

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 739

1 * Sec. 17. AS 39.23 is amended by adding a new section to read:

2 Sec. 39.23.401. DEFINITIONS. In this chapter,

3 (1) "commission" means the Public Officers Compensation Commission;

4 (2) "compensation" means the salary and per diem paid a public officer.

5 * Sec. 18. AS 22.05.140(c); AS 22.10.190(c); and AS 22.15.220(d) are repealed.

6 * Sec. 19. AS 39.23.200, 39.23.240, 39.23.250, and 39.23.400 are repealed.

7 * Sec. 20. AS 24.10.101 and 24.10.105 are repealed.

8 * Sec. 21. Notwithstanding AS 39.05.055(5) and the provisions of AS 39.23.201, enacted by sec. 12
9 of this Act, one of the initial members appointed to the Public Officers Compensation Commission shall
10 serve a one-year term, two members shall serve two-year terms, two members shall serve three-year
11 terms, and two members shall serve four-year terms.

12 * Sec. 22. Notwithstanding the requirement in AS 39.23.201(c), enacted by sec. 12 of this Act, that
13 the commission meet every other year, and the requirement in AS 39.23.241(a), enacted by sec. 14 of
14 this Act, that the Public Officers Compensation Commission submit reports in even-numbered years, the
15 commission shall submit its first report concerning the compensation of public officers no later than the
16 10th day of the regular session of the legislature immediately following the enactment of this Act.
17 Thereafter, the commission shall meet in odd-numbered years under AS 39.23.201(c) and submit reports
18 in even-numbered years under AS 39.23.241(a).

19 * Sec. 23. When the Public Officers Compensation Commission files its first order changing the
20 compensation of justices of the supreme court or judges of the court of appeals, superior court, or district
21 court, it shall address the compensation of all of those public offices in the order. The commission shall
22 include both the governor and the lieutenant governor in the first order it issues addressing the
23 compensation of either of those public offices.

24 * Sec. 24. Sections 1 - 5 and 18 of this Act take effect on the date that the first order changing the
25 compensation of justices and judges issued by the Public Officers Compensation Commission takes
26 effect.

27 * Sec. 25. Sections 6, 7, and 20 of this Act take effect on the date that the first order changing the
28 compensation of members of the legislature issued by the Public Officers Compensation Commission
29 takes effect.

30 * Sec. 26. Sections 8 - 10 of this Act take effect on the date that the first order changing the
31 compensation of the governor and the lieutenant governor issued by the Public Officers Compensation

1 Commission takes effect.

2 * Sec. 27. Section 11 of this Act takes effect on the date that the first order changing the
3 compensation of the heads of the principal departments of the executive branch of state government
4 issued by the Public Officers Compensation Commission takes effect.

5 * Sec. 28. Sections 12 - 17, 19, and 21 - 23 of this Act take effect immediately under
6 AS 01.10.070(c).

SCS CSHB 129 (FIN)

CHANGES MADE BY THE SENATE FINANCE COMMITTEE TO CSHB 129 (JUD) AM:

Sections 6, 8, and 27: These sections are new. They give legislators a salary increase to Range 17, Step A, and eliminate long-term per diem for legislative work done at a legislator's permanent place of residence. These changes are effective on July 1, 1991; they will be repealed by the first order of the Public Officers Compensation Commission that changes the salary of legislators.

Section 15: This section lists those professions from which some of the commission's members must be appointed. The SCS deletes the list from the House bill (one business executive, one person with experience in public administration, one representative of a nonpartisan voters' organization, one representative of a labor organization, and one lawyer) and replaces it with the list contained in CSSB 113 (STA) (one business executive, one person with experience in public administration, one person with experience in personnel management, one economist, one lawyer, and a former elected public officer of the state).

Section 18: This section contains a technical amendment to the House bill to correct an effective date problem (it merely renumbers the section from 39.23.250 to 39.23.251).

Section 20: This section was amended to change the definition of "compensation." The House bill defined it as salary and per diem. The SCS defines it as salary, per diem and allowances.

Adopted
5-18-91

Attachment
A

Major differences between CSHB 129 (JUD) am and CSSB 113 (STA):

1. CSHB 129 (JUD) am: Section 12 provides that commission membership shall include at least one business executive, one person with experience in public administration, one representative of a non-partisan voters organization, one representative of a labor organization, and one lawyer.

SB13
version

* ~~CSHB 129~~ (STA): Section 13 provides that commission membership shall include at least one business executive, one person with experience in public administration, one person with experience in personnel management, one economist, one lawyer, and one former elected public officer of the state.

2. ~~CSHB 129~~ (JUD) am: Section 14 provides that the commission shall submit reports and orders changing compensation during even-numbered years.

HB129
(language
even years)

CSSB 113 (STA): Section 15 provides that the commission shall submit reports and orders changing compensation during odd-numbered years.

→ 3. ~~CSHB 129~~ (JUD) am: Section 14 provides that the legislature has 60 days in which to disapprove an order changing compensation.

60 days
HB129
version

CSSB 113 (STA): Section 15 provides that the legislature has until the effective date of the order changing compensation in which to disapprove it. [The effective date of the order is the later of July 1 or the effective date of the appropriation to fund the order.]

4. ~~CSHB 129~~ (JUD) am: Section 14 provides that an order changing the compensation of public officers other than legislators takes effect on the later of July 1 or the effective date of the appropriation to fund the order. An order changing the compensation of legislators takes effect on the later of the first day of the next regular session or the effective date of the appropriation to fund the order.

Adopted

* ~~CSHB 129~~ (STA): Section 15 provides that an order changing the compensation of any officer takes effect on the later of July 1 or the effective date of the appropriation to fund the order.

Revised
→ SB13

5. CSHB 129 (JUD) am: Section 17 provides that "compensation" includes salary and per diem.

* ~~CSHB 129~~ (STA): Section 18 provides that "compensation" includes salary, per diem, and allowances.

SCS HB 129 (FW)

#1

The Public Officers Compensation Commission would have seven members, some of whom would be appointed by the governor from specific professions. The specific professions listed in CSHB 129 (JUD) am (section 12) and CSSB 113 (STA) (section 13) are as follows:

<u>PROFESSION</u>	<u>SOURCE</u>
business executive	both bills
person with experience in public administration	both bills
representative of a nonpartisan voters' organization	HB 129
representative of a labor organization	HB 129
lawyer	both bills
economist	SB 113
former elected public officer of the state	SB 113
person with experience in personnel management	SB 113

SB 113 vers

#4

AMENDMENT TO CSHB 129 (JUD) AM

Page 4, beginning at line 16, after "appropriation":

DELETE "and, for public officers other than legislators, takes effect on the later of the first day of the next fiscal year and the effective date of the first appropriation to fund the increase. For legislators, an order increasing compensation takes effect on the later of the first day of the next regular legislative session and the effective date of the first appropriation to fund the increase. Unless disapproved and except as provided in (d) of this section, an order decreasing the compensation of a public officer other than a legislator takes effect on the first day of the next fiscal year and an order decreasing the compensation of a legislator takes effect on the first day of the next regular legislative session."

INSERT "and takes effect on the later of July 1 of the next fiscal year and the effective date of the first appropriation to fund the increase. Unless disapproved and except as provided in (d) of this section, an order decreasing the compensation of a public officer takes effect July 1 of the next fiscal year."

#5

AMENDMENT TO CSHB 129 (JUD) AM

Page 2, insert following line 17:

"* Sec. 7. AS 24.10.110 is repealed and reenacted to read:

Sec. 24.10.100. ADDITIONAL ALLOWANCES. The Public Officers Compensation Commission may authorize an annual allowance for postage, stationary, stenographic services, and other expenses for each member of the legislature."

Renumber subsequent sections accordingly.

Page 6, line 6, after "compensation":

DELETE "means the salary and per diem paid a public officer."

INSERT "means the salary, per diem and allowances paid a public officer."

#1

The Public Officers Compensation Commission would have seven members, some of whom would be appointed by the governor from specific professions. The specific professions listed in CSHB 129 (JUD) am (section 12) and CSSB 113 (STA) (section 13) are as follows:

<u>PROFESSION</u>	<u>SOURCE</u>
business executive	both bills
person with experience in public administration	both bills
representative of a nonpartisan voters' organization	HB 129
representative of a labor organization	HB 129
lawyer	both bills
economist	SB 113
former elected public officer of the state	SB 113
person with experience in personnel management	SB 113

#2

AMENDMENT TO CSHB 129 (JUD) AM

Page 4, line 6, after "every":

DELETE "even-numbered"

INSERT "odd-numbered"

Page 6, line 16, after "in":

DELETE "even-numbered"

INSERT "odd-numbered"

Page 6, line 19, after "in":

DELETE "odd-numbered"

INSERT "even-numbered"

Page 6, line 20, after "in":

DELETE "even-numbered"

INSERT "odd-numbered"

#3

AMENDMENT TO CSHB 129 (JUD) AM

Page 4, beginning at line 14, after "law":

DELETE "within 60 days after the order is submitted
to the legislature."

INSERT "before the effective date of the change to
compensation."

#4

AMENDMENT TO CSHB 129 (JUD) AM

Page 4, beginning at line 16, after "appropriation":

DELETE "and, for public officers other than
legislators, takes effect on the later of the
first day of the next fiscal year and the
effective date of the first appropriation to fund
the increase. For legislators, an order
increasing compensation takes effect on the later
of the first day of the next regular legislative
session and the effective date of the first
appropriation to fund the increase. Unless
disapproved and except as provided in (d) of this
section, an order decreasing the compensation of a
public officer other than a legislator takes
effect on the first day of the next fiscal year
and an order decreasing the compensation of a
legislator takes effect on the first day of the
next regular legislative session."

KEEP

INSERT "and takes effect on the later of July 1 of
the next fiscal year and the effective date of the
first appropriation to fund the increase. Unless
disapproved and except as provided in (d) of this
section, an order decreasing the compensation of a
public officer takes effect July 1 of the next
fiscal year."

Adopted

#5

AMENDMENT TO CSHB 129 (JUD) AM

Page 2, insert following line 17:

"* Sec. 7. AS 24.10.110 is repealed and reenacted to read:

Sec. 24.10.100. ADDITIONAL ALLOWANCES. The Public Officers Compensation Commission may authorize an annual allowance for postage, stationary, stenographic services, and other expenses for each member of the legislature."

Re-number subsequent sections accordingly.

Page 6, line 6, after "compensation":

DELETE "means the salary and per diem paid a public officer."

INSERT "means the salary, per diem and allowances paid a public officer."

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF LAW

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May 15, 1991
HAND-DELIVERED

Hon. Jay Kerttula, Co-Chair
Hon. Pat Pourchot, Co-Chair
Senate Finance Committee
Room 516 - Capitol
Juneau, Alaska 99811

Re: CS HB 129 (Judiciary) am

Dear Senators Kerttula and Pourchot:

We advised the House State Affairs and Judiciary Committees that we were concerned about the constitutionality of certain features of the above bill. We also testified briefly at your committee's hearing on the Senate version of the bill, SB 113. We now explain those views in greater detail. Based on a prior request of court administrative director Archur H. Snowden, II, we also address the points raised in the court system's March 17, 1991, analysis of the bill for the House Judiciary Committee.

Though the House has added provisions to the bill to insure that the legislature's power to appropriate and the governor's power to veto the salary orders issued by the salary commission established by the bill, and the appropriations necessary to make them effective, we believe an argument can be made that portion of the bill which purports to set salaries by order for the governor, lieutenant governor, and judges is unconstitutional.

Art. III, sec. 15 of the Alaska Constitution requires that the compensation of the governor be "prescribed by law". Article IV, sec. 13 requires the same with respect to the compensation of judges. The Alaska Supreme Court comprehensively addressed the prerequisites of enactment in State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). In A.L.I.V.E. Voluntary the court struck down a section of the Administrative Procedures Act which purported to grant the legislature the power to annul administrative regulations by concurrent resolution. The opinion indicates that the term "by law" means by an enactment made in accordance with Alaska Const. art. II, secs. 13-19. A.L.I.V.E. Voluntary, 606 P.2d at 772-3. In drawing this conclusion, the court relied on the clear intention of the Alaska Constitutional Convention as expressed in the following testimony:

...[W]hen we say in the second sentence [of the proposed provision], "The state may by law," we are saying that the law must be passed by the legislature in the manner provided in the constitution and the statutes, and either signed by the governor or passed over his veto or become law without his signature in the manner provided by the constitution ...

A.L.I.V.E. Voluntary, 606 P.2d at 773, quoting 5 Proceedings of the Alaska Constitutional Convention at 3405 (January 28, 1956) (remarks of Delegate Sundborg).

The inclusion in the bill of a provision requiring that the orders of the proposed Public Officers Compensation Commission are subject to appropriation (see CSHB 129 at 4, lines 15-19 in proposed AS 39.23.241(c)) may not meet this objection. Art. II, sec. 13 of the Alaska Constitution limits appropriations bills to appropriations; matters of general law, including the salary level of the offices in question here, must be addressed in appropriate legislation. The salary orders which the proposed commission would issue do not qualify as general laws.

In its analysis of the constitutionality of the bill, the court system relies heavily on federal authority, including Atkins v. United States, 556 F.2d 1028 (Ct.Cl. 1977), cert. denied, 434 U.S. 1009 (1978), a case upholding a federal law allowing the recommendations of the President as to judicial salaries to become effective unless blocked by a resolution of one house of the legislature. See Letter from Charles S. Christensen III to Rep. Dave Donley (March 17, 1991). It cites the case primarily in support of an argument that HB 129 does not impermissibly delegate a legislative function. Our concern lies not in the delegation 1/, but in the use of a device, the salary order, which does not meet the formal prerequisites of enactment. Our court has distinguished Atkins on this point. In A.L.I.V.E. Voluntary the Alaska Supreme Court was asked to determine the constitutionality of a law permitting the legislature to annul administrative

1/ While we appreciate the political difficulty of setting the salaries of high ranking public officials, we disagree with the court system that the task of setting the salaries is so impractical or cumbersome as to require delegation. See March 17, 1991 letter, Christensen to Donley, at 4, citing Warren v. Boucher, 543 P.2d 731, 734 (Alaska 1975). However, we believe the provisions of section 16 of the bill are probably detailed enough to avoid the charge of improper delegation. cf. and contest Fairbanks North Star Borough v. State, 736 P.2d 1140, 1143 (Alaska 1987).

regulations by concurrent resolution. The court considered whether the legislature could exercise its powers without following the enactment provisions of the Alaska Constitution. It answered in the negative. A.L.I.V.E. Voluntary, 606 P.2d at 772-3, citing Plumley v. Hale, 594 P.2d 497, 502 (Alaska 1979). In considering the separation of powers aspects of the case, it noted with reference to the Court of Claims holding in Atkins that Article I, sec. 1 of the United States Constitution did not ". . ." as a textual [sic] matter, mechanically direct the manner in which Congress must exercise the legislative power" that the same could not be said of Article II the Alaska Constitution. A.L.I.V.E. Voluntary, 606 P.2d at 776-7, quoting Atkins, 556 F.2d at 1062.

There are other textual differences between the Alaska and U.S. Constitutions which might result in a ruling different than that in another case relied upon by the court system, Pressler v. Simon, 428 F.2d 302 (D.D.C. 1976), aff'd sub nom. Pressler v. Blumenthal, 434 U.S. 1028 (1978). In Pressler, a three judge panel upheld a law which allowed a commission to set salaries for members of Congress, reasoning that the language of U.S. CONST., art. I, sec. 6, and the apparent desire of the framers of the federal constitution to leave to Congress the ultimate responsibility to set its own salaries allowed Congress to delegate the power to set its salaries. Art. I, sec. 6 provides that congresspersons' compensation is to be ". . . ascertained by law". "Ascertained by law" and "prescribed by law" as used in Alaska Const. art. III, sec. 15, and art. IV, sec. 13, may not be interpreted to have the same meaning. "Ascertain" means "finding out" or "rendering certain". "Prescribe" means "dictate" or "lay down authoritatively". See Black's Law Dictionary (5th ed. 1979); Webster's Third New Int'l Dictionary (1976). A salary order clearly falls into the former category, but may not fit the latter. The holding in Pressler may apply with some force to Alaska's constitutional provision regarding the compensation of legislators, art. II, sec. 7, which provides that legislators receive an annual salary, but not specifying the means by which the salary should be determined. However, it seems that the framers of Alaska's constitution had something more formal in mind when they determined that judicial and gubernatorial salaries should be "prescribed by law" 2/, and that in A.L.I.V.E. Voluntary, the Alaska Supreme Court took the framers' intent seriously.

2/ The framers added certain formalities to the legislation process proposed by the drafters of the original enactment provisions of Article II, despite the assertion by the drafters that the original provisions were like those of the United States Constitution. 3 Proceedings of the Alaska Constitutional Convention 1746-8.

More interesting among the court system's citations is a case from Illinois in which a similar administrative procedure was upheld despite constitutional enactment provisions similar to Alaska's. Quinn v. Donnewald, 483 N.E.2d 216, 222 (Ill. 1985). There, the Illinois Supreme Court concluded that the initial law providing for salary orders by an administrative agency complied with constitutional provisions requiring that salaries of judges and legislators be "provided by law", and that the salaries of officers of the executive branch be "established by law". ILL. CONST. art. IV, sec. 11; art. V, sec. 21; art. VI, sec. 14. We would certainly rely on this case if called upon to defend the law as it is now written. However, a brief review of the later annotations to the enactment provisions of the Illinois Constitution (art. IV, sec. 8) suggest a more casual approach to the formalities of enactment than the Alaska Supreme Court seems prepared to adopt.

A case can be made that the state's courts will take an approach similar to Illinois' if called upon to review the statute. Nonetheless, we remain concerned that in light of A.L.I.V.E. Voluntary and the framers' express statements about the meaning of "by law", a challenge as to the use of salary orders to set the salaries of the governor, lieutenant governor, and judges may be successful. See 1980 Inf. Op. Att'y Gen. at 2 (February 27; J-66-382-80) ("by law" means adherence to constitution's provisions for enacting laws); see also 1977 Inf. Op. Att'y Gen. at 1 (November 16; J-66-280-78) and 1978 Inf. Op. Att'y Gen. (January 20; J-66-280-78) (cautioning that prior statute may be unconstitutional because concurrent resolution procedure therein didn't meet "by law" requirement for certain offices). The proposed commission could of course recommend rather than order salaries for those offices where there may be a constitutional problem, in the manner provided in current AS 39.23.240(c).

With regard to the legislative disapproval provisions of proposed AS 39.23.241(c), we doubt that the 60 day deadline for disapproval is enforceable; the legislature will always be able to amend the law. We suspect that the disapproval provisions will go the way of AS 23.40.215(b), which is rarely used, and that the legislature will express its views on the commission's orders when it makes its appropriations, as it does when it reviews the monetary terms of collective bargaining agreements. See AS 23.40.215(a).

We close with a brief technical note. Sec. 9 of ch. 124, SLA 1986, provides that AS 39.23.250 would not become effective until a constitutional amendment is adopted which creates a state salary compensation commission. CS HB 129's proposed amendment to AS 39.23.250 does not address this. It is not clear whether the

Senators Kerttula and Pourchot
Sb 113

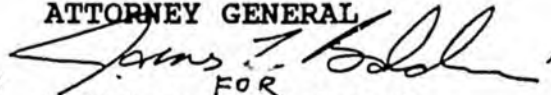
May 15, 1991
Page 5

House meant the delayed effective date to stand or overlooked this matter when drafting sec. 19. Your committee may wish to resolve this ambiguity.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By:



FOR

Kathleen Strasbaugh
Assistant Attorney General

Encl.

From: WCMC002 --JDCVM1
To: GASCBPA --JDCVM1

Date and time 02/19/91 16:44:03

From: Ron Lorensen
Asst. A.G.

Leg. & Regs., Juneau AGO

Subject: HB 129--Public Officers Compensation Commission

Here are the main legal (constitutional) issues I see raised by this bill:

1. The constitution specifically says that the compensation for the governor and lieutenant governor (art. III, sec. 15) and for judges (art. IV, sec. 13) are to be "prescribed by law". I think there is a good argument that this bill does not "prescribe their salaries by law", since it sets out a procedure for establishing salaries (formulation of salary orders by the commission) for the gov, lt gov, and judges that does not culminate in legislation which is enacted as LAW. This argument is strengthened by the fact that the procedure would circumvent the governor's ability to veto legislation enacted by the legislature. This infirmity does NOT apply to the procedure for setting salaries for commissioners or legislators, however.

2. There is also a very good argument that the procedure for establishing these salaries impermissably interferes with the powers of future legislatures. Under the bill, salary orders of the commission would become effective 60 days after they are submitted to the legislature, unless a bill disapproving the order(s) is enacted into law during that period. It's probably (see point three) permissible to set salaries in accordance with orders of the commission, so long as the legislature does not see fit to disapprove or change those salaries. BUT, to the extent the language of the bill is intended to result in a final salary that the legislature could not change after the 60 days has elapsed, it goes too far. One legislature can't bind or limit the power of a future legislature (the constitution can, of course), so salary orders of the commission would always be subject to being overridden by the legislature--no matter how long after they "take effect" under the bill.

3. There is also an issue of whether giving this commission the ability to set salaries for these public officials constitutes an impermissible delegation of legislative power. Although I think there is an issue on this point, I think the better answer is that it's okay because the bill does set out a pretty comprehensive list of standards or factors to be taken into account in arriving at compensation levels.

Those are the main issues I see in the short period of time I've had to look the bill over and think about it. Hope this helps. Bye.

cc: WPFCBJJ --JDCVM1

WCMC002 --JDCVM1

Thanks. Ron

*Presented to
House Staff Affairs
and House Judiciary*



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
Staff Counsel

303 K Street
Anchorage, AK 99501
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May 15, 1991

The Honorable Pat Pourchot
Co-Chairman, Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senator Pourchot:

CSHB 129 (JUD) am, establishing a Public Officers Compensation Commission, has been referred to the Finance Committee for consideration. This bill is similar to CSSB 113 (STA), which was heard by the committee earlier this month. Major differences between CSHB 129 (JUD) am and CSSB 113 (STA) are as follows:

1. CSHB 129 (JUD) am: Section 12 provides that commission membership shall include at least one business executive, one person with experience in public administration, one representative of a non-partisan voters organization, one representative of a labor organization, and one lawyer.

CSSB 113 (STA): Section 13 provides that commission membership shall include at least one business executive, one person with experience in public administration, one person with experience in personnel management, one economist, one lawyer, and one former elected public officer of the state. *Adopted*

2. CSHB 129 (JUD) am: Section 14 provides that the commission shall submit reports and orders changing compensation during even-numbered years. *Adopted*

CSSB 113 (STA): Section 15 provides that the commission shall submit reports and orders changing compensation during odd-numbered years.

3. CSHB 129 (JUD) am: Section 14 provides that the legislature has 60 days in which to disapprove an order changing compensation. *Adopted*

CSSB 113 (STA): Section 15 provides that the legislature has until the effective date of the order changing compensation in which to disapprove it. The effective date of the order is the later of July 1 or the effective date of the appropriation to fund the order.

4. CSHB 129 (JUD) am: Section 14 provides that an order changing the compensation of public officers other than legislators takes effect on the later of July 1 or the effective date of the appropriation to fund the order. An order changing the compensation of legislators takes effect on the later of the first day of the next regular session or the effective date of the appropriation to fund the order. *Adopted*

CSSB 113 (STA): Section 15 provides that an order changing the compensation of any officer takes effect on the later of July 1 or the effective date of the appropriation to fund the order. *Rescinded
Adopted*

5. CSHB 129 (JUD) am: Section 17 provides that "compensation" includes salary and per diem.

CSSB 113 (STA): Section 18 provides that "compensation" includes salary, per diem, and allowances. *Adopted*

The Alaska Court System is supportive of either version of this legislation. Based upon statements made by administrative officials, we believe that CSHB 129 (JUD) am is less likely to be vetoed by the governor because it requires an intervening election before an increase in legislative compensation can take effect.

Please feel free to contact me if you have any questions or comments.

Very truly yours,



C.S. Christensen III
Staff Counsel



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III
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303 K Street
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May 17, 1991

The Honorable Jay Kerttula, Co-Chairman
The Honorable Pat Pourchot, Co-Chairman
Senate Finance Committee
P.O. Box V
Juneau, Alaska 99811

Dear Senators Kerttula and Pourchot:

A representative of the Department of Law has provided the Finance Committee with a letter discussing the constitutionality of CSHB 129 (JUD) am, an act establishing a Public Officers Compensation Commission.^{1/} In the letter, concern is expressed regarding that portion of the bill which authorizes the commission to set compensation for the governor, lieutenant governor, and justices and judges.

Specifically, the letter notes that article III, section 15 of the Alaska Constitution requires the salary of the governor and lieutenant governor to be "prescribed by law." Article IV, section 13 requires that the salary of justices and judges also be "prescribed by law." It is argued that the constitution's use of the phrase "by law" requires salaries to be enacted in accordance with article II, sections 13-19 of the Alaska Constitution. Those sections set forth the mechanism by which bills are enacted into law by the legislature.

1. Letter from Kathleen Strasbaugh to Senators Kerttula and Pourchot (May 15, 1991)

In contrast, the constitution does not require that the compensation of legislators or commissioners be "prescribed by law." In this regard, it should be noted that the Department of Law no longer suggests that the salary order mechanism may be constitutionally infirm with respect to the compensation of legislators or commissioners; its only remaining concern appears to involve the salaries of the other specified officers.

In its analysis of CSHB 129 (JUD) am, the department relies primarily on State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980). In that case, the Alaska Supreme Court held that the legislature could not annul an administrative regulation by passage of a concurrent resolution, but only by enactment of a bill into law.

The department states that "[t]he opinion indicates that the term 'by law' means by an enactment made in accordance with Alaska Const. art. II, secs. 13-19." Strasbaugh letter at 1. We disagree with this characterization of A.L.I.V.E. Voluntary.

The court in A.L.I.V.E. Voluntary was not concerned with the import of the phrase "by law," and it did not consider whether the use of that phrase precluded the legislature from delegating its powers to a non-legislative body. Instead, as it noted, "[t]he question presented by this case is whether the legislature can exercise its legislative power without following these enactment provisions." A.L.I.V.E. Voluntary, 606 P.2d at 772.

The court held that the legislature could not exercise its legislative power without following the Alaska Constitution's enactment provisions (although administrative agencies could exercise delegated legislative power without being subject to such formalities). In support of this conclusion, it referenced the minutes of the constitutional convention:

The minutes of the proceedings of the constitutional convention indicate that the delegates were fully aware that only by following the enactment procedures could the legislature make law.

A.L.I.V.E. Voluntary, 606 P.2d at 773.

The court cited remarks of Delegate Sundborg in support of this conclusion, not in support of any "clear intention" of the convention to limit the legislature's ability to delegate powers

that must be exercised by law, as claimed by the department.^{2/} Strasbaugh letter at 2.

A review of the complete statement made by Delegate Sundborg reveals that the convention was concerned only with the procedure that must be followed by the legislature in enacting law, and not with the issues surrounding the delegation of power to administrative agencies:

[W]hen we say in the second sentence, "The state may by law", we are saying that that law must be passed by the legislature in the manner that is required by the constitution and the statutes, and either signed by the governor or passed over his veto or become law without his signature in the manner provided in the constitution, which we felt was the real intention of the body rather than merely requiring that the legislature by a majority in each house and without adhering to any of those other restrictions and without any reference to the governor could contract debt on behalf of the state.

5 Proceedings of the Alaska Constitutional Convention at 3405 (January 28, 1956) (remarks of Delegate Sundborg) (emphasis added).

However, even if we were to assume that the remarks of Delegate Sundborg did indicate an intent to limit the legislature's ability to delegate its powers, the remarks related to a specific type of legislative power, the power to contract state debt. It is axiomatic that some types of legislative power are fundamental and cannot be delegated. See, e.g., State v. American Federation of State, County and Municipal Employees, AFL-CIO Local 1726, Division of Adult Correction, 298 A.2d 362 (Del. 1972). The power to contract state debt may be such a fundamental power; the

2. The department states that its "concern lies not in the delegation, but in the use of a device, the salary order, which does not meet the formal prerequisites of enactment." Strasbaugh letter at 2. However, since it is definitionally impossible for a device utilized by a non-legislative body to meet the formal prerequisites of enactment, the issue is really one of delegation: can the legislature delegate a power when the constitution states that the power must be exercised "by law."

power to legislate is not. In context, Delegate Sundborg's remarks can only be applicable to the delegation of one specific power, and cannot be read as a general statement of limitation on legislative delegation.

As noted in my letter to Representative Dave Donley dated March 17, 1991, the supreme court has on one occasion considered whether a constitutional provision requiring the exercise of a power "by law" prohibits the delegation of that power (or, as the Department of Law would put it, has considered whether the term "by law" means that an enactment must be made in accordance with article II of the constitution). Warren v. Boucher, 543 P.2d 731 (Alaska 1975), involved the legislature's delegation to the lieutenant governor of the power to enact a method to determine if an initiative and a legislative act are substantially the same. In accordance with article V, section 3, and article XI, section IV of the Alaska Constitution, that method must be "prescribed by law." Notwithstanding this requirement, the court held that the delegation of power was proper; no enactment was necessary for the lawful exercise of the power by the lieutenant governor. Warren, 543 P.2d at 733, 734.

As noted in my letter to Representative Donley and in my testimony before the committee, a review of the case law in Alaska and other jurisdictions leads to the conclusion that the legislature may delegate its power to set salaries to a commission in the manner set forth in CSHB 129 (JUD) am. The delegation may take place whether or not the underlying constitutional provisions require that such salaries be "prescribed by law," as long as the legislature retains the ultimate control over the salaries. Such control is provided for by this legislation.

Please feel free to contact me if you have any additional questions or comments.

Very truly yours,



Charles S. Christensen III
Staff Counsel

HB 131

HOUSE BILL NO. 131

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE ULMER

Introduced: 2/11/91

Referred: Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the area within designated marine park units of the Alaska state park
2 system, and adding marine park units to the Alaska state park system."

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

4 * Section 1. AS 41.21.304(11) is amended to read:

5 (11) Shelter Island

6 Township 39 South, Range 63 East, Copper River Meridian

7 Section 13: E1/2

8 Section 24: E1/2

9 Township 39 South, Range 64 East, Copper River Meridian

10 Section 18

11 Section 19

12 Section 29

13 Section 30: Excluding USS 354

14 Section 31

1 Section 32
2 Section 33
3 Township 40 South, Range 64 East, Copper River Meridian
4 Section 4
5 Section 5
6 Section 6
7 Section 7
8 Section 8
9 Section 9
10 Section 10
11 Section 15
12 Section 16
13 Section 17
14 Section 21: NE1/4NE1/4
15 Section 22: N1/2;
16 * Sec. 2. AS 41.21.304 is amended by adding a new paragraph to read:
17 (34) Juneau Channel Islands
18 Township 38 South, Range 63 East, Copper River Meridian
19 Section 13
20 Section 25: E1/2
21 Section 29: S1/2
22 Section 32: E1/2
23 Section 33: SW1/4
24 Township 38 South, Range 64 East, Copper River Meridian
25 Section 18: SW1/4
26 Section 19
27 Section 20: W1/2SW1/4
28 Section 29: NW1/4NW1/4
29 Section 30: N1/2, SW1/4
30 Township 39 South, Range 63 East, Copper River Meridian
31 Section 4

- 1 Section 9
- 2 Section 10
- 3 Section 11
- 4 Section 13: SW1/4SW1/4
- 5 Section 14
- 6 Section 15
- 7 Section 16
- 8 Section 22
- 9 Section 23
- 10 Section 24: W1/2
- 11 Township 39 South, Range 64 East, Copper River Meridian
- 12 Section 8: SE1/4
- 13 Section 9: SW1/4
- 14 Section 16
- 15 Section 17: NE1/4
- 16 Section 34: S1/2, excluding tract A-5
- 17 Township 40 South, Range 64 East, Copper River Meridian
- 18 Section 1: NW1/4
- 19 Section 3: NE1/4
- 20 Section 36: SE1/4SE1/4
- 21 Township 40 South, Range 65 East, Copper River Meridian
- 22 Section 28: SW1/4
- 23 Section 31: SW1/4SW1/4
- 24 Section 32: E1/2
- 25 Section 33: W1/2
- 26 Section 34: W1/2E1/2, W1/2
- 27 Township 41 South, Range 65 East, Copper River Meridian
- 28 Section 1: NE1/4
- 29 Section 2
- 30 Section 3: NE1/4
- 31 Section 11

1
2
3

Township 41 South, Range 66 East, Copper River Meridian

Section 5: NW1/4, NW1/4NW1/4NE1/4

Section 6: NW1/4.

HB 131

SENATE FINANCE COMMITTEE REPORT

DATE: 5/18/91

FURTHER:

DATE TURNED INTO OFFICE: 5-19-91

The Finance Committee considered HOUSE BILL NO. 131

"An Act amending the area within designated marine park units of the Alaska state park system, and adding marine park units to the Alaska state park system."

and recommended:

[] replace with _____ CS
[] or adopt _____ 3 CS CS HB 131 (RIS)
[] attached amendment(s)
[] _____ letter of intent adopted

[] same title
[] new title
[] technical title change (HB only)

- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] further referral to _____

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

[] fiscal note(s) _____ Dept/Date:

[] fiscal note(s) _____ Dept/Date:

[] zero fiscal note(s) _____

[] zero fiscal note(s) _____
DNR 2/23/91
DF+G 3/19/91

[] appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

James Deenica
Lynn Hoffman
[Signature]
[Signature]

[Signature] - no an
[Signature] No Rec
[Signature] (No Rec)
[Signature]
[Signature]

1.

2.

Co-Chairs: Signatures and Recommendations

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

FISCAL NOTE

No. 2
Bill Version: HB 131
(H) Publish Date: 3/29/91

Revision Date: 03/18/91 Department Affected: Fish and Game
Title: Marine Park Additions BRU: Habitat
Component: Habitat

Sponsor: Representative Ulmer

Requestor: _____ COMPONENT SERIAL NO.

	4	8	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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

Estimate of current year impact: no impact on current year

ANALYSIS: (Attach a separate page if necessary.)

Changes in AS HB 131 (PES)
have no fiscal impact. This
fiscal note is appropriate.
5/18/91 PT
date Comte Aide (initial)

Prepared By: Frank Rue, Director Phone: 465-4105

Division: Division of Habitat Date: 03/18/91

Approved by Commissioner: [Signature]

Agency: Department of Fish and Game Date: 3/19/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No.
Bill Version: HB 131
(H) Publish Date: 3/13/91

Revision Date: 4-Mar-91 Department Affected: Natural Resources
Title: Additions to Marine Parks in Juneau BRU: Parks & Recreation Management
Area Components: Parks Management
Sponsor: Representative Ulmer
Requestor: House Resources COMPONENT SERIAL NO. 452

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME			
PART-TIME			
TEMPORARY			

Changes in SSS HB 131 (PES) have no fiscal impact. This fiscal note is appropriate.

5/18/91 date PT Comte Aide (initial)

Estimate of Current year impact: Negligible

ANALYSIS:

HB 131 will have a net-zero impact. The existing statute (AS 41.21.302) requires that a plan be written within five years of a marine park's establishment. Work on a plan will be deferred until later in the five year term. Help in managing the new marine park will be sought from local volunteers.

Prepared by: Pete Panarose Phone: 762-2602
Division: Parks & Outdoor Recreation Date: 4-Mar-91

Approved by Commissioner: Harold Heinze Date: 28-Feb-91
Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

SENATE CS FOR HOUSE BILL NO. 131 (RESOURCES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RESOURCES COMMITTEE

Offered: 5/18/91

Referred: Finance

Sponsor(s): REPRESENTATIVE ULMER

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the area within designated marine park units of the Alaska state park
2 system, and adding marine park units to the Alaska state park system."

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

4 * Section 1. AS 41.21.304(11) is amended to read:

5 (11) Shelter Island: the following described parcels excluding submerged land
6 seaward of the 20 fathom bathymetric line:

7 Township 39 South, Range 63 East, Copper River Meridian

8 Section 13: E1/2

9 Section 24: E1/2

10 Township 39 South, Range 64 East, Copper River Meridian

11 Section 18

12 Section 19

13 Section 29

14 Section 30: Excluding USS 354

1 Section 31
2 Section 32
3 Section 33

4 Township 40 South, Range 64 East, Copper River Meridian

5 Section 4
6 Section 5
7 Section 6
8 Section 7
9 Section 8
10 Section 9
11 Section 10
12 Section 15
13 Section 16
14 Section 17
15 Section 21: NE1/4NE1/4
16 Section 22: N1/2;

17 * Sec. 2. AS 41.21.304 is amended by adding a new paragraph to read:

18 (34) Juneau Channel Islands: the following described parcels excluding
19 submerged land seaward of the 20 fathom bathymetric line:

20 Township 38 South, Range 63 East, Copper River Meridian

21 Section 13
22 Section 25: E1/2
23 Section 29: S1/2
24 Section 32: E1/2
25 Section 33: SW1/4

26 Township 38 South, Range 64 East, Copper River Meridian

27 Section 18: SW1/4
28 Section 19
29 Section 20: W1/2SW1/4
30 Section 29: NW1/4NW1/4
31 Section 30: N1/2, SW1/4

- 1 Township 39 South, Range 63 East, Copper River Meridian
- 2 Section 4
- 3 Section 9
- 4 Section 10
- 5 Section 11
- 6 Section 13: SW1/4SW1/4
- 7 Section 14
- 8 Section 15
- 9 Section 16
- 10 Section 22
- 11 Section 23
- 12 Section 24: W1/2
- 13 Township 39 South, Range 64 East, Copper River Meridian
- 14 Section 8: SE1/4
- 15 Section 9: SW1/4
- 16 Section 16
- 17 Section 17: NE1/4
- 18 Section 34: S1/2, excluding tract A-5
- 19 Township 40 South, Range 64 East, Copper River Meridian
- 20 Section 1: NW1/4
- 21 Section 3: NE1/4
- 22 Section 36: SE1/4SE1/4
- 23 Township 40 South, Range 65 East, Copper River Meridian
- 24 Section 28: SW1/4
- 25 Section 31: SW1/4SW1/4
- 26 Section 32: E1/2
- 27 Section 33: W1/2
- 28 Section 34: W1/2E1/2, W1/2
- 29 Township 41 South, Range 65 East, Copper River Meridian
- 30 Section 1: NE1/4
- 31 Section 2

1
2
3
4
5

Section 3: NE1/4

Section 11

Township 41 South, Range 66 East, Copper River Meridian

Section 5: NW1/4, NW1/4NW1/4NE1/4

Section 6: NW1/4.

Alaska State Legislature



REPRESENTATIVE FRAN ULMER

MEMORANDUM

May 18, 1991

TO: Senator Pat Pourchot, Chair
Senate Finance Committee

FROM: Rep. Fran Ulmer

RE: HB 131 - Channel Islands Marine Park.

I request that you consider this bill. HB 131 has a zero fiscal note.

HB 131 - Channel Islands Marine Parks Designation

HB 131 designates 16 islands in the Juneau area as the Channel Islands State Marine Park, in accordance with present statutory authority under AS 41.21.300.

The Channel Islands State Marine Park Bill is based on the recommendation of the Juneau Area State Parks Advisory Board and the Division of Parks and Recreation which have stated that such a designation is necessary to ensure that these areas are managed for the purposes outlined by the state when it selected these areas from the federal government under the Statehood Act.

This designation is also a result of last year's legislative resolution, SCR 42, calling for development of a Marine Park network along the Inside Passage. British Columbia has already developed an Inside Passage Strategic Plan for establishing a marine parks system that stretches from Vancouver Island to Prince Rupert.

The main purpose of a Marine Park is to maintain fish and wildlife values, support and promote tourism and recreation, and preserve the cultural and scenic values of the area. The designation protects and maintains all present activities such as boating, hunting, fishing, hiking, camping, mining and trapping. It also prohibits the sale or disposal of land by the state.

HB 131 is truly parks with a small "p". I believe it's a designation that promises long term benefits for both Alaska's residents and visitors.

District 4B — Juneau

P.O. Box V • Juneau, Alaska 99811-3100 • (907) 465-4947



May 18, 1991
HB 131 - Marine park
Page Two

SUPPORTERS OF HB 131 - CHANNEL ISLAND MARINE PARKS

DEPARTMENT OF NATURAL RESOURCES/DIVISION OF PARKS

JUNEAU AREA STATE PARKS ADVISORY BOARD

CITY AND BOROUGH OF JUNEAU

ALASKA OUTDOOR COUNCIL

ALASKA ENVIRONMENTAL LOBBY

JUNEAU CONVENTION AND VISITORS BUREAU

NATIONAL AUDOBAN SOCIETY - JUNEAU CHAPTER

TAKU CONSERVATION SOCIETY

PHIL HOLDSWORTH - FORMER COMMISSIONER OF DNR

a:hb131sen.fin

Information on SB114 and HB131 to create additional State Marine Parks in the Juneau Area (Juneau Channel Islands and Shelter Island Additions) Feb-1991

Background

Section 6(a) of the Statehood Act allows the state to select up to 400,000 acres of National Forest land for the purposes of community expansion (essentially lands to be disposed of) and for creating recreation areas. The priority for allocating these state land selections will be community expansion (disposals) but the state did decide some years ago to utilize about ten percent of the acreage to create state marine parks. Alaska's marine parks program is copied from (and was planned in cooperation with) Washington State and the Province of British Columbia's similar systems. Washington now manages about 55 state marine parks; British Columbia has about 25 provincial marine park sites. Alaska's state park system currently manages 33 marine parks and the proposed legislation would add an additional unit to this program.

What is a Marine Park ?

A marine park can be characterized as legislatively designated units of the state park system which are protected small, scenic coves, bays, bights, beaches, where people tend to land float planes, anchor their boats and use for kayak camping. These recreation sites are often spaced a day's travel distance apart for boaters and are places where the clamming, fishing, camping or picnicking is excellent. Eventual developments could include mooring floats, a few tables and fire places on the beach, a simple pit toilet building, some public rental cabins and perhaps elevated tent platforms and firewood shelters.

Proposed marine parks are normally already popular spots with the public and would not be sold or disposed of by the state; instead, their recreation and scenic values will be preserved for all citizens to use.

What Types of Uses Would be Allowed?

The purposes and allowable uses for marine parks are outlined in AS 41.21.300-306. They are created to:

- (1) Maintain natural, cultural and scenic values.
- (2) Maintain fish and wildlife resources and lawful existing uses of these resources.
- (3) Promote and support recreation and tourism in the state.

Hunting, sport fishing and commercial fishing and trapping are

expressly allowed; the Fish and Game Department will continue to manage fish and wildlife programs. Aquaculture facilities and access to private lands and mineral claims and leases are permitted.

These are parks with a "small p" which consume small acreages and are user oriented.

Why Have Marine Parks Been Established?

To protect popular areas for increasing numbers of local boaters.

To respond to increased tourist demand for Alaska destinations.

To provide the majority of people an opportunity to enjoy the beauties of Alaska's shorelines.

To ensure access to prime public land for shore-related experiences to future water users.

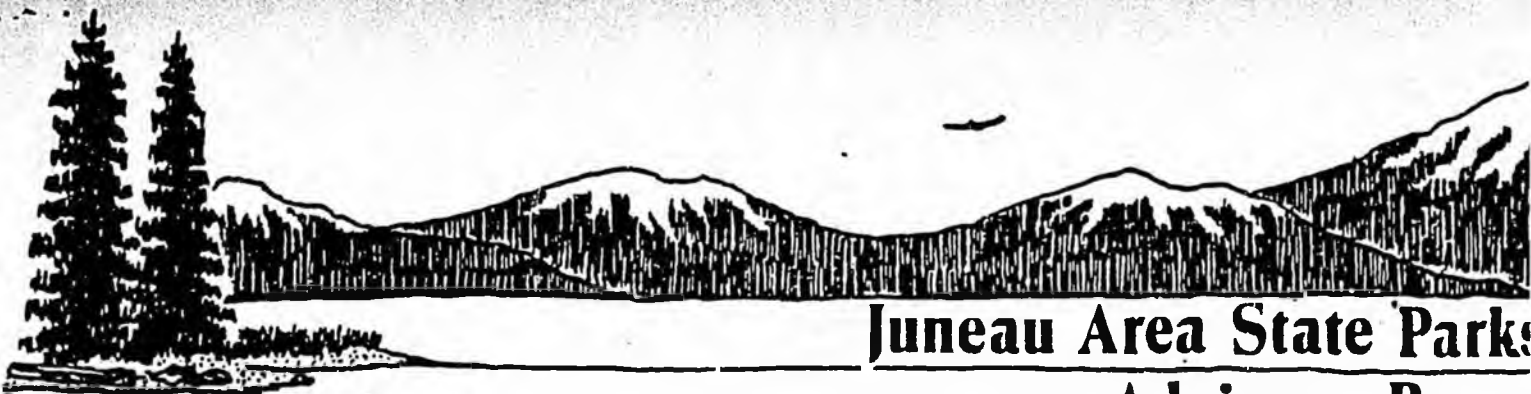
To set aside exceptional protected anchorages.

To create an overnight park system for water users.

Southeast RECREATION GUIDE

SOUTHEAST REGION OFFICE
400 Willoughby Bldg., 3rd Floor
Juneau, Alaska 99801 (907) 465-4563

S O U T H E A S T	Unit	Acreage	RECREATION GUIDE										Location		
	# Unit Name		CAMP SITES*	CAMPING LIMIT (DAYS)	PICNIC SITES	TOILETS	DRINKING WATER	PICNIC SHELTERS	TRAILS	HISTORICAL FEATURES	BOAT LAUNCH	FISHING		NEAREST COMMUNITY	
1	Totem Bight SHP	11												Ketchikan	10 Tongass Road
2	Refuge Cove SRS	13			14	T								F Ketchikan	8.7 Tongass Road
3	Settlers Cove SRS	38	12	11			W		Tr					F Ketchikan	18 N. Tongass Road
4	Pioneer Park SRS	3				T		W		Tr				Sitka	2 Halibut Road
5	Baranof Castle SHS	1									H			Sitka	Lincoln Street
6	Halibut Point SRS	22			9	T	W	S	Tr	H	F			Sitka	4.4 Halibut Road
7	Old Sitka SHP	51												F Sitka	7.5 Halibut Road
8	Juneau Trail System ST	15								Tr	H	F		Juneau	Juneau Area
9	Johnson Creek SRS	65												Juneau	15.5 N. Douglas Hwy.
10	Wickersham SHS	5												Juneau	7th Street
11	Point Bridget SP	2,800								Tr		F		Juneau	38.5 Glacier Hwy.
12	Chilkoot Lake SRS	80	32	7			W	S						F Haines	10 Lutak Road
13	Portage Cove SRS	7	9	7	3	T	W							F Haines	1 Beach Road
14	Chilkat SP	6,045	15	15			W	S	Tr		B	F		Haines	7 Mud Bay Road
15	Ak-Chilkat Bald Eagle P.	49,320												F Haines	8-30 Haines Hwy.
16	Mosquito Lake SRS	5	10	15		T	W					B	F	Haines	27.2 Haines Hwy.
17	Grueuing SHP	12									H	F		Juneau	24 Glacier Hwy.
SOUTHEAST ALASKA STATE MARINE PARKS															
18	Dall Bay SMP	585												F Ketchikan	Gravina Island
19	Thom's Place SMP	1,198												F Wrangell	Wrangell Island
20	Beecher Pass SMP	660												F Wrangell	Mitkof Island
21	Joe Mace Island SMP	62												F Wrangell	Sumner Strait
22	Security Bay SMP	500												F Petersburg	Chatham Strait
23	Taku Harbor SMP	700												F Juneau	Stephens Passage
24	Oliver Inlet SMP	560				T			Tr		B	F		Juneau	Admiralty Island
25	Funter Bay SMP	162												F Juneau	Admiralty Island
26	Shelter Island SMP	3,560			6	T			Tr		F			Juneau	Lynn Canal
27	St. James Bay SMP	10,220												F Juneau	Lynn Canal
28	Sullivan Island SMP	2,163												F Juneau	Lynn Canal
29	Chilkat Islands SMP	6,560												F Haines	Lynn Canal
30	Magoun Islands SMP													F Sitka	Krestof Sound
31	Big Bear/Baby Bear SMP													F Sitka	Perl Strait



Juneau Area State Parks Advisory Board

400 Willoughby Avenue
Juneau, Alaska 99801

March 12, 1991

Representative Bill Hudson
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

RE: Marine Parks Bill HB131

Dear Representative Hudson;

On behalf of the Juneau Area State Parks Advisory Board, I want to express my appreciation for the opportunity to testify March 6th before the House Resources Committee in favor of HB131. This letter is in response to your question about the public process which preceded the Board's endorsement of HB131.

As I testified, since its inception in 1984, the Board has supported the selection and designation of the Channel Islands as a State Marine Park. Similarly, the Division of Parks and Outdoor Recreation has endorsed the selection of these lands since the late 1970's. As I am sure you are aware, the process of selecting the Channel Islands from the federal government under the Alaska Statehood Act was conducted by the State Department of Natural Resources, Division of Land and Water Management. In the last decade, there were two main rounds of selection activities: 1982 and 1988. The Department advertised the selection process in state newspapers, sent letters to affected cities seeking their participation, and conducted a written comment period and public hearings. For example, in 1988 public hearings which were widely covered by the media

were held in every Southeast community. A draft proposed selection document was circulated during the year, and was finalized and signed by the Commissioner in June 1989. The Department received a favorable response, and little opposition to the selections.

Similarly, the Juneau Area State Parks Advisory Board received little opposition to its endorsement of the selections. Initially, certain environmental groups expressed concern that State selection would result in the lands being conveyed away to private ownership; however, the State Marine Park designation of the Channel Islands presumably has assuaged those concerns. The Parks Board publishes its monthly meeting schedule in the newspaper and on the radio and we welcome public participation and input. Our recent consideration of the Marine Parks bill elicited no public comment.

I hope that this answers your question. Please feel free to give me a call if I can provide further information or assistance.

Sincerely,

Shelley K. Owens

Shelley K. Owens
Chair,
Juneau Area State Parks Advisory Board

✓ cc: Rep. Fran Ulmer



ALASKA OUTDOOR COUNCIL, INC.

May 15, 1991

Senator Lloyd Jones, Chairman
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Jones:

The Alaska Outdoor Council reviewed and took positions on legislation of interest during its annual meeting in April.

The Council considered House Bill 131 carefully and decided to support the bill. Council delegates concluded that the overall outdoor recreation benefits including continued hunting, trapping, and fishing opportunities, boating, tourism, and scenic values warranted designation of the Channel Islands as part of the state marine parks system. Delegates also expressed the view that, in general, additional park facilities development would not be desirable because they would detract from the area's general attractiveness and would lead to restrictions on existing uses.

We encourage the Senate Resources Committee and the Legislature to pass HB 131.

Sincerely,

Richard H. Bishop
Legislative Affairs

cc: Representative Fran Ulmer
Representative Bill Hudson
Senator Jim Duncan

Juneau



March 22, 1991

Rep. Fran Ulmer
Alaska House of Representatives
PO Box V
Juneau, AK 99811

Dear Rep. Ulmer,

On behalf of the Board of Directors and members of the Juneau Convention & Visitors Bureau, I am writing to support House Bill 131 to designate several islands in the Juneau area as the Channel Islands State Marine Park.

The fastest growing area of tourism in Alaska is often referred to as "adventure tourism". This type of tourism is very active, often involving the visitor in something beyond what they would normally do in their lives. Kayaking, canoeing, camping and hiking are all the type of activities which make up and adventure tour.

Juneau is blessed with many opportunities for the adventure tourist. There is outstanding hiking, readily accessible boating and incomparable scenery and wildlife. The islands near Juneau could become a critical piece in the development of this growing market. I know of one company considering tours which would involve kayaking out of Auke Bay to an island for an overnight camping trip. Another is considering wildlife viewing tours to Benjamin Island.

By placing these islands under the Division of Parks, these new tour opportunities could develop under an existing umbrella which contains an established program of permitting, fee collection and maintenance. Appropriate levels of use would be established and the quality of the experience, which is the real product that all Alaska tours sell, would be maintained.

Adventure tourism is really tourism with a small "t". It is low impact and high quality. By its nature it would never become a mass-market product. But even though it is small in number, its participants tend to be big spenders and thus adventure tourism has the highest economic impact of any form of tourism.

The Channel Islands State Marine Park could play an essential role in the development of this important niche market while at the same time protecting the beaches and anchorages that so many Juneau residents use for recreation.

Sincerely,

Tom Garrett

369 South Franklin
Suite 201
Juneau, Alaska
99801
(907)586-1737
Thomas C. Garrett
President

TAKU CONSERVATION SOCIETY
1700 Branta Road
Juneau, AK 99801

*(man)
1/11*

April 8, 1991

Senator Ted Stevens
U.S. Senate
Washington, DC 20510

Dear Senator Stevens:

The Taku Conservation Society endorses the position of Federal Agencies that advise building Juneau's new school on uplands rather than wetlands. In this case perfectly adequate uplands are available and considered preferable by many Juneauites.

The employees of the Federal Agencies do a good job of fulfilling the spirit of the Federal laws that protect the health and welfare of all of us. We support them because Juneau is a better community because of their presence and their work. Young people in Juneau often seek careers with the Federal Government and carry out their public service duties with great sincerity. They deserve your support.

We are aware that there are those who would like to bend the Federal laws for political or personal benefit and there are those who sincerely believe some laws are miss-applied. If you are convinced there is a problem we suggest and urge that you address it by way of public hearing at which everyone has a chance to speak.

Thank you very much.

Sincerely,

Mary Lou King

Mary Lou King, Co-Chair

cc: Senator Duncan
Representative Ulmer

PHIL R. HOLDSWORTH, P.E.
CONSULTING ENGINEER & LEGISLATIVE COUNSEL
MINING — GEOLOGY — LANDS

PHONE 907-586-1383

326 FOURTH STREET, No. 1009
JUNEAU, ALASKA 99801

April 10, 1991

Representative Fran Ulmer
Room 421, Capitol
P.O. Box V
Juneau, Alaska 99811

Dear Representative Fran Ulmer:

As you may recall, the undersigned testified in support of SB 114 before the Senate Resources Committee and explained in some detail the historical creation of the extensive State marine parks system which has been created. The State of Alaska had been authorized to select limited tracts of land within the National Forest for "community expansion" and "community recreation areas".

I was present when HB 131 was heard by the House Resources Committee but had not planned to testify, as DNR covered the issue and presented the map describing the islands involved. I was asked to confirm some positions which were questioned by the committee.

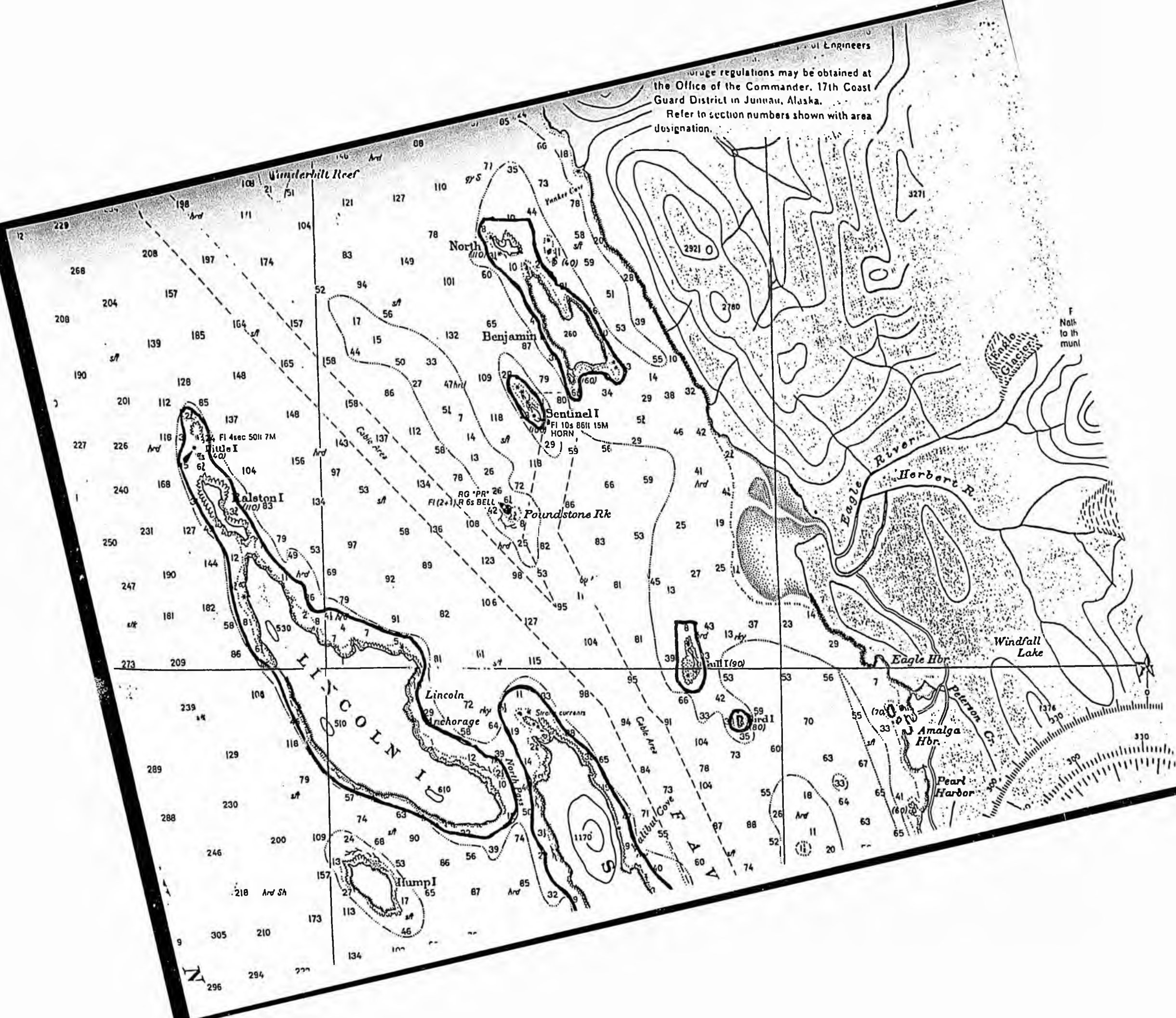
The marine park units covered by this bill are clearly "community" recreation areas, and are ideal for recreational use by the community of Juneau. The area described in the bill covers several small channel islands and a portion of Shelter Island. The land is still in Forest Service ownership but has been selected by the State, and will be approved for conveyance as the land certainly meets the qualification as "community recreation". There are no known mineral potentials on the involved islands and the Alaska Miners Association has expressed no opposition to the bill.

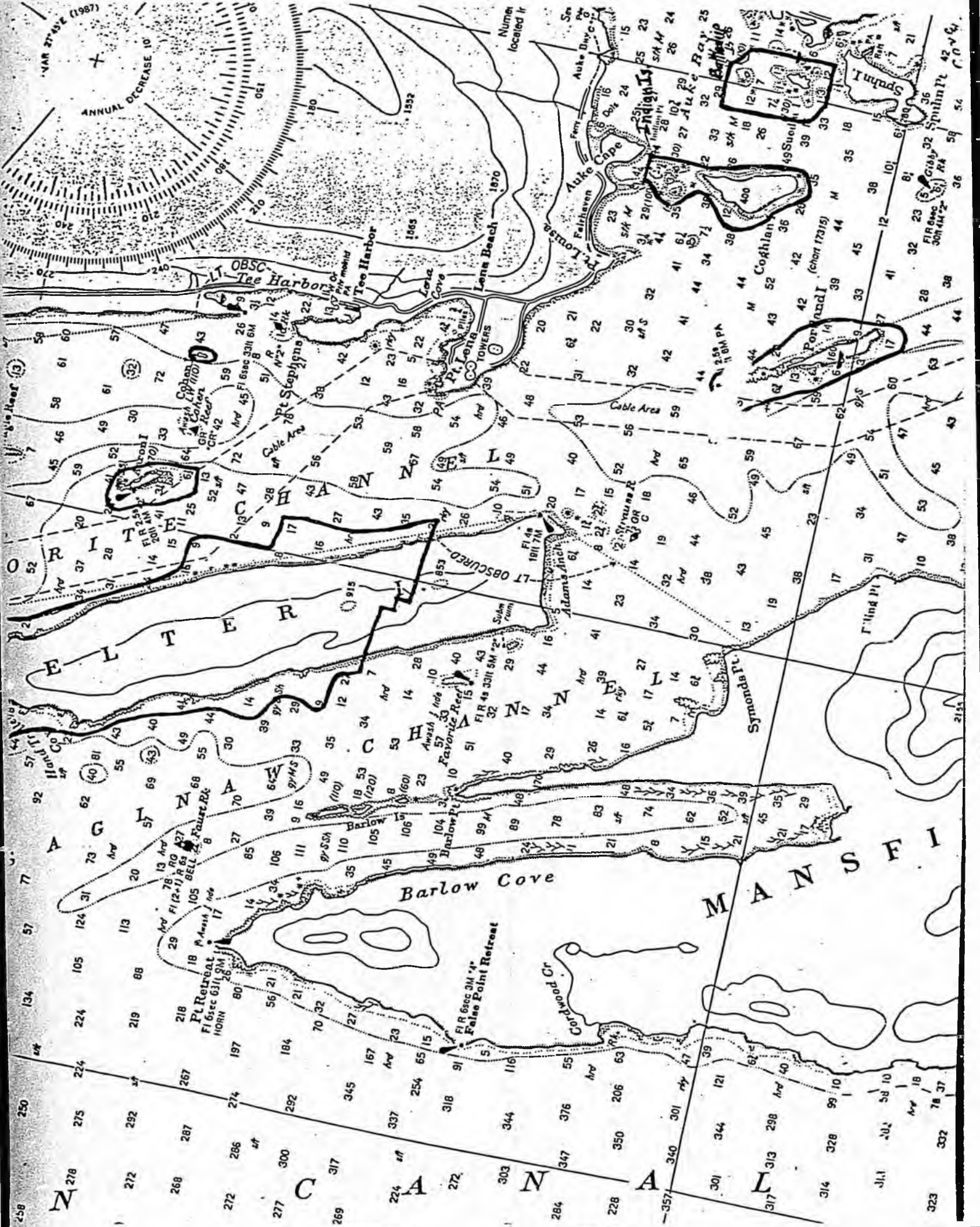
Sincerely,



Phil R. Holdsworth

... Engineers
... regulations may be obtained at
the Office of the Commander, 17th Coast
Guard District in Juneau, Alaska.
Refer to section numbers shown with area
designation.





HB 134

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 15, 1991

FURTHER REFERRALS:

Date of Committee Action: 4.15.91

The FINANCE Committee considered:

HB 134

HOUSE BILL NO. 134

APPLICABILITY OF VET LAND DISCOUNT

"An Act relating to the effective date of the veterans' land discount applicable to state land and to land discounts allowed under that program; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 134 (RES) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal impact DNR

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eileen P. MacLean	✓	Kay Brown		✓	
Mike Savary	✓				
Maxter Boyer					
Korona	X				
Steve ...	X				
Teresa Barnes	X				
Bob ...	X				
...	X				
...	X				
...	X				



 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 134 (RES)

Revision Date: 4/15/91 Department Affected: Natural Resources
 Title: Veterans Land Discount BRU: Land & Water Management
Applicable to state land Component: Land & Water Management
 Sponsor: House Military & Veteran Affairs
 Requestor: HOUSE FINANCE COMMITTEE COMPONENT SERIAL NO.

4	3	1	
---	---	---	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.0	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	12.0	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	12.0	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Representative Mike Navarre, Co-Chair *Mike Navarre* 465-3706
Representative Eileen MacLean, Co-Chair *Eileen MacLean* Phone: 465-3722
 Division: HOUSE FINANCE COMMITTEE Date: April 15, 1991

Approved by Commissioner: _____
 Agency: _____ Date: April 15, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CS FOR HOUSE BILL NO. 134 (RESOURCES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 3/15/91
Referred: Finance

Sponsor(s): HOUSE SPECIAL COMMITTEE ON MILITARY AND VETERANS' AFFAIRS

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the effective date of the veterans' land discount applicable to state
2 land and to land discounts allowed under that program; and providing for an effective
3 date."

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

5 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

6 (1) AS 38.05.058, enacted by sec. 6, ch. 181, SLA 1978, established a land discount
7 program. The state's land discount program authorized a progressively reduced purchase price for state
8 land acquired for residential use based on the applicant's number of years of residence in the state. The
9 program established a maximum discount on the purchase price of the land that an applicant might claim.

10 (2) In 1979, the state's land discount program authorized by AS 38.05.058 was amended
11 by secs. 23 - 25, ch. 85, SLA 1979, to increase the maximum discount that an applicant who was a
12 qualified veteran could claim under that program.

13 (3) In *Gilman v. Martin*, 662 P.2d 120 (Alaska 1983), the Alaska Supreme Court
14 considered the granting of a land discount by a municipal ordinance based on the applicant's length of

1 residence. Applying the conclusion reached in *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309,
2 72 L.Ed.2d 672 (1982), the court determined that the municipal ordinance establishing a land discount
3 program was unconstitutional as a violation of the equal protection clauses of the United States and
4 Alaska Constitutions. The decision, published April 1, 1983, did not involve the examination of the
5 analogous state land discount statute, AS 38.05.058.

6 (4) Following publication of the opinion, the Department of Natural Resources, acting
7 on advice from the Department of Law, determined that the state's residential land discount provisions
8 of AS 38.05.058, including the veterans' land discount provision, would no longer be implemented.

9 (5) The First Session of the Thirteenth Alaska State Legislature substantially revised state
10 laws that were based on residency and residence requirements. In sec. 19, ch. 67, SLA 1983, the
11 legislature eliminated the land discount program, repealing AS 38.05.058 effective July 16, 1983.

12 (6) The Second Session of the Thirteenth Alaska State Legislature established the current
13 veterans' land discount benefit, AS 38.05.940, by sec. 48, ch. 152, SLA 1984. The provision took effect
14 July 6, 1984.

15 (7) Taken together, the court opinion, administrative decision of the Department of
16 Natural Resources, and legislative revision of the veterans' land discount left certain veterans without
17 the opportunity to claim a land discount benefit provided by state law.

18 (b) The purpose of this Act is to ensure that all veterans are treated equally and that the veterans
19 who purchased land from the state after March 31, 1983, and before July 6, 1984, are not denied the
20 veterans' discount that was available to all other veterans purchasing land from the state. Granting this
21 retroactive discount serves the public purpose of making clear to those who contemplate joining the
22 nation's armed forces in the future that the state will honor their sacrifice on behalf of the nation and
23 grant benefits to them in the same manner that it has granted benefits to other veterans.

24 (c) The effect of this Act is to provide the benefit of the veterans' land discount of current law
25 to certain veterans who did not receive a discount under the former land discount program due to the
26 administrative decision of the Department of Natural Resources based on the decision in *Gilman v.*
27 *Martin*. The provision is particularly intended to apply to veterans who had submitted applications
28 claiming the veterans' land discount of former law, including but not limited to persons who were unable
29 to claim the benefit of the veterans' land discount on land offered for sale at the June 4, 1983, lottery
30 sale.

31 * Sec. 2. AS 38.05.940, as enacted by sec. 48, ch. 152, SLA 1984, is retroactive to April 1, 1983.

1 * Sec. 3. APPLICABILITY. (a) This Act applies only to persons who qualified for the veterans'
2 land discount of AS 38.05.940, enacted by sec. 48, ch. 152, SLA 1984, and made retroactive to April 1,
3 1983, by sec. 2 of this Act, and who, after March 31, 1983, and before July 6, 1984, purchased from
4 the state land for which the discount may apply.

5 (b) For land that a person purchased from the state after March 31, 1983, and before July 6,
6 1984, to which the veterans' land discount of AS 38.05.940, enacted by sec. 48, ch. 152, SLA 1984, and
7 made retroactive to April 1, 1983, by sec. 2 of this Act, applies, a person may not claim both the benefit
8 of the maximum land discount authorized to veterans by the provisions of former AS 38.05.058, enacted
9 by secs. 23 - 25, ch. 85, SLA 1979, and the benefit of the veterans' land discount of AS 38.05.940.

10 (c) The Department of Natural Resources shall credit, without interest, to the account of a person
11 who qualifies for the veterans' land discount under sec. 2 of this Act an amount equal to the difference
12 between the amount of the original purchase price of the land and an amount equal to that purchase price
13 with application of the discount authorized by AS 38.05.940. If the amount of the credit exceeds the
14 persons's remaining payment obligation to the state, or if the person does not have a remaining payment
15 obligation to the state, the Department of Natural Resources shall pay, without interest, to the person the
16 amount in excess of the person's remaining payment obligation.

17 (d) The veterans' land discount authorized by the retroactive application of AS 38.05.940.
18 authorized by sec. 2 of this Act, applies to land transferred to the University of Alaska. As to the
19 application of the discount to this land,

20 (1) the University of Alaska shall provide the credit authorized by (c) of this section to
21 persons who qualify for it; and

22 (2) the commissioner of natural resources shall reimburse the University of Alaska for
23 the total amount of all credits allowed for persons under (1) of this subsection.

24 (e) The provisions of this Act do not apply to a person who

25 (1) obtained land using a veterans' land discount under former AS 38.05.058 or under
26 AS 38.05.940 whether the person obtained the discount directly or by assignment;

27 (2) obtained land for which the discount authorized by this Act may apply if the person
28 has relinquished the land or the land has been the subject of default or foreclosure; or

29 (3) obtains land by assignment.

30 * Sec. 4. IMPLEMENTATION OF THIS ACT. (a) The commissioner of natural resources shall
31 publish, at least once a week for at least four successive weeks in newspapers of general circulation

1 within the state, a notice of the availability of the veterans' land discount authorized by sec. 2 of this
2 Act.

3 (b) A person who at the time of purchase of state land was eligible for the veterans' land
4 discount authorized by sec. 2 of this Act

5 (1) shall apply to the Department of Natural Resources for the discount;

6 (2) may not obtain the veterans' land discount authorized by sec. 2 of this Act unless the
7 person submits a complete application for the veterans' land discount not later than one year after the
8 effective date of this Act.

9 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CS HB 134 (Res)

Revision Date: Feb. 25, 1991 Department Affected: Natural Resources
 Title: Veterans Land Discount Applicable BRU: Land & Water Management
to state land Components: Land & Water Management
 Sponsor: House Military & Veterans Affairs
 Requestor: House Military & Veterans Affairs COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	14.2	21.3				
TRAVEL						
CONTRACTUAL	12.0					
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.2	21.3	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	26.2	21.3				
FEDERAL FUNDS						
OTHER						
TOTAL	26.2	21.3	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	1.0	1.0				

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)
See Attached

Prepared by: Ron Swanson Phone: 762-2680
 Division: Land & Water Management Date: Feb. 25, 1991

Approved by Commissioner: Harold Heinze Date: March 15, 1991
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

Fiscal Note for CS HB 134 (Res), continued

Approximately 850 parcels of land were sold by the department between April 1, 1983 and July 6, 1984, the period of retroactivity established by this bill. Based on the results of past state land sales, approximately 35% of the 850 parcels could have been sold to veterans.

This fiscal note will allow the hire of a temporary Natural Resource Officer I (pay range 14) for 4 months in FY 92 and 6 months in FY 93. During FY 92, this person would prepare advertisements for display in newspapers throughout the state, as well as veteran's publications, and work with the Department of Military and Veterans Affairs to ensure that eligible veterans are notified about this retroactive land discount program. In FY 92 and FY 93, this person will process and adjudicate applications, and provide refunds to those who qualify for the program.

The contractual monies (300) will pay for the display ads in newspapers.

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
VICE-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION
AND SOCIAL SERVICES



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4712
465-4968/4986
(SESSION)

914 CLAY COURT
ANCHORAGE, ALASKA 99503
(907) 276-6844

Representative Max F. Gruenberg, Jr.
District 11
Spennard, Upper Midtown Anchorage

MEMORANDUM

DATE: February 19, 1991

TO: Members of the Special Committee on Military and
Veterans' Affairs

FROM: Representative Max F. Gruenberg, Jr.

SUBJECT: HB 134, Veteran's Land Bill

I am pleased we have introduced HB 134 as a committee bill. This legislation grew out of a constituent problem in my district. Mr. Jeff Sisson brought it to my attention that he and his brother Glen were denied their twenty-five percent veteran's discount when they purchased state land in a lottery on June 4, 1983.

The discount for veterans on state land was discontinued on April 1, 1983 by order of the Commissioner of Natural Resources. Her decision was based on an attorney general's opinion growing out of an Alaska Supreme Court case, Gilman v. Martin, 662 P.2d 120 (Alaska 1983.) Pursuant to the commissioner's order, no discounts were given in the land lottery on June 4, 1983. The unconstitutional land discount statute, AS 38.05.058, was repealed July 16, 1983.

The veterans' discount was reinstated effective July 6, 1984 (AS 38.05.940.) HB 134 seeks to compensate veterans caught in the time window between April 1, 1983 to July 6, 1984 by making the effective date of AS 38.05.940 retroactive to April 1, 1983.

We estimate that approximately one third of the parcels sold between April 1, 1983 and July 6, 1984 will qualify for a veterans discount under HB 134. However, because only one discount per lifetime is allowed, it is likely not all veterans will take advantage of this statutory change.

Alaska State Legislature

House of Representatives

Rep. Ivan, Chair
Rep. Davidson
Rep. Foster
Rep. Gruenberg
Rep. M.W. Miller



P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4527

Special Committee on Military & Veterans Affairs

CHANGES ADOPTED IN CS for HB 134 (RES)

The following changes were incorporated into the Resources CS for HB 134:

Page 3, line 10: This change allows for the granting of a payment credit to be applied to each account in the amount of the discount. This will be a non-cash application to the account that would satisfy accrued interest to the date of application and the balance to reduce the remaining principal balance. This would require less work than issuing a warrant and significantly alters the appropriation amount found in HB 176 from \$100,000 to \$50,000. The appropriations are still required to satisfy those accounts with a zero balance or accounts where the credit amount is greater than remaining balance.

Page 3, line 17: Applies the veterans discount to land transferred to the University of Alaska. The University will provide the credit and the department will reimburse the university for the total amount of credits allowed.

Page 3, line 24: This provision limits applicability of the discount. The discount can be applied only one time per parcel and cannot be applied to another veteran if the land is assigned or obtained through default or foreclosure or if the land has been relinquished. Parts of this provision were found in section 4 of the original Military and Veterans Affairs committee substitute.

Alaska State Legislature

House of Representatives

Rep. Ivan, Chair
Rep. Davidson
Rep. Foster
Rep. Gruenberg
Rep. M.W. Miller



P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-1527

Special Committee on Military & Veterans Affairs

SECTIONAL ANALYSIS FOR CS FOR HB 134 (Res)

SECTION 1: The seven paragraphs of subsection (a) briefly recount the history of the land discount program as applicable to veterans.

Subsection (b) announces the purpose of the act: assistance to veterans who may have qualified for the benefits of the veterans land discount program by April 1, 1983, whose rights were suspended because of the administration's setting aside of the residential land discount program after issuance of the Gilman v. Martin decision of that date and who did not again eligibility for a land discount until the current program was enacted effective July 6, 1984.

Subsection (c) announces the effect of the act: provide the benefit of the veterans' land discount of current law to those veterans who did not receive a discount under the former land discount program due to the administration's suspension of land discounts.

SECTION 2: Makes the current veterans' land discount retroactive to April 1, 1983.

SECTION 3: Sets out the parameters on the applicability of the previous sections. This section also directs the commissioner of the Department of Natural Resources to compensate or allow credits to a qualified veteran who may have paid the state for land obtained during the period the discounts were not applicable. This section also details how discounts apply to university lands and how DNR and the university will apply a discount. It also establishes those who would not be eligible for a discount.

SECTION 4: Describes the publication and application process. Also establishes a one year period for which a veterans' land discount can be applied.

SECTION 5: Establishes an immediate effective date.

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

March 15, 1991

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FACSIMILE: (907) 586-2754

The Honorable Eileen MacLean, Co-Chair
The Honorable Mike Navarre, Co-Chair
House Finance Committee
P.O. Box V
Juneau, AK 99811

Dear Representatives MacLean and Navarre:

Subject: CSHB 134 (Resources), which relates to the effective date for a state veteran's land discount program.

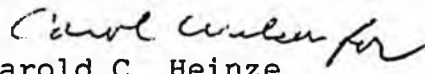
Position: The Department of Natural Resources supports this bill.

Background: In 1978, AS 38.05.058, which allowed residents a 5% discount on state land lottery purchases for each year of Alaska residency (up to 50% of the parcel purchase price), was enacted. In 1979, this law was amended to allow veterans an additional discount of up to 75% or \$37,500, whichever was less. The Kenai Peninsula Borough, under borough ordinance, offered a similar discount to purchasers of borough land. The borough program was challenged in court, and ruled unconstitutional by the Alaska Supreme Court on April 1, 1983. As a result of the court's ruling, and based on advice from the Attorney General, the Commissioner of Natural Resources determined that state land purchase discounts would be discontinued as of April 1, 1983.

The Legislature subsequently established a new veteran's land discount program that took effect on July 6, 1984. CSHB 134 (Resources) would allow veterans who purchased state land between April 1, 1983 and July 6, 1984, but were not permitted to claim the veteran's discount, to retroactively claim that discount. The discount would be credited to the amount due on the land. If the land has been paid for, the discount amount would be refunded. Discount applicants will be required to document their eligibility for the program. The department will notify the public about the program through newspaper advertisements and veteran's publications.

Please let me know if you need additional information related to this bill.

Sincerely,


Harold C. Heinze
Commissioner

enclosure

cc: Committee members
Bruce Kendall, Legislative Liaison, Office of the Governor
Major General Hugh L. Cox Commissioner, Department of Military and Veterans Affairs

Richard LaFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984
Page 2

On April 8, 1984, the Commissioner of the Department of Natural Resources decided, upon the advice of the Attorney General's Office, that the state discount program was unconstitutional and must be discontinued as of April 1, 1983, the date of the Gilman v. Martin opinion. The commissioner allowed a rather broad category of applicants to continue to receive a residency land discount on various equitable grounds. I assume this generosity was based on the fact that while it seemed likely that the state land discount program was unconstitutional, it had not been declared such by the court in the Gilman v. Martin case. 2/ I will not analyze the commissioner's April 8, 1983 decision in this memorandum. This discussion will be limited to the effect of the repeal of AS 38.05.058 by the legislature on July 16, 1983 sec. 19, ch. 67 SLA 1983.

LEGAL ANALYSIS

The effect of the repeal of a statute is to terminate the right to act under that statute in the future. LA Sutherland. Statutory Construction, § 23.33 (4th ed. Sands). Alaska has a general savings provision, AS 01.10.100(a), which preserves rights which have already vested under repealed statutes. AS 01.10.100(a) states:

The repeal or amendment of any law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability. (Emphasis added).

The phrase "right accruing or accrued" has been construed by the Alaska Supreme Court to mean a vested right. Dowling v. Dowling, 679 P.2d 480, 482 (Alaska 1984); Alaska Public Utilities

2/ The court in Gilman v. Martin mentioned somewhat ambiguously that the fact that the state discount program, unlike the Kenai Borough program, had been in effect for five years might raise "special considerations" if the court were considering the state discount statute.

Richard LeFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984
Page 3

Commission v. Chugach Electric Association, Inc., 580 P.2d 687, 692 (Alaska 1978); Sidwell v. Scheele, 355 P.2d 584, 586 (Alaska 1960). In Dowling v. Dowling, 679 P.2d at 482, the Alaska Supreme Court stated "the term 'vested' means 'fixed; accrued; settled; absolute.'"

With these legal principles in mind I will examine your ability to continue to apply the repealed discount statute to several state land programs: applications by a lessee to purchase land held in a state lease under AS 38.05.102, purchase of a remote parcel leasehold, and purchase of an open to entry leasehold.

Lessee preference.

Under AS 38.05.102, the commissioner may allow the holder of a state lease to purchase the land in the leasehold for its fair market value at the termination of the lease if the land is offered for sale or long-term lease and if he determines that it is in the best interest of the state. ^{3/} The decision to allow a state lessee to purchase is solely within the discretion of the commissioner.

You have inquired whether an individual who applied to purchase under AS 38.05.102 may still be given a land discount under AS 38.05.058 if the application was made prior to April 1, 1983 (the date of Gilman v. Martin), between April 1, 1983 and July 16, 1983 (the date of the repeal of AS 38.05.058), or after July 16, 1983. An application to purchase under AS 38.05.102 does not vest any right whatsoever in the applicant to purchase the land. The commissioner may choose not to exercise his discretion to grant the request. Unless the commissioner entered a final decision to grant the purchase request and the applicant had filed a proper application for a residency discount prior to the repeal of the discount statute, the applicant may not receive a discount once the authorizing statute is repealed. Until the application to purchase is granted and the discount application filed, the ability to purchase the land at a discount price is

^{3/} The text of AS 38.05.102 is at Appendix B.

Richard LaFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984

Page 4

not "settled"; it is not a vested right preserved by the Alaska saving statute. 4/

Open To Entry Lease Purchase

The open to entry program, under AS 38.05.077 5/ authorized applicants to lease up to 5 acres of state land in designated areas for a period of 10 years. At the end of the 10 year period, the lessee had the option of purchasing the land for its fair market value at the time the lease was entered. The decision to purchase was solely that of the lessee. The commissioner could not refuse to sell the land if the lessee exercised his purchase option. Most open to entry parcels were leased in the late 1960's through 1973. The department did not hold another OTE land disposal until 1979. The OTE statute was repealed in 1979. Section 31, ch. 85 SLA 1979.

Most individuals who participated in the early OTE program must necessarily have entered into a contract to purchase the land by 1983, prior to the repeal of the discount program and the Gilman v. Martin decision. They will, therefore, either have a patent to the land or a sales contract incorporating a land discount if they were eligible and applied for the discount. Such individuals have a vested right to the land discount.

It is possible that a few individuals who participated in the early OTE program were still leasing their parcels in 1983 when the discount program was repealed. The discount program was not in effect during the early OTE program because AS 38.05.058 was not adopted until 1978. Therefore neither the early OTE leases or the advertising for those sales mention a discount. Once the discount statute was repealed, the early OTE participant, who had not already entered into a sale contract with the state at a discounted purchase price, was ineligible to receive a residency discount.

4/ Although your request segregates University leases from other state leases, I have not discussed them separately since the applicable legal principles are the same.

5/ The text of former AS 38.05.077 is contained in Appendix C.

Richard LaFevre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984
Page 5

The status of individuals who participated in the last OTE disposal in 1979 is more complicated. The disposal brochure for the sale states that eligible applicants would receive a land discount on the purchase price of parcels offered in the disposal. However, the state OTE lease agreement does not mention the land discount. Certainly there is no problem with individuals who entered into a sale contract prior to the repeal of the discount statute. As discussed above, their contract gives them a vested right to a discount. Individuals who are still leasing their OTE parcel are more problematical. They do not have a written contract provision guaranteeing the land discount. However such applicants could make a good argument that once a lease is entered into the advertised terms of the sale (including a discounted sale price) are necessarily incorporated in the sale contract.

The OTE lease is intended to be the final embodiment of the lease agreement between the state and the OTE applicant. The issue is whether the terms of the disposal promised in the disposal brochure (such as the purchase option and residency discount) which are not incorporated in the agreement are nevertheless part of the agreement. The question turns upon whether the lease agreement is a complete integration of the contract terms or only partial so that it cannot be contradicted but can be supplemented by evidence of additional consistent terms contained in the disposal brochure. J. Calamari and J. Perillo, Contracts at § 40 (1970). It could be argued that the OTE lease agreement does not contain all the terms of the OTE disposal. The purchase option and the residency discount were terms of the disposal omitted from the lease agreement but agreed upon by the state and OTE lessee at the time the lease was entered into.

Remote Parcel

The remote parcel program succeeded the OTE program in 1979 at AS 38.05.077 - .078. 6/ For the purpose of your inquiry, the two programs are quite similar. The remote parcel program authorized successful applicants to lease state land for a period up to 10 years with an option to purchase the land at its fair

6/ The text of the remote parcel statute is contained in Exhibit D.

Richard LaFebvre, Deputy Director
Division of Land & Water Management
Department of Natural Resources
166-137-85

October 23, 1984
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market value at the date the lease was entered. The commissioner cannot refuse to sell the land if the remote parcel lessee exercises his purchase option.

The remote parcel program was repealed by the legislature in 1984. Section 7, ch. 103, SLA 1983. The legal analysis concerning the applicability of a land discount to the remote parcel program is the same as the OTE program. If an individual had either patent to the land obtained at a discounted price or a sale contract incorporating the land discount, he has a vested right to the discount. If a remote parcel lessee did not exercise his option to purchase until after the discount was repealed, the analysis, as in the case of late OTE purchasers, is more complicated. The disposal brochures for the remote parcel program which you sent for my review all state that eligible applicants would receive a land discount on the purchase price of parcels offered in the sale. However, the state remote parcel lease agreement does not mention the land discount. As in the case of the OTE lessee, the remote parcel lessee can make a good argument that once a lease is entered into the advertised terms of the sale, including the discounted sale price, are necessarily incorporated in the sales contract.

Conclusion

In conclusion only vested rights are saved when a statute is repealed. An application to purchase land in a state leasehold under AS 38.05.102 does not confer any right upon the applicant either to purchase land or to receive a discount on the purchase. Where a discount is incorporated in a purchase agreement for state land, the purchaser has a vested right to receive the discount. Although the remote parcel and OTE lease agreements do not mention the residency discount program, the provision of the disposal brochures which promises the discount to eligible applicants would probably be considered a term of the sale not integrated into the final lease agreement, giving the remote and OTE lessees a vested right to a discount on the purchase price.

BJM/jmo
Attach:

cc: Edward Barber, Contract Administration
Division of Land and Water Manager