

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 740

## DEPARTMENT OF NATURAL RESOURCES

## DECISION AND ORDER CONCERNING

## LAND SALES DISCOUNTS UNDER

AS 38.05.05B.

The Attorney General's Office has advised the Department of Natural Resources that under a recent Alaska Supreme Court decision (Gilman v. Martin, Opinion No. 2652 - April 1, 1983), the State's land sales residency discount statute (AS 38.05.05B) is unconstitutional and that, except for certain cases, the department must discontinue the allowance of purchase discounts effective as of April 1, 1983.

Therefore:

1. There will be no change in the current lottery filing period (Lottery #12, Homesite No. 10, and Remote Parcel No. 8), which will close at 4:30 p.m. on April 22, 1983. However, no land sales residency discounts will be allowed on the sale of parcels from that disposal.
2. In the case of subdivision or agricultural parcel sales through lottery, auction or over-the-counter, land sales residency discounts will apply to the purchase price only if the sale took place prior to close of business on April 1, 1983, and residency discount applications were submitted with the deposits.
3. In the case of the remote parcel and the open to entry programs, land sales residency discounts will apply to the purchase price only if the lease application was postmarked or actually, physically received by the department by close of business on April 13, 1983. Remote parcels must have been staked by April 1, 1983. (Law gives stakers 15 days; April 15 falls on Saturday, so they are normally given until the following Monday.)
4. Land sales residency discounts for lessee preferences under AS 38.05.102 will be considered by the department only if written application to purchase was postmarked or actually, physically received by the department prior to close of business on April 1, 1983. Exceptions will be reviewed on a case by case basis only when application of this ruling would result in gross unfairness or extreme hardship.
5. Land sales residency discounts applicable to preference rights to purchase land under AS 38.05.035 will be considered only if a written application to purchase was postmarked or actually, physically received by the department prior to close of business on April 1, 1983.
6. If the State prevails in the current Potlatch Ponds litigation and the disposal can be consummated, applicants will receive whatever terms and conditions, including land discounts that they would have received had there been no litigation.

7. Discounts will be awarded to successful applicants for lottery parcels in the Excursion Inlet Subdivision, Lottery #8, if contract issue has been delayed by Native allotment applications on those parcels.
8. In general, discounts will be granted in cases where all actions required of the applicant have been completed by April 1, but final steps by the State to award the discount have not been completed.
9. Since there may be some rare and exceptional cases or cases not covered by any of the above, such cases will be reviewed on a case-by-case basis and residency discounts will be awarded only in instances of extreme hardship or to avoid gross unfairness.
10. In the case of parcels eventually purchased as described above, no additional accumulation of residency for discount purposes will be allowed after March 31, 1983.

Esther C. Hunnicke

Esther C. Hunnicke  
Commissioner  
Department of Natural Resources

April 8, 1983

Date

HB 134

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/18/91

FURTHER:

DATE TURNED INTO OFFICE: 5/20/91

The Finance Committee considered CS FOR HOUSE BILL NO. 134 (RESOURCES)

"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."

and recommended:

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

do pass

do not pass

no recommendation

individual recommendations

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

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) HFB/DAIR 12.04/15/91

\_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. [Signature]

2. [Signature]

Do pass

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

No. 2

Bill Version: CSHB 134 (RES)

(H) Publish Date: 4/17/91

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

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	
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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	12.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>12.0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	12.0	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>12.0</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

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: \_\_\_\_\_ Date: April 15, 1991  
 Agency: \_\_\_\_\_

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).

**STATE OF ALASKA  
1991 LEGISLATIVE SESSION**

BILL NO. CS HB 134 (Res)

Revision Date: May 17, 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: Senate Finance 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	50.0					
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: Feb. 25, 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.

The capital funding will be used to refund the excess amounts paid by applicants for the veteran's land discount who retroactively qualify for the program under this bill.

# 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

#### M E M O R A N D U M

TO: Senator Jay Kerttula, Co-Chair  
Senator Pat Pourchot, Co-Chair  
Senate Finance Committee

FROM: Representative Ivan M. Ivan, Chair  
House Special Committee on Military  
and Veterans Affairs

DATE: May 15, 1991

RE: House Bill 134

Please consider this request to hear (pending referral) CSHB 134 (Res) at your earliest possible convenience.

CSHB 134 (Res) is an act relating to the effective date of the veterans land discount applicable to state land and to land discounts allowed under that program.

The original discount for veterans on state land purchases was enacted by the legislature in 1978. Residency discounts were also made available in 1979. The residency discounts were challenged 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's office, the Commissioner of Natural Resources discontinued all discounts as of April 1, 1983.

The legislature subsequently established a new veterans land discount program which took effect on July 6, 1984. CSHB 134 (Res) would allow veterans, who were not permitted to claim the veterans discount between April 1, 1983, and July 6, 1984, to retroactively claim that discount.

Thank you for your consideration of my request. Back-up material will be forthcoming. If you have any questions or need additional information, please do not hesitate to contact me or Tom Wright of my staff.

IMI:tw

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

May 14, 1991

The Honorable Lloyd Jones, Chair  
Senate Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Jones:

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

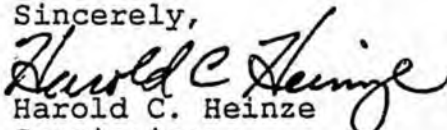
Position: The Department of Natural Resources supports this bill.

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. HB 134 would allow veterans who were not permitted to claim the veteran's discount between April 1, 1983 and July 6, 1984 to retroactively claim that discount.

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

Sincerely,

  
Harold C. Heinze  
Commissioner

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

# 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

#### 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.

# 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  
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### Special Committee on Military & Veterans Affairs

#### CS for HB 134 (Res) MAIN POINTS

- \* Allows veterans who have purchased state land between March 31, 1983, and July 6, 1984, to claim a veteran's land discount.
- \* A discount may only be used once, so if a veteran purchased land between those dates and purchased land at a later time and used the veteran's discount on the later purchased, the discount for the first purchase may not be used.
- \* Veteran's discounts were discontinued on April 1, 1983, due to a directive by the Commissioner of Natural Resources (based on a Supreme Court decision which struck down discounts based on residency). The Legislature established a new veteran's land discount on July 6, 1984. Veterans who purchased land before or after those dates were entitled to a discount while those who purchased land between those dates were not.
- \* Approximately 850 parcels were sold during the window period between April 1, 1983, and July 6, 1984. It is estimated that 35% of those parcels were sold to veterans.
- \* For those eligible for a discount, credits equal to the amount of the discount will be applied to each account. For those veterans who have a zero balance or if the balance would be less than zero after applying the discount, a cash payment would be made. This cash payment would equal the amount of the discount or the amount owed the veteran on the existing account after the balance is zeroed out.
- \* The discount under this bill is applicable for one year after enactment of this bill. Veterans must contact DNR to determine eligibility. DNR will publish in their own newsletters and in veterans publications, the availability of the discount.

HB 139

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 5, 1991

FURTHER REFERRALS:

Date of Committee Action: 4-24-91

The FINANCE Committee considered:

HB 139

HOUSE BILL NO. 139

RECOGNITION OF POLLUTION PREVENTION

"An Act relating to public recognition of pollution prevention and waste reduction and recycling efforts; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 139 (HEE)  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 DEL

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	<u>OTHER</u> RECOMMENDATIONS	DNP	NR	AM
<i>Mike Savane</i>		<i>Eileen P. Marhean</i>		✓	
<i>Mark Boyer</i>		<i>Greg [unclear]</i>		✓	
<i>Tony [unclear]</i>	✓				
<i>[unclear]</i>	✓	<i>Bob [unclear]</i>		✓	
<i>[unclear]</i>	X	<i>[unclear]</i>		✓	
<i>J. Ulmer</i>	✓				

*Mike Savane* *Eileen P. Marhean*  
CHAIRMAN'S SIGNATURE

## CS FOR HOUSE BILL NO. 139 (HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/15/91

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVES BROWN, Ellis, Ulmer, Boyer, Finkelstein, Koponen, Kubina, Navarre

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to public recognition of, and incentives for, pollution prevention and  
2 waste reduction and recycling efforts; and providing for an effective date."

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

4 \* Section 1. FINDINGS. The legislature finds that

5 (1) waste reduction and recycling must be a fundamental part of a comprehensive solid  
6 waste management effort;

7 (2) the success of waste reduction and recycling initiatives is largely dependent upon the  
8 current and future behavior of consumers in the state; and

9 (3) while significant opportunities for waste reduction and recycling exist, public  
10 education is required to ensure that consumers are aware of these opportunities.

11 \* Sec. 2. AS 46.03 is amended by adding a new section to article 2 to read:

12 Sec. 46.03.045. PUBLIC RECOGNITION OF POLLUTION PREVENTION EFFORTS.

13 In addition to the school awards program under AS 46.11.070, the department may identify,  
14 document, and publicly acknowledge exemplary pollution prevention achievements by individuals.

1 businesses, or government agencies in the state.

2 \* Sec. 3. AS 46.11 is amended by adding a new section to read:

3 Sec. 46.11.070. WASTE REDUCTION AND RECYCLING AWARDS FOR SCHOOLS.

4 (a) In consultation with the Department of Education, the Department of Environmental  
5 Conservation shall establish a waste reduction and recycling awards program under which the  
6 Department of Environmental Conservation may annually, subject to available funding, award  
7 grants of up to \$2,000 each to public schools in recognition of their efforts and the efforts of  
8 their students to reduce and recycle waste generated in the administrative offices, classrooms,  
9 laboratories, cafeterias, and maintenance operations of the schools.

10 (b) The Department of Environmental Conservation shall, on request, provide technical  
11 assistance to schools concerning their opportunities to reduce and recycle wastes.

12 (c) The Department of Environmental Conservation shall adopt regulations to implement  
13 the awards program. For purposes of evaluating school waste reduction and recycling programs,  
14 the department may group schools according to geographical location, student population,  
15 distance to recycling markets, or other criteria considered appropriate by the department.

16 (d) The Department of Environmental Conservation may accept and use restricted grants  
17 of money or other assistance from private persons or groups to fund the awards made under (a)  
18 of this section.

19 (e) The Department of Environmental Conservation may not use state money to fund  
20 awards made under (a) of this section unless an appropriation is made specifically for the  
21 purposes of (a) of this section.

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

**FISCAL NOTE**

**STATE OF ALASKA  
1991 LEGISLATIVE SESSION**

BILL NO. CSHB 139 (HES)

Revision Date: 3/28/91  
 Title: An Act relating to public  
recognition of pollution prevention  
 Sponsor: Rep. Kay Brown  
 Requestor: \_\_\_\_\_

Department Affected: DEC  
 BRU: Environmental Quality  
 Component: EQ Projects

COMPONENT SERIAL NO. 

1	1	0	1	1	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	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS	20.0	20.0	20.0	20.0	20.0	20.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	20.0	20.0	10.0	10.0	10.0	10.0
FEDERAL FUNDS						
OTHER / PR	10.0	10.0	20.0	20.0	20.0	20.0
<b>TOTAL</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>

POSITIONS:

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

Estimate of current year impact: **NONE**

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared by: Janice Adair  
 Division: Commissioner's Office

Phone: 465-2600  
 Date: March 28, 1991

Approved by Commissioner: *Jan O. Fowler*  
 Agency: Dept. of Environmental Conservation

Date: 3/29/91

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

CSHB 139 (HES)

FISCAL NOTE ANALYSIS

\$10.0 will be used to publicly recognize exemplary pollution prevention efforts by individuals, businesses, or government agencies and to promote the waste reduction and recycling awards for schools. \$20.0 will be used to award grants of up to \$2.0 each to public school in recognition of their reduction and recycling efforts. \$10.0 is anticipated as being collected from private sources in each of the first two fiscal years. By FY 94, the Department would propose to fund all school grants from private donations.

## **SPONSOR STATEMENT**

CS HB 139 (HESS) - Pollution Prevention & Recycling Recognition Awards

### **CS HB 139 (HESS)**

CS HB 139 (HESS) would provide for the public recognition of pollution prevention, waste reduction and recycling efforts.

Specifically, the legislation would:

- 1) **Establish an Alaska school recycling awards program.** Subject to available funding, DEC would be authorized to award grants of up to \$2,000 each to public schools in recognition of their waste reduction and recycling efforts;
- 2) **Authorize DEC to "identify, document and publicly acknowledge exemplary pollution prevention achievements by individuals, businesses or government agencies;"** and
- 3) **Authorize DEC to accept contributions from private sources to fund the recognition awards.**

### **Discussion**

Each day, Alaskans produce approximately 3 to 5 pounds of solid waste per person. Each year, it is estimated that the state produces as much as 1 billion pounds of trash. Many communities throughout Alaska are confronted with a landfill capacity shortage that will require substantial capital investments to address. The Department of Environmental Conservation has identified the need for tens of millions of dollars in additional investment for new landfills and to address solid waste management problems. At the same time, new federal landfill design requirements are making the development of new landfills increasingly expensive.

Last legislative session, the legislature enacted a statutory hierarchy as part of HB 478 (see AS 46.06.021) that promotes solid and hazardous waste management practices in the following order of priority:

- 1) waste source reduction
- 2) recycling of waste
- 3) waste treatment; and
- 4) waste disposal.

**Waste reduction and recycling must be a fundamental part of Alaska's solid waste management effort.** While significant opportunities exist for waste reduction and recycling, public education is essential to ensure that individuals are aware of these opportunities. Furthermore, the future success of Alaska waste reduction and recycling is critically dependent upon the positive attitudes and behavior of young Alaskans.

**CS HB 139 (HESS) is a cost-effective investment in Alaska's future solid waste management.** By establishing a recognition awards program for waste reduction and recycling efforts, the state can help educate and promote opportunities for pollution prevention. The extent to which Alaskans can succeed in diverting solid waste from our landfills and establish successful recycling programs will enable the state to avoid the needless expenditure of millions of dollars for costly landfill capacity additions.

**Recognition awards for successful pollution prevention efforts will also help small business by identifying positive solutions to pollution problems that can have economic as well as environmental benefits.** Some examples include,

- the efforts of an Anchorage manufacturing company to automate its bottle filling process resulting in the reduction of discharged ammonia;
- the decrease in solvent waste by an Anchorage dry-cleaner through a modification of its process allowing for the reuse of solvent and a reduction in solvent discharges; and
- the success of an Alaska newspaper to substitute non-toxic soy-based inks for petroleum based inks resulting in a reduction in the paper's hazardous waste management liabilities as well as a reduction in occupational health hazards.

These are the kinds of pollution prevention, waste reduction and recycling efforts that CS HB 139 (HESS) will recognize, encourage and award.

**A recent survey of Alaska consumers found that 90% of the respondents felt that solid waste recycling was a community priority.** The survey also found that about a third (31%) of the respondents lacked sufficient information about how to recycle more. In significant part, these impediments can be overcome by better education together with the kind of positive incentives and reinforcement provided through CS HB 139 (HESS).

Survey by Anchorage Recycling Center-Sent to Anchorage  
Refuse customers in April 1990:

1. Do you consider a solid waste recycling program a community priority?

YES: 3162/3514 90% NO: 367/3514 10%

2. Do you currently recycle?

YES: 2701/3514 77% NO: 812/3514 23%

3. Would you be willing to separate your recyclables if pick-up occurred at your home?

YES: 3307/3514 94% NO: 207/3514 6%

4. The value of recyclables will not support curbside pick-ups. Will you be willing to pay more than your current refuse bill for curbside pick-up of recyclables?

YES: 1994/3514 57% NO: 1520/3514 43%

5. If yes, how much more?

\$5.00: 1617/3514 46% \$10.00: 291/3514 8%

\$15.00: 75/3514 2% N/A: 1532/3514 44%

6. Should recycling be subsidized by:

Grants: 969/3514 28% Taxes: 673/3514 19%

User: 967/3514 27% None:1018/3514 29%

N/A: 545/3514 16%

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Does not pay:	437/3514	13%
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Yes: 1901/3514	54%	NO: 1611/3514	46%
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9. Business using cardboard: Will you put cardboard in a separate dumpster if you receive a 10% rebate on disposal pick-up?

YES: 1139/3514	32%	NO: 2313/3514	66%
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# Focus

## THE WASTE NOT WASHINGTON ACT

---

The 1989 Washington Legislature passed ESHB 1000, a comprehensive solid waste bill that will bring about significant changes in the way Washington citizens handle their garbage. The bill calls for waste reduction and source separation to become the fundamental strategies of solid waste management and establishes an aggressive state goal to achieve a fifty percent recycling rate by 1995. Local governments will play a very important role in meeting this goal by including waste reduction and recycling elements in their comprehensive solid waste management plans. Other key provisions of the bill are outlined below.

Funding for the activities under the bill will be provided partly through a surcharge of one percent on solid waste collection. A family setting out one garbage can per week will pay a maximum of 96¢ per year. Those with two cans or more per week will pay up to \$1.44 per year. Counties may also impose a fee on collection services in unincorporated areas to pay for solid waste planning and administration expenses.

### Waste Reduction and Recycling Elements of Local Plans

---

Local governments have been required to prepare solid waste management plans detailing how they will manage their garbage since the early 1970s. Now, cities and counties will be required to include waste reduction and recycling elements in their solid waste management plans written according to guidelines developed by the Department of Ecology. Curbside collection of recyclable materials will likely be required in most urban areas of the state. The plans must also address collection of recyclables in rural areas, monitoring of collection at nonresidential sites, and collection of yard wastes.

### Waste Reduction and Recycling Education

---

A comprehensive statewide public information program to encourage waste reduction, source separation, and recycling will be developed by the Department of Ecology. Local governments must also conduct educational programs to inform residents how to reduce and recycle their wastes. The Department will provide grants to local governments to assist with their educational efforts.

### Waste Composition/Recycling Survey

---

The Department of Ecology will conduct a yearly waste composition and recycling survey to track the progress toward meeting waste reduction and recycling goals. Washington was one of the first states in the nation to conduct waste stream analysis and will continue to lead the way in this regard.

### Collection Authority for Recyclables

---

The bill clarifies under what circumstances a city, county, or the Utilities and Transportation Commission has the authority to arrange for the collection of recyclable materials. Haulers regulated by the UTC will be required to use rate structures which encourage waste reduction and recycling.

### State Agency Waste Reduction and Recycling

---

State government will put additional emphasis on its own waste reduction and recycling program to ensure that all employees have the opportunity to participate in waste reduction and recycling at work. State agencies must also increase their use of recycled paper products by 50 percent.

### School Recycling

---

Public schools will be required to implement waste reduction and recycling programs according to guidelines developed by the Department. Schools will be provided with an incentive to maximize waste reduction and recycling through a new awards program. Three awards of \$10,000 will be given each year to public schools in the state.



## Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

### AEL TESTIMONY

#### HB 139 - POLLUTION PREVENTION RECOGNITION

I am a volunteer with the Alaska Environmental Lobby which is a coalition of 19 member groups throughout the State. We strongly support HB 139 and applaud the Representatives who introduced and support this bill.

I believe we are all familiar with the merits of recycling and waste reduction. We know it will save energy and natural resources, reduce air and water pollution, and reduce the amount of waste entering our landfills.

This bill through public recognition will make a positive step toward reducing the waste stream in Alaska.

By encouraging recycling and waste reduction in schools we can provide environmentally sound knowledge and skills to future generations.

We encourage you to approve this bill and provide the recognition that those involved in preventing pollution deserve.

Theresa Svancara, AEL Volunteer  
House Education and Social Services Committee  
March 13, 1991

CLEAN AIR COALITION • PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • ALASKA CENTER FOR THE ENVIRONMENT  
ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB  
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH  
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY  
LYNN CANAL CONSERVATION • SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER  
SOUTHEAST ALASKA CONSERVATION COUNCIL • KNIK CANOERS AND KAYAKERS

HB 139

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/18/91

FURTHER:

DATE TURNED INTO OFFICE: 5-19-91

The Finance Committee considered CS FOR HOUSE BILL NO. 139 (HES)

"An Act relating to public recognition of, and incentives for, pollution prevention and waste reduction and recycling efforts; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_
- or adopt \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

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

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

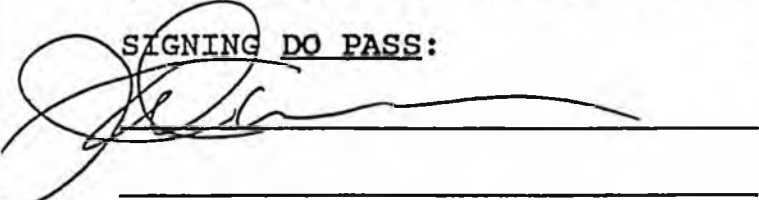
- fiscal note(s) Dept/Date: \_\_\_\_\_
- zero fiscal note(s) \_\_\_\_\_

- fiscal note(s) Dept/Date: 30.0 DEC. 3/29/91
- zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

SIGNING DO PASS:

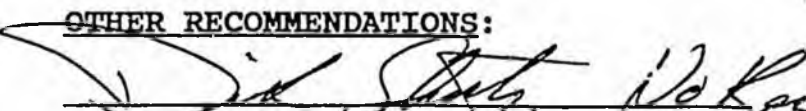
OTHER RECOMMENDATIONS:

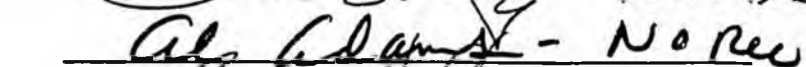


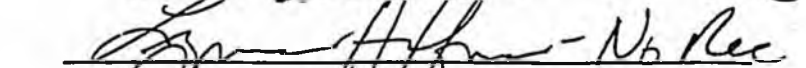
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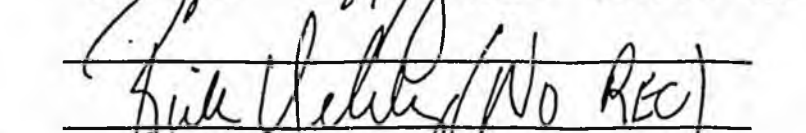
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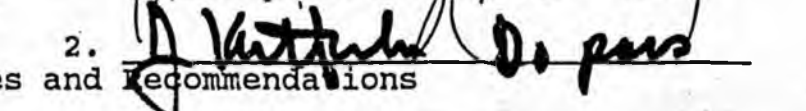
\_\_\_\_\_

 Dick Steitz idk

 Al Adams - No Rec

 Lynn Hoffman - No Rec

 Mike Welch (No Rec)

 J. Vetter Do pass

1.

2.

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

No. 2  
Bill Version: CSHB 139 (HES)  
(H) Publish Date: 4/26/91

Revision Date: 3/28/91  
Title: An Act relating to public  
recognition of pollution prevention  
Sponsor: Rep. Kay Brown  
Requestor: \_\_\_\_\_

Department Affected: DEC  
BRU: Environmental Quality  
Component: EQ Projects

COMPONENT SERIAL NO. 

1	1	0	1	1	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	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS	20.0	20.0	20.0	20.0	20.0	20.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	20.0	20.0	10.0	10.0	10.0	10.0
FEDERAL FUNDS						
OTHER / PR	10.0	10.0	20.0	20.0	20.0	20.0
<b>TOTAL</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>	<b>30.</b>

POSITIONS:

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

Estimate of current year impact: **NONE**

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared by: Janice Adair  
Division: Commissioner's Office

Phone: 465-2600  
Date: March 28, 1991

Approved by Commissioner: *Jan O. Fowler*  
Agency: Dept. of Environmental Conservation

Date: 3/29/91

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

CSHB 139 (HES)

FISCAL NOTE ANALYSIS

\$10.0 will be used to publicly recognize exemplary pollution prevention efforts by individuals, businesses, or government agencies and to promote the waste reduction and recycling awards for schools. \$20.0 will be used to award grants of up to \$2.0 each to public school in recognition of their reduction and recycling efforts. \$10.0 is anticipated as being collected from private sources in each of the first two fiscal years. By FY 94, the Department would propose to fund all school grants from private donations.

COMMITTEE COPY

## CS FOR HOUSE BILL NO. 139 (HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered: 3/15/91

Referred: Resources, Finance

Sponsor(s): REPRESENTATIVES BROWN, Ellis, Ulmer, Boyer, Finkelstein, Koponen, Kubina, Navarre

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to public recognition of, and incentives for, pollution prevention and  
2 waste reduction and recycling efforts; and providing for an effective date."

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

4 \* Section 1. FINDINGS. The legislature finds that

5 (1) waste reduction and recycling must be a fundamental part of a comprehensive solid  
6 waste management effort;

7 (2) the success of waste reduction and recycling initiatives is largely dependent upon the  
8 current and future behavior of consumers in the state; and

9 (3) while significant opportunities for waste reduction and recycling exist, public  
10 education is required to ensure that consumers are aware of these opportunities.

11 \* Sec. 2. AS 46.03 is amended by adding a new section to article 2 to read:

12 Sec. 46.03.045. PUBLIC RECOGNITION OF POLLUTION PREVENTION EFFORTS.

13 In addition to the school awards program under AS 46.11.070, the department may identify,  
14 document, and publicly acknowledge exemplary pollution prevention achievements by individuals,

1 businesses, or government agencies in the state.

2 \* Sec. 3. AS 46.11 is amended by adding a new section to read:

3 Sec. 46.11.070. WASTE REDUCTION AND RECYCLING AWARDS FOR SCHOOLS.

4 (a) In consultation with the Department of Education, the Department of Environmental  
5 Conservation shall establish a waste reduction and recycling awards program under which the  
6 Department of Environmental Conservation may annually, subject to available funding, award  
7 grants of up to \$2,000 each to public schools in recognition of their efforts and the efforts of  
8 their students to reduce and recycle waste generated in the administrative offices, classrooms,  
9 laboratories, cafeterias, and maintenance operations of the schools.

10 (b) The Department of Environmental Conservation shall, on request, provide technical  
11 assistance to schools concerning their opportunities to reduce and recycle wastes.

12 (c) The Department of Environmental Conservation shall adopt regulations to implement  
13 the awards program. For purposes of evaluating school waste reduction and recycling programs,  
14 the department may group schools according to geographical location, student population,  
15 distance to recycling markets, or other criteria considered appropriate by the department.

16 (d) The Department of Environmental Conservation may accept and use restricted grants  
17 of money or other assistance from private persons or groups to fund the awards made under (a)  
18 of this section.

19 (e) The Department of Environmental Conservation may not use state money to fund  
20 awards made under (a) of this section unless an appropriation is made specifically for the  
21 purposes of (a) of this section.

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

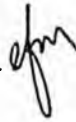
# Representative Kay Brown

ALASKA STATE LEGISLATURE

Legislative Information Office  
3111 C Street #435  
Anchorage, Alaska 99503  
(907) 561-7627

During Session  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4998

TO: Senator Pat Pourchot, Co-Chair  
Senate Finance Committee

FROM: Representative Kay Brown 

DATE: May 18, 1991

SUBJ: CS HB 139 (HES)/Waste Reduction Recognition Awards

CS HB 139 (HES), legislation that would provide for the public recognition of pollution prevention, waste reduction and recycling efforts, was recently referred to the Senate Resources Committee.

I would appreciate your consideration of waiving CS HB 139 (HES) from the Senate Finance Committee. As you may recall, a very similar bill passed both the House and the Senate last session, but died in the closing minutes of the session because it was not physically transmitted between the two bodies before final adjournment. The bill has a fiscal note of 30.0 (20.0 GF and 10.0 GF/PR).

CS HB 139 (HES) has received wide-spread public and legislative support as a cost-effective means of encouraging pollution prevention and waste reduction. For your reference, please find enclosed a packet of documents in support of this legislation. If you determine that it is necessary to have a hearing on the bill, I would appreciate your scheduling of this bill at the earliest possible time.

I appreciate your consideration of this request. If you have any questions, please contact Cathy Donadio of my staff at 465-4998.

attachments

DISTRICT 12

Downtown • Fairview • City View • Bootleggers Cove • Inlet View • South Addition • Thunderbird Terrace  
Eastridge • Penland Park • Airport Heights • Government Hill

## SPONSOR STATEMENT

CS HB 139 (HESS) - Pollution Prevention & Recycling Recognition Awards

### CS HB 139 (HESS)

CS HB 139 (HESS) would provide for the public recognition of pollution prevention, waste reduction and recycling efforts.

Specifically, the legislation would:

- 1) **Establish an Alaska school recycling awards program.** Subject to available funding, DEC would be authorized to award grants of up to \$2,000 each to public schools in recognition of their waste reduction and recycling efforts;
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- 3) **Authorize DEC to accept contributions from private sources to fund the recognition awards.**

### Discussion

Each day, Alaskans produce approximately 3 to 5 pounds of solid waste per person. Each year, it is estimated that the state produces as much as 1 billion pounds of trash. Many communities throughout Alaska are confronted with a landfill capacity shortage that will require substantial capital investments to address. The Department of Environmental Conservation has identified the need for tens of millions of dollars in additional investment for new landfills and to address solid waste management problems. At the same time, new federal landfill design requirements are making the development of new landfills increasingly expensive.

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- 1) waste source reduction
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- 3) waste treatment; and
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Waste reduction and recycling must be a fundamental part of Alaska's solid waste management effort. While significant opportunities exist for waste reduction and recycling, public education is essential to ensure that individuals are aware of these opportunities. Furthermore, the future success of Alaska waste reduction and recycling is critically dependent upon the positive attitudes and behavior of young Alaskans.

CS HB 139 (HESS) is a cost-effective investment in Alaska's future solid waste management. By establishing a recognition awards program for waste reduction and recycling efforts, the state can help educate and promote opportunities for pollution prevention. The extent to which Alaskans can succeed in diverting solid waste from our landfills and establish successful recycling programs will enable the state to avoid the needless expenditure of millions of dollars for costly landfill capacity additions.

Recognition awards for successful pollution prevention efforts will also help small business by identifying positive solutions to pollution problems that can have economic as well as environmental benefits. Some examples include,

- the efforts of an Anchorage manufacturing company to automate its bottle filling process resulting in the reduction of discharged ammonia;
- the decrease in solvent waste by an Anchorage dry-cleaner through a modification of its process allowing for the reuse of solvent and a reduction in solvent discharges; and
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These are the kinds of pollution prevention, waste reduction and recycling efforts that CS HB 139 (HESS) will recognize, encourage and award.

A recent survey of Alaska consumers found that 90% of the respondents felt that solid waste recycling was a community priority. The survey also found that about a third (31%) of the respondents lacked sufficient information about how to recycle more. In significant part, these impediments can be overcome by better education together with the kind of positive incentives and reinforcement provided through CS HB 139 (HESS).

## Sectional Analysis

### CSHB 139 (HESS) — Pollution Prevention Recognition Awards

#### Section 1

Findings.

#### Section 2

Provides authority for the Department of Environmental Conservation to "identify, document, and publicly acknowledge exemplary pollution prevention achievements by individuals, businesses or government agencies in the state."

#### Section 3

Establishes a school recycling awards program to be administered by the Department of Environmental Conservation in consultation with the Department of Education. Subject to available funding, DEC is authorized to award recognition grants of up to \$2,000 each to public schools in recognition of efforts to reduce and recycle waste generated by the school. The department would provide technical assistance to schools upon request.

Allows the department to accept contributions from private sources to fund the recognition awards and requires that the department may not use state money to fund awards unless an appropriation is made specifically for that purpose.

#### Section 4

Effective date.

Survey by Anchorage Recycling Center-Sent to Anchorage  
Refuse customers in April 1990:

1. Do you consider a solid waste recycling program a community priority?

YES: 3162/3514 90% NO: 367/3514 10%

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\$15.00: 75/3514 2% N/A: 1532/3514 44%

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Not sure where to take it:	1095/3514	31%
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Yes: 1901/3514	54%	NO: 1611/3514	46%
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9. Business using cardboard: Will you put cardboard in a separate dumpster if you receive a 10% rebate on disposal pick-up?

YES: 1139/3514	32%	NO: 2313/3514	66%
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**HB 1410**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: February 27, 1991

FURTHER REFERRALS:

Date of Committee Action: 3/6/91

The FINANCE Committee considered:

HB 140

HOUSE BILL NO. 140

ALLOW RECYCLING COST RECOVERY IN RATES

"An Act relating to rate review by the Alaska Public Utilities Commission for solid waste recovery and recycling services of public utilities."

**RECOMMENDATIONS:**

be replaced with CSHB 140 (L.C.)  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 \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) Department Com Ec. Develop 2/27/91

	SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
NAVARRE	Mike Navarre		Eileen P. MacLean MACLEAN		✓	
BOYER	MARK K. ALLEN	X				
BROWN	Tug Brown	X				
NOPESEN	Cheryl Koppen	✓	Jacko		X	
LARSEN	Gerald J. Larsen	X	Tamara Barnes Barnes		X	
WILSON	Kenn Ulmer	X	Bob Sharp Sharp		X	
			CRISP J. CRISP		✓	

NAVARRE Mike Navarre EP MacLean  
 CO-CHAIRMAN'S SIGNATURE maclean

**CS FOR HOUSE BILL NO. 140 (L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered: 2/27/91**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES FINKELSTEIN, Brown, Boyer, Ulmer, Koponen, Ellis**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to rate review by the Alaska Public Utilities Commission for solid waste  
2 recovery and recycling services of public utilities."

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

4 \* Section 1. AS 42.05.431 is amended by adding new subsections to read:

5 (f) In the establishment of rates of a utility furnishing solid waste material collection and  
6 disposal service, the commission shall permit recovery of reasonable, net capital and operating  
7 costs after considering the utility's recovery of revenue associated with the service.

8 (g) In the establishment of rates under this chapter, the commission shall promote solid  
9 waste recovery and recycling services.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

No. 1  
Bill Version: CSHB 140(L&C)  
(H) Publish Date: 2/27/91

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Deve  
Title: Deregulation of Refuse BRU: APUC  
Utilities Component: \_\_\_\_\_  
Sponsor: Rep David Finkelstein  
Requestor: Rep David Finkelstein COMPONENT SERIAL NO. 

--	--	--	--

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-
---------	-----	-----	-----	-----	-----	-----

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						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
No fiscal impact for FY91

Prepared By: Ray Wimmerman, Acting Exec. Director Phone: 276-6222  
Division: Alaska Public Utilities Commission Date: 2/15/91  
Approved by Commissioner: [Signature] Sec ASST.  
Agency: Department of Commerce & Economic Development Date: 2-19-91

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

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1016 WEST 6TH AVENUE  
SUITE 400  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 778-8222

February 12, 1991

The Honorable David Finkelstein  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Dear Representative Finkelstein:

A public meeting was held on February 12, 1990, to discuss the draft of the proposed bill that Representative Brown is sponsoring for the recovery and recycling of solid waste services. The meeting was attended by Commissioners Schröer, O'Tierney, May and Foster. Also participating were members of the Commission Staff (Staff).

It is assumed that if a utility were to request the capital and operating costs associated with the recovery operation that the costs should be prudent and reasonable. In other words, the review of Staff and approval by the Commission in conjunction with the allowing of the costs would fall under AS 42.05.381, Rates to be just and reasonable. In order to avoid any confusion the Commission suggests that the language be amended to substitute the word "reasonable" for the word "the" (preceding capitol) on line 6 of the work draft.

The meeting also focused on a general discussion of the practicality of utilities including the costs as part of a revenue requirement determination. The term "shall" on line 5 of the work draft assumes that it is at the option of the utility to request the costs. If costs were requested in the determination of a revenue requirement, any revenues associated with its operation would be subtracted from the revenue requirement.

The Commission also wanted to make you aware that landfills are not regulated and are typically Municipality operated. If the recycling operation is a landfill service, the costs would not be part of any revenue requirement other than the transportation and separation of the recyclable materials by the utility. However, any revenues that may be received would be used to offset the revenue requirement. For those utilities that have a landfill operation, the operation of the landfill is also not jurisdictional, but the tipping fee cost is determined in the affiliated interest decision as to reasonable cost,

AS 42.05.511(c). If landfill recycling is undertaken, the recycling aspects would be considered in the tipping fee determination.

The public meeting was recorded and is available upon request. Please contact me at 276-6222 if you have any questions or require further assistance.

Sincerely,

  
ALASKA PUBLIC UTILITIES COMMISSION

Don Schröer, Chairman



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-463-3366

March 4th, 1991

Representative David Finkelstein  
Capitol, Room 15  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Finkelstein:

The Alaska Environmental Lobby would like to take this opportunity to thank you for introducing HB 140. HB 140 will allow the Alaska Public Utilities Commission to consider some costs related to recycling when it reviews and approves rates for public utilities.

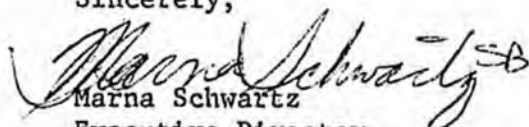
It is economically as well as environmentally wise for the State to make provisions for recycling, as HB 140 would do.

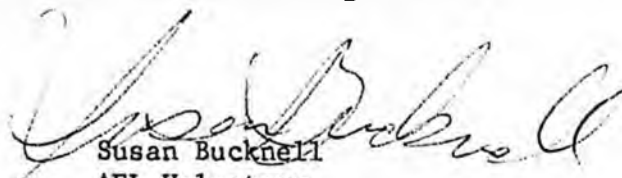
Rate structures for solid waste disposal should reflect longterm costs of disposal. Rates that don't are artificially low. Communities nationwide are being forced to deal with solid waste disposal crises. Many are turning to recycling as part of the solution. Allowing APUC more options in rate structure paves the way for farsighted solid waste management planning in the State of Alaska.

Recycling extends the life of landfills and postpones the time when we need major capital outlays for new solid waste facilities. HB140 has no fiscal note attached, and it will save on waste disposal costs in the future. Therefore, AEL supports the passage of HB140.

Once again, thank you for your effort in introducing this bill.

Sincerely,

  
Marna Schwartz  
Executive Director

  
Susan Bucknell  
AEL Volunteer

CLEAN AIR COALITION • PRINCE WILLIAM SOUND CONSERVATION ALLIANCE • ALASKA CENTER FOR THE ENVIRONMENT  
ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB  
ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY • DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH  
JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY • KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY  
LYNN CANAL CONSERVATION • SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER  
SOUTHEAST ALASKA CONSERVATION COUNCIL • KNIK CANOERS AND KAYAKERS



Official Business

# Alaska State Legislature

## House

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

### MEMORANDUM

To: House Finance Committee

From: Representative David Finkelstein 

Date: March 6, 1991

Re: HB 140; "An Act Relating to Rate Review by the Alaska Public Utilities Commission for Solid Waste Recovery and Recycling Services of Public Utilities."

HB 140 would allow utilities to include the cost of waste recovery and recycling in their rates. Currently, refuse companies that do recycling cannot include the cost in their rates.

Waste disposal in Alaska is a major problem. The ecological and economic costs of landfills are rising, and without a plan to control the amount of waste dumped in landfills, we could soon be facing a crisis. Solid-waste recovery and recycling are important parts of the solution for controlling the landfill problem.

By paying for recycling now, consumers will be reducing the need for more landfills and higher landfill fees in the future. In a recent survey by the Anchorage Recycling Center, 90% of the respondents felt that solid-waste recycling is a community priority and 57% of them were willing to pay more in their refuse bill for recycling.

Currently, recycling centers in Alaska are unable to compete with subsidized landfills and are threatened by low market prices. HB 140 would allow recycling and waste recovery to be treated as part of the normal functions of public utilities.

ALASKA PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

1016 WEST 6TH AVENUE  
SUITE 400  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-6222

February 22, 1991

Representative David Finkelstein  
P. O. Box V  
Juneau, Alaska 99811  
VIA FAX: 465-2444

Dear Representative Finklestein:

As an individual Commissioner on the Alaska Public Utilities Commission, I would like to offer the following comments on HB 140, "An Act relating to rate review by the Alaska Public Utilities Commission for *solid waste recovery* and *recycling services* of public utilities."

I offer the following rewrite to incorporate some of my individual concerns:

**AS 42.05.431 is amended by adding new subsections to read:**

(f) **The commission shall permit reasonable capital and operating costs and the associated revenues of providing solid waste recovery and recycling services in the establishment of rates of a utility furnishing collection and disposal of waste material service.**

(g) **The commission shall promote solid waste recovery and recycling services in the establishment of rates under this chapter.**

The change to add "and the associated revenues" gives the commission explicit authority to include revenues from these services in the development of rates. It also adds the phrase "the establishment of rates" which more closely parallels other statutory references to ratemaking.

If your goal is to insure the promotion of recycling, I would discourage a change from "shall permit" to "may permit" in the operative language. This change would provide future commissions the discretion to ignore recycling costs in the establishment of rates. Though I expect the current commission would permit reasonable costs to be included in rates under the "may permit" language, I do not know how enthusiastic future commissions may be about including recycling costs in the rates.

Under the "shall permit" language, the commission would still have the "reasonable" standard under which they would review any capital and operating costs. A firm cannot simply go purchase plant, incur expenses and expect to be able to raise rates to cover themselves. Though the commission has not yet heard a rate case directly involving recycling, the commission has a track record of reviewing the facts of individual cases and disallowing portions of plant investment that are not reasonable. Examples typically

February 22, 1991

include telephone and electric utilities which purchase more capacity than needed. Utilities cannot recover unreasonable costs from the ratepayers. The utilities have the burden of proof to demonstrate to the commission that the costs they incurred were just and reasonable.

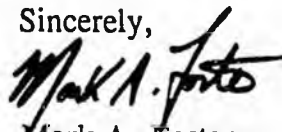
I do not believe the fears of rate escalation due to the start-up of curbside recycling programs are well founded. One, the commission will not allow unreasonable expenditures to be included in rates. Two, the commission is quite concerned about rate shock to ratepayers and will spread any significant justified increases over an appropriate transition period. Three, the economics of recycling programs are largely driven by the tipping fee of the landfill. A level comparison between recycling and landfilling suggests that to the extent that the total net cost to recycle is less than the tipping fee, there is a savings. With tipping fees of \$100/ton and above and escalating, particularly in communities in Southeastern Alaska, there is a significant potential for consumers to see long term savings in their bills for waste disposal through the implementation of recycling programs. To the extent the costs of recycling are reasonable when compared to a tipping fee, the commission would be able to include those costs and their associated revenues in the rate.

The hypotheticals which were cited at the teleconference Thursday appeared to ignore the tipping fee and focused on what would happen to rates if the revenue from the sale of a recycled good did not cover the costs of collection. A level comparison would require the commission to go a step further and review whether or not the net cost of the recycling program was reasonable when compared to the costs of landfill disposal.

Finally, I would encourage you to add an additional subsection (g) which gives the commission a tool to promote recycling in the design of rates. A similar provision for the promotion of energy conservation exists as AS 42.05.141(c). I expect that the provision promoting recycling in rate design will be an effective way to help encourage recycling efforts, especially during the critical start-up phase of new adventures (see attachment A: excerpt from "On the Road to Recovery: Seattle's Integrated Solid Waste Management Plan").

If I can be of any assistance, please call me at 276-6222.

Sincerely,



Mark A. Foster,  
Commissioner

Attachments

require contractors to provide standardized containers in 19-, 32-, 60- and 90-gallon sizes. Households are issued the container appropriate to their subscription level and any waste not in the container is easily identified as extra. Collection contractors will only pick up cans that were provided by the City or that have pre-paid trash tags attached.

With these improvements in place, the Utility plans a primarily preventive approach to enforcement, for example educating people about waste reduction and recycling and informing them of the ban on mixing yard waste with garbage.

## FINANCIAL PLAN SUMMARY

### ***RATE STRUCTURE AND RATES***

Seattle has had mandatory residential garbage charges since the Utility was established in 1961. The Utility is self-supporting with no subsidies from the general fund. Rates are set by the City Council and residential customers are billed through the City's Combined Utility Billing System. Rates for commercial garbage collection services provided by franchised haulers are approved by the Washington Utilities and Transportation Commission and customers are billed by the haulers.

In 1981 the Utility established a variable can structure which offers an incentive for waste reduction and recycling. Residents must now pay for the amount of garbage they throw away. Recent analysis showed that without this rate structure, more waste would have required disposal. Transfer station services are based on a rate per ton except that a minimum charge is levied for small commercial loads and a flat rate for automobile loads is now charged.

In 1986 and 1987, rates increased substantially to cover the cost of landfill closure and increased tipping fees at King County's Cedar Hills Landfill. These rate increases, as well as the new curbside recycling program, have led to reduced amounts of garbage.

As a result of two Utility rate analyses in 1988, the following rate structure was adopted by the City Council:

- ***Backyard vs. Curbside Pickup.*** Customers are offered a choice between curb/alley and backyard service. The backyard pickup charge is 40 percent more than bringing the can to the curb. This 40 percent premium represents about double the cost of service, but provides a strong incentive to bring waste to the curb and eventually lower collection costs.
- ***Basic Rate Structure.*** The variable can rate structure is continued, but the charge for service for more than one can is significantly higher than previous rates. The one-can rate is \$13.75 per month. There is no charge for curbside recycling service; this cost is included in the garbage rates. The second and third can now each cost an additional \$9 rather than the 1988 \$5 differential. This was done to provide an increased incentive for waste reduction and recycling. In the long run, customers should be charged based on the actual weight of the garbage they produce each week.
- ***Extra Waste.*** A pre-paid trash tag for extra waste is available for \$5. The trash tags can be ordered from the Utility by phone or purchased at any Seattle 7 Eleven, Associated Grocers or Safeway store.

- **Yard Waste.** Curb/alley collection of yard waste is available weekly or biweekly for \$2 per month, with a required annual subscription. As many as 20 cans or bags of yard waste will be collected for the \$2 monthly fee. The fee is low to encourage subscription, but not so low as to discourage backyard composting.
- **Low Subscription Alternatives - Mini-can/Zero Can.** A new 19-gallon mini-can service is available to those who produce little waste and/or recycle and compost most of their waste. This rate provides a significant incentive for waste reduction and recycling for customers who would not fill one garbage can.
- **Multi-family Variable Rates.** Multi-family building owners can choose any level of service, whereas previously they were limited to subscription levels equal to multiples of the number of units. Allowing these customers more service-level flexibility will provide an incentive to reduce the volume of waste disposed.
- **Compacted Waste.** A new rate is charged for compacted waste in detachable containers to reflect the increased cost of disposal due to the increased weight. Weight limits control the amount of compacted waste that can be put in a can.
- **LIEH Subsidy.** Qualified low-income, elderly and handicapped customers are eligible for a subsidized rate for one and two cans.
- **Bulky Item Pickup.** For a \$15 fee, bulky items such as refrigerators, stoves, mattresses and sofas will be collected. The service is on-call.
- **Transfer Stations.** The transfer station tip fee is \$62 per ton for commercial customers, which is below the full cost of service but above the variable cost. The rate is not set at the cost of service because if it were set higher, these customers would likely travel the extra distance to King County transfer stations which charge \$47 per ton.

## PROJECTED OPERATING AND CAPITAL COSTS

The Solid Waste Utility operates as an enterprise fund, generating most of its revenues from rates charged to customers. Projected 1989 revenues include \$35.6 million from charges for residential collection and \$4.86 million from transfer station charges. Additional income includes \$2.76 million from interest earnings and \$3.0 million from a Business and Occupations surtax levied on haulers of commercial waste to help pay for landfill closure.

These revenues cover all costs incurred by the Utility. For 1989, operating costs total \$39.3 million, including:

- Recycling and yard waste services and residential garbage collection services for all Seattle residents
- Transfer station services to anyone wanting to haul garbage and/or recyclables to the City's two transfer stations
- Disposal at King County's Cedar Hills Landfill
- Closure of the City's two landfills

The 1989 capital improvement program budget totals \$16.6 million. Recommendations from the 1988 *Solid Waste Facilities Plan* will be implemented over the next six years, upgrading and restructuring the Utility's transfer station and hauling operations to increase recycling, improve employee safety and customer service and streamline operations. The biggest capital expenditures in the next two years will be for landfill closure. Beginning in 1991, the Utility will incur capital costs for the new system of transport to a distant landfill.

# CERTIFIED REFUSE AND GARBAGE UTILITIES IN ALASKA

Anchorage Refuse, Inc.-Anchorage

Andersen, Incorporated-Nome

Channel Sanitation Corporation-Juneau

Drake's Sanitation, Inc.-Fairbanks

Eagle River Refuse, Inc.-Eagle River

Far North Sanitation Service, Inc.-Fairbanks

Interior Services-Fairbanks

Peninsula Sanitation Company, Inc.-Girdwood, Kenai, Soldotna

Tongass Sanitation-Ketchikan

Wasilla Refuse, Inc.-Wasilla

Williwaw Services, Inc.-Unalaska

Survey by Anchorage Recycling Center-Sent to Anchorage  
Refuse customers in April 1990:

1. Do you consider a solid waste recycling program a community priority?

YES: 3162/3514 90% NO: 367/3514 10%

2. Do you currently recycle?

YES: 2701/3514 77% NO: 812/3514 23%

3. Would you be willing to separate your recyclables if pick-up occurred at your home?

YES: 3307/3514 94% NO: 207/3514 6%

4. The value of recyclables will not support curbside pick-ups. Will you be willing to pay more than your current refuse bill for curbside pick-up of recyclables?

YES: 1994/3514 57% NO: 1520/3514 43%

5. If yes, how much more?

\$5.00: 1617/3514 46% \$10.00: 291/3514 8%

\$15.00: 75/3514 2% N/A: 1532/3514 44%

6. Should recycling be subsidized by:

Grants: 969/3514 28% Taxes: 673/3514 19%

User: 967/3514 27% None:1018/3514 29%

N/A: 545/3514 16%

7. What prevents you from recycling more?

Does not pay:	437/3514	13%
Not sure where to take it:	1095/3514	31%
Inconvenient	1894/3514	54%
Not interested	44/3514	1%
N/A	702/3514	20%

8. Do you believe garbage pick-up should be mandatory in Anchorage?

Yes: 1901/3514	54%	NO: 1611/3514	46%
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9. Business using cardboard: Will you put cardboard in a separate dumpster if you receive a 10% rebate on disposal pick-up?

YES: 1139/3514	32%	NO: 2313/3514	66%
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**HB 1442**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 1, 1991

FURTHER REFERRALS:

Date of Committee Action: 3/13/91

The FINANCE Committee considered:

HB 142

HOUSE BILL NO. 142

CRIME OF ESCAPE

"An Act relating to the crime of escape and the definition of official detention for the purposes of the criminal code and provisions governing prison facilities and prisoners."

- RECOMMENDATIONS: [ ] the same title  
 be replaced with \_\_\_\_\_ [ ] 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) \_\_\_\_\_  
 fiscal impact \_\_\_\_\_  
 zero fiscal note \_\_\_\_\_

- APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_ *LAW 2/25/91*  
 zero fiscal note(s) *PUB SAFETY 2/25/91*

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Thomas Barnes</i>					
<i>Mark K. ...</i>		<i>Mike Savare</i>		✓	
<i>REC. E. ...</i>		<i>Bob ...</i>		✓	
<i>Jan ...</i>		<i>[Signature]</i>			
<i>[Signature]</i>		<i>[Signature]</i>			
<i>J. ...</i>	X	<i>[Signature]</i>		✓	
		<i>[Signature]</i>		✓	

*Mike Savare*  
 CHAIRMAN'S SIGNATURE

HOUSE BILL NO. 142  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 2/19/91

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of escape and the definition of 'official detention' for the  
 2 purposes of the criminal code and provisions governing prison facilities and prisoners."

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

4 \* Section 1. PURPOSE. It is the purpose of this Act to reverse the effect of the decisions of the  
 5 Alaska Court of Appeals in Jacobson v. State, 786 P.2d 388 (Alaska App. 1990), and Hubbard v. State,  
 6 800 P.2d 952 (Alaska App. 1990).

7 \* Sec. 2. AS 11.56.330(a) is amended to read:

8 (a) One commits the crime of escape in the fourth degree if, without lawful authority,

9 one

10 (1) removes oneself from official detention for a misdemeanor; or

11 (2) having been placed under actual restraint by a peace officer before arrest,

12 removes oneself from the restraint.

13 \* Sec. 3. AS 11.81.900(b)(34) is amended to read:

14 (34) "official detention" means custody, arrest, surrender in lieu of arrest, or

- 1 actual or constructive restraint [CONFINEMENT] under an order of a court in a criminal or
- 2 juvenile proceeding, other than an order of conditional bail release;

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

No. 1  
Bill version HB 142  
(H) Publish Date: 3/1/91

Revision Date: \_\_\_\_\_  
Title: An Act Relating to the Crime  
of Escape  
Sponsor: House Judiciary  
Requestor: House Judiciary

Department Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments

COMPONENT SERIAL NO. 

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-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/PROG RCPT						
<b>TOTAL</b>	-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 None

ANALYSIS: (Attach a separate page if necessary)

No distinct fiscal impact upon the AST is expected.

Prepared by: Gayle A. Horetski Phone: 465-4322  
 Division: Commissioner's Office Date: 2/25/91  
 Approved by Commissioner: *Gayle Horetski* Richard L. Burton  
 Agency: Department of Public Safety Date: 2/25/91

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

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

No. 2

Bill Version: HB 142

(H) Publish Date: 3/1/91

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

Department Affected: \_\_\_\_\_

Title: "An Act relating to the crime  
of escape..."

BRU: Prosecution

Component: Criminal Justice Litigation

Sponsor: House Judiciary

Requestor: House Judiciary

COMPONENT SERIAL NO.

			8	9
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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						
---------	--	--	--	--	--	--

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

*Richard I. Pegues*

Prepared By: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: February 25, 1991

Approved by Commissioner: \_\_\_\_\_

*Richard I. Pegues*  
Charles E. Cole, Attorney General

Agency: Department of Law

Date: February 25, 1991

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

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 142

This bill reverses the effects of two recent Alaska Court of Appeals' decisions, in Jacobson v. State and Hubbard v. State, concerning the crime of escape and the definition of official detention.

First, AS 11.56.330(a) is amended to clarify that one commits the crime of escape in the fourth degree if, without lawful authority, having been placed under actual restraint by a peace officer before arrest, one removes oneself from the restraint.

Second, AS 11.81.900(b)(34) is amended to include actual or constructive restraint under an order of the court within the definition of official detention.

These amendments will not have a fiscal impact on the Department of Law because they are consistent with the law as it was interpreted prior to the recent decisions of the Court of Appeals.

## REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE

DISTRICT ELEVEN • SPENARD

NORTHWOOD • SPENARD • THOMPSON • TURNAGAIN • UPPER MIDTOWN • WINDEMERE


P.O. BOX V, JUNEAU 99811

(907) 465-3892



### M E M O R A N D U M

TO: Representative Eileen MacLean, Co-Chair  
Representative Mike Navarre, Co-Chair  
Finance Committee

FROM: Representative Dave Donley, Chair 

RE: HB 142 - Crime of Escape

DATE: February 27, 1991

---

I would greatly appreciate if HB 142 could be scheduled for a finance committee hearing. The bill reverses the effects of two recent Alaska court of appeals' decisions relating to the crime of escape by closing two loopholes in existing law.

In the first case, Jacobson v. State, 786 P.2d 388 (Alaska App. 1990), the defendant escaped the scene of a crime after having been handcuffed by a police officer, but before being arrested on a specific charge. The court of appeals reversed the defendant's conviction, and held that the statute only allows escape charges to be brought after a defendant has been formally arrested on a specific charge. Section 2 of the bill closes this loophole by making it a crime to, having been placed under actual restraint by a peace officer before arrest, remove oneself from the restraint.

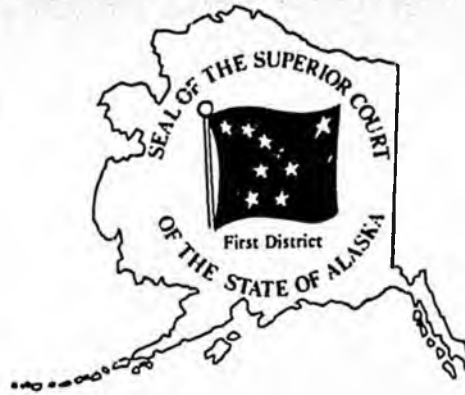
In the second case, Hubbard v. State, 800 P.2d 952 (Alaska App. 1990), the defendant was in court on a bail hearing, having been previously released on a theft charge. The judge ordered the defendant into custody but, before an officer could physically restrain the defendant, he fled the courtroom. The court of appeals held that the defendant could not be charged with a crime under these circumstances because there was no indication of any legislative intent to prohibit the conduct. Section 3 of the bill closes this loophole by including constructive restraint under an order of the court within the definition of official detention.

Thank you in advance for your help in scheduling this bill.

DD:lho

ANCHORAGE OFFICE

3111 "C" STREET, SUITE 450 • ANCHORAGE, ALASKA 99503 • (907) 561-7629



Superior Court  
State of Alaska

FIRST JUDICIAL DISTRICT

DIMOND COURTHOUSE, BOX U  
JUNEAU, ALASKA  
99811-4100

Chambers of  
Walter L. Carpeneti, Judge

(907) 463-4741

January 25, 1991

Honorable Fran Ulmer  
Alaska State Representative  
P.O. Box V  
Juneau, AK 99811

Re: Draft legislation concerning  
escape

Dear Representative Ulmer:

Thank you for your letter of January 23, 1991, received here yesterday, concerning draft legislation addressing the opinions of the court of appeals in the Jacobson and Hubbard cases. You asked for my opinion or comments.

First, I believe that the proposed legislation clearly defines as criminal the conduct in question, and in that regard addresses the concerns raised by those two cases.

Second, note that the proposed changes would make the defendant's actions in Jacobson prosecutable as a misdemeanor, but not a felony. (I make this observation because the defendant's conduct in Jacobson arguably was felonious, although, of course, the court of appeals ruled that there was no violation of the statute.) It is a legislative decision as to whether the conduct should be a misdemeanor or a felony, but I wanted to make sure that you were aware that the draft provided that removing oneself from restraint placed by a peace officer prior to arrest would be only a misdemeanor, even if the person had been placed under restraint for a felony.

re  
HB142

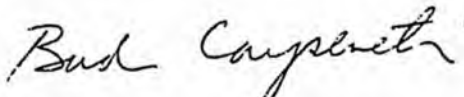
On January 17th I received from you a note regarding House Bill No. 21 and your requests for comments. I would make the following general observations:

1. The proposed legislation does not address at all the problem raised in the Jacobson and Hubbard cases. That is, it does not change or clarify the definition of "official detention".

2. The proposed legislation basically has the effect of creating a felony when one escapes from official detention for a misdemeanor (or from official detention in connection with a valid warrant), and during the escape takes a police vehicle or an emergency medical vehicle. That seems to me to be a policy decision for the legislature, and I do not believe that I can offer too much which would be helpful to that policy determination.

I hope these comments are helpful to you. Thank you for offering me the chance to comment. Please do not hesitate to contact me if you have any other questions.

Sincerely,



Walter L. Carpeneti

Re: HB 21  
Rep.  
Barnes  
bill on  
stealing  
police  
cars



Superior Court  
State of Alaska

FIRST JUDICIAL DISTRICT

DIMOND COURTHOUSE, BOX U  
JUNEAU, ALASKA  
99811-4100

Chambers of  
Walter L. Carpenelli, Judge

(907) 463-4741

December 6, 1990  
(dictated 12/5/90)

Honorable Fran Ulmer  
Alaska House of  
Representatives  
P.O. Box V  
Juneau, AK 99811

Dear Fran:

Enclosed please find copies of the two cases which I mentioned to you during your visit yesterday.

Simply put, I cannot believe that the legislature would not have intended that the conduct of the defendants in these cases be prosecutable as escape. Mr. Jacobson was apprehended by a police officer under extremely suspicious circumstances in a darkened building after the officer had received a report of a burglary in progress. He ran from the officer when he realized, on a darkened stairway, that he was speaking to an officer of the law and not to a confederate. He was caught by the officer some hundred yards or so from the building. He feigned illness in an attempt to break away, which was momentarily successful, until tackled by the officer again. Brought back to the building by the officer, he was placed in handcuffs, which handcuffs were run around a post so as to secure Mr. Jacobson to the post. The officer left him under the guard of an armed officer. By tricking the officer and by pulling one hand through the handcuff, Mr. Jacobson was able to escape from the police. He was again caught, this time about 20 minutes later.

The narrow question in Jacobson was whether the defendant was "under official detention for a felony" when he fled. The legislature defined official detention to include "custody,

arrest, surrender in lieu of arrest, or confinement under an order of a court." I think it is clear that Mr. Jacobson was in custody. The court of appeals held that he was not. Its reasons are set out on page 393. They are wholly unpersuasive to me. (Briefly, it makes no sense to categorize these definitional terms according to whether they describe continuing circumstances or those which are fixed in time, and it does violence to legislative intent to effectively interpret away a term.) More importantly, I simply cannot believe that the legislature intended the kinds of distinctions found at page 393 when it passed this statute.

The Hubbard case is even more baffling. There, the defendant, in a courtroom, was ordered by a judge to remain in the courtroom while a bail hearing was set on. The defendant had previously been arrested, was out on release, had allegedly violated the conditions of release, and was released again. While the defendant was subsequently in court, the judge said "Mr. Hubbard will be remanded", which I take to mean that he would be remanded to custody while a bail hearing was scheduled. The judge requested the defendant to take a seat in the jury box, and he instead left the courtroom, ignoring a further call by the judge to remain.

Without sounding like a broken record, I simply cannot believe that the legislature, when it defined "official detention" as including "custody" (as well as "arrest, surrender in lieu of arrest, or confinement under an order of a court") did not intend that a person in Mr. Hubbard's situation be considered as being in custody.

In defense of the court of appeals, I believe that it is concerned about the policy implications of contrary decisions in these cases. The Jacobson court says as much at the top of the right-hand column on page 393. With due respect to the court, however, I believe it is for the legislature to weigh and then make those policy decisions, and for the courts to effectuate those decisions (short of a constitutional violation, which no one has argued here).

Honorable Fran Ulmer

Page Three

December 6, 1990  
(dictated 12/5/90)

I hope this information is helpful to you. I would be happy to discuss it further with you.

Sincerely,

*Bud Carpeneti*

Walter L. Carpeneti

Enclosures

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

January 18, 1991

The Honorable Fran Ulmer  
Alaska State Representative  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ulmer:

Last week, your legislative assistant, Margaret Pugh, asked that we provide assistance in drafting a bill relating to the crime of escape. In particular, she indicated that you are interested in responding to the court of appeals opinions in Jacobson v. State, 786 P.2d 388 (Alaska App. 1990), and Hubbard v. State, \_\_\_ P.2d \_\_\_ (Alaska App. 1990) (Op. No. 1092).

In Jacobson, the defendant escaped the scene of a crime after having been handcuffed by a police officer, but before being arrested on a specific charge. The court of appeals reversed the defendant's subsequent conviction for escape, holding that the crime of escape as set out in AS 11.56.310 cannot be committed unless and until the defendant has been arrested on an identified charge. 786 P.2d at 393.

In Hubbard, the defendant was in court on a bail hearing, having been previously released on a theft charge. The superior court ordered the defendant remanded to custody but, before an officer could physically restrain the defendant, the defendant fled the courtroom. The court of appeals held that the defendant could not be charged with the crime of escape under these circumstances because he had not "been physically placed under arrest" at the time he fled. Op. No. 1092 at 7. The court noted "no indication of any legislative intent to adopt a doctrine of constructive restraint." Id.

Attached, please find a draft bill containing two sections. Section 1 amends AS 11.56.330 by adding a subsection that makes it the misdemeanor offense of escape in the fourth degree for a person who has been placed under actual restraint by an officer to remove himself or herself from that restraint without lawful authority. Section 2 amends the definition of "official detention" to include "actual or constructive restraint" under a court order. These two provisions will close the loopholes created by Hubbard and Jacobson by providing criminal sanctions, first,

The Honorable Fran Ulmer

January 18, 1991

Page 2

when a person flees after having been handcuffed or otherwise physically restrained by a peace officer, even if the person has not been charged with a crime yet, and, second, when a person flees the courtroom after having been ordered into custody by a judge.

If you have any questions, or if I have misinterpreted your request, I would be happy to discuss the matter with you further. Also, we would very much appreciate the opportunity to review any work draft of the bill prepared by legal services.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: Margot Knuth

Margot Q. Knuth  
Assistant Attorney General

MOK:me-009

1/15/91

D R A F T---ESCAPE

For an Act entitled: "An Act relating to the crime of escape."

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

\* Section 1. AS 11.56.330 is amended to read:

Sec. 11.56.330. ESCAPE IN THE FOURTH DEGREE. (a) One commits the crime of escape in the fourth degree if, without lawful authority, one

(1) removes oneself from official detention for a misdemeanor; or

(2) having been placed under actual restraint by a peace officer prior to arrest, one removes oneself from the restraint.

(b) Escape in the fourth degree is a class A misdemeanor.

\* Sec. 2. AS 11.81.900(b)(34) is amended to read:

(34) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint [CONFINEMENT] under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

PLEASE MICROFILM TOP PAGE ONLY

DOCUMENTS WHICH HAVE NOT BEEN  
FILMED BUT ARE AVAILABLE IN THE  
ORIGINAL FILE INCLUDE:

→ Copy of "Pacific Reporter" re:  
David W. Jacobson v State of Alaska  
→ Copy of Court document re:  
Christopher Hubbard v State of Alaska