

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 763

() USE COMMITTEE REPORT

(11)

Date Referred: April 17, 1991

FURTHER REFERRALS:

Date of Committee Action: 5/6/91

The FINANCE Committee considered:

HB 287

HOUSE BILL NO. 287

LIMIT TAX DEDUCTION FOR OIL SPILL CLEANUP

"An Act disallowing under the Alaska Net Income Tax Act a portion of the deduction authorized by the Internal Revenue Code for certain oil and hazardous substance discharge related expenditures; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 287 (FIN) 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) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mike Savane</i> NAUARDRE	✓	<i>Scott Sharp</i> Sharp		✓	
<i>Mona Soyak</i> Boyer	X	<i>Robert C. Phillips</i> Phillips		✓	
<i>Fay Brown</i> BROWN	✓	<i>Donald J. Larson</i> Larson		X	
<i>Kaponek</i> KAPONEK	✓	<i>Eileen P. MacLean</i> MACLEAN		✓	
<i>James A. Bannister</i> JALCO	X	<i>Tamara A. Bannister</i> BANNISTER		X	
<i>Umu</i> Umu	X				

Mike Savane NAUARDRE
Eileen P. MacLean MACLEAN
CHAIRMAN'S SIGNATURE

CS FOR HOUSE BILL NO. 287 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES ELLIS, Brown, Gruenberg, Navarre

A BILL

FOR AN ACT ENTITLED

1 "An Act disallowing under the Alaska Net Income Tax Act a portion of the deduction
2 authorized by the Internal Revenue Code for certain oil and hazardous substance discharge
3 related expenditures; and providing for an effective date."

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

5 * **Section 1.** AS 43.20.036 is amended by adding a new subsection to read:

6 (k) For purposes of determining the tax payable under this chapter, a taxpayer who owns
7 or who has control over oil or a hazardous substance may deduct expenses not to exceed
8 \$1,000,000 incurred during the tax year to contain, clean up, and mitigate the effects of the
9 discharge of that oil or hazardous substance. The limitation of this subsection also applies to
10 payments, whether compensatory or remedial in nature or otherwise, if made to the state or the
11 federal government or to a trust to which the state is a party when required by a court order
12 entered under 33 U.S.C. 1251 - 1376 (Federal Water Pollution Control Act of 1972, as amended
13 by the Clean Water Act of 1977, as amended) or 42 U.S.C. 9601 - 9657 (Comprehensive
14 Environmental Response, Compensation, and Liability Act of 1980, as amended) or in settlement

1 of litigation by the state against the taxpayer made under one of those Acts or other law. The
2 limitations of this subsection do not apply to a hazardous substance response action contractor,
3 as that term is defined by AS 46.03.823, unless the oil discharge or the discharge of the
4 hazardous substance is caused by an act or omission of the contractor that under AS 46.03.823(a)
5 is negligent or grossly negligent or that constitutes intentional misconduct.

6 * Sec. 2. This Act is retroactive to January 1, 1991, and applies to taxes payable under the Alaska
7 Net Income Tax Act (AS 43.20) after December 31, 1990.

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 287 (FIN)

Revision Date: _____
Title: Limiting the deduction for oil and hazardous substance discharge expenditures
Sponsor: Ellis, Brown, Gruenberg, Navarre
Requestor: _____

Department Affected: Department of Revenue
BRU: Revenue Operations
Component: Income and Excise Audit
COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: Attach a separate page for analysis.

SEE ATTACHED

Prepared By: Larry E. Meyers *Larry E. Meyers* Phone: (907) 465-2320
Division: Income and Excise Audit Division Date: May 7, 1991

Approved by Commissioner: Lee E. Fisher *Lee E. Fisher*
Agency: Department of Revenue Date: 5-7-91

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

May 7, 1991

CSHB 287
FISCAL NOTE ANALYSIS
DEPARTMENT OF REVENUE

CSHB 287 would add a new subsection (k) to AS 43.20.036 that would place a \$1,000,000 cap on deductible business expenses incurred to contain, clean up, or mitigate the effects of an oil or hazardous substance discharge. The cap would also apply to compensatory and remedial payments made to the state, the federal government, or a trust to which the state is a party when required by court order entered under 33 U.S.C 1251-1376 or 42 U.S.C. 9601-9657, as well as to payments by taxpayers in settlement of litigation by the state.

AS 43.20.021(a) generally incorporates certain provisions of the federal income tax law including those provisions that would currently allow spill or discharge expenses to be deducted. However, AS 43.20.021(a) also provides that specific provisions in AS 43.20 shall modify or limit the application of the federal provisions to Alaska law. Therefore, CSHB 287 would effect a modification to the incorporation of federal law and would result in placing a yearly cap on all deductions for oil and hazardous substance discharges.

The Department previously estimated the fiscal impact of HB 287 based on the proposed Exxon oil spill settlement. However, that settlement has since been rejected and terminated. Therefore, the Department is unable to predict what the overall impact will ultimately be and that uncertainty is reflected in the zero fiscal note.

FISCAL NOTE

**STATE OF ALASKA
1991 LEGISLATIVE SESSION**

BILL NO. HB287

Revision Date: _____
 Title: Disallowing deduction for oil and hazardous substance discharge expenditures
 Sponsor: Ellis, Brown, Gruenberg, Navarre
 Requestor: _____

Department Affected: Department of Revenue
 BRU: Revenue Operations
 Component: Income and Excise Audit

COMPONENT SERIAL NO. | 1 | 1 | 3 |

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97-02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LANDS & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	487.0	814.0	542.0	378.0	378.0	378.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	487.0	814.0	542.0	378.0	378.0	378.0
FEDERAL FUNDS						
OTHER						
TOTAL	487.0	814.0	542.0	378.0	378.0	378.0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: Attach a separate page for analysis.
 SEE ATTACHED

Prepared By: Carl Meyer *Carl Meyer* Phone: (907) 465-2320
 Division: Income and Excise Audit Division Date: April 18, 1991

Approved by Commissioner: Lee E. Fisher *Lee E. Fisher*
 Agency: Department of Revenue Date: 4-19-91

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

April '18, 1991

HB 287
FISCAL NOTE ANALYSIS
DEPARTMENT OF REVENUE

HB 287 would add a new subsection (k) to AS 43.20.036 that would place a \$500,000 cap on deductible business expenses under 26 U.S.C. 162 incurred to contain, clean up, or mitigate the effects of an oil or hazardous substance discharge. The cap would also apply to compensatory and remedial payments made to the state, the federal government, or a trust to which the state is a party when required by court order entered under 33 U.S.C 1251-1376 or 42 U.S.C. 9601-9657, as well as to payments by taxpayers in settlement of litigation by the state.

AS 43.20.021(a) generally incorporates certain provisions of the federal income tax law including those provisions like IRC Sec. 162 that would currently allow spill or discharge expenses to be deducted. However, AS 43.20.021(a) also provides that specific provisions in AS 43.20 shall modify or limit the application of the federal provisions to Alaska law. Therefore, HB 287 would effect a modification to the incorporation of federal law and would result in placing a yearly cap on all deductions under IRC Sec. 162 for oil and hazardous substance discharges.

Although the Department is of the opinion the expenses would properly be subject to IRC Sec. 162, there remains a possibility a taxpayer could take the position that a deduction is authorized under another provision of the Internal Revenue Code thereby effectively avoiding the limitation. That possibility could be addressed and foreclosed, for example, by deleting on line 7 "under 26 U.S.C. 162 expenses" and replacing with more general language such as "an amount".

The estimated fiscal impact of HB 287 is based on the Exxon oil spill settlement. That settlement provides for payments of \$90,000,000 this summer or fall, \$150,000,000 on September 1, 1992, \$100,000,000 on September 1, 1993, and \$70,000,000 on September 1 of 1994 through 2001. Additional amounts to be paid as fines or penalties are not reflected in the fiscal note as these amounts are not deductible under current law. Also, the fiscal note does not take into account the provision providing for an additional \$100,000,000 payment if the settlement agreement is reopened to consider currently unknown injuries.

AMENDMENT I

OFFERED IN THE HOUSE
TO: HB 287

BY REPRESENTATIVE ELLIS

Page 1, line 6:

Delete "the taxpayer"

Insert "a taxpayer who owns or who has control over oil or a hazardous substance"

Page 1, line 8:

Delete "of an oil discharge or of a discharge of a"

Insert "the discharge of that oil or"

Page 2, line 1, after "law.":

Insert "The limitations of this subsection do not apply to a hazardous substance response action contractor, as that term is defined by AS 46.03.823, unless the oil discharge or the discharge of the hazardous substance is caused by an act or omission of the contractor that under AS 46.03.823(a) is negligent or grossly negligent or that constitutes intentional misconduct."

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ANCHORAGE, ALASKA 99503
(907) 581-7828

WHILE IN SESSION
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE


JUDICIARY

SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: Members of the House Finance Committee
FROM: Rep. Johnny Ellis 
RE: House Bill 287
DATE: April 29, 1991

Thank you for your consideration of HB 287. The purpose of this bill is to disallow a deduction from state corporate income taxes for the costs related to the clean up of oil or hazardous substance spills, including the types of payments structured in the Exxon oil spill settlement.

After the announcement of the proposed settlement between the state, the federal government and Exxon over the Exxon Valdez oil spill there was mixed public reaction on whether or not the settlement was in the best interest of Alaskans. The actual settlement provisions aside, I found the greatest negative reaction to be that Exxon could deduct their settlement payments from their federal income taxes. The effect is that federal taxpayers would be underwriting the costs of a negligent, criminal act by the Exxon Corporation. There is legislation in Congress to prevent this deduction and I have introduced HJR 34 to encourage its passage.

During the consideration of HJR 34 it became apparent that, since the state corporate income tax relies on the net income determination on the federal tax form, Exxon's tax payments to the state would be reduced based on their settlement payments. I consider this to be adding "insult to injury" and was thus motivated to introduce HB 287.

House Bill 287 allows for the deduction of clean up costs up to \$500,000 so that the clean up of small spills will not be discouraged.

Based on the figures in the proposed settlement, the passage of HB 287 would forestall a loss in state revenue of \$487,000 in FY 92, \$814,00 in FY 93, \$542,000 in FY 94 and \$378,000 in FY95 through FY02 for a total of \$4.86 million.



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WHILE IN SESSION
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ALASKA STATE HOUSE



CHAIR
RULES COMMITTEE

JUDICIARY


SPECIAL COMMITTEE ON INTERNATIONAL
TRADE & TOURISM

LEGISLATIVE COUNCIL

REPRESENTATIVE JOHNNY ELLIS

MEMORANDUM

TO: House Finance Committee Members

FROM: Rep. Johnny Ellis 

RE: HB 287

DATE: May 6, 1991

Thank you for considering House Bill 287. The testimony on April 29th by Mr. Tom Williams of BP Exploration suggested to me an amendment which will more clearly achieve my intent with this bill.

Mr. Williams was concerned that this bill would discourage a company which did not cause a spill from helping out with a clean up, or would be unfair to a company which is contracted to clean up a spill. He gave the example of "Service City" on the North Slope where several bankrupt oil service companies left behind "an ugly and dangerous mess". BP and other companies cleaned up the site, although they apparently had no responsibility for doing so.

The amendment I am offering (Chenoweth 7-LS1205/A.1) would change the bill so that only a spiller who is negligent would be disallowed deductions for the costs of a cleanup. A non-spiller who cleans up (a response action contractor) would be allowed the full deduction currently allowed under law.

Under this bill, even a negligent, small spiller would be allowed to deduct clean up costs up to \$500,000. I encourage the committee to boost this figure up to \$1 million.

I remain firmly committed to the bill after this amendment. I believe the public is adamantly opposed to helping to pay for the clean up costs of a negligent oil or hazardous substance spiller. Cleaning up after a spill that a company negligently caused should not be just another cost of doing business for that company.



217 Second Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323
FAX (907) 463-5515



April 24, 1991

Representative Mike Navarre
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Navarre:

The Alaska State Chamber of Commerce has reviewed HB 287, and act disallowing under the Alaska net income tax portions of expenses for the clean up and mitigation of discharges of oil or hazardous substances.

The reasoning behind the bill seems to be one of insuring that some of the costs of cleanup and mitigation do not result in an offsetting tax deduction; in effect, costing the liable party little or nothing while simultaneously reducing state revenues.

Our objections to this bill are twofold. First, this bill is part of a continuing pattern which seems to be based on the premise that if you create enough financial hardship and risk you can punish spill mishaps out of existence. This is the sort of approach which led, however inadvertently, to the situation which made spill cleanup contractors liable for spill impacts. Somewhat rhetorically, why not consider the development of legislation which provides positive incentives for spill prevention, cleanup and mitigation. Tax deductions for the costs of those activities is certainly an example of a positive motivator.

Our second objection to the bill is the provision which sets the limits to the deductible expenses at \$500,000. Depending on the nature and circumstances of a spill, it wouldn't take much to incur \$500,000 in cost. It maybe, as rumored, that HB287 is another "Exxon" bill. We would argue that the net that has been cast covers a large school of fish, many of whom are quite small. For example, line 8 on page 1 reads "oil discharge", not "crude oil discharge". In effect, this impacts every single carrier of petroleum products and hazardous substances.

We would encourage you and the other members of the House to carefully consider whether there is adequate justification for HB287. We wish you well in your deliberations.

Sincerely,

A handwritten signature in black ink, appearing to be "E. Polley". The signature is fluid and cursive, with a long horizontal stroke at the end.

E. Polley
Government Relations

HB 296

HOUSE COMMITTEE REPORT

(11)

Date Referred: May 8, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-18-91

The FINANCE Committee considered:

HB 296

HOUSE BILL NO. 296

PROTECTION OF NATIVE HUMAN REMAINS

"An Act relating to human remains and funerary objects."

RECOMMENDATIONS:

be replaced with CS HB 296 (dup) 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 Dnr

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	X				
<i>[Signature]</i>	X				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	X				
<i>[Signature]</i>	X				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	X				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				

[Signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

No. i

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Version: CSHB 296 (JUD)

(H) Publish Date: 5/8/91

Revision Date: _____ Department Affected: Public Safety
 Title: "An Act relating to human remains and funerary objects" BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Davidson
 Requestor: House Judiciary

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						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact upon the Division of Alaska State Troopers is anticipated.

Prepared by: Gayle A. Horetski Phone: 465-4322
 Division: Office of the Commissioner Date: 5/6/91
 Approved by Commissioner: *Richard L. Burton* Richard L. Burton
 Agency: Department of Public Safety Date: 5/6/91

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 296 (JUD)

Revision Date: May 18, 1991 Department Affected: Department of Natural Resources
Title: An Act Relating to Human Remains and Funerary Objects BRU: _____
Component: _____

Sponsor: Representative Davidson
Requestor: HOUSE FINANCE COMMITTEE COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Representative Mike Navarre, Co-Chair *Mike Navarre* 465-3706
Representative Eileen MacLean, Co-Chair *Eileen MacLean* Phone: 465-3722
Division: _____ Date: May 18, 1991

Approved by Commissioner: _____
Agency: _____ Date: _____

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

CS FOR HOUSE BILL NO. 296 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/8/91
Referred: Finance

Sponsor(s): REPRESENTATIVES DAVIDSON, Lincoln, Grussendorf, Gruenberg, MacLean, Koponen, Ivan, Gonzales, G.Phillips, Parnell, Kubina

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to human remains and funerary objects."

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

3 * Section 1. AS 12.65 is amended by adding new sections to read:

4 ARTICLE 2. HUMAN REMAINS.

5 Sec. 12.65.150. REPORTS OF HUMAN REMAINS. (a) Except as provided in (b) of
6 this section, a person who encounters human remains in or on land or water in the state shall

7 (1) immediately cease any activity that may cause further disturbance of the area;

8 and

9 (2) report the presence and location of the remains to the nearest law enforcement
10 agency as soon as possible considering the location of the discovery and the availability of
11 communication alternatives.

12 (b) The requirements of (a) of this section do not apply to a person who encounters
13 human remains while operating under a permit issued under AS 41.35.080.

14 (c) If the law enforcement agency determines that remains reported to it under (a) of this

1 Sec. 41.35.080. PERMITS. The commissioner may issue a permit for the investigation,
2 excavation, gathering, or removal from the natural state [,] of any historic, prehistoric, or
3 archeological resources of the state or human remains or funerary objects reported under
4 AS 12.65.150 or AS 41.35.410. A permit may be issued only to persons or organizations
5 qualified to make the investigations, excavations, gatherings, or removals and, except as
6 otherwise provided in the permit issued under of this section, only if the results of these
7 authorized activities will be made available to the general public through institutions and
8 museums interested in disseminating knowledge on the subjects involved. If the historic,
9 prehistoric, or archeological resource involved is one that [WHICH] is, or is located on a site
10 that [WHICH] is, sacred, holy, or of religious significance to a cultural group, the consent of that
11 cultural group must be obtained before a permit may be issued under this section.

12 * Sec. 6. AS 41.35.090 is amended to read:

13 Sec. 41.35.090. NOTICE REQUIRED OF PRIVATE PERSONS. Before any
14 construction, alteration, or improvement of any nature is undertaken on a privately owned,
15 officially designated state monument or historic site by any person, the person shall give the
16 department three months' [MONTHS] notice of intention to construct on, alter, or improve it.
17 If the construction, alteration, or improvement involves known reasonably identifiable
18 human remains or funerary objects, the person shall also give three months' notice of
19 intention to construct, alter, or improve to the descendants or tribe of the decedent whose
20 remains are involved. Before the expiration of the three-month notification period, the
21 department shall either begin eminent domain proceedings under AS 41.35.060(b) or undertake
22 or permit the recording and salvaging of any historic, prehistoric, or archeological information
23 considered necessary.

24 * Sec. 7. AS 41.35.230 is amended to read:

25 Sec. 41.35.230. DEFINITIONS. In this chapter [AS 41.35.010 - 41.35.240], unless the
26 context otherwise requires,

27 (1) [REPEALED

28 (2)] "committee" means the Historic Sites Advisory Committee;

29 (2) "funerary objects" means items for which there is direct circumstantial
30 evidence, expert opinion, or documentation that the items were directly associated with
31 human remains or were intentionally placed with human remains either at the time of

1 probably not funerary objects, the department shall comply with (c) of this section.

2 (c) If human remains or funerary objects described in (a) and (b) of this section are not
3 disinterred, the department shall leave them in the place where they are interred, when possible.
4 If the human remains or funerary objects are disinterred and the decedent's living descendants
5 are reasonably identifiable, the department shall, by certified mail return receipt requested, notify
6 the decedent's relative with the closest kinship ties that the remains and funerary objects are
7 available for disposition. If the remains and funerary objects include Native human remains or
8 funerary objects and the department is unable to ascertain the existence and address of living
9 descendants of the descendant, the department shall determine with as much specificity as
10 possible their tribe of origin and notify the governing body of the tribe of their discovery and
11 location. If a specific tribe of origin is not reasonably identifiable, the department shall, by
12 certified mail return receipt requested, give the notice of the discovery and its location to the
13 governing body of the tribe whose members predominate in the vicinity of the discovery.

14 (d) At the request of a descendant or the governing body of a tribe notified under (c) of
15 this section, the department shall provide for access to the remains or funerary objects so that the
16 descendant or the tribe may dispose of them. A tribe may not be allowed to have access until
17 the tribe's plan for disposition of the remains or objects has been submitted to the department.
18 If, within 120 days after notification by the department by certified mail return receipt requested,
19 neither a descendant nor a tribe seeks the right to dispose of the remains or funerary objects, the
20 department shall treat them in the same manner as it treats other unclaimed human remains or
21 historic, prehistoric, and archeological resources under this chapter, as applicable.

22 (e) A person may request a tribe or descendant to grant to the person an opportunity to
23 study human remains or funerary objects for which the tribe or descendant is granted disposition
24 rights under (c) of this section.

25 Sec. 41.35.420. DISPUTE RESOLUTION COMMITTEE. When needed, the governor
26 shall establish a committee to advise the department concerning conflicting claims of tribes and
27 descendants with respect to disposition rights for human remains and funerary objects. A
28 committee consists of the state liaison officer appointed under 16 U.S.C. 470 - 470n (National
29 Historic Preservation Act) and the following persons, who shall be appointed by the governor as
30 the need arises:

31 (1) an archeologist with osteological expertise or a physical anthropologist; and

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. CSHB 296

Revision Date: _____ Department Affected: Natural Resources
 Title: An Act Relating to Human BRU: Parks & Outdoor Recreation
Remains and Funerary Objects Components: Historic Resource Management
 Sponsor: Representative Davidson
 Requestor: House Judiciary COMPONENT SERIAL NO. 451

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	55.9	57.2	58.5	59.8	61.1	62.4
TRAVEL	24.3	26.3	28.3	30.3	32.3	34.3
CONTRACTUAL	22.7	23.7	24.7	25.7	26.7	27.7
SUPPLIES	1.2	1.3	1.4	1.5	1.6	1.7
EQUIPMENT	8.7					
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	112.8	108.5	112.9	117.3	121.7	126.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	112.8	108.5	112.9	117.3	121.7	126.1
FEDERAL FUNDS						
OTHER						
TOTAL	112.8	108.5	112.9	117.3	121.7	126.1

POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Provision should be made in this bill to allow the department to recover the costs of activities required by this bill from the person(s) responsible for disinterring human remains and funerary objects. The public should not be required to shoulder the entire burden of costs.

Prepared by: Bob Shaw/Judy Bittner Phone: 762-2622
 Division: Parks and Outdoor Recreation Date: 13-May-91

Approved by Commissioner: B HAZ Harold Heinze Date: 13-May-91
 Agency: Department of Natural Resources

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

FISCAL NOTE ANALYSIS HB-296

Assumptions: This bill will significantly increase identification and reporting of human burials annually. Ethnic and individual identity will be difficult to establish. DNR will not routinely fund investigations of burials on non-state lands.

Program Summary: An Archaeologist II (new position) will implement the bill provisions. Specific duties will include: drafting regulations changes specific to HB-296 requirements; archaeological field examination and excavation of disturbed burials; analysis of human remains and funerary objects; determination of ethnic affiliation; historic research to determine individual person identity for historic period remains; forensic anthropology consultation with State crime lab personnel; training on human bone identification to Alaska State troopers; consultation with tribal units on ethnic identification of burials and curation/reburial issues; participation in a technical committee appointed by the Governor to mediate burial claims disputes; timely notification of tribes of burials in which they may have interests and processing of tribal claims for burial remains; record keeping and management of state administered human remains collections.

In addition to one new staff, physical anthropologists with specialized topical or regional expertise will be routinely required (Annual need 20 days at \$400/day = 8.0 contractual) to supply expert opinion on ethnic affiliation. These experts may be appointed to the gubernatorial committee to adjudicate claims disputes and occasionally to make field inspections. Burials are routinely encountered in remote areas as well as rural villages, requiring travel to inspect the remains in their disturbed context. Since burials often are in archaeological deposits, care must be taken in the field to recover associated funerary objects as specified by the bill. The remote locations and sometimes volatile emotional nature of burial issues will make two person investigation teams necessary.

Economic Impact: No income production is anticipated from this bill.

Impact on Local Government: Distribution of burials is statewide and impacts on local governments will be dependent on the number of development projects they undertake. Specific impacts are not precisely predictable, but will be ameliorated by good project planning in advance of construction start-up. There will also be impacts to persons developing their private lands since they may also occasionally encounter burials.

Position Title Archaeologist II			No. of Positions	Range/Step 18/A	Borg. Unit GGU
Time Status PFT		Start Months 12		Location Anchorage	Election District
Justification					
HB-296 requires identification of human remains and funerary objects statewide for the purpose of returning the remains to relatives or native tribal entities for reburial. Decisions as to the group which will receive the materials will be based on a preponderance of evidence compiled from physical anthropological characteristics of the human remains and the artifact characteristics of the funerary objects. Research to compile and evaluate that evidence will require an experienced archaeologist (with specialized skills in forensic anthropology or human osteology) or a physical anthropologist with training and experience in field archaeology. Detailed knowledge of the physical characteristic of Alaskan regional populations must be developed by the incumbent to allow assignment of ethnicity to human remains. Identification of funerary objects will also require detailed knowledge of archaeology statewide. Special skills are required above those normally held by field archaeologists and are not routinely and dependably available as contracted services. A full-time position is required to insure expertise availability and meet the anticipated work load.					
Type of Expenditure			Amount		
1	2	3			
Salary	38,592.00				
Benefits	14,644.37				
Provision Pay					
Other					
Total Contract Services			55.9		
Travel			8.0		
Contractual			9.6		
Commodities			1.2		
Equipment			8.7		
Other					
Total Cost			83.4		
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004		83.4		
I-A Receipts	1006				
CIP Receipts	1061				
Other					
			83.4		

**Request For
New Position**

Agency Natural Resources
 BRU Park and Recreation Management
 Component State Historic Preservation Program

Page 1 of 1
 Revised Date

FY 90

HB 296 Native Burial Bill -- Fiscal Note Backup

PERSONNEL SERVICES

Archaeologist II (Range 18A = \$4658/mo w/ benefits) 55.9

TRAVEL

Staff Commercial air for 10 incidents
(Archaeo + assistant) \$400per ticket (20 tickets) 8.0
For committee (3 people w/air r/t \$400ea -- 3 incidents) 3.6
For consultant physical anthropologist - 3 trips \$400ea 1.2
Per diem for all above 115 days at \$100/day 11.5

CONTRACTUAL

Physical Anthropologist (\$400/day for 20 days) 8.0
Air charter 2.5
Radio repeater service (Trident) .3
Film processing .4
Postage .4
Misc. xerox, phone .4
Archaeological field assistant (1.1 months Archaeologist I
Range 16D = \$4294/mo w/ benefits) 4.7
Frontier office space rental at \$3.06/sq. ft/month
Staff office 64 sq. ft + 100 sq. ft storage and analysis 6.0

SUPPLIES

Packing for human and funerary objects .6
Office supplies .4
Film .2

EQUIPMENT

Computer 1.8
Office (desk, file cabinet, chair, bookcase, table, partitions,
computer table) 2.3
Forensic instruments and measuring devices 2.6
Locking storage cabinet .8
Emergency radio .6
Camera w/ macrolens .6

112.8

STATE OF ALASKA
House of Representatives
District 27

Representative Cliff Davidson
Chairman
House Resources Committee



Box V, Juneau, AK 99811
(907) 465-2487
Box 746, Kodiak, AK 99615
(907) 486-8250

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

FROM: Representative Cliff Davidson

DATE: May 17, 1991

SUBJECT: House Bill 296, Repatriation of Human Remains

Thank you for taking the time to hear House Bill 296. I disagree with the fiscal note the Department of Natural Resources has attached to the legislation and would like to explain why.

Alaska Statute 41.35, the Alaska Historical Preservation Act, directs the Historical Resource Management Office (HRMO) within the Department of Natural Resources (DNR) to protect and interpret Alaska's heritage resources. HRMO fulfills this mandate in many ways such as reviewing state development projects, issuing permits and leases and assists with land management plans and other undertakings for potential impacts to important, non-renewable heritage sites. Additionally, the department conducts historical and archaeological surveys, cultural resources evaluations and mitigation excavations. New or updated information on sites is added to the Alaska Heritage Resources Survey.

House Bill 296 requires HRMO to go one step further when they are notified of unmarked historical burial sites. That extra step, after identifying the historical significance, is to contact "reasonably identifiable" next of kin or the closest tribal group to the burial site and allow them the opportunity to repatriate the remains and affiliated burial items, if they so wish.

Page 2
House Finance Committee
House Bill 296

The department feels they need additional funding to support this effort. The HRMO currently has three Archaeologists I, three Archaeologists II and one Archaeologist III on staff. Archaeologists are well versed in the study of historical properties. It is my belief that these employees should and would be able to ascertain within a reasonable doubt the lineage of the remains. I believe once this division is notified of a potential historical gravesite, one of their main objectives is to decipher the who, what, when and where in order to update state records. To go the extra mile and contact the nearest tribal group or potential next of kin should not add a new burden to the existing process.

Therefore, I respectfully suggest the House Finance Committee pass House Bill 296 with a zero fiscal note with the intent that the department return next year with information regarding the number of hours spent by staff following the mandate of this legislation.

Thank you for your time and consideration of this request.

Kodiak Area Native Association



402 Center Avenue
Kodiak, Alaska 99615
Phone (907) 486-5725

Representative Cliff Davidson
State of Alaska House of Representatives
Box V, Juneau, AK 99811

May 6, 1990

Dear Cliff,

I would like to express my wholehearted support for House Bill 296, as professional archaeologist, and on behalf of the Kodiak Area Native Association. The bill offers long overdue protection for human remains in Alaska, and recognition of the rights and dignity of Native Alaskans. I am particularly pleased with Section 6, which will be one of the few protections available for archaeological sites on private land.

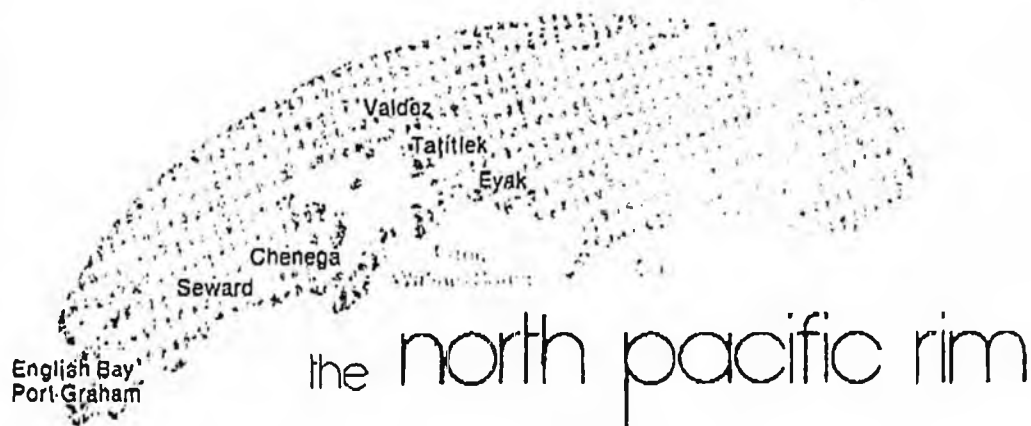
On page 2, line 5 and 6, you might consider legitimately obtained skeletons purchased by physicians and others, which are generally imported from India and other places. Perhaps it would be best to address the bill specifically to human remains from the state of Alaska.

Also, it may be wise to make the proposed dispute committee, described in page 5, lines 27-31, and on page 6, and odd number to avoid split decisions. I would urge you to retain the full representation of the Native community, and consider dropping the area resident.

On the whole the bill is clear, solidly written, and does what it is supposed to. Please accept my thanks, and that of the Native community for introducing this fine piece of legislation. It is fully consistent with your excellent record for supporting and protecting the cultural heritage of Native people.

Sincerely,
KODIAK AREA NATIVE ASSOCIATION
Kelly Simeonoff, President

Rick Knecht
Culture and Heritage
Program Administrator



May 6, 1991

Representative Cliff Davidson
Chairman
House Resources Committee
State of Alaska
House of Representatives
Box V
Juneau, Alaska 99811

Dear Representative Davidson:

The North Pacific Rim, the Alaska Native regional tribal organization serving the people of the Prince William Sound and lower Kenai Peninsula, is pleased to see the progress of House Bill 296, "An Act relating to human remains and funerary objects." This Act will close a loophole in current state law and provide some much needed protection for Alaska Native burial sites.

We would like to emphasize that we do not view this legislation as being "anti archaeology" or "anti science" in any way. We would like to point out that The North Pacific Rim is incorporating an archaeology component into a youth Spirit Camp project this summer. We view HB 296 as a vehicle for showing respect for the Native cultures of our state and recognizing the right of Native people to protect the graves of their ancestors.

Thank you and the other sponsors for the time and effort you have put into this important piece of legislation.

Sincerely,

Richard A. Rolland
Executive Director

Alaska Federation of Natives, Inc.

May 3, 1991

Mr. Cliff Davidson, Chairman
House Resources Committee
House of Representatives
Box V
Juneau, Alaska 99811

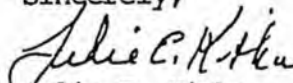
Dear Mr. Davidson:

The Alaska Federation of Natives has followed, with great interest, the repatriation/unmarked burial site hearings of the last one and one-half years. I am pleased to see that progress on the issue has resulted in House Bill 296 now being before the House Judiciary Committee. The Federation supports HB 296 as currently drafted.

As you are well aware, Native burial site disturbances and the removal of remains and funerary objects is an extremely sensitive issue. Time and time again events in Alaska have shown that respect for ancestral remains and Native culture has been readily sacrificed for science and/or personal gain.

The Federation supports HB 296 as presented to the House Judiciary Committee and thanks its sponsors for their efforts in this matter.

Sincerely,


Julie E. Kitka
President

RECEIVED

APR 9 1991

N.A.R.F.
WASHINGTON

SMITHSONIAN INSTITUTION

Washington, D.C. 20560
U.S.A.

April 8, 1991

Mr. Henry J. Sockbeson
Native American Rights Fund
1712 N Street, N.W.
Washington, D.C. 20036-2976

Dear Mr. Sockbeson:

As we have already discussed by telephone, I am pleased to tell you that the Smithsonian Institution has finally completed its consideration of the request of the Larsen Bay Tribal Council for the repatriation of certain materials. The materials in question are, as you know, human remains and associated funerary objects from a site at Uyak Bay, Alaska, that was excavated by Ales Hrdlicka between the years 1931 and 1938. Our decision has not been an easy or uncontested one, and as you also know it follows from an exhaustive review involving a number of outside specialists. Now with the full concurrence of the Director of the National Museum of Natural History, however, I have concluded that the balance of some fairly complex considerations supports a return of these materials to the Council.

You have expressed the belief, with which I can sympathize, that this case has taken an excessive length of time to resolve. Frankly, an awareness of the negative effect this delay is having on our desire to maintain cordial relations with many Native American communities has played a part in the decision to conclude our deliberations on the Larsen Bay claim without convening the Review Panel that has been established for this purpose. A major problem for us has been the difficulty in recruiting the supplementary staff needed to expedite our own internal research on claims. That problem is slowly being overcome, but we must recognize that substantial recruitment delays will always be inherent in Federal hiring processes.

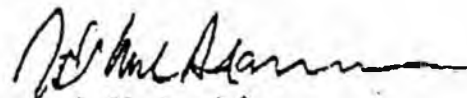
But there have been other, more substantive reasons as well for the length of time that has been devoted to this case. The scientific evidence, while voluminous, does not lend what any fair-minded person would regard as absolutely conclusive support to any position on the repatriation issue. Without going into details, the record of the original excavations at the site presents many ambiguities, making it very difficult to decide on

the likelihood of possible breaks in the occupation there, or on the possibility that older population elements may have been substantially or wholly replaced by new ones during the course of that occupation. Particularly for this reason, I have also felt it was necessary to weigh the evidence for general continuity of Native American occupation in the immediately surrounding region, from the aboriginal period until the present. Once again, no conclusion on this matter can be as clear-cut as one would like. But I think the sum of the evidence (if not all of its details) supports the judgment I am reporting to you herewith.

Issues like those mentioned above had not been anticipated in detail, I should point out, in the legislation mandating our review. Partly because they are so new, we have felt the need to think about them very deliberately. At the same time, now looking to the future, this experience leaves me with a growing sense of the particularity of each of the repatriation claims that are likely to be addressed to the Smithsonian. One would hope that each case would help us to develop broad principles, presently enabling us to handle subsequent cases with less uncertainty and delay. But I am no longer so confident that this hope will be easily realized.

Please be in touch with Dr. Frank Talbot, Director of the National Museum of Natural History, in order to discuss arrangements for the return of these remains. I do hope you understand that all of us at the Smithsonian, while obviously conscious of the scientific loss that we believe this repatriation represents, view the act of repatriation itself with the deepest sympathy and respect. It is our earnest hope that you, your colleagues and constituents will recognize in our action an expression of good will and good intentions that will lead to an improvement of our relations in the future.

Sincerely yours,



Robert McC. Adams
Secretary

HB303

HOUSE COMMITTEE REPC T

file

(11)

Date Referred: February 7, 1992

FURTHER REFERRALS:

Date of Committee Action: 3/11/92

The FINANCE Committee considered:

HB 303

HOUSE BILL NO. 303

CRIMINAL APPEALS

"An Act relating to the state's right to appeal in criminal cases; relating to sentence appeals from sentences imposed by the district court; amending Rule 202 of the Alaska Rules of Appellate Procedure; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB303 (FIN) 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) _____

2 zero fiscal note AK Court System; Public Safety 2 zero fiscal note(s); Admin 2/7/92; Law 2/7/92

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eileen P. Maclean</u> Maclean	<input checked="" type="checkbox"/>	<u>Tom Brown</u> Brown		<input checked="" type="checkbox"/>	
<u>Mike Navarre</u> NAVARRE	<input checked="" type="checkbox"/>	<u>John Koponen</u> Koponen		<input checked="" type="checkbox"/>	
<u>Mark Boyer</u> Boyer	X	<u>Chris Jack</u> Jack		<input checked="" type="checkbox"/>	
<u>Frank Larson</u> Larson	<input checked="" type="checkbox"/>	<u>Paul Phillips</u> Phillips		<input checked="" type="checkbox"/>	
<u>James Barnes</u> Barnes	<input checked="" type="checkbox"/>	<u>Best Sharp</u> sharp		<input checked="" type="checkbox"/>	

Mike Navarre NAVARRE E P Maclean MACLEAN
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 303

Revision Date: _____
 Title: "An Act relating to the State's right to appeal in criminal cases . . ."
 Sponsor: House Judiciary
 Requestor: House Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 The fiscal impact of this bill depends entirely on the numbers of cases where review was previously denied, which now must be heard by the appellate courts. It is doubtful that there are any such cases. The appellate courts rarely have denied discretionary review to the State.

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: February 3, 1992

Approved by Commissioner: Nancy Bear Usina
 Agency: Administration

Date: 2/4/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

**STATE OF ALASKA
1992 LEGISLATIVE SESSION**

BILL NO. CSHB 303(JUD)

Revision Date: _____ Department Affected: Public Safety
 Title: "An Act relating to the state's right to appeal in criminal cases." BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: House Judiciary
 Requestor: House Finance COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact is anticipated.

Prepared By: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 3/5/92
 Approved by Commissioner: *Gayle A. Horetski for* Richard L. Burton
 Agency: Department of Public Safety Date: 3/5/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 303

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act relating to the state's right to appeal in criminal cases..." BRU: Prosecution
 Sponsor: House Judiciary Committee Component: All
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services / RAL Date: January 21, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 21, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 303

This bill amends AS 22.07, AS 22.10, AS 22.15, and repeals Rule 202(c), Alaska Rules of Appellate Procedure, to provide that the state's right to appeal in criminal cases is limited by the prohibition against double jeopardy contained in the United States Constitution and the Alaska Constitution. Existing law limits this right except to test the sufficiency of the indictment or information or to appeal a sentence on the ground it is too lenient. The effect of granting broadened appeals rights to the state will be to permit it to test evidentiary rulings that are adverse to the state's case at the outset. Currently, the state's only opportunity to test evidentiary rulings is when a defendant appeals a ruling adverse to the defense and the state gets to respond.

Although there will be some incremental cost when the state elects to affirmatively bring an evidentiary appeal, it will certainly be more efficient than the current system where we must wait for a defense appeal before evidence issues are finally resolved.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 303

Revision Date: _____
 Title: "An Act relating to the State's right to appeal in criminal cases . . ."
 Sponsor: House Judiciary
 Requestor: House Judiciary

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency

COMPONENT SERIAL NO.

1	6	3	1
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

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

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE:	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 The fiscal impact of this bill depends entirely on the numbers of cases where review was previously denied, which now must be heard by the appellate courts. It is doubtful that there are any such cases. The appellate courts rarely have denied discretionary review to the State.

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: February 3, 1992

Approved by Commissioner: Nancy Bear Usafa
 Agency: Administration

Date: 2/7/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill No. CS HB 303

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the state's right to BRU: Trial Courts
appeal in criminal cases Components: _____
 Sponsor: House Judiciary
 Requestor: _____ COMPONENT SERIAL NO.

000 000	000 768
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *(Signature)* Phone: 264-8228
 Division: Alaska Court System Date: 03/04/92

Approved by: Arthur H. Snowden, II, Administrative Director *(Signature)* Date: 03/04/92
 Agency: Alaska Court System

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

CS FOR HOUSE BILL NO. 303 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the state's right to appeal in criminal cases; relating to sentence
2 appeals; amending Rule 202 of the Alaska Rules of Appellate Procedure; and providing
3 for an effective date."

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

5 * Section 1. The legislature finds that AS 22.07.020, AS 22.10.020, and AS 22.15.240, which give
6 the state a right to appeal in criminal cases, are based on the provisions of 18 U.S.C. 3731.

7 * Sec. 2. AS 22.07.020(b) is amended to read:

8 (b) The court of appeals has jurisdiction to hear appeals of sentences of imprisonment
9 imposed by the superior or district court on the grounds that the sentence is excessive or too
10 lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and
11 the state constitution.

12 * Sec. 3. AS 22.07.020(c) is amended to read:

13 (c) The court of appeals has jurisdiction to review [(1)] a final decision of the district
14 court in an action or proceeding involving criminal prosecution, post-conviction relief, extradition,

1 probation and parole, habeas corpus, or bail [; AND (2) THE FINAL DECISION OF THE
2 DISTRICT COURT ON A SENTENCE IMPOSED BY IT]. In this subsection, "final decision"
3 means a decision or order, other than dismissal by consent of all parties, that closes a matter in
4 the district court.

5 * Sec. 4. AS 22.07.020(d) is amended to read:

6 (d) An appeal to the court of appeals is a matter of right in all actions and proceedings
7 within its jurisdiction except that

8 (1) the right of appeal to the court of appeals is waived if an appellant chooses
9 to appeal the final decision of the district court to the superior court; and

10 (2) the state's right of appeal in criminal cases is limited by the prohibitions
11 against double jeopardy contained in the United States Constitution and the Alaska
12 Constitution [STATE HAS NO RIGHT OF APPEAL IN CRIMINAL CASES EXCEPT TO
13 TEST THE SUFFICIENCY OF THE INDICTMENT OR INFORMATION OR TO APPEAL A
14 SENTENCE ON THE GROUND THAT IT IS TOO LENIENT].

15 * Sec. 5. AS 22.10.020(e) is amended to read:

16 (e) An appeal to the superior court is a matter of right, but an appeal from a subordinate
17 court may not be taken by the defendant in a criminal case after a plea of guilty, except on the
18 ground that the sentence was excessive. The state's right of appeal in criminal cases is limited
19 by the prohibitions against double jeopardy contained in the United States Constitution and
20 the Alaska Constitution [STATE HAS NO RIGHT TO APPEAL IN CRIMINAL CASES,
21 EXCEPT TO TEST THE SUFFICIENCY OF AN INDICTMENT OR INFORMATION OR TO
22 APPEAL A SENTENCE ON THE GROUND IT IS TOO LENIENT].

23 * Sec. 6. AS 22.10.020(f) is amended to read:

24 (f) An appeal to the superior court may be taken on the ground that a sentence of
25 imprisonment of 90 days or more was excessive and the superior court in the exercise of this
26 jurisdiction has the power to reduce the sentence. The state may appeal a sentence on the
27 ground that it is too lenient. When a sentence is appealed [BY THE STATE] on the ground
28 that it is too lenient, the court may not increase the sentence but may express its approval or
29 disapproval of the sentence and its reasons in a written opinion.

30 * Sec. 7. AS 22.15.240(b) is amended to read:

31 (b) The defendant may appeal a judgment of conviction given in the district court in a

1 criminal action to the superior court. When the judgment is given on a plea of guilty, an appeal
2 may not be taken by the defendant except on the ground that a sentence of imprisonment of 90
3 days or more was excessive. The state's right of appeal in criminal cases is limited by the
4 prohibition against double jeopardy contained in the United States Constitution and the
5 Alaska Constitution. The state may also [STATE HAS NO RIGHT OF APPEAL IN
6 CRIMINAL ACTIONS FOR WHICH JUDGMENT IS GIVEN IN THE DISTRICT COURTS,
7 EXCEPT TO TEST THE SUFFICIENCY OF THE INFORMATION OR TO] appeal a sentence
8 on the ground that it is too lenient. When a sentence is appealed [BY THE STATE] on the
9 ground that it is too lenient, the court may not increase the sentence but may express its approval
10 or disapproval of the sentence and its reasons in a written opinion.

11 * Sec. 8. Rule 202(c), Alaska Rules of Appellate Procedure, regarding the prosecution's right to
12 appeal in criminal cases, is repealed.

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

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

ALLOWING STATE TO APPEAL IN CRIMINAL CASES

HB 303 enlarges the state's right to appeal in criminal cases by giving state prosecutors the same right to appeal as have federal prosecutors. Unlike Alaska law where the right of the prosecution to appeal is limited by statute (AS 22.07.020 and AS 22.10.020), the right of federal prosecutors to appeal erroneous decisions is limited only by constitutional double jeopardy provisions. A copy of the federal statute is attached.

Like all human institutions, our criminal justice system is not perfect and judges sometimes make mistakes. If a mistake is made in favor of the state, the defendant can appeal. A conviction that was wrongfully obtained will be reversed on appeal. That is as it should be; basic justice requires no less. But, if a judge makes a mistake in favor of a defendant, the state may not be able to obtain appellate review of the erroneous decisions. Constitutional prohibitions against double jeopardy do not require that these erroneous decisions stand uncorrected. The proposed amendment changes the statutes to allow the state to appeal in circumstances where an error has been made.

Under current state statutes, if a trial judge dismisses a case erroneously, the state must file a "petition for review", not an "appeal", with the court of appeals. The difference is two-fold.

First, the right to "appeal" means the right to have the court hear a case and consider it on the merits; the court cannot refuse to hear the case. But a "petition for review" is addressed to the court's discretionary power to review decisions of the trial court; the petitioner must convince the court that there is some good reason to take the case, aside from the fact that the judge may have made a mistake. The court can deny the petition because the legal issue raised is unusual, or because the issue is not likely to recur, or because the court is too busy, or for any other discretionary reason, without ever reaching the merits of the trial judge's decision. That is, the trial judge could be clearly wrong to have dismissed charges in a criminal case, but the court of appeals is not required to do anything to correct that wrong, even if it completely agrees with the state's legal argument.

Second, a petition for review must be drafted on very short notice. In the normal appeal process, a person has 30 days from the date of the trial judge's decision to file a simple pleading stating the person intends to appeal. The record on appeal is then prepared. After the record is completed, the person has an additional 30 days to file a brief. This means that, as a

practical matter, the person has several months to research and draft a brief before it must be filed with the court.

The petition for review process is quite different. The state has only 10 days from the trial judge's order to draft a petition that includes a sufficiently convincing argument on the merits of the case to convince the court of appeals that they should take the case and reverse the trial judge's decision. This 10-day period was designed with interlocutory -- mid-trial -- appeals in mind. However, with mid-trial appeals the parties and the judicial system cannot afford the luxury of leisurely briefing because everyone needs to know quickly whether the court of appeals is going to interrupt the trial to decide the legal issue involved. This frantic pace does not make a lot of sense when the state appeals a final order in a case; by definition, a final order adverse to the state ends the case. There is no reason to rush the briefing schedule after a final order has been entered.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 80
JUNEAU, ALASKA 99911-0310
PHONE: (907) 485-3428

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

March 5, 1992

Representative Dave Donley
3111 C St., Suite 450
Anchorage, AK 99503

Ref: House Bill No. 303

Dear Representative Donley:

This letter is in response to your request for information regarding how House Bill No. 303, which broadens the state's right to appeal, would affect the Criminal Division of the Department of Law. The bill would eliminate the need to file petitions for discretionary review of adverse dispositive rulings by trial courts, thereby reducing the workload of the appellate office.

The Office of Special Prosecutions and Appeals represents the State of Alaska in all felony merit appeals, in all criminal cases in the Alaska supreme court, and in all federal actions challenging state convictions. Under existing law, the state's right to appeal in most cases is limited by the court of appeals' discretion. OSPA must file petitions for review, seeking discretionary appellate review of adverse dispositive rulings by the trial court. For example, the state cannot currently appeal a trial court's dismissal of charges based upon an alleged violation of the defendant's right to a speedy trial; it must file a petition for review. Though in practice the court of appeals nearly always decides to grant the state's petitions in these cases, OSPA must nevertheless devote a significant amount of time to draft the petition.

Under existing law, the state has thirty days from the certification of the record or the filing of the appellant's brief to file its brief, but only ten days from the adverse ruling to file a petition for review. This ten-day time frame for filing a

HB 303 - 2
3/5/92

petition for review puts a strain on OSPA. Because the appellate attorney is new to the case, he must review the trial court pleadings and listen to cassette tapes of any relevant hearing. The attorney must then research the law because the petition must contain a "[d]iscussion of the reasons why the decision below is alleged to be erroneous." This is often as time consuming as filing a brief on direct appeal, and usually takes several days. If the petition is granted, the case proceeds as if an appeal had been filed: the parties designate a record, the clerk prepares the record, and the parties file briefs.

Under House Bill No. 303, the state would be permitted to appeal adverse decisions as a matter of right. A state attorney could initiate an appeal by filing a notice of appeal, a statement of points on appeal, and a designation of record. Preparation of these documents ordinarily would occupy at most a few hours. Once the record is certified, the state would have thirty days to file a brief.

At the current time, OSPA has seven appellate attorneys, two trial attorneys and a supervising attorney. Thirty-eight briefs and other responsive pleadings are due within the next thirty days. Two of the cases in the office involve extremely long trials, requiring the assigned attorneys to read 4000 and 5800 pages of transcripts. It would be difficult today for an appellate attorney to drop everything and devote the necessary time to filing a petition for review. An appellate attorney can more easily juggle an appeal into his caseload than he can a petition for review.

I strongly urge you to support the passage of the bill for it will greatly assist OSPA in providing effective representation in all appellate proceedings.

Yours truly,

CHARLES E. COLE
ATTORNEY GENERAL

By:


Cynthia M. Hora
Assistant Attorney General

The provisions of this section shall be liberally construed to effectuate its purposes.

(As amended Jan. 2, 1971, Pub.L. 91-644, Title III, § 14(a), 84 Stat. 1890.)

1971 Amendment. First par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision, judgment, or order of district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where double jeopardy prohibits further prosecution.

Second par. Pub.L. 91-644, § 14(a)(1), enacted provision for appeal to a court of appeals from decision or order of district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

Such first and second pars. superseded former first eight pars. Pars. one through four had provided for appeal from district courts to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision granting judgment of conviction for insufficiency of indictment or information, where such decision or judgment was based upon invalidity or construction of the statute upon which the indictment or information was founded and for an appeal from decision or judgment sustaining a motion in bar, where defendant had not been put in jeopardy. Pars. five through eight provided for appeal from district courts to a court of appeals where there were no provisions for direct appeal to Supreme Court from decision or judgment setting aside, or dismissing any indictment or information, or any count thereof and from decision granting a judgment of conviction, and from an order, granting a motion for return of seized property or a motion to suppress evidence, made before trial of a person charged with violation of a Federal law, if the United States attorney certified to the judge who granted the motion that the appeal was not taken for purpose of delay and that the evidence was a substantial proof of the charge pending against the defendant.

Third par. Pub.L. 91-644, § 14(a)(2), authorized within third par., formerly ninth, an appeal within thirty days after order has been rendered.

Fourth par. Pub.L. 91-644, § 14(a), in revising the provisions, had the effect of designating former tenth par. as fourth par.

Fifth par. Pub.L. 91-644, § 14(a)(3), substituted as a fifth par. provision for liberal construction of this section for prior eleventh par. provision respecting remand of case by Supreme Court to court of appeals that should have been taken to such court and treatment of the court's jurisdiction to hear and determine the case as if the appeal were so taken in the first instance and for prior twelfth par. provision respecting certification of case to Supreme Court that should have been taken directly to such Court and treatment of the Court's jurisdiction to hear and determine the case as if the appeal were taken directly to such Court.

Savings Provision. Section 14(b) of Pub.L. 91-644 provided that: "The amendments made by this section (to this section) shall not apply with respect to any criminal case begun in any district court before the effective date of this section (Jan. 2, 1971)."

Legislative History. For legislative history and purpose of Pub.L. 91-644, see 1970 U.S. Code Cong. and Adm. News, p. 3804.

Federal Practice and Procedure

Appellate review

Arrest of judgment, see Wright: Criminal 2d § 574.

Criminal contempt proceedings, see Wright: Criminal 2d § 713.

Decision setting aside or dismissing indictment or information, see Wright: Criminal 2d § 191.

Dismissal for unnecessary delay, see Wright: Criminal 2d § 814.

Motion for judgment of acquittal, see Wright: Criminal 2d § 469.

Search and seizure, see Wright: Criminal 2d § 678.

Government's right to appeal, see Wright: Criminal 2d § 874.

Mandatory release of defendant on his own recognizance upon dismissal of indictment, arrest of judgment and appeal by government, see Wright: Criminal 2d § 767.

Review of federal courts, see Wright, Miller & Cooper: Jurisdiction § 4034 et seq.

Writ applications, see Wright, Miller, Cooper & Griesman: Jurisdiction §§ 3932, 3934.

Notes of Decisions

Decision or judgment

Acquittal 24a

Double jeopardy 89

Exclusion of evidence 31b

Exclusion of witnesses 31a

Instructions 55

Mandamus 33a

Motion to correct sentence 54a

New trial, order granting 47a

Order reducing sentence 54

Parole terms 53

Quashing of subpoenas 90

States and territories, appeals by 9

Suppression of evidence

Generally 51

Time of ruling 31a

Writ of error 52

1. Constitutionality

Where there was a general finding of guilt rendered by court in a bench trial, and thereafter district court granted defendant's motion to suppress, double jeopardy did not bar an appeal by the government. U.S. v. Rose, 1976, 97 S.Ct. 26, 429 U.S. 5, 50 L.Ed.2d 5.

Where district court, following a nonjury trial, found defendant guilty of charge of possessing marijuana with intent to distribute and thereafter

Note 4

ing out of violation of injunction issued pursuant to section 160 of Title 29 in a case involving an unfair labor practice. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

K. — Right to jury trial

District court, which stated that it would not impose a sentence in excess of six months, properly denied the jury trial motion of defendants. Professional Air Traffic Controllers Organization officers who were charged with criminal contempt for failing to honor temporary restraining orders. U.S. v. Martinez, C.A. La. 1982, 686 F.2d 334.

This section giving an accused a right to a speedy and public trial by an impartial jury in all cases of contempt arising under laws of United States governing issuance of injunction or restraining orders in any case involving or growing out of a labor dispute do not apply to contempt proceedings to enforce injunctions issued under section 141 et seq. of Title 29. Pabst Brewing Co. v. Brewery Workers Local Union No. 77, AFL-CIO, C.A. Ill. 1977, 555 F.2d 144.

Failure to at least accord defendants statutory right to "demand" trial by jury in criminal contempt proceeding violated due process. Richmond Black Police Officers Ass'n v. City of Richmond, Va., C.A. Va. 1977, 548 F.2d 123.

Writ of mandamus requiring jury trial in criminal contempt proceedings instituted by National Labor Relations Board was recalled, following United States Supreme Court decision that jury trials were not required in such cases, since withdrawal of mandate would not substantially prejudice rights of the union defendants and although defendants had spent considerable time and effort preparing for their challenge to jury selection procedure there was no vested interest in bringing such challenge in instant case and such work, which had been done by public interest legal group, presumably would be available in other cases. In re Union Nacional de Trabajadores, C.A. 1, 1975, 527 F.2d 602.

Business agent for union local did not have constitutional or statutory right to jury trial on charge of contempt for violation of a "Boys Markets" temporary restraining order which enjoined the local and its officers, agents, members, and all persons in active concert and participation with them from in any manner engaging in a strike, work stoppage or picketing against employer. U.S. v. Parin, C.A. La. 1975, 524 F.2d 992, certiorari denied 96 S.Ct. 1493, 425 U.S. 904, 47 L.Ed.2d 753.

Under this section providing that an accused is entitled to a jury trial in all cases of contempt arising under laws of the United States governing issuance of injunctions in any case involving or growing out of a labor dispute, union and officers cited for contempt arising out of their alleged violation of court order enjoining union from striking without complying with notice and waiting requirements of section 160 of Title 29, were entitled to jury trial. In re Union Nacional de Trabajadores, C.A. Puerto Rico 1974, 502 F.2d 113.

Section 160 of Title 29 stating that in granting or enforcing injunctive relief requested by National Labor Relations Board in connection with alleged unfair labor practice the jurisdiction of court sitting in equity shall not be limited by Norris-LaGuardia Act, section 101 et seq. of Title 29, does not insulate criminal contempt proceedings following issuance of Board-requested injunction from requirement of jury trial under this section giving an accused right to jury in all cases of contempt arising under laws of United States governing issuance of injunctions in a case involving a labor dispute. *Id.*

Air traffic controller's charged with contempt in violating preliminary injunction requiring them to refrain from concerted effort directed to work slow down or stoppage and to notify their supervisor of their medical and physical condition with supporting medical data were not entitled to jury trial. U.S. v. Robinson, C.A. Alaska 1971, 449 F.2d 925.

CHAPTER 235—APPEAL

§ 3721. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district court suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.

HB305

(11)

Date Referred: March 13, 1992

HOUSE COMMITTEE REPORT
FURTHER REFERRALS:

Date of Committee Action: 3/24/92

The FINANCE Committee considered:

HB 305

HOUSE BILL NO. 305

REPEAL SUNSET PROVISIONS OF AUTO INS. LAW

"An Act repealing provisions of law that would repeal the mandatory motor vehicle insurance law."

RECOMMENDATIONS:

be replaced with _____ 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 Law; DCED

zero fiscal note(s) DPS 3/13/92

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Mike Navarre</u> Navarre	✓	<u>George Jacko</u> JACKO		✓	
<u>Ray Brown</u> Brown	✓	<u>Ronald J. Larson</u> LARSON		X	
<u>Tamara Barnes</u> Barnes	✓	<u>Eileen P. Mallean</u> Mallean		X	
<u>Bill Sharp</u> Sharp	✓				
<u>Rose E. Phillips</u> Phillips	✓				
<u>A. L. Wren</u> Wren	✓				
<u>Mark Boyer</u> Boyer	X				
<u>[Signature]</u>	✓				

Mike Navarre Navarre EP Mallean
CHAIRMAN'S SIGNATURE

HOUSE BILL NO. 305

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced: 4/26/91

Referred: Transportation, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

**1 "An Act repealing provisions of law that would repeal the mandatory motor vehicle
2 insurance law."**

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

**4 * Section 1. Sections 4, 6, 8, 10, 12, 13, 15, 19, 21, 23, 25, 31, and 35 of ch. 108, SLA 1989 are
5 repealed.**

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 305

Revision Date: 4/26/91 Department Affected: Commerce & Economic Dev.
 Title: Repeal Sunset Provisions of BRU: Insurance
Auto Insurance Law Component: Operations
 Sponsor: House Judiciary Committee
 Requestor: _____ COMPONENT SERIAL NO.

0	3	5	4
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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.

Prepared By: Joan Brown *JBrown* Administrative Officer Phone: 465-2597
 Division: Insurance Date: 3/19/92
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Date: 3-19-92
 Agency: Commerce and Economic Development Date: 3/19/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 305

Revision Date: _____ Department Affected: Department of Law
 Title: "...repealing...law that would repeal the mandatory motor vehicle insurance law." BRU: Prosecution
 Sponsor: House Judiciary Committee Component: All
 Requestor: House Judiciary Committee COMPONENT SERIAL

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Expenditures/Revenues: (Thousands of Dollars)

85 through 91

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill repeals provisions of law that would have repealed the mandatory motor vehicle insurance law, and it will not have a fiscal impact on the Department of Law.

Prepared by: Richard I. Peques Director Phone: 465-3672
 Division: Administrative Services Date: March 10, 1992
 Approved by Commissioner: Richard I. Peques /-OR/
 Agency: Department of Law Date: March 10, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 305

Revision Date: _____ Department Affected: Public Safety
 Title: An Act repealing provisions... BRU: Motor Vehicles
mandatory motor vehicle insurance law Component: Driver Services
 Sponsor: House Judiciary
 Requestor: House Judiciary COMPONENT SERIAL NO.

	5	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact upon the Division of Motor Vehicles is anticipated.

Prepared By: Juanita Hensley Phone: 465-4335
 Division: Motor Vehicles Date: 1/9/92
 Approved by Commissioner: Richard L. Burton
 Agency: Department of Public Safety Date: 1/13/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376



CHAIRMAN
JUDICIARY COMMITTEE
VICE CHAIRMAN
REGULATION REVIEW COMMITTEE
MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

HB 305 Repeal Sunset Provisions of Auto Insurance Law

This bill would repeal the sunset provisions of the mandatory insurance law. These provisions were put into the original bill because there were some concerns about the effect of mandatory insurance on rates. The compromise reached at that time was to put a sunset provision in the bill so that the legislature could revisit the issue.

Mandatory automobile insurance has been a success. Automobile insurance rates have gone down. It regularly scores 80% plus favorable rating in public opinion surveys. If anything, the public has asked for the law to be strengthened.

The time has come to cease viewing mandatory auto insurance as an experiment and make it the permanent law of the state.

DD/bb

BILL NO: HB 305

DATE: 5/6/91

TITLE: "An Act repealing provisions . . . mandatory motor vehicle insurance law"

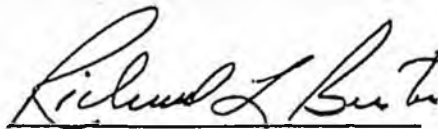
CONTACT: Juanita Hensley
Driver Services (DMV)
465-4335

DEPARTMENT OF PUBLIC SAFETY

HB 305 repeals the "sunset clauses" of the current Mandatory Insurance Law, which is scheduled to be repealed effective January 1, 1994. Repeal of the sunset clauses would allow the present law to remain in effect indefinitely, until amended or repealed by the legislature.

The current Mandatory Insurance Law has had a positive effect on the number of uninsured motorists. Statistics show that for the six months of 1989 that the law was in effect, 11.2% of drivers involved in accidents were uninsured. In 1990, 11.9% of drivers involved in accidents were uninsured. For the period of January through April of 1991, only 9.2% of drivers involved in accidents were uninsured.

The Department of Public Safety supports this bill.



Richard L. Burton
Commissioner

POSTED PER

HB306

HOUSE COMMITTEE REPORT

(11)

Date Referred: May 6, 1991

FURTHER REFERRALS:

Date of Committee Action: 5/7/91

The FINANCE Committee considered:

HB 306

HOUSE BILL NO. 306

MCNEIL RIVER GAME REFUGE & SANCTUARY

"An Act establishing a McNeil River State Game Refuge and altering the McNeil River State Game Sanctuary; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 306 (FIN) 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) FISH GAME ; DNR

SIGNING <u>DO PASS</u>	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Mike Navarre</i> Navarre ✓	✓	<i>Bert Sharp</i> Sharp ✓			
<i>Mark Boyer</i> Boyer X	X				
<i>James Barnes</i> Barnes ✓	✓				
<i>Robert Koponen</i> Koponen ✓	✓				
<i>Leg Brown</i> Brown ✓	✓				
<i>Donald Larson</i> Larson X	X				
<i>Ed Maclean</i> Maclean X	X				
<i>William Ulmer</i> Ulmer X	X				

Mike Navarre Navarre
Ed Maclean Maclean
 CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 306

Revision Date: 5-1-91 Department Affected: Fish and Game

Title: McNeil River State Game Refuge BRU: Wildlife Conservation

Component: Wildlife Conservation

Sponsor: Representative Grussendorf

Requestor: _____ COMPONENT SERIAL NO.

	4	7	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	26.0	26.0	26.0	25.0
TRAVEL	0	4.0	4.0	4.0	4.0	4.0
CONTRACTUAL	0	0	10.0	10.0	10.0	10.0
SUPPLIES	0	1.0	4.0	4.0	4.0	4.0
EQUIPMENT	0	0	8.9	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	5.0	52.9	44.0	44.0	44.0

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

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

GENERAL FUND	0	5.0	52.9	44.0	44.0	44.0
FEDERAL FUNDS						
OTHER						
TOTAL	0	5.0	52.9	44.0	44.0	44.0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	2	2	2	2
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: no impact on current year

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Dave Kelleyhouse, Director Phone: 465-4190

Division: Division of Wildlife Conservation Date: 5/01/91

Approved by Commissioner: *Ross Anderson*

Agency: Department of Fish and Game Date: 5/1/91

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

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 306

Revision Date: _____ Department Affected: Natural Resources
 Title: McNeil River State Game BRU: Land & Water Management
Refuge Components: Land & Water Management
 Sponsor: Representative Grussendorf
 Requestor: House Resources COMPONENT SERIAL NO. 431

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Janet Bureson Phone: 465-3400
 Division: Land & Water Management Date: 30-Apr-91

Approved by Commissioner: Harold Heinze Date: 30-Apr-91
 Agency: Department of Natural Resources

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

CS FOR HOUSE BILL NO. 306 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GRUSSENDORF, Navarre, Jacko, Mackie, Davidson, Boyer, Brown, Ellis, Finkelstein, Gruenberg, Koponen, Kubina, Moyer, Ulmer, B.Davis, Donley

A BILL
FOR AN ACT ENTITLED

1 "An Act establishing a McNeil River State Game Refuge and altering the McNeil River
2 State Game Sanctuary; and providing for an effective date."

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

4 * Section 1. AS 16.20 is amended by adding a new section to read:

5 Sec. 16.20.041. MCNEIL RIVER STATE GAME REFUGE. (a) The following state-
6 owned land and water, including the tidelands but exclusive of marine water and submerged land,
7 lying within the parcels described in this subsection is established as the McNeil River State
8 Game Refuge:

9 Township 10 South, Range 29 West, Seward Meridian

10 Section 19: S1/2

11 Section 20: SW1/4

12 Section 29: W1/2

13 Sections 30 - 31

14 Township 10 South, Range 30 West, Seward Meridian

1 Section 3: SW1/4
 2 Section 4: SE1/4
 3 Sections 10 - 11
 4 Sections 14 - 16
 5 Section 17: E1/2
 6 Sections 20 - 23
 7 Sections 25 - 29
 8 Section 30: SE1/4
 9 Section 31: NE1/4, S1/2
 10 Sections 32 - 36
 11 Township 11 South, Range 29 West, Seward Meridian
 12 Sections 1 - 35
 13 Section 36, except Nordyke Island and its tidelands
 14 Township 11 South, Range 30 West, Seward Meridian
 15 Sections 1 - 36
 16 Township 11 South, Range 31 West, Seward Meridian
 17 Sections 1 - 36
 18 Township 11 South, Range 32 West, Seward Meridian
 19 Sections 1 - 36, except land within Katmai National Park and Preserve
 20 Township 12 South, Range 31 West, Seward Meridian
 21 Sections 1 - 36
 22 Township 12 South, Range 32 West, Seward Meridian
 23 Sections 1 - 36, except land within Katmai National Park and Preserve
 24 Township 13 South, Range 33 West, Seward Meridian
 25 Section 1, except land within Katmai National Park and Preserve.

26 (b) The McNeil River State Game Refuge is established to

27 (1) provide permanent protection for brown bear and other fish and wildlife
 28 populations and their habitats, so that these resources may be preserved for scientific, aesthetic,
 29 and educational purposes;

30 (2) manage human use and activities in a way that is compatible with (1) of this
 31 subsection and to maintain and enhance the unique bear viewing opportunities in the McNeil

1 River State Game Sanctuary established under AS 16.20.160;

2 (3) provide opportunities that are compatible with (1) of this subsection for
3 wildlife viewing, fisheries enhancement, fishing, hunting, trapping, and mineral entry, for
4 temporary safe anchorage, and for other activities.

5 (c) The Board of Game shall determine whether hunting of brown bears within the
6 McNeil River State Game Refuge should be prohibited.

7 (d) The department and the Department of Natural Resources

8 (1) may not enter into sales of land or water within the McNeil River State Game
9 Refuge;

10 (2) may enter into leases within the McNeil River State Game Refuge if the
11 commissioner finds that activity conducted under the lease is compatible with the purposes for
12 which the refuge is established.

13 * Sec. 2. AS 16.20.160 is repealed and reenacted to read:

14 Sec. 16.20.160. MCNEIL RIVER STATE GAME SANCTUARY. The following state-
15 owned land and water, including the tidelands but exclusive of marine water and submerged land,
16 lying within the parcels described in this subsection is established as the McNeil River State
17 Game Sanctuary:

18 Township 12 South, Range 29 West, Seward Meridian

19 Sections 1 - 36

20 Township 12 South, Range 30 West, Seward Meridian

21 Sections 1 - 36

22 Township 13 South, Range 29 West, Seward Meridian

23 Sections 5 - 8

24 Sections 17 - 20

25 Sections 29 - 32

26 Township 13 South, Range 30 West, Seward Meridian

27 Sections 1 - 36

28 Township 13 South, Range 31 West, Seward Meridian

29 Sections 1 - 36

30 Township 13 South, Range 32 West, Seward Meridian

31 Sections 1 - 36

1 Township 14 South, Range 32 West, Seward Meridian

2 Sections 1 - 12

3 Sections 15 - 22

4 Sections 27 - 30.

5 * Sec. 3. AS 16.20.170 is repealed and reenacted to read:

6 Sec. 16.20.170. PURPOSE; REGULATIONS. (a) The McNeil River State Game
7 Sanctuary is established to

8 (1) provide permanent protection for brown bear and other fish and wildlife
9 populations and their habitats, so that these resources may be preserved for scientific, aesthetic,
10 and educational purposes;

11 (2) manage human use and activities in a way that is compatible with (1) of this
12 subsection and to maintain and enhance the unique bear viewing opportunities within the
13 sanctuary; and

14 (3) provide opportunities that are compatible with (1) of this subsection for
15 wildlife viewing, fisheries enhancement, and fishing, for temporary safe anchorage, and for other
16 activities.

17 (b) Hunting and trapping within the McNeil River State Game Sanctuary are prohibited.

18 (c) The department and the Department of Natural Resources

19 (1) may not enter into sales of land or water within the McNeil River State Game
20 Sanctuary;

21 (2) may enter into leases within the McNeil River State Game Sanctuary if the
22 commissioner finds that activity conducted under the lease is compatible with the purposes for
23 which the sanctuary is established.

24 (d) The McNeil River State Game Sanctuary is closed to mineral entry under
25 AS 38.05.185 - 38.05.275.

26 (e) The boards may adopt regulations governing access, entry, development, construction,
27 fishing, and other uses and activities affecting the natural habitat, fish and wildlife, and public
28 use of the McNeil River State Game Sanctuary.

29 * Sec. 4. This Act takes effect on the date the Paint River fish ladder begins operation. The
30 commissioner of fish and game shall certify to the revisor of statutes the date the fish ladder begins
31 operation.

REPRESENTATIVE
BEN GRUSSENDORF
1221 HALIBUT POINT ROAD
SITKA, ALASKA 99835
(907) 747-8458

RULES COMMITTEE
LEGISLATIVE COUNCIL

DISTRICT 3
ELFIN COVE
FELICAN
PORT ALEXANDER
SITKA
TENAKEE

Alaska State Legislature

WHILE IN JUNEAU
P.O. Box V
JUNEAU, ALASKA 99811
(907) 465-3824
(907) 465-3720

House of Representatives SPEAKER OF THE HOUSE May 4, 1991

Rep. Eileen MacLean, Co-Chair
Rep. Mike Navarre, Co-Chair
House Finance Committee

Dear Rep. MacLean and Rep. Navarre:

I have introduced House Bill 306, "An Act establishing a McNeil River State Game Refuge and altering the McNeil River State Game Sanctuary; and providing for an effective date, with the intent of insuring that if a proposed \$2.8 million Paint River fish ladder is built, bears attracted there by migrating salmon will not be adversely affected by increased human-bear contact. Providing sanctuary status to the Paint River will give bears priority status and protect them.

At this time, five environmental groups have sued the Army Corps of Engineers to block construction of the Paint River fish ladder until an appropriate environmental assessment is completed. One of the groups, Friends of McNeil River, has stated that "either the land around Paint River is given some sort of special status to control human access and activities, or the fish don't go up the ladder". The Department of Fish and Game wants the ladder and I want the ladder, so as a result of attempted compromise between all concerned groups to allow the ladder and protect the bears, I hope to pass this legislation.

The Resources Committee Substitute to House Bill 306, contains language changes intended to clarify intent of the bill and certain changes resulting from negotiations with concerned parties.

The numbering of the new section creating the McNeil River State Game Refuge and the numbering of the section extending the Sanctuary was changed to accommodate the Department of Fish and Game's several regulations referring to existing sanctuary statutes; AS 16.20.170.

Language was added in Section 1 (a) to clarify the exclusion of marine water and submerged land from the refuge.

The wording of Section 1 (b) (3) was changed to clarify the intent of the section.

Rep. MacLean, Rep. Navarre
May 4, 1991
page two

Section 1 (d) (2) and 1 (e) was added to further clarify the intent of the section.

Section 1 (f) was deleted so as to not conflict with existing statutes pertaining to the Fish and Game Commissioner's regulation authorization in state refuges.

Language was added to Section 2 (a) clarify the exclusion of marine water and submerged land from the sanctuary.

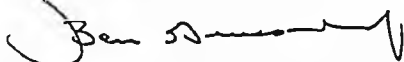
The wording of Section 2 (b) (3) was changed to clarify the intent of the section.

Section 2 (d) (2) and 2 (e) was added to further clarify the intent of the section.

The effective date was changed to allow the establishment of the refuge and the extension of the sanctuary upon operation of the fish ladder.

This bill must be passed to give promise to concerned groups that the bears will be protected in the Paint River area, and hopefully allow fisheries enhancement within the Paint River for the stocking of five salmon species for commercial fishing. I hope you support my efforts to pass this bill.

Respectfully yours,



Rep. Ben Grussendorf
Speaker of the House

Alaska State Legislature



Speaker of the House of Representatives

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-1720

Official Business

MEMORANDUM

TO: REP. BEN GRUSSENDORF
FROM: FALEENE SELE, STAFF
DATE: APRIL 25, 1991
RE: MCNEIL RIVER STATE GAME SANCTUARY/REFUGE

=====

Below are acreage estimates for existing land within the McNeil River State Game Sanctuary, proposed expansion of the sanctuary and proposed McNeil River State Game Refuge. Estimates provided by John Westlund of ADF&G's Wildlife Conservation office in Anchorage.

New northern extension:	8,640 acres
New southern extension:	<u>20,480</u>
Total extension:	29,120
Original McNeil Sanctuary:	<u>83,800</u>
Total Sanctuary acreage:	112,920
Total Refuge acreage:	131,840

TOTAL NEW ACREAGE IN BOTH SANCTUARY AND REFUGE = 160,960

Estimates based on # of sections multiplied by 640.

Northern Sanctuary sections:	13.5
Southern Sanctuary sections:	32
Refuge sections:	206



KENAI PENINSULA BOROUGH

144 N. BINKLEY • SOLDOTNA, ALASKA 99669
PHONE (907) 262-4441

DON GILMA
MAYOR

April 30, 1991

Rep. Ben Grussendorf
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Rep. ~~Grussendorf:~~ ^{Ben}

I am writing in support of HB 306 and your efforts in finding an amicable solution to the current dilemma surrounding the Paint River fishery enhancement project and the protection of the brown bear and other fish and wildlife populations and habitats in the McNeil River area.

It is my understanding that a lawsuit has been filed against the U.S. Corps of Engineers over the Paint River project by a number of organizations who are interested in preserving the integrity of the McNeil River brown bear habitat. It is also my understanding that this pending lawsuit could potentially have a detrimental effect on the federal funding allocated to this project.

Both the development of the Paint River project and the protection of the wildlife in the McNeil River area are important to the well being of this region of the State. While the Borough Assembly has not had the opportunity to take a position on this issue, I believe I can speak for both the administration and the Assembly in saying we strongly support your efforts in finding a solution so that the Paint River fishery enhancement project may proceed, while at the same time protecting the fish and wildlife in the McNeil River area.

Sincerely,

Don Gilman,
Borough Mayor

KENAI PENINSULA BOROUGH
ECONOMIC DEVELOPMENT DISTRICT, INC.

RESOLUTION 91-7

A RESOLUTION SUPPORTING THE CONSTRUCTION OF THE PAINT RIVER FISHERIES ENHANCEMENT PROJECT AND SUPPORT FOR HB 306 "AN ACT ESTABLISHING A MCNEIL RIVER STATE GAME REFUGE AND ALTERING THE MCNEIL RIVER STATE GAME SANCTUARY AND PROVIDING FOR AN EFFECTIVE DATE."

WHEREAS, ninety-nine percent of Lower Cook Inlet commercial salmon permits are held by Alaskans, of which ninety-three percent are residents of the Kenai Peninsula; and

WHEREAS, commercial fishing is a major industrial activity sustaining the economy and labor force of the Kenai Peninsula; and

WHEREAS, the Paint River Fisheries Enhancement Project (which will stock all five species of salmon native to Alaska) would be an accessible fishery for the Kenai Peninsula's commercial fleet; and

WHEREAS, the fish ladder will enable the Paint River system to produce more than 1.7 million salmon annually, adding a projected annual commercial fish harvest and processing value in the Lower Cook Inlet of \$11 million and adding new jobs to the regional economy; and

WHEREAS, \$1.6 million has been appropriated by the State of Alaska and \$1 million committed by the U.S. Economic Development Administration for construction of the fish ladder; and

WHEREAS, concerns have been expressed for protecting bear population at McNeil River; and

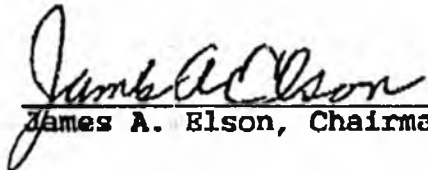
WHEREAS, Representative Ben Grussendorf has introduced HB 306 which expands the boundaries of the McNeil River State Game Sanctuary and establishes a McNeil River State Game Refuge.

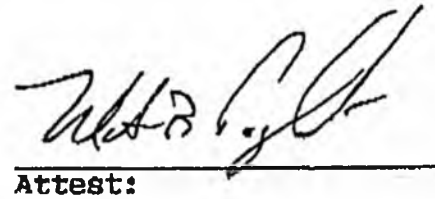
NOW, THEREFORE, BE IT RESOLVED BY THE EXECUTIVE COMMITTEE OF THE KENAI PENINSULA BOROUGH ECONOMIC DEVELOPMENT DISTRICT, INC. THAT

Section 1: The Alaska State Legislature enact HB 306 to provide expansion of the McNeil River State Game Sanctuary and establishment of a McNeil River State Game Refuge which will address the protection of the bear population at McNeil River.

Section 2: This resolution shall take effect immediately upon its adoption.

APPROVED BY THE EXECUTIVE COMMITTEE OF THE KENAI PENINSULA BOROUGH ECONOMIC DEVELOPMENT DISTRICT, INC., THIS 6th DAY OF May, 1991.


James A. Elson, Chairman


Attest:

Attachment #2
5/16/91
HS 206

McNeil River Proposals April 1991



Proposed McNeil River
State Game Sanctuary
Additions

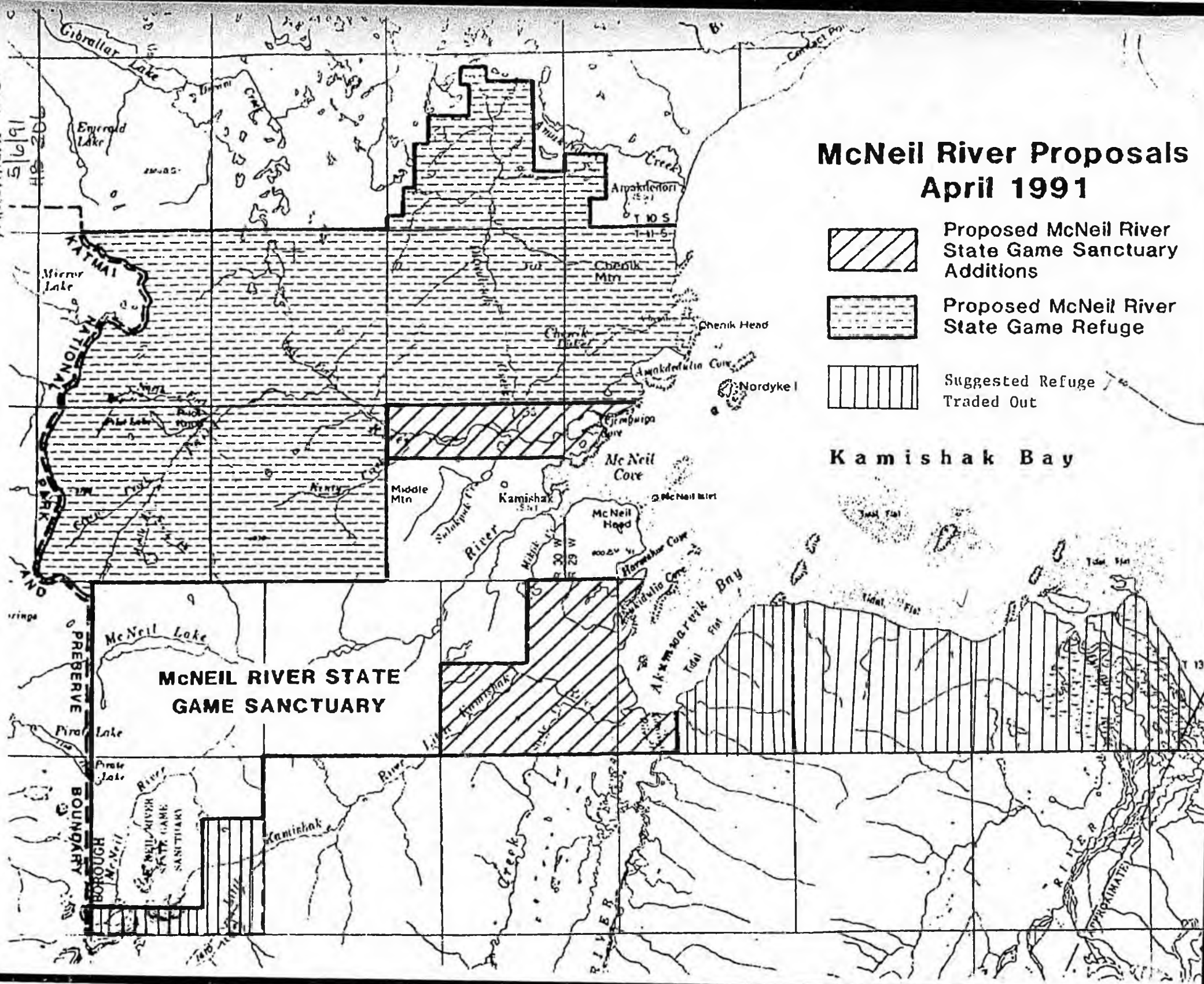


Proposed McNeil River
State Game Refuge



Suggested Refuge
Traded Out

Kamishak Bay



**MCNEIL RIVER STATE
GAME SANCTUARY**

State decides not to change ladder plans

Bears may run into humans at Paint River salmon runs

By DAVID HULEN
Daily News reporter

The controversial fish ladder on the Paint River just outside the McNeil River bear sanctuary will apparently be built on schedule this summer without new restrictions on human activity around it, state wildlife authorities said Friday.

The \$3 million structure is to be built near the mouth of the Paint River, just three miles from the much-photographed falls on the McNeil where dozens of brown bears gather each summer to gorge on salmon.

The idea of the ladder, on the west side of Cook Inlet across from Homer, is to enable salmon to swim around a 35-foot waterfall and spawn in the system, creating a new major commercial salmon run.

But some conservationists think a large new salmon run so close to McNeil could threaten the bears that gather there — and the chance for people to watch so many of them — by drawing them out of the sanctuary and on to state land along the Paint, where bear hunting and sport fishing are allowed. Fish ladder opponents think the amount of human contact with bears could increase, endangering both bears and people.

Officials in the Department of Fish and Game have been discussing the idea in recent weeks of pressing for legislation to impose land-use restrictions on the area around Paint River. One idea was to press legislators to extend the McNeil River sanctuary north to cover the Paint River system, along with restrictions of hunting, fishing and other human activity.

Please see Page C-3, LADDER

LADDER: State decides to forgo new rules

Continued from Page C-1

But on Friday, Karl Schneider, acting regional supervisor of the Division of Wildlife Conservation, said Fish and Game officials in Juneau had not decided to push the legislation this year. With only a month or so left in this year's session, he said, it was unlikely that any such action would occur this year.

Part of the reason, he said, was that new appointees at the top of Fish and

Game, including the new state head of Wildlife Conservation, were just settling into their jobs and were still trying to get familiar with the issue. In addition, he said, groups involved with the issue haven't been able to agree on just what the department should do.

Permits were issued for the project last year.

"I think they feel at this point they can't take a position," Schneider said. Nonetheless, he said, officials in

the department think "some kind of special area status" makes sense and said the issue will continue to be discussed.

Tony Dawson, an Anchorage wildlife photographer who has helped form the group Friends of McNeil River, was among a large group of citizens and government officials who met on the issue Friday. He said he was disappointed the state wasn't doing more.

"They seem to think (placing restrictions on the land)

is moving too fast.... To us, it's not moving fast enough," Dawson said. "Nobody's offering any hope of canceling the project and no protection is likely to be in place" until at least next year.

Schneider, meanwhile, said he thought Fish and Game officials shared the same concerns of the McNeil River group.

"The uncertainty is what's the best thing to do about it," he said.

ADL
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ADL
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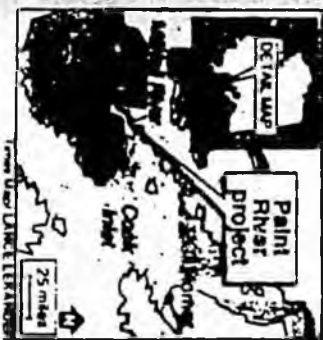
Fish ladder plan spurs interest in bear sanctuary

By DAVID FUTCH

4-10-91

TIMES WRITER

The fear of a brown bear massacre by hunters along the Paint River has led House Speaker Ben Grussendorf to devise a plan to include that stream within the boundaries of the McNeil River State Game Sanctuary.



Grussendorf said Tuesday he expects to introduce a bill ensuring that if a proposed \$2.8 million Paint River fish ladder is built, bears attracted there by migrating salmon will not be killed by hunters.

Currently the Paint River drainage area three miles north of McNeil River does not protect bears from human intrusion, hunting or fishing because the land is designated as state land and not sanctuary for animals.

Friends of McNeil River, a group that opposes construction of the fish ladder, said without sanctuary status, people could fish there, causing potentially disastrous confrontations with bears.

Each year hundreds of people make the trek to view as many as 65 bears at a time feeding on salmon at McNeil River. The river flows to McNeil Cove, 34 miles southwest of Augustine Island in the Aleutian Range.

The Paint River fish ladder is a state, federal and Cook Inlet Aquaculture Association project. See River, page B5

River

Continued from page B1

signed to create another breeding ground for salmon by giving them a way to negotiate the 35-foot high Paint River Falls.

Hunting guide Mike DeNeut predicts a bear massacre unless the Paint River area becomes part of the McNeil River sanctuary.

DeNeut, who has 20 years guiding experience in the nearby Iliamna drainage area, said any designation other than sanctuary status would allow hunters to kill bears at Paint River.

"If you include it as part of McNeil, guides will

stay away because they know the government will almost send them to the electric chair for hunting in the sanctuary," DeNeut said. "I know the mentality of a lot of guides and they can't wait for the ladder to go in."

Grussendorf, D-Sitka, said he decided to propose legislation to include Paint River in the McNeil Sanctuary to give bears priority status and protect them.

The state wants the fish ladder built but does not want to see bears an easy target to hunters.

Friends of McNeil River said the ladder would create a mother lode of salmon at Paint River and divert older and younger bears unable to compete at McNeil River to the Paint River where bears currently do not congregate.

"Bears are not stupid. They take the easy way or out," Grussendorf said. "The Paint River could

become another place where people go to look at bears. When people think of Alaska they think of that magnificent animal. Alaska wouldn't be Alaska without that brown bear."

Tony and Kathy Dawson with Friends of McNeil River have been fighting the ladder but understand political realities will demand the ladder be built. They said they are pleased to see legislation is being put forth to include the Paint River as part of McNeil River Sanctuary. They added they hope the Paint River gets sanctuary status before it's too late.

Tony Dawson said the ladder may not be completed in time for salmon to make a run up the Paint River this summer but it will be by next summer.

If a couple of seasons pass without the Paint River receiving sanctuary status, then the McNeil

River bears could end up on the wrong end of a gun, Dawson said.

"What should have been done is give this area sanctuary status before the ladder is built," he said. "The other point is there are a lot of people tapping their pencils and shaking their heads that six weeks ago weren't doing anything."

Tom Walker, a Cook Inlet Aquaculture planner, said his group has no problem with naming the Paint River part of McNeil Sanctuary.

He said he hopes language in the bill allows for limited activity on the Paint River so Cook Inlet Aquaculture can check on what happens to the salmon migrating up the Paint River.

"Our area of interest is the salmon," Walker said. "I wouldn't hazard a recommendation as to what is good or bad for bears."



Times photo by BILL SHERWONIT



STATE'S BIOLOGISTS AGREE McNEIL'S BEARS NEED ADDITIONAL PROTECTION

4-14-91

Since being assigned to McNeil River State Game Sanctuary in 1976, Larry Aumiller has become the world's leading expert on McNeil's annual gathering of brown bears. Some colleagues within the Department of Fish and Game say the 46-year-old state wildlife technician understands *Ursus arctos* better than anyone, anywhere.

Through his close contact with McNeil's bears, Aumiller has developed ties with the animals that most people might consider a little strange. He's learned to distinguish individual animals and, if asked, will discuss their different personalities and behavioral traits. He's even named many of the regulars who fish for salmon at McNeil Falls year after year. There's Teddy. Chaser. Weird. And Flashman, Groucho and Melody. Just to name a few.

In a sense, the bears have become Aumiller's family. His concern for them, both collectively and individually, is clear.

It's equally clear that the sanctuary and its summertime residents have helped to shape Aumiller's life over the past 15 years. He, in turn, has helped thousands of sanctuary visitors see first-hand that bears are not the bloodthirsty, unpredictable killers that they're often made out to be, while demonstrating that humans and bears can indeed peacefully co-exist "if you do the right things."

Aumiller's unique connection with McNeil's bears naturally makes him sensitive to anything that might jeopardize the sanctuary's values. Long before anyone else, he recognized that a proposed fisheries-development project at nearby Paint River would inevitably affect the sanctuary and possibly do it significant harm. He expressed his concerns.

For years, no one listened. Or at least no one in a position of authority acted on his concerns.

Sometime within the past year, things began to change. Dramatically. As reported by the media, nearly everyone in



Bill Sherwonit