be placed before the voters of a municipality or  
21 an established village under AS 04.11.502:

22 (1) "Shall alcoholic beverages be sold in . . . . (name  
23 of municipality or established village) only by a bar? (yes or no)";

24 (2) "Shall alcoholic beverages be sold in . . . . (name  
25 of municipality or established village) only by a liquor store? (yes  
26 or no)"; or

27 (3) "Shall alcoholic beverages be sold in . . . . (name  
28 of municipality or established village) only by a restaurant? (yes or  
29 no)."

1 \* Sec. 18. AS 04.11.500(b) is amended to read:

2 (b) If a majority of the voters vote "yes" on one of the ques-  
3 tions [QUESTION] set out in (a) of this section, the board shall be  
4 notified immediately after certification of the results of the elec-  
5 tion and thereafter may not issue, renew, or transfer between holders  
6 or locations a license for licensed premises located within the bound-  
7 aries of the municipality and in unincorporated areas within five  
8 miles of the boundaries of the municipality or within the perimeter of  
9 the established village, except the type [THOSE TYPES] of license  
10 [LICENSES] listed on the ballot. Licenses in effect within the bound-  
11 aries of the municipality or perimeter of the established village, and  
12 in an unincorporated area outside of but within five miles of the  
13 boundaries of the municipality, except the type [THOSE TYPES] of  
14 license [LICENSES] listed on the ballot, are void 90 days after the  
15 results of the election are certified. A license that will expire  
16 during the 90 days after the results of a local option election under  
17 this section are certified may be extended, until it is void under  
18 this subsection, by payment of a prorated portion of the annual li-  
19 cense fee.

20 \* Sec. 19. AS 04.11.500(c) is amended to read:

21 (c) If the majority of the voters vote "no" on one of the ques-  
22 tions [QUESTION] set out in (a) of this section or on the questions  
23 set out in AS 04.11.490 or 04.11.496, or vote "yes" on the question  
24 [QUESTIONS] set out in AS [04.11.490,] 04.11.492, [04.11.496,] or this  
25 section if a different type [TYPES] of license is [LICENSES ARE]  
26 listed on the ballot in an election conducted under [IN ACCORDANCE  
27 WITH] AS 04.11.502 after an election in which the voters voted "yes"  
28 on the question set out in (a) of this section, the board shall be  
29 notified immediately after certification of the results of the

1 election. A license [LICENSES] in effect in the municipality, in the  
2 unincorporated area outside of but within five miles of the boundaries  
3 of the municipality or established village that was [WERE] excepted  
4 from the prohibition on sale in accordance with the results of the  
5 earlier election are void 90 days after the results of the election  
6 are certified. Thereafter the board may not issue, renew, or transfer  
7 between holders or locations a license for licensed premises located  
8 within the boundaries of the municipality or within the perimeter of  
9 an established village, or in an unincorporated area within five miles  
10 of the boundaries of the municipality, except a license that may be  
11 issued to a municipality or to a [ONE OF THE] types of license [LI-  
12 CENSES] listed on the ballot as a result of a majority of the voters  
13 voting "yes" on either of the questions [QUESTION] set out in AS 04.-  
14 11.492 or this section, respectively. A license that will expire  
15 during the 90 days after the results of a local option election under  
16 this section are certified may be extended, until it is void under  
17 this subsection, by payment of a prorated portion of the annual li-  
18 cense fee.

19 \* Sec. 20. AS 04.11.500 is amended by adding new subsections to read:

20 (d) If one of the questions set out in (a) of this section is  
21 placed on the ballot of an established village in which there are no  
22 licensed premises, the lieutenant governor shall, at least 10 days  
23 before the election, post written notice at two public places within  
24 the established village of the requirements in AS 04.11.320(a) con-  
25 cerning issuance of a new license in an established village in which  
26 there are no licensed premises.

27 (e) In preparing the ballot for an election on one of the ques-  
28 tions set out in (a) of this section, the local governing body or the  
29 lieutenant governor shall include an explanation of the authority to

1 sell alcoholic beverages given to the type of license that would be  
2 exempt from the prohibition on the sale of alcoholic beverages.

3 (f) In this section,

4 (1) "bar" means a beverage dispensary;

5 (2) "liquor store" means a package store;

6 (3) "restaurant" means a restaurant or eating place.

7 \* Sec. 21. AS 04.11.502(a) is amended to read:

8 (a) The local governing body of a municipality, whenever a  
9 number of registered voters equal to at least 35 percent of the number  
10 of votes cast at the last regular municipal election petition the  
11 local governing body to do so, shall place upon a separate ballot at  
12 the next regular election or at a special election whichever question  
13 [OR COMBINATION OF QUESTIONS] set out in AS 04.11.490 - 04.11.500  
14 constitutes the subject of the petition. The local governing body  
15 shall conduct the election in accordance with the election ordinance  
16 of the municipality and may prepare the election ballots in English  
17 and a second language specified by the local governing body.

18 \* Sec. 22. AS 04.11.502(b) is amended to read:

19 (b) The lieutenant governor, whenever 35 percent of the regis-  
20 tered voters residing within an established village petition the  
21 lieutenant governor to do so, shall place upon a separate ballot at a  
22 special election that question [OR COMBINATION OF QUESTIONS] set out  
23 in AS 04.11.490 - 04.11.500 that constitutes the subject of the peti-  
24 tion. The lieutenant governor shall conduct the election in the  
25 general manner prescribed by the Alaska Election Code (AS 15).

26 \* Sec. 23. AS 04.11.502(e) is amended to read:

27 (e) AS 29.26.110 - 29.26.160 applies to a petition under (a) of  
28 this section in a general law municipality except the

29 (1) number of required signatures is determined under (a)

1 of this section rather than under AS 29.26.130;

2 (2) application filed under AS 29.26.110 shall contain the  
3 question [OR COMBINATION OF QUESTIONS] set out under AS 04.11.490 -  
4 04.11.500 rather than containing an ordinance or resolution;

5 (3) petition shall contain the question [OR COMBINATION OF  
6 QUESTIONS] set out under AS 04.11.490 - 04.11.500 rather than material  
7 required under AS 29.26.120(1) and (2).

8 \* Sec. 24. AS 04.11.502 is amended by adding a new subsection to read:

9 (f) After a petition has been filed under (b) of this section,  
10 the local governing body of the established village may request that  
11 ballots for an election under (b) of this section be prepared in  
12 English and in a second language specified by the local governing  
13 body. The lieutenant governor shall honor a request made under this  
14 subsection if the local governing body makes its request within 15  
15 days after a petition is filed under (b) of this section, the second  
16 language specified by the local governing body has a written form, and  
17 a qualified translator is available.

18 \* Sec. 25. AS 04.11.504(a) is amended to read:

19 (a) If a prohibition imposed on the issuance, renewal, transfer,  
20 or relocation of licenses between holders and locations under AS 04.-  
21 11.490, 04.11.496, or 04.11.498 [AS 04.11.490 - 04.11.500] is removed  
22 by a vote of "yes" ["NO"] on a question for which the majority of the  
23 people voted "no" ["YES"] in an earlier election, the board shall,  
24 upon application, issue the same number and type of licenses that were  
25 in effect in the municipality or established village on the date of  
26 certification of the earlier election. If the prohibition imposed on  
27 issuance, renewal, transfer, or relocation of licenses between holders  
28 and locations is removed by a "yes" vote on a question set out in  
29 AS 04.11.492 and 04.11.500, the board may issue the types of licenses

1 specified in the question presented to the voters in the subsequent  
2 election. Licenses may be issued for the same or other premises  
3 within the municipality or established village that were licensed on  
4 the date of certification of the earlier election. However, if the  
5 local governing body requests that fewer licenses of a particular type  
6 be issued than would otherwise be issued if the provisions prescribing  
7 the ratio of population to licensed premises in AS 04.11.400(a) are  
8 applied, only the number of licenses of that particular type requested  
9 by the local governing body may be issued by the board. Priority shall  
10 be given applicants who were formerly licensees and whose licenses  
11 were not renewed because of the results of the previous election.  
12 However, these applicants have no legal right to a license and the  
13 board is not required to approve the application.

14 \* Sec. 26. AS 04.11.506 is amended to read:

15 Sec. 04.11.506. NOTICE OF THE RESULTS OF A LOCAL OPTION ELEC-  
16 TION. (a) If a majority of the voters vote "No" on a question set  
17 out in AS 04.11.490, 04.11.496, or 04.11.498, or "yes" on a question  
18 set out in AS 04.11.492, or 04.11.500 [AS 04.11.490 - 04.11.500], the  
19 board shall immediately notify the Department of Law and the Depart-  
20 ment of Public Safety of the results of the election.

21 (b) If a majority of the voters vote "no" ["YES"] on a question  
22 set out in AS 04.11.496 or 04.11.498, the following actions, in addi-  
23 tion to those prescribed in (a) of this section, shall be undertaken  
24 before the date the prohibition on importation or possession becomes  
25 effective:

26 (1) the board shall notify by certified [REGISTERED] mail  
27 all [HOLDERS OF] package store licensees who are authorized by the  
28 board to sell alcoholic beverages in response to a written sollicita-  
29 tion. [LICENSES] of the prohibition;

(2) the municipality or established village shall post notice of the prohibition in the municipality or village.

\* Sec. 27. AS 04.16.010(a) is amended to read:

(a) A person may not sell, offer for sale, give, furnish, or deliver [OR CONSUME] an alcoholic beverage on premises licensed as a package store between the hours of 12:00 a.m. and 8:00 a.m. each day, or sell, offer for sale, give, furnish, deliver, or consume an alcoholic beverage on other premises licensed under this title between the hours of 5:00 a.m. and 8:00 a.m. each day.

\* Sec. 28. AS 04.16.010(c) is amended to read:

(c) A licensee, an agent, or employee may not permit a person to enter and a person may not enter premises licensed as a package store between the hours of 12:00 a.m. and 8:00 a.m., or other premises licensed under this title between the hours of 5:00 a.m. and 8:00 a.m. each day. This subsection does not apply to common carriers or to an employee of the licensee who is on the premises to prepare for the next day's business. A person may enter or remain on the premises of a bona fide restaurant or eating place licensed under this title to consume food or nonalcoholic beverages.

\* Sec. 29. AS 04.16.015 is amended by adding a new subsection to read:

(e) A package store licensee may not sell or offer for sale alcoholic beverages at a price below the wholesale price paid by the package store licensee, plus not less than eight percent of the retail selling price and applicable shipping costs.

\* Sec. 30. AS 04.16 is amended by adding a new section to read:

Sec. 04.16.105. POSSESSION OF PRODUCTS DESIGNED FOR BREWING OR DISTILLING. A person may not knowingly possess a product designed only for brewing or distilling an alcoholic beverage if the person is under the age of 21 years or if the person is in an area that has

Delete

1 restricted the sale and importation or possession of alcoholic bever-  
2 ages under AS 04.11.496 or 04.11.498.

3 \* Sec. 31. AS 04.16.125(a) is amended to read:

4 (a) A person may not use a common carrier to transport alcoholic  
5 beverages into an area that has restricted the sale of alcoholic  
6 beverages under AS 04.11.490, 04.11.492, or 04.11.500 and a common  
7 carrier may not knowingly transport alcoholic beverages into an area  
8 that has restricted the sale of alcoholic beverages under AS 04.11.-  
9 490, 04.11.492, or 04.11.500 unless

10 (1) the shipping container holding the alcoholic beverages  
11 is clearly labeled as containing alcoholic beverages with letters that  
12 contrast in color to the shipping container and that are at least two  
13 inches in height; and

14 (2) an itemized invoice showing the purchase value of the  
15 alcoholic beverages is attached, by the purchaser or the licensee who  
16 sells the alcoholic beverages, to the outside of the shipping con-  
17 tainer.

18 \* Sec. 32. This Act takes effect July 1, 1990.  
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OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE  
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

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JUNEAU, ALASKA 99811  
(907) 485-3822

P.O. BOX 210001  
ANCHORAGE, ALASKA 99521  
(907) 561-7612

TO: Senator John Binkley  
Co-chairman, Finance

FROM: Tim Kelly  
Senate President *TK*

DATE: January 30, 1990

RE: CS for SB 297

Thank you for including the amendments I had previously requested in the Committee Substitute for SB 297.

Please remove the amendment in Section 29 and add the amendment regarding new hours of operation in Sections 27 and 28.

I appreciate your consideration of this request.

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE  
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

2/2/90

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P.O. BOX 210001  
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(907) 581-7612

TO: Senator John Binkley  
Co-chairman, Finance

FROM: Tim Kelly  
Senate President *TDK*

DATE: January 30, 1990

RE: CS for SB 297

Thank you for including the amendments I had previously requested in the Committee Substitute for SB 297.

The amendments, Section 27 - AS 04.16.010 (a); Section 28 - AS 04.16.010(c) and Section 29 - AS 04.16.015, were placed in the bill by request. Both items will help to curb the sale of alcoholic beverages from package liquor stores.

I appreciate your consideration of this request.

# Senator Johne Binkley

Senate Finance Committee  
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee  
Co-Chairman

## MEMORANDUM

February 1, 1990

TO: Senate Finance Committee

FROM: Senator Johne Binkley

RE: Sectional Analysis of Proposed Finance CSSB 297,  
Amendments to Title 04

Section One. This section would require ABC Board authorization before a package store can sell in response to a written order and that authorization is only good for only year at a time. Whenever there is a local option adopted by a community, the board is required to notify all holders of a package store license of the election. This section ties in with section 16 which limits the notification only to those package store licensees which are authorized to sell by mail. The Board has revised its license renewal forms so that those package store licensees who want to sell by mail need only check a box.

Section Two. This would bring the amount of distilled spirits that can be sent by mail order to an area with restricted sales into compliance with the presumption provision. There was an amendment to SB 371 on the floor of the House at the end of the 1988 session which increased the mail order amount to 18 liters but the presumption amount was not changed. This would drop it back down to 12.

There have been a number of problems with people understanding the effects of a local option election. This bill attempts to assist the local governing bodies and the Division of Elections by simplifying the ballot language and requiring certain explanations. Many of the changes in this bill are technical in nature resulting from the changes made to the ballot language. It was necessary to change the effect of a "yes" vote and of a "no" vote.

Section Three. This clarifies that on a vote for a community liquor license, only one type of license may be voted on in any one election.

Section Four. A technical change switching the effects of a "yes" vote and a "no" vote on the question of allowing the sale of alcoholic beverages.

Section Five. This changes the wording of the local option ballot for the prohibition of liquor sales to read "Shall the sale of alcoholic beverages be allowed in

the city of *Bethel*?" It also makes another technical change to the effects of a "yes" or "no" vote.

Section Six. This changes the wording of the local option ballot for a community liquor license election and makes technical changes so that only one type of community liquor license may be voted on in any one election as in Section Three, above. The questions would read: "Shall alcoholic beverages be sold in the city of Bethel only by a bar operated by the city of *Bethel*?" or "Shall alcoholic beverages be sold in the city of Bethel only by a liquor store operated by the city of *Bethel*?" The current language is attached.

Sections Seven and Eight. Both of these sections make technical changes to provisions regarding community liquor licenses which reflect the changes in Section Three, above which limits a vote on a community liquor license to one type of license in any one election.

Section Nine. Adds the provision that an explanation must follow the community liquor license question which explains how alcohol may be sold by a bar which means "beverage dispensary license" and by a liquor store which means "package store license."

Section Ten. This changes the wording of the local option ballot for banning the sale and importation of alcohol. The question would read "Shall the sale and importation of alcoholic beverages be allowed in the city of *Bethel*?" It also makes technical changes to the effects of a "yes" or "no" vote.

Section Eleven. This changes the wording of the local option ballot for banning the possession of alcohol to read "Shall the possession of alcoholic beverages be allowed in *Bethel*?" It also makes technical changes to the effects of a "yes" or "no" vote.

Sections Twelve. These section make additional technical changes to the effects of a "yes" or "no" vote on the question of allowing the sale and importation of alcohol in an established village.

Section Thirteen. This change will allow the ban on possession to take effect 60 days following certification of the election **IF** there are no licensed premises in the established village. If there is a licensed premises, then the effective date remains 90 days after certification of the election. It also includes a technical change to the effects of a "yes" or "no" vote.

Sections Fourteen and Fifteen. Makes the same changes as Sections 12 and 13, above as they relate to municipalities.

Section Sixteen. This is a technical change to the effects of a "yes" or "no" vote on sale and importation.

Section Seventeen. This changes the wording of the local option ballot which would allow the sales of alcohol only by selected licensees and specifies that only one kind of license can be voted on at a time. It would read "Shall alcoholic beverages be sold in the city of *Bethel* only by (bar) (liquor store) (restaurant)?" The current language is attached.

Sections Eighteen and Nineteen. These are technical changes relating to the clarification that on a vote for selected liquor license, only one type of license may be voted on in any one election.

Section Twenty. This section relates to selected licensee elections (Section 17, above) and is one of the more confusing parts of the bill. It requires some background information.

Under current law at AS 04.11.320, the ABC Board may not issue a license in an established village where there is no licensed premises UNLESS there has first been a local option election on either prohibiting sales and the vote was no OR on the question of a selected licensee and the vote was YES.

Because the local option laws are complex, many villages which propose to have a vote on a selected licensee have not realized that voting NO on the type of licensee would not allow them to have another kind of licensee instead. A NO vote on this question when there is no licensed premises does not allow the Board to issue another kind of license.

Subparagraph (d) of this section would require the Lieutenant Governor's office (the Division of Elections) to make this known to the residents of a village which is going to have an election on one of these questions. The Division would have to post written notice of the requirements of AS 04.11.320 in two different public locations within the village. They already post notice of the election itself.

Subparagraph (e) would require the ballot give an explanation of the types of liquor sales allowed if the ballot were to pass.

Section Twenty-One. Deletes the reference to a "combination of questions" on a local option ballot for a municipality. This clarifies that only one question may be voted during an election.

It also provides that the local governing body may prepare the election ballots in English and a second language specified by the body. This does not give a municipality any additional powers but simply spells out in statute that they have this ability.

Section Twenty-Two. Makes the same deletion of "combination of questions" for established villages.

Section Twenty-Three. Makes the same deletion of "combination of questions" under the provisions in statute governing the petitions for a local option election.

Section Twenty-Four. This subsection would allow the governing body of an established village to request that the local option ballot be written in both English and another language. The request would have to be made to the Lt. Governor's office within 15 days of the filing of the petition in order to give his office time to prepare the ballots. However, it is envisioned that the ballot questions would be set out in regulation for those languages most common to the areas where the local option elections generally take place.

Section Twenty-Five. This makes technical changes to the effects of a "yes" or "no" vote on the questions of sale, sale and importation and possession.

Section Twenty-Six. This section makes technical changes to the effects of a "yes" or "no" vote. It also expands the notice requirements of a community that has adopted a local option. Under current law, if a community bans the sale and importation, it is required to post notice of the ban within the community. This section extends that notice requirement to the ban on possession.

It also includes a change in (b)(1) to the notice requirements for the ABC Board and ties into Section One, above. Under current law, the Board must send notice every package store licensee by registered mail of the adoption of a ban on importation. This amendment would expand that notification to include the ban on possession. The Board would only have to send by certified mail a notice to those licensee authorized to sell in response to a written order.

Sections Twenty-Seven and Twenty-Eight. These sections limit the hours which a package store may operate. Under this provision, package stores would have to close for sales between the hours of midnight and 8:00 a.m. Only employees or delivery people would be allowed to be on the premises during those hours.

Section Twenty-Nine. This sets a minimum price for the sale of alcohol by a package store licensee. It provides that he may not sell his product for less than the wholesale price plus 8% and whatever the shipping costs equal.

Section Thirty. This clarifies what was probably an oversight in current statute. It provides that persons under 21 or persons within a local option area which has restricted the sale and importation or possession of alcohol may not possess products designed to brew or distill alcohol.

Section Thirty-One. In 1988, we passed SB 371 where it was required that alcohol being shipped into a community which had restricted the sale of alcohol be labeled and have an itemized invoice on the outside of the box. However, air carriers were not given any responsibility for checking to see if people were shipping alcohol. This section states that a carrier may not knowingly ship unlabeled alcohol.

In order to make that requirement workable, it was necessary to revise the itemized invoice requirement. The ABC Board had interpreted the language from last year as allowing only the licensee to prepare the invoice. This section will allow the purchaser to provide the invoice. This could be the sales receipt.

Section Thirty-Two. This section makes the bill effective on July 1, 1990.

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS  
P.O. BOX AF  
JUNEAU, ALASKA 99811-0105  
PHONE (907) 465-4611

COMMENTS REGARDING  
WORK DRAFT DATED 1/27/90  
CS FOR SENATE BILL NO. 297 (Finance)

Prepared by  
Division of Elections  
January 30, 1990

The Division of Elections has reviewed the work draft for the Finance Committee Substitute for Senate Bill 297. The concerns raised by the Division of Elections relate to some of the technical issues covered by the bill, rather than its intent or general philosophy. Additionally, the comments prepared by this Division do not necessarily cover issues more closely related to the responsibilities or areas of expertise of the Alcoholic Beverage Control Board or Department of Community and Regional Affairs.

Based on our review of the work draft, the Division of Elections is concerned that certain provisions will leave in question the interpretation which is to be applied, or will lead to confusion on the part of the voter.

Sections 3 and 4. AS 04.11.490 (a) and (b)

These provisions modify the options which, under the current statute allows a local governing body to put before the voters the question as to whether or not the community would be allowed to apply for a community liquor license to operate a beverage dispensary or package store, or both.

Under the new scheme, only one choice could be put on the ballot. The local governing body would have to choose between a bar or a package store, and only that one choice could be offered to the voter on the ballot.

While it could be argued that simplification of the question makes the voter's desire more easily understood, the Division believes that other more fundamental questions and interpretations are left less clear. For example:

1. Does the construction of this language imply that a community could NOT operate under both types of licenses? Would the single option language mean that the community

would not be eligible to also operate under the second type of license even if the voters voted in favor of a community license put before them at the initial election?

2. If the language is not intended to restrict a community to only operating under one type of license, how much time would have to lapse between the two separate elections? Must a 12 month period lapse between the two separate elections? Under AS 04.11.502 (d), an election to remove a restriction previously imposed may not be conducted more than once every 12 months. In the context of the single choice pertaining to community licenses, would a "no" vote on one of the options be considered "a restriction previously imposed" prohibiting the second option being put before the voters for 12 months?

Sections 5, 6, 7, 8 - AS 04.11.192 (a) through (d)

These provisions as provided in the work draft also present potential confusion as to the intent. Under current law, community licenses are only issued to the local governing body of a municipality and may not be issued to an established village. The construction of these provisions as drafted may unintentionally imply an intent to change the law to allow established villages to obtain community licenses.

1. AS 04.11.492 (a), as written states that the either of the questions may be placed before the "voters of a municipality" under AS 04.11.502. Subsection 502 refers to the method by which an election is called. In its entirety, it covers both municipalities and established villages. The specific wording "voters of a municipality" may be explicit enough in maintaining community licenses only for incorporated communities, if the intent were not muddled by Section 8.
2. Section 8 covers the preparation of the ballot for the questions set out in AS 04.11.492. This provision, in addition to outlining the ballot preparation requirements for local governing bodies of municipalities, also imposes certain mandates on the Lieutenant Governor in preparing the ballots for elections held under the same provisions. The Lieutenant Governor is responsible for the conduct of elections in established villages, leading to some confusion as to the actual intent of the bill with regard to the allowability of community licenses in the unorganized borough.

Sections 4, 9, 10 - AS 04.11.490 (a), AS 04.11.496 (a),  
AS 04.11.498 (a)

These provisions identify certain questions which may be posed in liquor option elections to determine the voters' desire to restrict

or prohibit various activities involving alcohol. In each of the questions the wording has been changed in a way which could result in voter confusion. The questions in current statute are posed in a way that asks if the activity should be prohibited. A YES vote clearly means it should be prohibited, while a NO vote means it should not be prohibited.

While it may have been the intent to exchange the word "prohibited" to words which are more commonly understood and readable, the wording proposed may be even less clear. The Division is concerned that the voters may have difficulty in determining whether the YES vote or the NO vote more accurately reflects their desire. In fact, the new wording requires a YES vote to get a negative result.

For example, the question posed in AS 04.11.498 reads, "Shall the possession of alcoholic beverages not be allowed in.....?" The voter will have to consider between the following responses.

1. YES possession should not be allowed: or,
2. NO possession should not be allowed.

Under AS 15.45 amendments were enacted in 1988 which require that ballot propositions be worded so that a YES vote on the proposition clearly is a vote to enact a proposed law. The Division of Elections is concerned that as proposed in the work draft, the language does not fulfill the intent suggested for ballot wording in Title 15.

#### Section 15 - AS 04.11.500

SB 297 requires that if a request is made by the local governing body within 15 days of the filing of the petition for a local option election, the Lieutenant Governor will print the ballots in English and a second language specified by the local governing body. As the Division has expressed, our support of this provision which would require printing ballots in Native languages as well as English, has been cautious because of our concern about our ability to administer it accurately, uniformly and neutrally. It is our understanding that many of the Native languages (and their various dialects) are not considered "written languages". We have also been advised that often the very population that speaks little or no English would also be the very population who would be unable to read their own language if it was written.

From an administrative view point, we are concerned that our access to qualified translators may be limited, as would our ability to adequately proofread the ballots. However because the actual wording of liquor option questions is set in statute and not subject to variation, the Division believed that printing these ballots in Native languages as well as in English may be manageable. Our support was specifically hinged on the fact that the questions were simple, one sentence propositions.

However, under AS 04.11.500 (d) in the work draft a whole element is added which would make the issue more complex. This provision also requires that the ballots include an explanation of the authority to sell alcoholic beverages given to each type of license identified in the ballot question. The provision does not specify what the explanation of authority is to include. For some types of licenses the statutory description of the authority is quite lengthy, including not only what is authorized, but also what is not authorized. The requirement certainly makes the translation issue more complex and variable. The Division is, therefore, even more concerned about the length of the ballot measures which will include both English and Native language translations, and the accuracy with which translations can be obtained and monitored.

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Brewsack Inc  
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WA 98004

For the attention of  
Mr Gordon Hamers

14 April 89

Re: Sale of Brewsacks for Home Consumption.

Dear Sir:

Further to our telephone conversation today, I have enclosed details on our new product - The Brewsack.

By the most convenient method yet devised, Brewsack allows the purchaser to ferment beer in his own home without bottles, caps and other brewing paraphernalia.

An outer woven sheath contains a sealed plastic sack, itself containing a premeasured amount of brewer's wort. The purchaser simply adds the correct amount of water and a small amount of yeast which is supplied with the package.

Fermentation takes about 21 days to complete. The spigot at the bottom of the sack dispenses the draft beer directly into a glass. The gas by product of fermentation retained in the sack (up to about 10 lbs pressure) assists in dispensing and maintains gas levels in the beer.

The main ingredient in the wort is liquified malt extract, with sugar and hops in small quantities. The product is absolutely free of preservatives, additives or other chemicals and when sold, is totally devoid of alcohol.

We would like to sell this product in Alaska directly, or through a variety of suppliers within the state. May we receive from your agency a letter stating that sales of this product do not violate any existing liquor or alcoholic beverage laws for home use by the consumer?

Would you also include a list of licensed package stores in Alaska with your reply? Thank you for your assistance.

Sincerely  
BREWSACK INC

Barry M Bonser  
Director

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L

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# SENATE COMMITTEE REPORT

## FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 4/28/89

4/20/89  
Mr. President:

~~FIN~~

Committee considered SB 299

amending the manner of calculating gross value of oil for purposes of administration of the oil and gas properties production tax; efd

and recommended:

replace with CS SB 299 (Fin)  same title

attached amendment(s) and  ~~new~~ title

~~SFC~~ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

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

FISCAL NOTE(S) attached  zero  
 appropriation no FN attached

<sup>DOR</sup>  
 fiscal impact  
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

NO REC - NO REC

[Signature]

[Signature] (No Rec)

Committee backup attached Chair signature and recommendation

[Signature] Co. Chair

By the Senate Finance Committee

LETTER OF INTENT - SB 299

The Alaska State Legislature believes the expenses and costs referred to in SB 299 are not presently allowable as reasonable costs of transportation for determination of the gross value of oil or gas under AS 43.55.150(a). The purpose of passing SB 299 is to avoid lengthy and costly litigation by clarification of this point.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act Amending the Manner of  
Calculating Gross Value of Oil & Gas  
Production  
Sponsor: Sturgulewski, Kerttula  
Requestor: \_\_\_\_\_

Agency Affected: Department of Revenue  
BRU: Oil and Gas Audit Division

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>5,000</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

POSITIONS:

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

ANALYSIS: Attach a separate page for analysis.  
SEE ATTACHED

Prepared By: Chuck Logsdon  
Division: Oil and Gas Audit Division

Phone: 277-5627  
Date: April 21, 1989

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: 4/21/89

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

Changes in CSSB 299 (Fin) have no  
fiscal impact. This fiscal note  
is appropriate. 4/28/89 *al*

ANALYSIS:

This bill would disallow, in the calculation of gross value at the point of production, any increase in transportation cost associated with a catastrophic oil discharge. At this time, it is unclear what impact the Valdez spill will have on these costs (vessel repair or incremented chartering costs). If these costs amount to \$50 million and are included in the calculation of reasonable transportation costs, the severance tax would be reduced by \$5.5 million.

6-1272E ✓  
Chenoweth  
4/27/89

Original sponsors: Sturgulewski and  
Kerttula

ADOPTED

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 299 (*Finance*)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act omitting from the calculation of the gross  
7 value of oil, for purposes of administration of the  
8 oil and gas properties production tax, certain costs,  
9 losses, damages, and expenses relating to catas-  
10 trophic oil discharges from vessels; and providing  
11 for an effective date."

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

13 \* Section 1. AS 43.55.150 is amended by adding a new subsection to  
14 read:

15 (c) In determining the gross value of oil under (a) of this  
16 section, the department may not allow as reasonable costs of transpor-  
17 tation

18 (1) the amount of loss of or damage to, or of expense  
19 incurred due to the loss of or damage to, a vessel used to transport  
20 oil if the loss, damage, or expense is incurred in connection with a  
21 catastrophic oil discharge from the vessel into the marine or inland  
22 waters of the state;

23 (2) the incremental costs of transportation of the oil that  
24 are attributable to temporary use of or chartered or substituted  
25 service provided by another vessel due to the loss of or damage to a  
26 vessel regularly used to transport oil and that are incurred in con-  
27 nection with a catastrophic oil discharge into the marine or inland  
28 waters of the state; and

29 (3) the costs incurred to charter, contract, or hire

1 vessels and equipment used to contain or clean up a catastrophic oil  
2 discharge.

3 \* Sec. 2. AS 43.55.140 is amended by adding a new paragraph to read:

4 (15) "catastrophic oil discharge" has the meaning given in  
5 AS 46.04.120.

6 \* Sec. 3. This Act is retroactive to the first day of the month in  
7 which it takes effect, and applies to oil and gas produced on or after that  
8 date.

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

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STATE OF ALASKA  
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1989

SUBJECT: Retrospective application of Senate  
Bills 286 and 299

TO: Senator Arliss Sturgulewski

FROM: Jack Chenoweth  
Legislative Counsel 

Each of the two above-captioned bills has a retroactivity feature. The state's net income tax is computed and paid on an annual basis. Senate Bill 286, amending the net income tax, applies the changes made in that bill back to income earned since the start of this calendar year. The oil and gas properties production (i.e. "severance") tax is due and payable monthly. 1/ Senate Bill 299, amending the chapter that imposes the severance tax, applies the changes made in that bill back to production from the first day of the month in which the Act takes effect.

Since retroactivity is common to both, let me discuss the common concept in the material that follows.

---

1/ Under AS 43.55.020(a):

The gross production tax on oil or gas shall be paid monthly. The tax is due on the 20th day of each calendar month on oil or gas produced from each lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

Thus, tax liability is incurred and remitted on a monthly, not an annual basis. For oil production during December, 1988, the tax became due and payable January 20, 1989, and tax liability for oil production during January, 1989, becomes due and payable February 20, 1989.

April 21, 1989

A retroactive tax adjustment will apply if there is a valid public purpose served by giving retrospective effect to that adjustment. Here, the committee's deliberations may be critical. As the bills are considered, it would, in my judgment, be important to develop a record on which a court, if called upon to consider an argument, would conclude that there was a public purpose served by giving the amendments a retrospective effect.

A reasonable retrospective application will be sustained. The farther back the retroactive provision is given effect, the less likely a court would be to sustain the provision without a clear showing of public purpose. (To foreclose a claim altogether, in other legislation I have discouraged retrospective application of severance tax adjustments, for example, beyond the narrow period recognized under AS 43.55.-020(a), that is, a change amending the economic limit factor to be made retroactive only to the beginning of the month in which the bill is to take effect. That approach should not create any problems of retrospective applications since the tax liability would not have become due on that date.)

#### RETROSPECTIVE APPLICATION OF THE BILLS:

Tax statutes may be made retroactive. 2/ The threshold

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2/ This office has also recently considered proposed retrospective application of severance tax adjustments, specifically relying on the federal and state constitutional prohibitions against passage of ex post facto laws. There are two ex post facto law prohibitions of the federal constitution. Article I, section 9, clause 3 is a limitation on the federal government, while article I, section 10, clause 1 imposes a similar limitation on the states. Alaska's constitution also contains a limitation in section 15 of article I.

Our previous conclusion that federal and state constitutional prohibitions against enactment of ex post facto laws would support a challenge to the amendment's retrospective application was surely in error. Federal court decisions have limited the application of the limitations to criminal or penal

Senator Arliss Sturgulewski  
Page 3  
April 21, 1989

consideration is that the retrospective application of the measure must not impair an obligation of contract. The impairment of contract consideration appears to be inapplicable in this instance. Retrospective application of a newly-enacted statute may, in some instances, impair obligations of contract, in violation of article I, section 10 of the United States Constitution and article I, section 15 of the State Constitution. However, the Alaska Supreme Court appears to have cut off an impairment of contract argument applicable to retrospective application of a tax amendment in Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska, 1985). To the argument that the oil and gas corporate income tax then in litigation impaired the obligation of the state's underlying lease contracts, the court concluded that "[the] argument [was] without merit":

. . . No lease provision has been impaired. In entering into the leases the state could not, and did not, contract away its power as a sovereign to tax income earned in the state. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 102 S.Ct. 894, 71 L.Ed.2d 21 (1982) disposes of this issue:

Contractual arrangements remain subject to subsequent legislation by the presiding sovereign. Even where the contract at issue requires payment of a royalty for a license or franchise issued by the government entity, the government's power to tax remains unless it "has been specifically surrendered in terms which admit of no other reasonable interpretation." St. Louis v. United R. Co., 210 U.S. 266, 280, 28 S.Ct. 630, 634, 52 L.Ed. 1054 (1908).

455 U.S. at 148, 102 S.Ct. at 907, 71 L.Ed.2d at 36 (citations omitted); see also Exxon v. Eagerton, 462

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statutes, concluding that retrospective tax legislation is not prohibited by the ex post facto clause. Personal Finance Co. v. United States, 86 F. Supp. 779 (D.Del., 1949). See 16A Am. Jur. 2d secs. 636, 677. Decisions in other state courts have similarly concluded. Parlato v. McCarthy, 69 A.2d 648 (Ct., 1949), Walker v. Commonwealth, 130 S.W.2d 27 (Ky., 1939). The Alaska Supreme Court has not extended application of the state constitutional ex post facto prohibition beyond penal or criminal matters. Danks v. State, 619 P.2d 720 (Alaska, 1980); Creekpaum v. State, 753 P.2d 1139 (Alaska, 1988).

U.S. at 187-94, 103 S.Ct. at 2304 - 2307, 76 L.Ed.2d at 508-12.

705 P.2d 418, at 438.

\*

If legislation acts retrospectively, the nature and duration of its retrospective application should be reasonable. The arguments favoring a reasonable retrospective operation arise out of the equal protection and due process clauses of the state and federal constitutions.

Federal equal protection considerations:

State legislation retroactively imposing a tax is not necessarily and certainly invalid under the equal protection clause of the Fourteenth Amendment to the federal constitution. The inquiry to be made is one of whether the retroactivity impairs substantial, vested rights, and is reasonable in the circumstances. As to retroactively imposed new taxes, the courts have been reluctant to find a violation because of the impairment of a vested right. Welch v. Henry, 305 U.S. 134, 83 L.Ed. 87, 59 S.Ct. 121 (1938), rehearing denied 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 250 (1938). 3/ Several state courts have agreed. See Garrett

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3/ In Welch, the United States Supreme Court concluded that a Wisconsin state statute, enacted in 1935 and operating retrospectively to tax corporate dividends earned in 1933 which, when received, were deductible from gross income, did not violate the equal protection clause. The tax rates applied to the dividends differed from the rates applicable to other types of taxable income. As to the retrospective application of the new tax to dividends that were, when earned, exempt from tax, the court noted that:

The equal protection clause does not preclude the legislature from changing its mind in making an otherwise permissible choice of subjects of taxation. The very fact that the dividends were relieved of tax [in 1933], when the need was less, is basis for the legislative judgment that they should bear some of the added burden when the need is greater.

Freight Lines v. State Tax Commission, 135 P.2d 523, at 526, 527 (Utah, 1943); Colonial Pipeline Co. v. Commonwealth, 145 S.E.2d 227 (Va., 1965), reh. den. (1966), app. dismissed, 384 U.S. 268, 16 L.Ed.2d 523, 86 S.Ct. 1476 (1966). 4/

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Numerous retroactive revisions of the federal and Wisconsin revenue laws . . . have imposed taxes on subjects previously untaxed and shifted the burden of old taxes by changes in rates, exemptions, and deductions. It has never been thought that such changes involve a denial of equal protection if the new taxes could have been included in the earlier act when adopted. If some retroactive alteration in the scheme of a tax act is permissible, as is conceded, it seems plain that validity, so far as equal protection is concerned, must be determined, as in the case of any other tax, by ascertaining whether the thing taxed falls within a distinct class which may rationally be treated differently from other classes. If such changes are forbidden in the name of equal protection, legislatures in laying new taxes would be left powerless to rectify to any extent a previous distribution of tax burdens which experience had shown to be inequitable, even though constitutional.

83 L.Ed. 87, at 92.

4/ In Garrett Freight Lines v. State Tax Commission, 135 P.2d 523 (Utah, 1943), the Utah Supreme Court, called upon to determine whether an excise tax levied on the use of diesel motor fuel that was used prior to the date the legislative act became law, found no equal protection violation:

It is well settled that a tax does not necessarily violate the Federal Constitution merely because it contains retroactive features. Milliken v. United States, 283 U.S. 15, 21, 51 S.Ct. 324, 75 L.Ed. 809 [(U.S., 1931)]; Billings v. United States, 232 U.S. 261, 34 S.Ct. 421, 58 L.Ed. 596 [(U.S., 1914)]; Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 125, 83 L.Ed. 87 [(U.S., 1938)] . . . .

. . . .

Neither the Federal Constitution nor the Utah

Federal due process considerations:

Retroactive imposition of a tax is not necessarily a violation of the due process clause of the Fourteenth Amendment to the federal constitution. The leading case is Welch, cited earlier, in which the United States Supreme Court determined:

The objection chiefly urged to the taxing statute is that it is a denial of due process of law because in 1935 it imposed a tax on income received in 1933. But a tax is not necessarily unconstitutional because retroactive. Milliken v. United States, 283 U.S. 15, 21, 75 L.Ed. 809, 814, 51 S.Ct. 324 [(1931)], and cases cited. Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute.

83 L.Ed. 87, at 93. But the assertion that due process is not violated is not absolute and, the court has said that

In each case it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation.

Id.

Similarly, in Garrett Freight Lines, earlier cited, the Utah Supreme Court determined that the due process clause is not

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Constitution has any provision in terms prohibiting retroactive legislation -- excepting that which forbids the enactment of ex post facto laws. [Citations omitted.] That clause relates to criminal and penal matters and does not affect legislation such as the statute here involved. Calder v. Bull, 3 Dall. 386, 390, 1 L.Ed. 648, 1 Kent Commentaries 409; 3 Story on Constitution 212; 18 C.J.S. Constitutional Law, sec. 435, p. 886.

a limitation on the state's ability to retrospectively impose a tax:

Although basing its case upon the due process clause, appellant does not show wherein the tax constitutes any arbitrary and oppressive discrimination except to assert that a tax based upon a transaction consummated prior to passage of the act amounts to a taking of property without due process. It has many times been questioned whether the due process clause constitutes any limitation upon the taxing power. In this connection we quote from Mr. Justice Sutherland of the United States Supreme Court in an opinion upholding the validity of a statute of the State of Washington levying a tax upon the sale of oleomargarine:

Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power conferred upon Congress by the Constitution. \* \* \* And no reason exists for applying a different rule against a state in the case of the Fourteenth Amendment. \* \* \* That clause is applicable to a taxing statute such as the one here assailed only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property. \* \* \* Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful powers are matters beyond the scope of judicial inquiry. \* \* \* Nor may a tax within the lawful power of a state be judicially stricken down under the due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses, \* \* \* unless, indeed, as already indicated, its necessary interpretation and effect be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the state.

A. Magnano Co. v. Hamilton, 292 U.S. 40, 54 S.Ct. 599, 601, 78 L.Ed. 1109.

Garrett Freight Lines, 135 P.2d 523, at 527.

Courts have, however, considered retrospective tax legislation unconstitutional as a violation of the due process clause when, as Welch concludes, in light of "the nature of the tax and the circumstances in which it is laid," the legislation is "so harsh and oppressive as to transgress [that] constitutional limitation." Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 83 L.Ed. 87, at 93. The question is typically one of the degree of harshness, based upon consideration of factors such as (1) the effect of the retroactive application of legislation amending a tax on a taxpayer's voluntary act that was influenced by the taxpayer's understanding of tax incidence or consequence at the time of that act, especially if the tax to be imposed or amended is "novel," (2) the sufficient certainty of the taxpayer's expectation of money that is jeopardized by the retroactive legislation, (3) the length of the period of the legislation's retrospective application, and (4) the importance of the public purpose to be served by the action. The first three elements are, to some degree, based on the taxpayer's expectations, while the fourth involves a determination of a public interest that necessitated the actual enactment.

Computation and payment of the severance tax is not greatly determinative of taxpayers' taxable activities that generate the tax liability, nor does this proposed legislation seem to strike at activities of a taxpayer that reasonably relied on the current severance tax rates before this bill proposed amendment of that tax. It is the length of the period of the legislation's retrospective application and the importance of the public purpose to be served that need be most carefully considered.

State due process and equal protection considerations:

Nothing in my quick research suggested that an analysis under the state's "due process" clause, article I, section 7, would reach a conclusion at variance with the decisions based on the comparable federal provision discussed above.

State "equal protection" analysis differs, though the conclusion reached under that analysis is consistent with the conclusions reached under the analysis applicable to the federal provisions. In State v. Erickson, 574 P.2d 1 (Alaska, 1976), the court established a "single test"

Senator Arliss Sturgulewski  
Page 9  
April 21, 1989

approach for state-constitution based equal protection analysis, essentially requiring that the court (1) ascertain the purposes of the legislation to determine whether they are legitimate; (2) determine whether the means chosen to accomplish the objectives actually do so; and (3) balance the importance of the state's interest against the constitutional right involved. The state has plenary authority to tax. Assuming an adequate record, adding to tax liability on the income and severance taxes payable by major producers seems to bear a strong correlation to the state's efforts to impose a tax burden on those who are principally responsible for conducting marine operations in a way that is environmentally safe. By that analysis, if the retrospective application of the change is reasonable, the court should reject any state constitutional equal protection-based claim.

JC:gc  
WKG9/099

Enclosure

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX S  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300  
TELEFAX: (907) 465-2389

April 28, 1989

The Honorable Rick Uehling  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

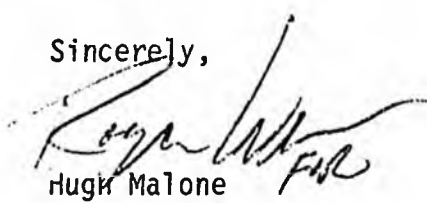
RE: Senate Bill 299

Dear Senator Uehling:

This letter is a follow-up to my earlier letter of today addressing the issues in SB 286 and SB 299.

If the draft letter of intent on SB 299 (enclosed) is adopted, I believe that the concerns expressed in my earlier letter are well met. The department has no objection to the legislation if the letter of intent is adopted.

Sincerely,



Hugh Malone  
Commissioner

HM:m11  
Enclosure

89-152

Department of Revenue  
Amendment  
April 28, 1989

SB 299

AMENDMENT

Section 1, lines 27 - 29

Delete Subsection (c)(3)

*W. J. W.*

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300  
TELEFAX: (907) 465-2389

April 28, 1989

The Honorable Rick Uehling  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

RE: Senate Bill 286  
Senate Bill 299

Dear Senator Uehling,

Thank you for the opportunity to comment briefly on Senate Bills 286 and 299, which would amend the corporate income tax and the severance tax to deal with spill-related costs. I appreciate the concern that is addressed by both bills -- the effect on the general fund of the recent disaster in Prince William Sound. However, I believe it would be unwise to proceed on either of these bills without a fair amount of further study.

Senate Bill 286 would amend the corporate income tax law (AS 43.20) to prohibit the deduction of spill related costs. I have attached a revised fiscal note, which contains an analysis that touches on some of the difficulties in this seemingly simple bill. For example, the bill might inadvertently prohibit the deduction of expenses to a fisherman who chartered his boat to help in the clean-up effort. And, the limitation of the deduction denial to Alaska spills raises constitutional problems. Further, since our corporate income tax is based on a share of worldwide income, the denial of deductions is very severely diluted in the case of a multinational taxpayer. Thus, the fiscal savings for the general fund are small.

Senate Bill 299 would amend the severance tax (AS 43.55) to limit costs of transportation allowable in the net back process to determine wellhead value. The taxpayer may not use costs of repairing vessel damage associated with a spill, or any extra cost incurred in substituting other vessels, or costs of vessels and equipment used in clean-up. It is my view that most of these costs are not currently permitted as reasonable costs of transportation, and that the department can meet most of these concerns by regulation. We are currently studying the need for regulations in this area. I am concerned that section (c)(3) of this legislation might imply that the costs listed are currently allowable, giving the oil industry an argument it does not now have.

Senator Rick Uehling  
Page 2  
April 28, 1989

In sum, I hope that the legislature goes slowly in this area. My department will be pleased to work with you and other interested legislators. I do not believe that precipitous action is either necessary or advisable.

Sincerely,

A handwritten signature in cursive script that reads "Hugh Malone". The signature is written in dark ink and is positioned above the printed name and title.

Hugh Malone  
Commissioner

HM:m11  
89-146

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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April 28, 1989

The Honorable Rick Uehling  
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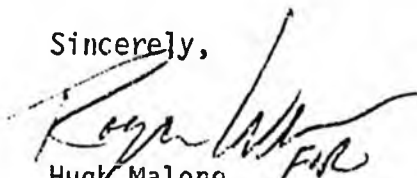
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Sincerely,



Hugh Malone  
Commissioner

HM:m11  
Enclosure

89-152

By the Senate Finance Committee

A/29/89

LETTER OF INTENT - SB 299

The Alaska State Legislature believes the expenses and costs referred to in SB 299 are not presently allowable as reasonable costs of transportation for determination of the gross value of oil or gas under AS 43.55.150(a). The purpose of passing SB 299 is to avoid lengthy and costly litigation by clarification of this point.