Leg. Finance-House & Senate Finance Comte Files (1991-1992) 770

HB371

SENATE FINANCE COMMITTEE REPORT

DATE: 3/6/92

FURTHER:

DATE TURNED
INTO OFFICE: 5-2-92

The Finance Committee considered CS FOR HOUSE BILL NO. 371 (FINANCE)

"An Act relating to a conditional benefit for certain seasonal employees in the public employees' retirement system."

and recommends:

[ ] replace with _____ CS _____(FINANCE)
or [ ] adopt previous_____ CS _____(_____)
[ ] attaches amendment(s)

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

[ ] adopts _____Letter of Intent

[ ] further referral to the _____

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

NEW FISCAL NOTES: **Dept/Date**

[✓] **zero** fiscal notes A11/DOA 4-27-92 (w/new analysis)

[ ] fiscal notes _____

[ ] **appropriation**--no fiscal note

PREVIOUS FISCAL NOTES: **Dept/Date**

[ ] **zero** fiscal notes _____

[ ] fiscal notes _____

DO PASS:

1. _____
Co-Chair: Signature/Recommendation

OTHER RECOMMENDATIONS:

2. _____
Co-Chair: Signature/Recommendation

FISCAL NOTE

BILL NO. CSHB 371 (FIN)

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 4/27/92
Title: "An act relating to a conditional service benefit in the Public Employees Retirement System for seasonal Employees"
Sponsor: Bover
Requestor: Senate Finance Committee

Department Affected: ALL STATE
BRU: ALL STATE
Component: ALL STATE

COMPONENT SERIAL NO.

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
REVENUE FUND SOURCE:	0	0	0	0	0	0

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: $0

ANALYSIS: (attach a separate page if necessary.) Since we estimate that number of members advantaged would be less than 100, the actuarial impact to the PERS contribution rate would be unmeasurable. We estimate that the PERS accrued liability would increase by $450,000 upon passage of this bill.

Prepared By: Gary Bader
Division: Retirement and Benefits
Phone: 465-4470
Date: April 24, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 4/27/92

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

CS FOR HOUSE BILL NO. 371 (FINANCE)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/28/92
Referred: Rules

Sponsor(s): REPRESENTATIVES BOYER, B.Davis

A BILL

FOR AN ACT ENTITLED

"An Act relating to a conditional benefit for certain seasonal employees in the public employees' retirement system."

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

* Section 1. AS 39.35.385 is amended by adding a new subsection to read:

(g) Subject to AS 39.35.450, an employee is eligible for a normal retirement benefit at age 55 or an early retirement benefit at age 50 if the employee was first hired as an employee before July 1, 1986, and has made contributions to the system on a total of 9,750 hours worked as a seasonal employee. However, an employee may not receive credit towards the total for more than 1,950 hours in a calendar year. Subject to AS 39.35.450, an employee who was first hired on or after July 1, 1986, and is otherwise eligible under this subsection is eligible for a normal retirement benefit at age 60 or an early retirement benefit at age 55.

REPRESENTATIVE
MARK BOYER

VICE-CHAIRMAN
HOUSE FINANCE COMMITTEE

Alaska State Legislature

House of Representatives

FAIRBANKS

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119 NORTH CUSHMAN STREET
FAIRBANKS, ALASKA 99701-2879
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JUNEAU

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3466

MEMORANDUM

TO: Senator Pat Pourchot, Co-Chair
Senator Jay Kerttula, Co-Chair

FROM: Rep. Mark Boyer MB

DATE: March 6, 1992

RE: HB 371, credited service for seasonal employees

I would like to request that HB 371 be scheduled for a hearing in the Senate Finance Committee. This bill is identical to SB 336 that is already in your committee.

Currently seasonal employees only receive PERS credit for a 7.5 hour work day even though they may have worked many more hours due to overtime. Subsequently, though they may work as many hours as a year-round employee, it can take them two to four times as long to qualify for a retirement benefit. The Finance version of HB 371 would allow these employees to receive credit in PERS for a conditional benefit based on the number of hours actually worked, not to exceed 1950 hours per year, the equivalent of a full year of service. The committee substitute does not provide for early or full vesting. Vesting would still only accrue to the employee based on days/years worked. The attached analysis describes the current system and how HB 371 proposes to change it.

HB 371 passed the House on Monday with a vote of 34 to three. It has a zero fiscal note from the Dept. of Administration.

Thank you.

FAIRBANKS 20B

March 6, 1992

HB 371
Credited Service for Seasonal Employees

Currently, seasonal employees only receive PERS credit for a 7.5 hour work day even though they may have worked many more hours due to overtime. Subsequently, though they may work as many hours as a year-round employee, it can take them two to four times as long to qualify for a retirement benefit.

One of the examples of employees affected by this inequity is firefighters. Firefighters must work when forest fires exist and cannot go home when the clock strikes 5:00 p.m. (or 4:30 p.m.). Experienced firefighters can save the state millions of dollars in fire suppression costs. Yet our current system does not encourage these employees to return by allowing for a reasonable opportunity for retirement benefits.

Another type of seasonal employee affected is state construction inspectors. Inspectors work along side construction workers on highway projects, working the same long hours as the contractors' employees. Traditionally, construction workers earn their pension credits based on hours worked, assuring that they can qualify for retirement benefits in five years (on average). Yet the inspectors must work for 10 to 15 years, in many cases, before they can count on retirement benefits.

The Employee Retirement Income Security Act (ERISA), is our nations most comprehensive and far reaching law regarding pension plans. While the State of Alaska is not bound by ERISA, it influences the statutes and regulations for PERS. Under ERISA a pension plan must grant workers a full "year of service" when an employee has at least 1,000 hours of service in a year. In the case of seasonal industries, the Secretary of the Dept. of Labor may set an even lower standard than 1,000 hours.

According to statute, permanent part-time employees receive credited service on a pro rata basis. It follows that if we reduce credit for significantly less time worked, we should increase credit for significantly more time worked.

HB 371 would allow state seasonal employees to receive credit in PERS for a conditional benefit based on the number of hours actually worked, not to exceed 1950 hours per year, the equivalent of a full year of service. This is similar to the existing provisions allowing conditional benefits for legislative employees. The current version of the bill does not provide for early or full vesting. Full vesting would still only accrue to the employee based on days/years worked.

1000 hours = 19.2 hours/week
1950 hours = 37.5 hours/week

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 258-6284

819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

GARY BROOKS
Secretary / Treasurer

February 26, 1992

Mr. and Madame Chair, Members of the House Finance Committe:

We are writing to urge your support of House Bill 371, which would amend the Public Employees Retirement System to allow eligibility of hours worked for retirement credit for seasonal employees.

It goes without saying that the bill is important to the thousands of seasonal employees who work for the state, and it is equally important to those of us who represent them in the workplace. Many of these seasonal employees work during the summer months--fighting forest fires, ensuring that Alaska's fish and game stocks are not in jeopardy, and doing countless other jobs. Many of these jobs also require numerous hours of overtime so that, in the course of a season, the employee works nearly as many hours as a permanent full-time employee. Often, seasonal jobs are conducted under difficult, remote and physically demanding conditions. Occasionally, the conditions are extremely hazardous, such as fighting forest fires.

Presently, seasonal employees receive retirement credit on a monthly basis, regardless of the hours worked in that month. The average seasonal employee may put in eight months of service in terms of hours worked, but receives only five months of credit in the retirement system. Accordingly, it would take 12 years for the seasonal employee to be vested under PERS.

Passage of House Bill 371, sponsored by Rep. Mark Boyer, would allow this same employee to be PERS vested in 7.5 years. We believe this is a fair expectation for an employee devoting their career to serving the state and its citizens.

Seasonal positions tend to be the most abused in state service, and the employees are often mistakenly viewed as "disposable." Employees in this category are not guaranteed the length of their season and do not receive other benefits extended to year-round employees. Yet the state relies on the expertise and loyalty of these employees to protect the Alaska's resources. House Bill 371, if approved, would let these employees know their efforts are appreciated.

As you are probably aware, it is the norm in Alaska's private sector to provide retirement based on hours worked for seasonal trades employees. Within the state and private sectors, the harsh and dangerous nature of the work often means that such seasonal employees seldom last long enough to attain vestment. The end result is that employees devote 10-plus years of their lives to state service and have no retirement benefits despite having made contributions to PERS.

From our perspective, H.B. 371 is only asking that you give the state's seasonal employees a modicum of fairness with regard to retirment benefits. Accordingly, we respectfully ask your support of this much-needed legislation.

Ed Flanagan, Public Employees Local 71, AFL-CIO

Pat Smutz, Alaska State AFL-CIO

Bruce Ludwig, Alaska Public Employees Assn./AFT, AFL-CIO

Jon Stables, Alaska State Employees Assn./AFSCME, AFL-CIO

1460 Old Richardson Hwy.
Fairbanks, Ak. 99705
Jan. 25, 1992

HB 371

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 1
To Senator Pourchot	From Michael McGowan
Co.	Co.
Dept.	Phone # 4747916
Fax # 465 2069	Fax # 4747335

Dear Representative Boyer:

I would like to express my support for HB371. This is probably the most important employment issue affecting turnover of seasonal fire fighters at State Forestry. This bill would go a long ways to recognize the important role served by the seasonal workforce within Alaska. It would create more incentive for workers to return each year rather than look for other jobs. This will help maintain a more stable workforce. The State will benefit through greater efficiency of experienced fire fighters and save unnecessary expense of training new recruits.

If you had a raging forest fire near your home, would you prefer to be protected by a workforce averaging fifteen fire seasons of experience or three fire seasons of experience? These people have to rapidly make decisions that can affect life safety of whole communities and obligate the State for millions of dollars. The Tok fire in 1990 cost over $20 million. Has anybody even wondered how many fire seasons experience the Initial Attack Incident Commander had? You would probably insist on having an experienced surgeon do a heart bypass rather than an intern so why not use the same logic in hiring seasonal employees?

Most seasonal forestry technicians are funded for five months work per year. It takes about ten to twelve years just to get vested for retirement. Based on an average season of 500 hours of overtime, vestment would occur within eight or nine years with HB 371 in effect. This is a big deal to someone thinking of remaining with a seasonal job or looking elsewhere.

I have personally worked at State Forestry as a seasonal for eleven years and have accumulated aproximately eight years time in service. If my overtime had been included, I would have accumulated eleven years of time in service. If I continue to work another fifteen years without HB371, I will probably only have a total of sixteen years of service for retirement at age 55. HB 371 would boost that up to a total of twenty three years.

I would like to ask you to amend HB 371 to include a provision to allow seasonal employees to receive credited service for all overtime worked since their original date of hire. Let's stop treating the seasonal workforce in the State like they're a bunch of second class citizens. An hours service credit for every hour worked is only fair to those who go beyond the call of duty to serve the State.

Please feel free to contact me at 488-2096 (home) or 474-7916 (work) if you need any further information. Thanks for your support.

Sincerely,

Michael G. McGowan

Michael G. McGowan

REPRESENTATIVE MARK BOYER
ALASKA STATE LEGISLATURE
c/o HOUSE FINANCE COMMITTEE
STATE CAPITOL
JUNEAU, ALASKA 99801-1182

DEAR REPRESENTATIVE BOYER

THANK YOU FOR YOUR EFFORTS TO MAKE THE RETIREMENT SYSTEM EQUITABLE FOR SEASONAL EMPLOYEES OF THE STATE OF ALASKA. THE PRESENT METHOD OF SERVICE CREDIT HAS A NEGATIVE IMPACT ON A LIMITED, BUT IMPORTANT GROUP OF EMPLOYEES.

WITH AN AUSTERE ECONOMY THE PRACTICE OF EMPLOYMENT BASED ON NEED IS A PRUDENT METHOD OF MANAGING THE WORK FORCE. AS LONG AS WE RECOGNIZE THAT SOME FLEXIBILITY IS REQUIRED TO MEET OBJECTIVES WE CAN BE FRUGAL AND PROFESSIONAL MANAGERS. THE GOOD FAITH ADJUSTMENT TO THE RETIREMENT SYSTEM THAT IS PROPOSED IS A SIGNIFICANT GESTURE FOR THOSE WILLING TO SERVE AS SEASONAL EMPLOYEES.

DUE TO A VARIETY OF REASONS THERE ARE LIMITED OPPORTUNITIES FOR PEOPLE TO BE EMPLOYED FULL TIME IN MANY CAREER FIELDS. LIKE TOURISM, THE NATURAL RESOURCES, WILDLAND FIRE PROTECTION, AND OTHER GOVERNMENT SERVICES HAVE SOME BASIC STAFFING NEEDS AND THE REQUIREMENT FOR A LARGER CORE GROUP OF EDUCATED, TRAINED, AND EXPERIENCED PERSONNEL TO BE AVAILABLE SEASONALLY. WHEN NEEDED TEMPORARY HELP AUGMENTS THE BASIC ORGANIZATION. THE POINT IS THAT THE VALUE OF THE SEASONAL CORE GROUP IS OFTEN UNDER ESTIMATED.

DUE TO THE DANGEROUS NATURE OF THE WORK WILDLAND FIREFIGHTERS ARE REQUIRED BY NATIONAL STANDARDS TO MEET SPECIFIC LEVELS OF PHYSICAL FITNESS AND TRAINING BEFORE THEY CAN BE EMPLOYED. ENTRY LEVEL POSITIONS REQUIRE LESS THAN ONE WEEK OF TRAINING WHILE THOSE WHO SUPERVISE THOSE PEOPLE REQUIRE THREE ADDITIONAL WEEKS OF TRAINING AND THREE OR MORE YEARS OF EXPERIENCE. THE REQUIREMENTS FOR THE MORE COMPLEX SUPERVISORY AND MANAGEMENT POSITIONS ARE SIMILAR FOR PHYSICAL FITNESS AND VERY COMPLEX FOR EDUCATION AND TRAINING. ONE ONLY NEED TO REVIEW THE FIRE THAT OCCURRED IN TOK IN 1990 TO APPRECIATE THE LEVEL OF EXPERTISE NEEDED TO MOBILIZE, EMPLOY, MAINTAIN AND DEMOBILIZE THE WORK FORCE WHILE MEETING STRATEGIC AND TACTICAL OBJECTIVES. THE EXPENSE OF THE ACTIVITY ALONE DEMANDS EXCELLENT MANAGEMENT, ADMINISTRATION, AND SUPERVISION. SEASONAL EMPLOYEES ARE THE CORNERSTONE OF SUCH AN EMERGENCY RESPONSE.

WHEN EMERGENCIES EXCEED THE CAPACITY OF THE VERY LIMITED NUMBER OF SEASONAL EMPLOYEES, CREWS ARE EMPLOYED ON A TEMPORARY BASIS TO MEET THE NEED. IN ANTICIPATION OF THAT REQUIREMENT BOTH HERE IN ALASKA, AND OUTSIDE, MORE THAN 1200 PEOPLE ARE TRAINED AND ANNUALLY EVALUATED TO MEET PHYSICAL FITNESS STANDARDS FOR TEMPORARY HIRE. BECAUSE THEY ARE TRAINED TO WORK TOGETHER SAFELY THEY CAN BE ASSIGNED TO A QUALIFIED SUPERVISOR TO PERFORM A VARIETY OF EMERGENCY AND NON-EMERGENCY WORK. THIS SYSTEM HAS BEEN SUCCESSFULLY USED IN RESPONSE TO A NUMBER OF INCIDENTS IN THE PAST, e.g. WILDLAND FIRES, FLOODS, OIL SPILLS, ETC. AND WILL CONTINUE TO PROVIDE EXCELLENT SERVICE WHEN CALLED UPON IN THE FUTURE. A BENEFIT OF THIS METHOD IS THE FACT THAT SEVERAL MILLIONS OF DOLLARS ARE PAID ANNUALLY TO PEOPLE FROM RURAL VILLAGES THAT HAVE EXTREMELY LIMITED OPPORTUNITIES FOR EMPLOYMENT. THE KEY ELEMENT IN THE SUCCESSFUL EMPLOYMENT OF THESE CREWS IS THE SUPERVISION PROVIDED BY SEASONAL EMPLOYEES.

THE INVESTMENT IN TRAINING AND EXPERIENCE FOR SEASONAL EMPLOYEES HAS SOME FAR REACHING POSITIVE EFFECTS. WHEN VACANCIES OCCUR FOR FULL TIME EMPLOYEES THERE CAN BE A POOL OF HIGHLY QUALIFIED CANDIDATES TO COMPETE FOR A POSITION. WHEN INSTRUCTORS ARE NEEDED TO TRAIN OTHERS THE EXPERTISE IS AVAILABLE LOCALLY TO MEET THE NEED. WHEN NOT EMPLOYED AT THEIR SEASONAL JOBS SOME ARE ACTIVE OPERATING SMALL BUSINESSES, SUBSTITUTE TEACHING, WORKING WITH VOLUNTEER FIRE DEPARTMENTS, AND SERVING AS PART TIME FACULTY AT COLLEGES.

BECAUSE SEASONAL EMPLOYMENT WITH THE STATE IS THEIR PRIMARY VOCATION IT REPRESENTS A PROSPECT FOR RETIREMENT INCOME. IN THE PRESENT SYSTEM A PERSON MAY HAVE TO BE EMPLOYED FOR MORE THAN A DOZEN YEARS BEFORE THEY ARE ABLE TO MEET MINIMUM TIME IN SERVICE REQUIREMENTS. IT IS ALSO SIGNIFICANT THAT THE TIME WORKED IS NOT AN INVESTMENT IN SOCIAL SECURITY WHICH MAY BE THE ONLY OTHER OPTION FOR RETIREMENT. THE PROSPECT THAT OVERTIME WILL COUNT AS INCOME TO COMPUTE A RETIREMENT ANNUITY IS SIGNIFICANT ONLY IF A PERSON HAS A REASONABLE EXPECTATION OF GAINING ELIGIBILITY. THE EMPLOYEE IS ALREADY CONTRIBUTING TO THE SYSTEM FOR ALL WAGES EARNED. GIVING CREDIT IN THE SYSTEM FOR NOT MORE THAN 1950 HOURS PER YEAR WILL BE A SIGNIFICANT AND JUSTIFIED INCENTIVE FOR SEASONAL EMPLOYMENT.

THANK YOU AGAIN FOR YOUR EFFORTS IN THIS MATTER.

LOREN C. ROTROFF
PO BOX 56763
NORTH POLE, ALASKA 99705

FISCAL NOTE

No. 3
Bill Version: CSHB 371 (FIN)
(H) Publish Date: 2-28-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:
Title:"An act relating to a conditional service benefit in the Public Employees Retirement System for seasonal Employees"
Sponsor: Boyer
Requestor: House Finance Committee

Department Affected: Administration
BRU: Retirement and Benefits
Component: Retirement and Benefits

COMPONENT SERIAL NO. 64

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
REVENUE FUND SOURCE:	0	0	0	0	0	0

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: $0

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Gary Bader Gary M. Bader
Division: Retirement and Benefits
Phone: 465-4470
Date: February 24, 1992

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 2/25/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB & Impacted Agency(ies).
Rev 11/91

COMMITTEE COPY

HB373

FISCAL NOTE

No. 1

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Bill Version: CSHB 373(CRA)
(H) Publish Date: 1/24/92

Revision Date:
Title: "...exemption from property taxation for natural resources in place"
Sponsor: Representative MacLean
Requestor:

Department Affected: Community and Regional Affairs
BRU: Local Government Assistance
Component: State Assessor

COMPONENT SERIAL NO. 0673

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	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Renard Henderson
Phone: 465-4708
Division: Administrative Services Division
Date: 11/3/92

Approved by Commissioner: Ed. Hein
Agency: Department of Community and Regional Affairs
Date: 1-14-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/7/91

COMMITTEE COPY

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 373

Revision Date: _____ Department Affected: Revenue

Title: Exemption from Municipal Property Taxation for Natural Resources BRU: Revenue Operations

Component: Oil and Gas Audit Division

Sponsor: Representative Maclean

Requestor: Representative Jacko COMPONENT SERIAL NO. 0 1 1 5

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						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	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: Robert L. Doss, Director Phone: 277-5627

Division: Oil and Gas Audit Division Date: January 21, 1992

Approved by Commissioner: Daniel Hyndman

Agency: Revenue Date: January 21, 1992

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

Rev 10/7/91

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

150 THIRD STREET
JUNEAU, ALASKA 99801-1291
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

January 17, 1992

POSITION PAPER

RE: House Bill 373

SPONSOR: Representative MacLean

Program Effects of Bill

The passage of this bill would cause all natural resources in place, as defined in the legislation, to become mandatorily exempt from municipal property taxation. The passage of this measure would make the temporary exemption for natural resources in place enacted by HB 159 in 1990 permanent. That exemption expires July 1, 1992.

Comments

The Department strongly supports the passage of HB 373. This position is the result of our recent study conducted under CH 127, SLA 1990. The full report of that study, along with our conclusions and recommendations, has already been delivered to the Committee. A suggestion for a minor technical amendment is attached to this position paper.

Edgar Blatchford, Commissioner

Attachment

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

January 22, 1992

The Honorable Jerry Mackie, Chair
House Community and Regional Affairs Committee
P.O. Box V
Juneau, AK 99811

Dear Representative Mackie:

Subject: HB 366, HB 373, which relate to an exemption from municipal property taxation for natural resources in place.

Position: Although these bills do not directly affect the Department of Natural Resources, we offer our support for the taxation policy they establish.

Background: The valuation of natural resources in place is an extremely difficult and costly task to accomplish, and the results are rarely acceptable to all involved parties. Resource development depends as much on markets, timing, and location as it does on the resource itself. Not exempting natural resources in place from municipal property taxation could further discourage natural resource development in Alaska and depress the price the state receives when offering its resources for sale.

In addition, not exempting natural resources in place from property taxation would raise the value of property within municipalities which, in turn, would negatively affect state education foundation aid and revenue sharing monies municipalities are eligible to receive.

Recommendation: Consider the report on taxation of natural resources in place prepared by the Department of Community and Regional Affairs, and adopt its recommendations.

Sincerely,

Harold C. Heinze

Harold C. Heinze
Commissioner

cc: Representative Cherie Davis
Representative Eileen MacLean
Committee Members
Paul Fuhs, Legislative Liaison, Office of the Governor
Edgar Blatchford, Commissioner, Department of Community and Regional Affairs

10-J9 LH

MEMORANDUM

State of Alaska

Department of Law

RECEIVED
APR 27 1988
MRAD
DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

TO: Bob Evans, Legislative Liaison
Office of the Governor

DATE: April 26, 1988

FILE NO.: 663-88-0410

TEL. NO.: 465-3600

SUBJECT: Exemption of "in place" natural resources

FROM: Marjorie L. Odland
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our opinion regarding a draft bill exempting "in place" natural resources from municipal taxation (Our file: 773-88-0061). You have several concerns regarding the effect and necessity of this bill which will be addressed individually below.

1. What is the state's current obligation regarding the assessment of "in place" natural resources in the full-value determination of a borough or municipality?

The standard by which a local assessor must assess property is set out in AS 29.45.110(a), which reads:

> **The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section, AS 29.45.060 and 29.45.230. The full and true value is the estimated price that the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.**

Under the above statute, a local assessor must assess all taxable property in accordance with the standard. The determination as to whether "in place" natural resources must be included in the assessment of property and the state's liability for insuring the inclusion of assessment of "in place" natural resources by municipalities is central to your question.

To date, municipalities have not assessed "in place" natural resources. Additionally, the state has not required municipalities to include these resources when determining full and true value of property under AS 29.45.110. There is no case law in Alaska interpreting AS 29.45.110 with respect to assessment requirements of "in place" natural resources nor is there a case

in Alaska holding that it is mandatory for these resources to be included in property assessment. However, it is the opinion of this office that "in place" natural resources may correctly be included in the full value determination of a municipality under AS 29.45.110(a) and that the Alaska Supreme Court would support this opinion.

Looking to other states' court opinions and treatise law, it is generally held that the right to tax is purely of statutory creation, and practically all of the authorities are to the effect that assessors, in valuing property, may take into consideration the fact that property contains undeveloped minerals in such quantity as to enhance the value of the land over its mere surface value. See 2 A.L.R. 1550-1553 and cases cited therein. It has also been held that minerals in place are not rendered nontaxable merely because of lack of legislative method and regulation for determining their value. Greene County v. Lattas Creek Coal Co., 100 N.E. 561 (Ind. 1913); 72 Am.Jur.2d State and Local Taxation § 764.

There is case law supporting the view that assessors are required to value for taxation all real property according to its market value. Under those decisions, value is measured by all the circumstances and advantages that tend to enhance it, of which underlying minerals, if accessible, are most important items, so that they must necessarily be included in the valuation. See, e.g., Logan v. Washington County, 29 Pa. 373, 14 Mor. Min. Rep. 108 (Penn. 1857). Any element of value tending to affect selling price "may" be taken into consideration by the assessor in arriving at a proper valuation for assessment purposes. Washington County v. Marquis, 82 Atl. 756 (Penn. 1912). The decisions of the courts in these two cases appear to have been based upon statutes similar in wording to AS 29.45.110(a).

Of main import, is that none of the authorities we found held for the premise that liability attaches to the state or local taxing entity for failure to include "in place" natural resources in their assessments. The authorities we found were based upon cases where a taxpayer was challenging the authority of the taxing jurisdiction to include the value of "in place" natural resources in the assessment of their property.

Furthermore, we found no cases holding that local or state assessors are required to search out "in place" natural resources in order to include them in the assessment of property. The cases mainly hold that it is correct for assessors to take into consideration all "facts" directly affecting the value. It is our opinion that this general rule concerns facts which affect

the value of the property that are known or prospective; not sought or speculative.

There is authority supporting the view that assessors may take into consideration prospective value of property as well as present value in making assessments and that an added value may be given property for purposes of taxation where there is "sufficient reason" to believe that the property contains mineral deposits in sufficient quantity to give it a value as a prospective mine. However, there is also authority to the effect that not only must property be valued at its present value at the time of the assessment, but that such value cannot be based on a speculative prospective value. See generally 72 Am.Jur.2d State and Local Taxation, §§ 763-764.

In summary, it is our opinion that AS 29.45.110(a) allows for "in place" natural resources to be assessed and included in the full value determination of a municipality. The issue of whether the state is mandated to assess these resources will be included under the next section dealing with any potential state liability for failure to include assessment of "in place" natural resources in the full value determination of a municipality.

2. If "in place" natural resources are not currently exempted from the full value determination, what liability may the state face if the state assessor does not include these in his assessments?

As pointed out above, the state has never required municipalities to assess "in place" natural resources in order to arrive at the full and true value of property in the municipality. **The issue is not whether AS 29.45.110(a) can be interpreted to allow for assessment of "in place" natural resources, since we believe that the Alaska Supreme Court would rule that it does.** The issue here centers around the state's longstanding application of this statute in not requiring these resources to be assessed and whether the state faces liability for not including "in place" resources in the assessments. In short, we do not believe that the state faces any present liability for failure to require municipalities to assess "in place" natural resources without a specific exemption in the law.

We are assuming that the liability anticipated by your question concerns a situation where one municipality complains that the state should be requiring another municipality to assess its known "in place" natural resources in the full value determination as it affects the distribution of municipal revenue sharing and education funding. However, a municipality's claim

of deprivation of due process or equal protection against the state must fail. The Alaska Supreme Court recently ruled that a municipality is not a "person" and therefore may not assert due process or equal protection claims against its creator, the state. Kenai Peninsula Borough v. State, ___ P.2d ___, Op. No. 3277 (Alaska, Mar. 4, 1988).

If the state changes its application of AS 29.45.110-(a), rules of contemporaneous construction generally hold that a reversal in interpretation of a statute by the administering agency will be applied only prospectively. 2A N. Singer, Sutherland Statutory Construction § 49.05, (4th ed. 1984 rev.) (hereafter "Sutherland"). In other words, if the state reverses its interpretation and administration of AS 29.45.100(a) requiring municipalities to assess "in place" natural resources in their determinations of full value, the state's new interpretation most likely will apply only to future years; not retroactively.

We note that there is caselaw in other states supporting the following viewpoint:

> the mere failure of public officers charged with the duty to enforce statutory and constitutional provisions in respect to the levy and collection of taxes, or the acquiescence of public officers in conditions that exempted certain property from taxation, should not be permitted to stand in the way of the "correct" administration of the law, or be construed to estop more diligent and efficient public officers when they attempt to perform their duty by bringing in to the revenue proper subjects of taxation that had theretofore been allowed to escape the payment of taxes.

Sutherland § 49.05 (citing Louisville v. Board of Education, 154 S.W. 379, 380-381 (Ky. 1913).

Based upon the above viewpoint, we believe that the present state assessor has correctly pointed out that "in place" natural resources may be included in municipal assessments, and **properly should be included.** However, as noted above, it is the opinion of this office that no liability attaches to the state for failure to insist on the assessment of these resources at this time.

3. Is it your opinion that this exemption from municipal resources is necessary?

Probably yes, for the main purpose of addressing the issue and clarifying the state's application and interpretation of AS 29.45.110(a). We do not believe any retroactive liability will attach if the state does not immediately provide for this exemption in the law. Additionally, the state may wish to consider whether it wants to make the exemption of "in place" natural resources from municipal taxation mandatory upon the municipalities or whether to allow municipalities the option of providing for the exemption of these resources from taxation.

We hope this addresses your concerns. Please do not hesitate to contact us if you need further assistance on this matter.

MLO/pjg

Resolution of the Alaska Municipal League
Resolution No. 92-6

A RESOLUTION RECOMMENDING TAX-EXEMPT STATUS OF "IN PLACE" RESOURCE RESERVES

WHEREAS, under Chapter 127, SLA 1990, there is a temporary exemption for natural resources in place until July 1, 1992, and

WHEREAS, under the same statute, the Department of Community and Regional Affairs (DCRA), in concert with the Alaska Municipal League and the Department of Revenue, is required to prepare a study and recommendations by January 15, 1992, on municipal property taxation of natural resources in place, and

WHEREAS, the AML President appointed a working group of municipal officials and other individuals which has worked with DCRA to represent the views of municipalities, and

WHEREAS, previously, Alaska law required municipalities that levy a property tax to assess, levy, and collect property taxes on natural resources in place, except oil and gas resources, which are mandatorily exempted, and

WHEREAS, without the exemption, the Office of the State Assessor may be required to include values for those natural resources in place in the full value determination for municipalities across the state, and

WHEREAS, prior to the temporary exemption, neither municipalities nor the Office of the State Assessor included values for those resources on local assessment rolls or in the full value determination, and neither has the staff or fiscal resources to value natural resources in place, and

WHEREAS, the inclusion of values for those resources on local property tax rolls or in the full value determination would be likely to have substantial negative tax impacts on farms, ranches, homesteads, and other residential property and substantial negative impacts on municipalities under the state revenue sharing and education funding formulas, and

WHEREAS, under the Alaska Constitution and existing statutes, municipalities have broad powers to impose a variety of taxes on such industries, including sales, use, severance, excise, property, and income taxes, in order to provide services and mitigate the impacts or development, and

WHEREAS, in the "Draft Report on the Study of Taxation of 'In Place' Natural Resources" dated November 1, 1991, and prepared by DCRA, natural resources in place *are defined as "any material in its native state before it has been severed or extracted";*

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League supports the passage of legislation that would require, under AS 29.45.030, the exemption from municipal property taxes of all natural resources in place, as defined in the DCRA Draft Report of November 1, 1991, together with language that would insure preservation of the power of municipalities to levy other types of taxes, including severance and sales taxes against the development and sale of those natural resources.

Adopted at Annual Business Meeting o November 15, 1991 o Fairbanks, Alaska

ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 278-7997 Telephone: (907) 276-0347

October 24, 1991

Ms. Sandra J. Wicks
Deputy Director
Municipal and Regional Assistance Division
Department of Community and Regional Affairs
P.O. Box BH
Juneau, AK 99811-2110

Re: In Place Taxation of Resources

Dear Ms. Wicks:

It was my pleasure to meet you on Friday at the workshop here in Anchorage. With several mining industry people in the audience I am sure you now realize that we are not the rowdy bunch you had been led to expect.

The purpose of this letter is to relate some of our concerns regarding the taxation of minerals in place. Taxation of minerals in place is detrimental for the mineral industry for many reasons and we urge that the report to the Legislature clearly define these reasons and recommend that the existing statute be changed to exempt in place resources from taxation. That report should also list the many other avenues that are now open to the municipalities for taxation of resource industries.

The first and most compelling reason for not taxing minerals in place is that it is extremely difficult to place a value on minerals before they are actually extracted from the ground. Major mining companies employing scores of exploration, financial, environmental, engineering, and management people have a very difficult time defining the value of a deposit.

These companies have extensive institutional experience with many hundreds of years of combined expertise. They have state of the art equipment, procedures and computers that are used in their evaluation process. They have operating mines, often around the world, for comparison and history as basis for determining mining and processing costs. They work to predict metal market changes and spend many years establishing a management track record and developing markets.

Because of the difficulty encountered in making profits in mining, many companies focus on only one or two metals, or focus only on base metals of copper, lead and zinc. Some companies focus on the precious metals of gold and silver while others search for and mine only platinum or diamonds or coal. Each of these commodities has a sufficiently different and complex set of exploration, mining, metallurgical, financial, and marketing problems that necessitate specialization in order to produce profits.

Given an industry with these characteristics and boards of directors intimately concerned with the profitability of each operation, the question becomes: How can local or state tax assessors or their staffs even begin to determine the value of a mineral deposit when these companies have such difficulties determining the value?

The second major problem with the taxation of minerals in place is that it discourages exploration in two ways. First, it discourages exploration in any jurisdiction that utilizes a scheme of in place minerals taxation, and second, it discourages exploration even if in place taxation is on the books but not being used. It will discourage exploration of areas where little is currently known (grass roots exploration) and it will discourage a company from fully evaluating deposits that are already well defined or are already in production. In this instance the tax would discourage the most efficient management of the mine.

Mining companies and financial institutions that loan to them typically have a checklist of items that they consider at each step in their search for new mines. Before a company begins more than a cursory review of mineral prospects in Alaska, they will compare Alaska to the other states, provinces and countries where they may wish to invest their exploration dollars. The items on the checklist will include - regulations, regulatory stability, types of taxes, existing tax levels, tax stability, fiscal stability of the state or country that may affect taxes, etc. The checklist will also address political stability, labor force availability, labor force attitudes, and operating cost considerations.

These items are reviewed before approval is given to spend money in a particular state or country. The exploration business is one of finding likely exploration targets and developing sufficient information to determine if that target can ever become a mine. This process requires many years. For Greens Creek, the largest silver mine in North America, it took 17 years from the initial discovery until first production. For Red Dog, the largest zinc deposit in the world, it took 21 years from initial discovery until first production. For Diamond-Chuitna Coal Co., it has thus far taken 14 years and the first ton of coal has yet to be mined and sold.

If an in place tax had been charged on these minerals before they were mined, there is a high likelihood that no mining would ever have taken place. The cost burden in the early years of a project and the uncertainty as to how long this ongoing cost burden would continue before the mine could start would have been a significant argument against continuing exploration.

Each year a mining company re-evaluates the various projects around the world where it can invest its exploration dollars. Within overall corporate objectives, each prospect/project will compete with every other project for funding for the next year. Each year the checklist comes out and further investment is weighed against the results of this year's exploration findings and any changes to the regulatory, tax, political, etc climates. A project in Alaska will have to compete for funding with prospects in Mexico, Bolivia, Indonesia, USSR, etc. If the Alaskan project carries with it a tax on in place minerals, that project will be at a disadvantage.

Because of the lack of transportation infrastructure in Alaska, it is simply more expensive to conduct minerals exploration and develop and operate a mine here than in many other places of the world. In place taxation, and the scary prospect of being taxed on a resource before it is economic, is just one more disincentive to doing business in Alaska.

Alaska is already at a severe disadvantage for a variety of reasons. These include the cost of operating in the north and the lack of infrastructure. They also include the fact that most mining companies have, at least up until the past two years, seen Alaska as a bad place to do business. They have seen Alaska as a place where they will be harassed by all manner of preservationist groups that have claimed Alaska as their big park. They have watched as the state has milked the oil industry at every turn. They have watched some past state administrations thumb their nose at mining and even target mining companies for harassment.

Because of these and many other factors, there are now only five mines in the entire state with more than 100 employees. From World War II until 1989 when Greens Creek and Red Dog began operation there had been effectively no hard rock mining in the State of Alaska. There are 3000 coal mines in the U.S. and in spite of the fact that Alaska has as much coal as the other states combined, there is only one operating coal mine in Alaska. We are, however, now seeing many companies return to look for minerals in Alaska. It is as if Greens Creek and Red Dog have shown the world that it is possible to start a major mine in Alaska. This notion had been in question for many years. Taxation of minerals in place will act to negate the positive changes that have occurred.

A third fact to consider is that taxation of minerals in place is an additional burden on local communities that are already struggling to encourage creation of new jobs and expand their real property tax base. For much of Alaska the only opportunity for economic development and creation of new jobs is through development of the mineral resources. Many parts of the state do not have timber or fish or oil. The only opportunity in those areas for good-paying, skilled, close-to-home, year-around jobs is the development of the minerals. It should also be noted that on a nation-wide average, mining jobs are higher paying than comparable jobs in other industries.

If in place minerals are taxed, local communities will be hurt without even knowing it. Many of the mining companies that have the expertise to find and develop the minerals will not even go out in Alaska to look for new mines. They will not be there to provide exploration jobs in the early years of a project nor will they be there to provide mine operating jobs and long term employment.

During the meeting here in Anchorage, State Assessor Mr. Mike Worley described the assessment of value as a combination of many factors. He described this as the value of the facilities and improvements along with the value of a particular piece of land based on its location or setting. The value of an undeveloped lot therefore includes the potential value of the lot for the highest and best use to which it could be placed. A fourth major problem with in place taxation is therefore: How will the value of the non-tangible natural resources that exist due to location or setting be determined? For the lot in town, this non-tangible value is determined and it will have to be determined for all areas of the state.

For example, how will "wilderness character" be valued? This is clearly a natural resource that is in place and it too will have to be taxed. What is the value of "wilderness character" for a remote area where one can see wildlife on a consistent basis? What is the increased value of a parcel of land that has a fabulous view of Mt. McKinley or Mt. Saint Elias? Those sites have a natural resource value based on their location just as the lot in town has a value based on its location.

This is an "opportunity value" that exists for many different resources. A tremendous opportunity may exist if a lodge were to be constructed and marketed for European or Japanese customers at $5000 per week. Until that lodge is built and has developed its niche in the market it will be impossible to determine what that opportunity value really is. It will be easier to calculate for lodges and resorts that are already in operation and are benefitting from the opportunity value of the natural resources around them.

Mr. Worley also discussed several tax policy considerations. These included fairness between taxpayers and fairness between municipalities. If natural resources are to be taxed in place and taxation is to be fair, all areas of the state will be subject to taxation of their scenic values, wilderness character, wilderness proximity, and other such resource values.

What about hunting and fishing lodges? What about lodges that focus on hiking or mountain climbing? These often occupy and utilize the most beautiful parts of the state. They will be subject to taxation of the resources they utilize even if the resources are not consumed, just as in the case of minerals that are not extracted from the ground. Of course it could be argued that the hunting and fishing lodges do indeed consume some of the resources.

In a similar vein, a fifth problem with taxation of natural resources in place involves how will the fish resources available to fishing sites be taxed? The fish are clearly a natural resource. The "lot" where the fish site is located has a measurable market value but it also has an "opportunity value" by virtue of the fish that pass the site. If the fisherman is diligent and fishes every minute of every opening he will likely have a greater profit that if he fishes only the best or most convenient openings. What then is the basis for taxing the in place resource that is available to him?

A sixth problem is whether or not it would be cost effective to attempt taxation of in place resources. The above examples show some of the difficulties that will be encountered. What will be the cost of assessing the in place resource values for fish, timber, wilderness character, scenic views, lodges, and minerals? The direct financial costs to the municipalities and the state will be very high as will the indirect costs that will result.

The direct costs are not a one time charge either. Value assessment of in place resources will in many instances require a yearly re-evaluation. Fish resources available to the fisherman will vary from year to year as will the cost of operation and the price that he can get for the resource. From a minerals standpoint the "value" of ore deposits also change each year. Some ore is mined (hopefully), additional drilling may add to the ore reserves, changes in the metallurgy of the ore being mined (the difficulty of removing the metal from the rock) may increase costs, other factors may increase costs, and the prices received for the metals will always fluctuate. Each of these changes means that the "value" of the minerals in place will change.

The issue of annual re-evaluation should be a concern. I believe Arizona is one of only two states that still attempts to tax ore reserves in place. I talked with mining industry officials there and learned that in Arizona there are five major mining companies that have 14 operating properties with copper and gold being the primary commodities produced. The assessed value of the ore reserves are re-evaluated each year based on metal prices, operating costs and profits and the process is a very strenuous one for all concerned.

The indirect costs will include disagreements between the lodges, fishermen, loggers, miners, etc. seeking to operate, and the municipalities. Arguments and discontent between these groups and the municipalities would become a very divisive factor for the communities. We need only look at the problems that arise right now when assessors seek to place a value on real property that can be seen, touched and measured. Therefore, what will it be like to value resources that cannot be seen, touched or measured?

A seventh problem will arise when a company that has been taxed for several years on the in place natural resources decides that the project is not economic and asks for reimbursement of the taxes that had been paid. This could be a lodge developer that sees his potential market change or it could be a mining company that concludes that the metallurgy of the ore is too complex and costly for a mine to be profitable.

The above points show the extreme difficulty of in place taxation of resources. For some resources the valuation process (assessing) is more difficult than for other resources. Considering minerals, it is nearly impossible for these to be valued for taxation and if they are taxed the ultimate effect will be less exploration in Alaska and there will be fewer jobs generated.

In considering taxation of in place resources, all of these resources will have to be valued and taxed. This would be a herculean task. We therefore urge you to provide the State Legislature a recommendation that the statute be changed to exempt all resources in place from taxation.

Sincerely,

Steven C. Borell, P.E.
Executive Director

Municipal "in place" resource tax issue will be back before lawmakers in 1992

A Special Analysis
by
Tim Bradner

Valuation of resources could impact many things ?

Municipal taxation of resources "in-place" will be before the Alaska legislature again in 1992 — a two-year exemption enacted by 1990 will expire next July. If the legislature does not extend the exemption, municipalities will face the question of whether they should impose these kinds of taxes. Because of the way local assessments affect formulas for state school revenue-sharing, the issue directly affects the amount of money local school districts get from the state.

State lawmakers may establish a framework for assessments, or impose limitations, on the ways local governments impose resource taxes. The State Dept. of Community and Regional Affairs has a study of the issue now underway, which will include the experiences other states have had with natural resources property taxes.

State law appears to require valuation of resources in place

Resource "in place" taxes are property taxes placed on the value of raw, undeveloped natural resources. Alaska statutes exempt certain kinds of property — oil and gas — from in-places taxes, although surface facilities related to oil and gas are subject to tax. But the law is silent as to other types of resources, such as minerals or timber.

The issue mainly affects mining developers most directly because several major projects — the AJ Mine eventually Greens Creek Mine in Juneau, Red Dog Mine in northwest Alaska, the Usibelli and Wishbone Hill coal mines, Fort Knox in Fairbanks — are within municipal boundaries. The companies developing these projects are concerned over uncertainties that arise from different theories of municipal appraisals on undeveloped mineral properties. Some of these projects are economically marginal, and new local government taxes would affect the economic viability of the projects. Sand and gravel owners and operators should also be concerned. Timber properties would also be affected, but trees are easier to appraise simply because they can be seen, counted and graded. They are more" quantifiable."

How the issue complicates state school revenue-sharing

The complication with state school funding arises because the state assessor is required to prepare a statement of the full and true real and personal property in the state (AS 14.17.140), and must yearly do a full value determination for each municipality. The full value determination is a basic element of the formulas for school funding and state revenue sharing. If statutes do not specifically exempt resources in place from local taxation, the implication is that they should be subject to local taxation, and thus a part of the "full value" determination. *(Cont'd page 4)*

(Continued from page 3) But if the value of resources, having been determined, is added to the basic assessment of municipalities, the result will be changes in the amount of education revenue sharing. For the Northwest Arctic Borough, which includes the Red Dog Mine, this could have dramatic financial consequences, for example.

Implied taxability of resources has always existed in state law

The implied taxability of undeveloped resources has always existed in Alaska law, but in practice most municipalities did not attempt such taxes because they felt the values would be hard to determine and, if undeveloped, had little or no value. Where they were taxed, market-value appraisal techniques were applied. In Fairbanks North Star Borough, for example, the value of surface lands on some mining claims have been taxed.

But major mining projects within municipalities do have undeveloped ore reserves of some value. Determining that value is a major issue. If state law appears to require "full value" assessments, the value of those ore bodies should be included in local tax bases. The problem faced by municipalities is that even if they choose not to impose property taxes on resources, the state assessor may be required to include them in his or her own determination of municipal assessed value, in which case the municipality loses state education funds.

Local governments may also be subject to citizen lawsuits by failing to tax in-place resources. Alternatively, the state assessor may be under legal challenge by other municipalities without natural resources who would argue they are losing state education money because other local governments with resources are not being appraised fairly, under state law.

How to define "resources in place"

One problem is how to clearly define the term. The phrase "in place resources" does not correspond to any commonly used assessment terminology, and appears to be very broad. Chapter 127, SLA 1990 (which imposed the temporary two-year moratorium on taxation) refers only to natural resources in place as, "including proven or unproven mineral and other deposits of valuable materials and timber stumpage...".

What is ambiguous in that definition is the phrase "other deposits of valuable materials." This very likely includes sand and gravel, but would it, for example, also include glacier ice, if it had some form of economic value? The Dept. of Community and Regional Affairs, for the purpose of its own study, uses the definition "Any material in its native state before it has been severed or extracted."

(Continued next page)

This article on "in place" resource taxation first appeared in our special Digest supplement publication for special small communities, municipalities, and schools published in late November (No. 21/91).

The CRA study is 'evolving"

(Continued from page 4) As the C&RA study is now evolving, two discreet positions are developing, not only over the question of whether such taxes should be imposed, but over the definition. Some state agencies, and appraisal experts retained by them, feel the definition of mining properties should be linked to the term "proven reserves" because that phrase has well-established meaning in the mining industry (it means ore reserves definitely established by drilling, as compared to more general estimates). Municipal appraisers, on the other hand, want a very broad interpretation. For them, "resources in place" should be defined as "any material in its native state without regard to quantity, quality or economic value." Appraisers want the term defined broadly so others will not misinterpret it in a limiting way.

Two positions that have formed up over the definition are these:

(1) Natural resources should not be subject to municipal tax before they are severed because it is tec nically infeasible or impractical, and because taxation of an ore body before development takes pl ce will hamper development of the resource. The State Departments of Commerce and Economic Development, Natural Resources, Revenue and the Office of the State Assessor (CRA) hold this position.

A contrary view is:

(2) Taxation of resources in place before extraction takes place should be available to municipalities if the resource has a measurable value that can be demonstrated by accepted appraisal practices. Alaska Municipal League and Alaska Assoc. of Assessing Officers takes this position.

What some municipalities now do

Several municipalities tax resources in various ways, but always at the point of extraction or in a manner where values are clearly demonstrated. In Ketchikan Gateway Borough, City and Borough of Sitka and Kodiak Island Borough, timber is a resource but most of it is owned by Alaska Native corporations exempt from taxation under federal law, and from local property taxation until development occurs. In other jurisdictions, such as Haines and Juneau, municipal assessors have not valued timber separately from surface estate.

Other marketable timber in Southeast Alaska is outside local government areas. Until 1986 mining claims were assessed at a flat $200 for every 20 acres. After 1986, mining claims were to be valued at their full and true value, but in practice, values were based on the value of surface holdings, with no regard to subsurface resources.

Four boroughs that encompass large areas, including mineralized regions, do not have property taxes: Northwest Arctic, Aleutians East, Lake & Peninsula and Denali. However, Kodiak and the Denali Borough have resource excise taxes that tax as the resource as extracted. Kodiak's tax applies mainly to fish and timber, but it broad enough to apply to minerals as well. Denali Borough has a specific resource extraction tax levied on coal — $.05 cents per ton of production, and gravel, $.05 cents per cubic yard of production.

(Continued page 8)

Problems of assessing natural resources

(Cont'd from page 5) One problem municipalities face in imposing taxes on resources in place is administrative cost. Appraisals require expertise in several professional fields, and the going rate for these kind of services in $150/hour. If several natural resources in a municipality were to be appraised, it would be extremely expensive. An alternative would be for the state to perform a uniform appraisal, similar to the process now used for oil and gas properties subject to the state oil and gas property tax. Both municipalities and the state levy property taxes on petroleum facilities (the local tax is credited against the state tax by the taxpayer) but the valuation is done by the state.

If resource-in-place taxes were to be allowed, private industry might prefer this approach because it would avoid a patchwork of different appraisal methods used across the state. Uniformity in the state assessor's full value determination, for school revenue sharing, might also require it. More serious is the problem of actual establishing value.

Robert Paschall, a consultant retained by both the state and the Northwest Arctic Borough to do assessments of the Red Dog Mine, noted that metallurgical problems being experienced by Cominco Alaska, the operator, would result in the value of the ore body dropping from $100 million to $30 million. In two to three years, when those problems are solved, the value would increase again to $100 million. Dramatic swings which are typical in world metals prices will also affect the in-place value of ore reserves. Obviously, such fluctuations in assessed value would make property tax collections very unpredictable, and add uncertainty to annual state school revenue-sharing.

Northwest Arctic example portrays the 'uncertainties'

An illustration of how this would affect the Northwest Arctic Borough: If the approximate state Full Value Determination for Northwest Arctic Borough is $446,850,000, the addition of $100 million to its tax base would increase its Full Value Determination by 22 percent, resulting in a decrease of $400,000 in annual school funding. Against this uncertainty, timber presents a different issue. Timber is easier to value because it can be seen and measured, although market prices can also be volatile, and in-place value is also affected by its location (more remote, difficult to access stands would have higher costs, thus lower in-place values).

What other states do

Thirty one states can legally tax natural resources in place but only 12 states actually do it, in varying ways. Arizona, Colorado, Indiana, Kentucky, Michigan, Mississippi, Missouri, South Dakota, Texas, Virginia, West Virginia and Wisconsin now have different forms of resource in-place taxes. Nineteen states exempt natural resources in place from property assessments.

States that do have active resource in-place taxes have resources sufficient to generate the revenue to justify staff and expenditure. Arizona and Kentucky are very active, but both centralize the assessment function with state government, to assure uniformity. Kentucky assessed and taxes at the state level, then passes the revenues through the local governments. Arizona provides assessments to local governments, which then levy the tax.

(Continued next page 9)

Sales approach to value hard to "vertify"

(Cont'd from page 8) In other states that allow in-place taxes, many rely on the market, or sales approach to valuation, a traditional method in real estates appraisal. But actual sales of resource properties are rare, hard to verify, and are often not comparable to other properties being assessed. Many states have mandatory sales disclosure laws, which requires sale prices to be provided to assessment offices. Still, sales data is considered generally inadequate to reliably assess resource properties. Generally, many states that allow in-place taxes disregard them because of lack of reliable data. In Canada, resource taxation is generally similar to that of the U.S. Resource development projects are subject to federal, provincial and local taxes in the form of income and severance taxes.

A complex impact on projects

The Department of Commerce and Economic Development pointed out that states with the highest taxes, including in-place taxes, offer more in the way of infrastructure for industrial development than does Alaska. Alaska mining operators now pay a mining license tax, state corporate income taxes, and rents and royalties, such that the total burden on mining places Alaska in the upper 1/3 of states with taxes on mining. The department also said: "A tax on unmined, in-place reserves would seriously penalize a company for pursuing the sensible, longer-term, in-depth approach to evaluation of an ore body. Companies now often take a slow methodical approach to proving up properties. A tax might discourage programs to define reserves. Instead such a tax might encourage a company to make a quicker, less-informed decision that could result in costly mistakes or, just as bad, the abandonment of a good project that simply needed more work to demonstrate its economic viability." DCED also questioned whether a tax on standing timber would encourage premature harvesting of the resource to avoid taxes, or otherwise distort harvest planning based on market criteria.

Comments from state agencies included in the C&RA study

The State Assessor pointed out that, based on the Red Dog experience, the complexity of valuing ore bodies is beyond the experience of local governments and state agencies in Alaska. Alaska Municipal League contested this assertion, and said that Alaska assessors are capable of valuing resources if market criteria can be developed. If minerals are to be taxed, the state assessor said, "proven reserves" should be the criteria and the assessment function should be centralized in state government. Municipal League also opposed this: "Only the state perceives a problem with current assessment practices. Municipalities do not want the state to determine local values or increase the regulation of local taxation," AML said in correspondence to the C&RA study team.

The state assessor also said the state does not now have adequate staffing or trained personnel to undertake a central assessment task. Alaska has other problems, the assessor pointed out: Adequate maps and complete property ownership information are not available. Municipal League said: "The question of taxation refers only to known natural resources that have measurable market value. The broad definition of in-place natural resources includes known and unproven deposits of material that may not have any measurable market value. By definition, ad valorem taxation is based on value. No value - no tax.

(Continued on page 10)

Other thoughts: "Community tax inequities will remain"

(Cont'd from page 9) There are other perspectives in the shadows of debate over taxation of resources "in place." One such issue is the inequities **between "have and "have not" Alaska local governments**. Some have rich tax bases, some have little, some no hopes of a tax base. Naturally, every local government is looking for a high value/per capita industrial tax base. However, Alaska has many local governments with marginal tax bases, and even whole regions denied choice of real local government because they have no hope of a tax base. The resources "in place" tax issue is an initiative by some local governments looking for badly needed tax resources. As a matter of principle they would like to bring their fellow governments along for the philosophical ride. However, as the Alaska map fills up with local governments, these local governments will sooner or later turn to look at each other, and examine the sizable tax inequities between them.

Industrial tax base sharing ?

If inequities become glaring enough there may well be a movement to construct a kind of state law provision that would allow 'have not' local communities to share in the benefits of a defined state industrial tax base. The problem with industrial and resource tax wealth is they tend to center on a few areas. In terms of philosophy, a tax sharing provision would be a cousin to what Congress constructed in the controversial 7(i) feature of federal native land claims legislation, a provision that requires the sharing of a portion of resource revenues between all corporations..

There is already a great disparity of tax wealth between Alaskan communities. For example, the North Slope Borough may well be the richest local tax base in the North America. In 1990 the North Slope Borough was at the top of the Alaska tax value list with a value of $1.53-million per capita (oil property). At the bottom of tax value cities was Hooper Bay with $8,943 per capita. Second in value in 1990 was the City of Valdez at $280,739 per capita (oil transp facilities), followed by other boroughs and cities with some measure of industrial tax value, such as the Kenai Borough with $86,111 per capita (oil facilities), Bristol Bay Borough, $92,566 per capita (fish plants), Sitka and Ketchikan (pulp plants) with $54,349 and $63,597 per capita. However, the new Aleutians East Borough has only $32,077, and the Lakes and Peninsula Borough has $34,447. Municipalities with virtually no industrial base generally fall between $25,000/$45,000 per capita. Fairbanks and Anchorage are only in the $42,000/per capita range, but these two communities are commercial centers that, should need require, have potential access to high yield revenue through a sales tax. A sales tax in St. Mary's, Hooper Bay, Dillingham, or Nome offers no simnilar high yield.

Direct resource tax load and trade "contradictory" ? ? ?

Another perspective --a direct resource tax load and international trade may not mix. Remember taxes must generally be "uniformly applied." One resource may be able to stand a tax load, while another bound into extremely competitive international markets cannot stand a high tax load. A government may not be able to legally differentiate. Some economists suggest that the term "Pacific Rim" trade, with regard to any expectation of very high resource royalty or tax yield, is simply an economic contradiction. The increasingly competitive world trade market suggests that taxes, other than taxes related to management and environmental cost, must come from indirect taxation, from income taxes and sales taxes, not from a front end load on the product.

One of our year long feature issues ?

Can resources pay tax load, or must people pay taxes too ?

Throughout 1992 we will examine the ongoing issue of expanding the state's tax base. Alaskans are fond of talking about the need to diversify their economy. Implied in this rhetoric is the suggestion that somehow 'new revenues' associated with this diversification will replace lost oil revenue.

The reality we will discuss throughout the year is whether it is realistic for Alaska to expect that many other resources can really be taxed directly, or pay royalties that provide significant revenue. Some types of resources may only be able to afford to pay for their own management and some social and rehabilitation costs. This discussion will surface intermittently throughout our publication year in Legislative Digest. We do not suggest that other resources should be 'taxless,' but we will explore whether there are other resources that can replace skidding petroleum production revenue earnings. At the bottom of this review is the reality of whether we can add much tax load to natural resources that already carrying high Alaska production costs, and still expect to be competitive in the market --especially international markets. Facing tough international competition, some resources will only be able to pay payroll, but will employ people who will, in turn, pay taxes for public services.

In this context we will discuss:

(1) Where other states get their taxes?

(2) Keeping state and local taxes separate!

(3) Problems with direct resource taxation.

(3) The stake of the business community in insuring that the state over the long-haul adopts a 'fair" agenda of taxes.

(4) The stake of the citizen and local communities in insuring that Alaska adopts a fair tax agenda, that avoids the kind of tax competition and loading that has occurred in other states!

(5) Public understanding of direct resource tax load and the ability of high cost Alaska to compete in the international market.

HB377

HOUSE COMMITTEE REPORT

(11)
Date Referred: April 14, 1992 FURTHER REFERRALS:

Date of Committee Action: 5/7/92

The FINANCE Committee considered: HB 377

HOUSE BILL NO. 377 AIR POLLUTION CONTROL PROGRAM

"An Act relating to prevention, abatement, and control of air pollution; and providing for an effective date."

RECOMMENDATIONS: [ ] the same title
be replaced with CS HB 377(FIN) [ ] a new title
[ ] have attached amendments(s)
[ ] do pass
[ ] do not pass
[ ] no recommendations
[✓] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[✓] fiscal impact HEC 5/7/92
[ ] zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date)
[✓] fiscal note(s) DEC 2/24/92
[ ] zero fiscal note(s) _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*
Mike Navarre Navarre	✓	E. Lee P. Mackerm Mackerm		X	
Mark Boyle Boyle	X	Tamara L Barnes Barnes		X	
Lisa Brown Brown	✓	Bert Sharp Sharp		X	
Roger Roponen Roponen	✓	Ralph E. Phillips Phillips		↘	
Fred Ulmer Ulmer	✓	Ronald J. Larson Larson		X	

Mike Navarre E P MacLean
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. CS HB 377 (FIN)

Revision Date: 5/1/92 Department Affected: Environmental Conservation

Title: "An Act Relating to Air Quality" BRU: Environmental Quality

Component: Air Program

Sponsor: Representative Moyer

Requestor: House Finance Committee COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	50.6	41.0				
CONTRACTUAL	380.2	279.0				
SUPPLIES	52.1	83.8				
EQUIPMENT	46.2	235.3				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	529.1	639.1				
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS	250.0					
OTHER FUND SOURCE:	279.1	639.1				
TOTAL	529.1	639.1				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared By: CO-Chair Mike Navarre CO-Chair Eileen MacLean Phone: 465-3779 465-4833

Division: House Finance Committee Date:

Approved by Commissioner:

Agency: Date:

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

Rev 10/7/91

HYDROCARBON INVESTIGATIONS

	FY 92	FY 93	FY 94	FY 95
100				
200		20.6	41.0	
300		160.2	279.0	
400		52.1	83.8	
500		46.2	235.3	
600				
700				
800				
SUBTOTAL		279.1	639.1	

HAZE INVESTIGATIONS

100			
200		30.0	
300		220.0	
400			
500			
600			
700			
800			
SUBTOTAL		250.0	
FY TOTAL		529.1	639.1

COMBINED HYDROCARBON & HAZE INVESTIGATIONS

100	0.0	0.0	0.0
200	0.0	50.6	41.0
300	0.0	380.2	279.0
400	0.0	52.1	83.8
500	0.0	46.2	235.3
600	0.0	0.0	0.0
700	0.0	0.0	0.0
800	0.0	0.0	0.0
FY TOTAL	0.0	529.1	639.1

NOTE: The FY 94/95 costs for investigations not known at this time, will depend upon the findings of the initial investigations. Out year costs for haze study could be substantial, perhaps as high as several million dollars.

5/1/92 Rep. Brown.rev

Fiscal Note — Additional Information

HB 377 — HYDROCARBON & HAZE INVESTIGATIONS

Haze Study

The fiscal note reflects Phase I of the haze pollution effort (250.0) in FY 93. Future year costs would depend upon the findings of the initial investigations.

Hydrocarbon Study

The fiscal note reflects an initial work effort in FY 93 focused on hydrocarbon/VOC pollution in the Anchorage area with continuation level funding provided for FY 94 (279.1).

In FY 94, an expanded hydrocarbon/VOC work effort is undertaken in Fairbanks, building upon the data and experience developed initially as a result of the Anchorage study effort (360.0). This would include aquisition of new monitoring station equipment.

This fiscal note also assumes that 400.0 from the Oil and Hazardous Substance Release Response Fund, authorized for expenditure in the FY 92, will be used to initiate the hydrocarbon/VOC investigations and purchase equipment.

* * * * *

The proposed hydrocarbon and haze investigations are described in greater detail in the attached materials.

ANCHORAGE HAZE AND HYDROCARBON STUDY

The Department is proposing to conduct an evaluation into the source of "brown" haze identified over the Anchorage and Fairbanks Carbon Monoxide non-attainment areas. The proposed multi-phased project would be required to evaluate and control the cause of the reported haze. Cost estimates are based on projected courses of action which may grossly underestimate the full cost required to conduct a particular phase. Phase I will be completed by February 1994. Step 1 and 2 can be completed by February 1993. Step 3, Phase I to be conducted Spring 1993 - data report available February 1994.

Phase I: Preliminary Assessment $250K

Step 1. Literature Search: Review of previous haze, aerosol and photo chemical smog studies. $50K

Step 2. Technical Steering Committee: Representatives from the following, but not limited to; academia, EPA, State of Alaska, other state air quality experts, industry, private consultants and foreign air quality experts. $35K

Step 3. Preliminary Analytical Work: Air quality screening analysis to identify target compounds and preliminary meteorological evaluation. This analysis will result in a gross assessment of environmental components and atmospheric characteristics associated with the reported haze. $165K

Phase II: Measurement Programs $2-6MM Est - could be higher

Step 1. Advanced survey analysis: Conduct complete emission inventory of chemical constituents as identified by the technical steering committee in the preliminary assessment. Evaluate meteorological dynamic of the Anchorage Bowl and Upper Cook Inlet airshed.

Step 2. Field Monitoring: Air quality monitoring for criteria and non-criteria pollutants, source testing and tracer studies - short range transport studies. Study will require state-of-the-air sampling instrumentation; doppler accoustic sounder, lidar, portable rawinsondes, tethersondes, thirty meter meteorological towers, airborne monitoring platforms(instrumented C131 aircraft), SUMMA VOC monitoring canisters and GC-MS analytical monitoring systems

Step 3. Dispersion Modelling: To evaluate potential environmental impacts and project pollutant concentrations. First run comparisons with preliminary monitoring results to help direct more refined monitoring protocol

Step 4. Signature Working: Monitoring; Refined chemical and meteorological measurements to finger print physical dynamics of the haze.

Phase III: Data Review and Results $100-200K

Step 1. Data Evaluation: Laboratory analytical, QA/QC, data review

Step 2. Results and Recommendations

Phase IV: Control and Implementation $500K-$1MM

Step 1. Sensitivity Analysis: Evaluation of chemical contribution, modelled impacts vs actual monitored concentration. Evaluation of temporal/seasonal contributions to haze development.

Step 2. Control Strategies: Development, evaluation and implementation

MEMORANDUM

STATE OF ALASKA
Department of Environmental Conservation
Division of Environmental Quality - Air Quality

TO: Mike Conway, Director, SPAR

DATE: April 15, 1992

FILE NO: F80C1G

THRU: Mike Menge, Director, EQ
Jim Hayden, Env. Mgr, SPAR
Leonard Verrelli, Chief, AQ

TELEPHONE NO: 465-5100

FROM: Gerry Guay, Project Manager

SUBJECT: Transfer of Funds
Government Hill Hydrocarbon
Monitoring

The Division of Environmental Quality requests $400,000 from the Oil and Hazardous Substance Release Response Fund (OHSRRF) to fund expenditures for the period of July 1, 1992, through June 30, 1993, to procure air monitoring instrumentation to evaluate ambient air quality in and around the Government Hill community of Anchorage. An additional $279,100 is requested for FY93, July 1, 1992, through June 30, 1993, to operate Government Hill monitoring sites and conduct associated grab-sample monitoring.

The purpose of this project is to quantify ambient air quality impacts from hydrocarbon emissions at the Port of Anchorage. Department air quality modelling analyses have predicted extremely high, ground-level concentrations of hydrocarbon emissions in the Government Hill residential community as the result of fugitive emission from the Port of Anchorage tank farm. Benzene, one of the pollutants of concern, is a known carcinogen and was modelled at concentrations which correspond to a Unit Risk Factor of 1 in 10,000. Numerous citizen and legislative complaints received by the Department and Municipality of Anchorage over the past three years have heightened the State's concern for local air quality conditions.

To address potential health risk concerns, the Department submitted an FY 91 budget request for funding to conduct air quality monitoring. The Air Quality Program requested $360.0K to procure, install, operate and maintain one Volatile Organic Carbon (VOC) monitoring site for one year. The budget request did not survive the Governors's final budget cuts, but the Commissioner's Office requested that the Air Program attempt to conduct an evaluation of Government Hill VOC levels through some alternative funding source.

Staff explored the use of EPA special project monies, re-programmed project funds and re-directed funds with little success. Completion of the 1991 summer monitoring season in Nikiski, without the availability of OHSRRF(470 Fund) monies, consumed all

discretionary FY92 Ambient Analysis Group program funds, leaving no money to initiate a new monitoring project. After exhaustive negotiations with EPA, the State obtained authorization to re-direct funding from another air toxics special project for use in the Government Hill study. Simultaneously, the air staff initiated a VOC grab-sample monitoring study to evaluate ambient concentrations in the residential community. The initial monitoring was intended to be the rapid response phase of a more in-depth monitoring program to be conducted during the winter of 1991-92. In addition, the Air Toxics Project issued an RFP to sample the vapor phase concentration in the fuel storage tanks to develop better emission factors for use in computer modelling.

The grab-sample monitoring study was conducted from late September through mid-October. Most ambient concentrations ranged from 3-20 ug/m^3. This range of concentration was identified by the State's contractor, the Oregon Graduate Institute, as being similar to the results of other VOC monitoring studies conducted in rural/urban regions of the nation. To better understand the magnitude of short term public exposure during fuel storage tank loading, staff collected samples adjacent to the military's Defense Fuels storage facility during one of their tank loading operations. The sample concentrations showed very high, short-term exposure levels - 2505 ug/m^3. A literature review identified this level of exposure as similar to concentrations experienced during refueling of automobiles. It must be noted that there are no "instantaneous" standards for measuring VOC concentrations.

Unknown to the Air Quality Program staff, Representative Kay Brown had been successful in identifying an Oil and Hazardous Substance Release Response Fund (OHSRRF) line item of $400K specifically established for the Department to evaluate VOC impacts in Government Hill. Although the Spill Prevention and Response Division was aware of the funding earlier in the fiscal year, the Air Program was not aware of the money's existence until early October.

The Commissioner's Office requested that the Attorney General's Office review the intent of the 470 Fund to see if Fund monies could be used for air monitoring. In an October 9, 1991, response, Breck Tostevine, Assistant Attorney General, stated that air releases do fall within the coverage of the Fund. Based on this legal interpretation, the Air Program requested access to the 470 Fund to conduct further monitoring on Government Hill.

The Division of Environmental Quality verbally requested use of the Government Hill response funds in mid-October, but was told that all funding should be considered a short-term loan and must be recoverable. The air quality staff contacted tank farm owners to see what funding was available and how much support could be mustered to pay for a monitoring program. The response was lukewarm. Industry had several concerns with the State's modelling results. They also did not necessarily feel that they were causing a threat to the residents of the area. If monitoring was going to be costly, they felt they would be better off to retrofit their tanks. Staff concluded that cost recovery would be difficult.

A decision briefing concerning tank farm emissions at Government Hill and a proposal to begin developing regulations to control tank farm emission at the Port of Anchorage was presented to the Commissioner on January 17, 1992. The Commissioner approved a plan to conduct a second grab-sample study which would include selected monitoring locations throughout Anchorage. Because the source of funding for this project was unclear, the monitoring start date has been delayed. During this period the Air Staff has been working closely with the laboratory staff to enhance DEC's capability for performing VOC analytical work. No new monitoring has been conducted to date.

On March 31, 1992, the Commissioner made the decision to move forward with regulations based on risk analysis alone. This decision redirected the Air Program's thoughts on monitoring and led to a revised monitoring strategy. The Department's Ambient Analysis Group is developing a monitoring project plan to evaluate the ambient concentration of Benzene and other toxic hydrocarbon air pollutants in the Municipality of Anchorage. The focus of this monitoring is hydrocarbon emissions from storage tanks, automobiles, gas stations, and home heating.

The initial phase of this monitoring project will establish two full-time monitoring sites at Government Hill. The first site will be installed along Bluff Drive and will include a meteorological tower and instrumentation. The second site will be installed adjacent to tank farm property at the bottom of the hill. These sites are scheduled to operate continuously for one year. A third analyzer, currently being purchased by the Department's laboratory staff, will be temporarily installed in site one to serve as a collocated, precision pair. The analyzer will add credibility to monitored results. The analyzer will eventually be installed at the Municipality's new oxides of nitrogen monitoring site in downtown Anchorage to evaluate hydrocarbon concentration. The Department is planning to conduct quarterly saturation monitoring studies using SUMMA canister monitors. The study will evaluate Municipality-wide hydrocarbon concentrations to provide the Department with better information on potential health impacts to residents. Collected data will be compared with Government Hill results to identify the quality of air which exists in the upper Cook Inlet Basin.

Monitoring for VOCs requires very specialized instrumentation. The Department is proposing to purchase two Gas Chromatograph Mass Spectrometry (GC-MS) analyzers ($100K ea.) to serve as the foundation of our VOC monitoring program. Each analyzer will require a front end sampling train ($24K ea). The Department is in the process of researching the possibility of complementing the GC-MS analyzers with a Fourier Transform Infrared (FTIR) Multiple-gas Remote Sensor which uses Differential Absorption Lidar technology to conduct VOC measurements over a larger cross-sectional area. The Department will purchase additional "SUMMA" canister samplers for use in saturation sampling studies.

Project manager Gerald Guay will be responsible for budget management, obligation/expenditure approval, fund report documentation, and justification.

The Government Hill project budget breakout for FY92 and FY93 is presented in the following table. The funds requested for this project would be expended in line items 200, 300, 400 and 500. Contractual services, travel and capital expenditures are expected to take the largest allocation. Due to the number of highly technical instruments located at the site, instrument maintenance and repair tasks are frequent and necessary for the continued successful operation of the monitoring site. The contractual expenditures listed here are for a site contractor, utilities and shipping of consumable items and instruments. Commodity purchases are to provide consumable supplies such as calibration gases, recorder paper, etc., in addition to any needed instrument parts. Staff will conduct site selection, installation, training for a site operation, and instrument repair, in addition to managing contractual services. Federal funds (not reflected in the table) will be used to conduct oversight audits of the instrument performance.

PROJECTED EXPENDITURES SFY 92/93

	FY92	FY93
Personnel (100)	0.0	
Travel (200)	8.0	20.6
Contractual (300)	12.0*	160.2**
Monitoring		
Grab Sample		
Commodities (400)	0.0	52.1
Equipment (500)	380.0	46.2
TOTAL	$400.0K	$279.1

* FY92 Monitoring ($0.0), Grab-Sample ($12.0)
** Fy93 Monitoring ($140.0), Grab-Sample ($20.2)

The budget request of $400,000 will allow the Department to purchase monitoring instrumentation for evaluating the concentration of hydrocarbon emissions in Statewide ambient air. The immediate use of this instrumentation is to conduct air quality analyses in Government Hill in FY93. The $279,100 requested FY93 funding will be used to install and operate two monitoring sites plus conduct at least one saturation study.

_____ _____

Approved Approved Budget Amount

_____

Date

_____

Disapproved

_____

Date

GAG/jmb
Attachment

cc: Barbara Frank, Admin. Officer, SPAR

1 monitoring site

ESTIMATED MONITORING COST OF VOCs AT GOVERNMENT HILL

Line Item	Element	Element Cost ($ K)	Line Cost ($ K)
100	Personal Services		0.0
200	Travel		20.4
	Installation	3.5	
	Maintenance/Servicing	12	
	Instrument Audits	4.9	
300	Contractural Services		118.8
	Site Operation, Maintenance & Servicing	108	
	Utilities	4.2	
	Instrument Shipping		
	Startup	4.0	
	Repair & Servicing	2.6	
400	Supplies		31.7
	Consumables	24	
	Calibration Gas		
	Chart Paper		
	Computer Disks		
	Miscellaneous		
	Replacement Parts		
	Audit Material & Supplies	4.0	
	Site Preparation	3.7	
500	Equipment		189.1
	Instrumentation		
	GC/MS	110	
	Calibration Eq.	15	
	Data Logger	5	
	Support Eq.	26	
	Spare Parts	24	
		180	
	Monitor Enclosure	9.1	
		TOTAL	$360.0 K

FISCAL NOTE

No. 1
Bill Version: CSHB 377(Res)
(H) Publish Date: 2-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date:
Title: Alaska Air Permit Statutes

Department Affected: Environmental Conservation
BRU: Division of Environmental Quality

Sponsor: Representative Tom Moyer
Requestor: Resources Committee

Component: Air Quality Management

COMPONENT SERIAL NO. 1 14 2 18

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	728.7	180.0	603.3	315.9	243.3	260.2
TRAVEL	180.2	0.0	106.3	48.7	151.5	9.5
CONTRACTUAL	48.2	(60.0)	(393.1)	20.0	270.7	0.0
SUPPLIES	56.0	0.0	35.7	16.1	145.7	8.8
EQUIPMENT	207.0	(120.0)	0.0	(34.2)	30.0	60.0
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1220.1	0.0	352.2	366.5	841.2	338.5
CAPITAL						
REVENUE (note 2)	1,320.1	0.0	894.3	366.5	841.2	506.5

FUNDING: (Thousands of Dollars) (Incremental Increases)

GENERAL FUND	0 (Note3)	0.0	0.0	0.0	(38.3)	(168.0)
FEDERAL FUNDS	(100.0)	0.0	(542.1)	0.0	0.0	0.0
OTHER	1,320.1	0.0	894.3	366.5	879.5	506.5
TOTAL	1220.1	0.0	352.2	366.5	841.2	338.5

POSITIONS:

FULL-TIME	18.0	0.0	6.0	0.0	0.0	0.0
PART-TIME	0.5	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:

ANALYSIS: (Attach a separate page if necessary.)

Note 1. FY93 General Fund program receipts are contained in the Governor's FY93 Operating Budget.

Note 2. Revenue Fund Source consists of program receipts deposited in the General Fund. Following passage of this bill, program receipts are to be deposited in the Clean Air Protection Fund.

Note 3. No additional general funds will be required for this program over FY92 levels.

Prepared by: Leonard D. Verrelli
Phone : 465-5100
Division: Environmental Quality
Date : 20-Feb-92

Approved by Commissioner: Kenneth Adler for John Sandor
Agency: Deptartment of Environmental Conservation
Date: 2/20/92

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

CSHB317(Res)
2-24-92

	FY93	FY94	FY95	FY96	FY97	FY98
Full-time positions added	18	0	6	0	0	0
Part-time positions added	.5	0	0	0	0	0

Incremental costs

Line Item	FY93	FY94	FY95	FY96	FY97	FY98
71000 Personal	728.7	180.0	603.3	315.9	243.3	260.2
72000 Travel	180.2	0.0	106.3	48.7	151.5	9.5
73000 Contract	48.2	(60.0)	(393.1)	20.0	270.7	0
74000 Supplies	56.0	0.0	35.7	16.1	145.7	8.8
75690 Equipment	207.0	(120.0)	0.0	(34.2)	30.0	60.0
Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Cost Projection	1220.1	0.0	352.2	366.5	841.2	338.5

INCREMENTAL REVENUE PROJECTIONS

Projected revenues for the FY93 and FY94 years are directly derived from the budgets prepared, and interim program receipts projections. Revenue projections for operating permit program for FY95 and later are comprised of two components: permit fees assessed to existing facilities and permit fees assessed to new facilities. The fee structure used to estimate revenue has three components: a base cost of $1500 for a permit to a "small" affected facility, $25 per ton of regulated air contaminant per year emitted by existing facilities (larger than 100 tons per year), and a fee "cap" at 4000 tons per year. From emission estimates of currently permitted facilities, the fee schedule was applied and "phased in" over three years. The estimate for new facilities revenues was derived from an assumption of composition of these sources, 80 percent of which emit less than 100 tons per year, the remainder emitting less than 500 tons per year. These facilities will be permitted starting in the third year of the program. Note that program receipts directly offset any expenditure that would otherwise be required from general funds.

Projected Incremental Revenues

Year	FY93	FY94	FY95	FY96	FY97	FY98
General Fund Match	0.0	0	0	0	(38.3)	(168.0)
CAA Supplemental funds	<100.0>	0	<542.1>	0	0	0
Interim fees, current	1320.1	0	(617.3)	(330)	(424.1)	0
Fees, current facilities	0	0	1511.6	696.5	864.4	61.9
Fees, new facilities	0	0	0	0	439.2	444.6
Year	FY93	FY94	FY95	FY96	FY97	FY98
Total Funds	1220.1	0	352.2	366.5	841.2	338.5

Adopted

7-LS1624Z
Lauterbach
5/6/92

CS FOR HOUSE BILL NO. 377 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MOYER, Boyer, Brown, Finkelstein, B.Davis, Koponen

A BILL

FOR AN ACT ENTITLED

"An Act relating to procurement of alternative-fueled vehicles and transition plans to reduce emissions from vehicles; establishing a small business assistance program and a compliance advisory panel in the Department of Environmental Conservation in a manner that will enable the state to maintain primary management of air quality in the state by meeting the requirements of federal law that the state have an assistance program and advisory panel; requiring a report to the legislature concerning an air quality control permit fee program; stating that the state's policy is to comply with the Clean Air Act; relating to fees imposed for air pollution control permits; relating to the duration of air pollution control permits, reopening of air pollution control permits, and termination, modification, amendment, revocation, and reissuance of air pollution control permits; allowing air pollution control permits for temporary operations; providing that a timely and complete application for a permit is sufficient to bring an owner and operator into

compliance with state laws requiring an air pollution control permit unless delay was due to the owner's and operator's fault; relating to records held by the Department of Environmental Conservation; relating to motor vehicle pollution; relating to local air quality control programs; clarifying that owners and operators are both subject to air pollution control requirements; allowing the Department of Environmental Conservation to impose administrative penalties in addition to allowing the department to seek criminal and civil penalties and other remedies for violation of air pollution control laws; establishing a clean air protection fund; providing for the deposit into the general fund of certain money related to air pollution control; clarifying that air pollution control laws do not give the Department of Environmental Conservation jurisdiction over certain areas; relating to studies of haze and hydrocarbon pollution; relating to civil, administrative, and criminal penalties, damages, and other remedies for air quality control violations; clarifying the definition of 'hazardous substance' to include releases and threatened releases to the atmosphere; amending the lien provisions relating to the oil and hazardous substance release response fund; providing that this Act does not authorize the Department of Environmental Conservation to adopt regulations that establish ambient air quality standards, emission standards, or classifications of facilities or sources according to characteristics relating to air quality; repealing a provision relating to variances and providing for an effective date."

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

*** Section 1.** PURPOSES. (a) The primary purpose of this Act is to bring the state into compliance with the 1990 amendments to the federal Clean Air Act codified at 42 U.S.C. 7401 - 7671q. Changes in state law are necessary to allow the state to continue to have primary management of air quality in the state and to retain federal approval of the state's air quality control program in order to ensure the continued receipt of federal highway and air pollution control money. The federal Environmental Protection Agency must prohibit the approval of highway projects and highway grants, and may withhold

air pollution control grants, if the state does not comply with 42 U.S.C. 7401 - 7671q (Clean Air Act).

(b) The legislature also recognizes that the replacement of automobiles, light trucks, and vans in the state fleet with vehicles fueled by energy sources other than gasoline will contribute to the improvement of air quality in the communities in which they are used. Therefore, another purpose of this Act is to require state agencies operating in nonattainment areas for carbon monoxide and particulate matter to procure alternative-fueled vehicles.

* **Sec. 2.** AS 14.09 is amended by adding a new section to read:

Sec. 14.09.030. ALTERNATIVE-FUELED BUSES. (a) The department shall develop plans to encourage contractors that provide school bus transportation to

(1) procure alternative-fueled buses; and

(2) develop transition plans to reduce the emission of oxides of nitrogen, volatile organic compounds, carbon monoxide, and particulates from existing vehicles through vehicle modification or use of oxygenated fuels.

(b) In this section, "alternative-fueled" means capable of operating on a fuel such as compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, or electricity that, compared to operation on regular fuel, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

* **Sec. 3.** AS 36.30 is amended by adding a new section to article 1 to read:

Sec. 36.30.097. PROCUREMENT OF CERTAIN VEHICLES. (a) When the Department of Transportation and Public Facilities procures an automobile, light truck, or van, other than for the Department of Public Safety, for addition to the state fleet that will be used at a location in a carbon monoxide nonattainment area in which the Department of Transportation and Public Facilities maintains a fleet of at least 15 vehicles, the procurement officer shall procure only an alternative fueled vehicle if

(1) an alternative fueled vehicle is available from an original equipment manufacturing company; and

(2) at least one compatible alternative fuel fueling facility is located in the nonattainment area.

(b) In making a procurement under this section, the procurement officer may give a preference to an automobile, light truck, or van operated on compressed natural gas.

(c) In this section, "alternative-fueled" means capable of operating on a fuel such as

compressed natural gas, liquefied petroleum gas, liquefied natural gas, methanol, ethanol, or electricity that, compared to operation on regular fuel, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide, or particulates.

* **Sec. 4.** AS 46.03.140 is amended by adding a new subsection to read:

(b) It is the policy of the state to have a program to prevent, abate, control, and identify air pollution that complies with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended, and federal regulations adopted under those laws.

* **Sec. 5.** AS 46.03 is amended by adding new sections to read:

Sec. 46.03.161. PAYMENT OF FEES. The owner and operator of a facility who is required to apply for a permit under AS 46.03.140 - 46.03.160 shall pay the applicable fees established by the department under AS 44.46.025(a)(2). The owner and operator shall pay the fees to the department or to the public entity designated by the department.

Sec. 46.03.162. PENALTY AND INTEREST FOR NONPAYMENT. (a) The department shall adopt regulations that provide for the assessment of a penalty of five percent per month of delinquency up to a maximum of 25 percent of the fee established under AS 44.46.025(a)(2) against the owner and operator of a facility if the owner and operator fail to timely pay a fee lawfully imposed under AS 44.46.025(a)(2). The department may also assess interest against the owner and operator, computed under AS 45.45.010(a), after a fee is due under AS 46.03.161 and is unpaid.

(b) If a permittee has failed to pay a fee required under AS 46.03.161 or a penalty or interest imposed under (a) of this section, the department may, after 30 days' written notice to the permittee

(1) terminate the permit for which the fee, penalty, or interest remains unpaid; or

(2) refuse to issue or renew permits requested by the permittee or refuse to amend or modify a permit when the amendment or modification is requested by the permittee.

Sec. 46.03.163. DURATION OF PERMITS. (a) A permit under AS 46.03.140 - 46.03.160 shall be issued for a fixed term established by the department that is no longer than five years and no shorter than three years after the date of issue, except as provided for temporary permits under AS 46.03.167.

(b) If a timely and complete application for renewal of a permit is submitted to the department, the existing permit issued under AS 46.03.160 does not expire until the renewal

permit has been issued or denied.

Sec. 46.03.164. REOPENING OF PERMITS. (a) A permit issued under AS 46.03.140 - 46.03.160 is subject to review and reopening by the department based on the determination of the federal administrator that the permit must be revised to comply with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended.

(b) A permit issued under AS 46.03.140 - 46.03.160 is subject to review and reopening by the department if the permit is issued to a major facility and is valid for a term of three or more years. The department shall reopen a permit described in this subsection to incorporate changes in law, or to impose equivalent emission limitations, that became applicable after the permit was issued. The department shall make incorporations allowed under this subsection as soon as practicable, but, regarding a change in law, no later than 18 months after the change in law took effect. The department may not reopen a permit under this subsection if the change in law is not effective until after the date that the permit expires. Reopening of a permit under this subsection shall be treated as a permit renewal by the department if the procedural requirements for permit renewal have been met.

(c) Proceedings to reopen a permit shall follow the same procedure as for initial permit issuance and affect only those parts of the permit for which the department had cause to reopen under this section.

Sec. 46.03.165. TERMINATION, MODIFICATION, AMENDMENT, OR REVOCATION AND REISSUANCE OF PERMITS. After 30 days' written notice to the permittee, the department may

(1) terminate, modify, amend, or revoke and reissue a permit if the department finds that

(A) the permit was obtained by misrepresentation of material fact or by failure of the owner and operator to disclose fully the facts relating to issuance of the permit;

(B) the permittee has violated AS 46.03.140 - 46.03.249, a regulation, a judicial or administrative order, or a material term or condition of a permit, approval, or acceptance issued under AS 46.03.140 - 46.03.249; or

(C) there has been a material change in the quantity or type of air contaminant emitted from the facility;

(2) modify, amend, or revoke and reissue a permit if the department finds that the permit contains a material mistake.

Sec. 46.03.166. FEDERAL TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF PERMITS. The department shall take measures practicable and otherwise lawful to avoid termination, modification, or revocation and reissuance by the federal administrator of permits issued by the department under AS 46.03.140 - 46.03.160.

Sec. 46.03.167. TEMPORARY OPERATIONS. The department may issue a single permit authorizing a facility to operate at specific multiple locations in the state for temporary periods of time not to exceed one year at any one location. A permit described in this section is valid only for the specific locations identified in the application and authorized by the department. The department may not issue a permit under this section unless the permit contains conditions that will ensure compliance with AS 46.03.140 - 46.03.249 at each authorized location, including compliance with ambient air quality standards and applicable increment or visibility requirements adopted under AS 46.03.140 - 46.03.150. A permit under this section must require the owner and operator to notify the department at least 30 days before a change in location of a facility permitted under this section.

Sec. 46.03.168. RELATION TO OTHER LAWS. Holding and complying with a permit issued under AS 46.03.140 - 46.03.160 does not alter or affect

(1) the owner's and operator's obligation to comply with an emergency order issued under AS 46.03.820 or 42 U.S.C. 7603 (Clean Air Act, sec. 303), as amended; or

(2) the liability of an owner and operator for a violation of applicable requirements of law before or at the time of permit issuance.

Sec. 46.03.169. TIMELY AND COMPLETE APPLICATION AS SHIELD. If an owner and operator have submitted a timely and complete application for a permit or a permit renewal, as applicable, but final action has not been taken on the application, the owner's and operator's failure to have a permit is not a violation of AS 46.03.140 - 46.03.160 unless the delay in final action was due to the failure of the owner and operator to timely submit information required or requested to process the application.

* **Sec. 6.** AS 46.03.180 is repealed and reenacted to read:

Sec. 46.03.180. CONFIDENTIALITY OF RECORDS. (a) Records and information, other than emission data, in the department's possession and control are considered confidential

records if

(1) the owner and operator have certified under oath to the department or authorized local program that public disclosure would tend to affect adversely the owner's and operator's competitive position; and

(2) the records are entitled to protection as trade secrets.

(b) Except as provided in (a) of this section, permits, permit applications, emissions and monitoring reports, compliance reports, certifications, and monitoring, reporting, and quality assurance plans in the department's possession and control are available to the public for inspection and copying.

* Sec. 7. AS 46.03 is amended by adding new sections to read:

Sec. 46.03.181. SMALL BUSINESS ASSISTANCE PROGRAM. A small business assistance program is established in the department.

Sec. 46.03.182. SCOPE OF PROGRAM. (a) The small business assistance program shall

(1) collect, coordinate, and disseminate information on methods and technologies that will assist small business facilities to comply with AS 46.03.140 - 46.03.249 and regulations adopted under AS 46.03.140 - 46.03.249;

(2) encourage lawful cooperation among small business facilities and other persons to facilitate compliance with AS 46.03.140 - 46.03.249 and regulations adopted under AS 46.03.140 - 46.03.249;

(3) provide small business facilities with information on pollution prevention and accidental release detection and prevention, including information on alternative technologies, process changes, products, and methods of operation that help reduce air pollution;

(4) assist small business facilities in determining applicable requirements and in receiving permits under AS 46.03.140 - 46.03.160 in a timely and efficient manner;

(5) ensure that small business facilities receive notice of their rights under AS 46.03.140 - 46.03.249 in a manner and form that ensures adequate time for the facilities to evaluate compliance methods and to evaluate applicable proposed or final regulations adopted or standards issued under AS 46.03.140 - 46.03.249 or 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended;

(6) inform small business facilities of their obligations under AS 46.03.140 -

46.03.249 and regulations adopted under AS 46.03.140 - 46.03.249;

(7) provide small business facility operators with a list of auditors available for auditing the operation of the facility or, if possible, and at the request of a facility owner or operator, audit a facility to evaluate compliance with AS 46.03.140 - 46.03.249 and regulations adopted under AS 46.03.140 - 46.03.249; an audit under this paragraph may not be regarded as an inspection or investigation;

(8) assist in developing and implementing modified work practices or technical changes to processes to facilitate compliance with AS 46.03.140 - 46.03.249 and regulations adopted under AS 46.03.140 - 46.03.249;

(9) coordinate with the federal small business stationary source technical and environmental compliance assistance program established under 42 U.S.C. 7661f(b) (Clean Air Act, sec. 507(b)), as amended;

(10) collect and make available guidance prepared by the federal small business stationary source technical and environmental compliance assistance program;

(11) at the request of a facility owner or operator, refer questions concerning compliance with AS 46.03.140 - 46.03.249, or with a regulation adopted or permit issued under AS 46.03.140 - 46.03.249, to air quality management personnel of the department; and

(12) designate a person to be an advocate for small businesses while serving as a liaison between small businesses and air quality management personnel of the department.

(b) If the legislature appropriates money from the general fund for purposes of the small business assistance program, the department shall provide the services listed in (a) of this section to a requesting facility that is not a small business concern as defined in 15 U.S.C. 631, as amended, but that otherwise meets the definition of a small business facility under AS 46.03.249 and is subject to the requirements of AS 46.03.140 - 46.03.249.

Sec. 46.03.183. POWER TO LIMIT PROGRAM. After consultation with the federal administrator and the administrator of the United States Small Business Administration, and after providing notice and opportunity for public hearing, the department may exclude from the scope of the small business assistance program established in AS 46.03.182 a category or subcategory of small business facilities that the department finds to have sufficient technical and financial capabilities to meet the requirements of state and federal law without the assistance provided under AS 46.03.181 - 46.03.184.

Sec. 46.03.184. COMPLIANCE ADVISORY PANEL. (a) A compliance advisory panel is established in the department. The panel members shall serve without compensation, but are entitled to travel expenses and per diem as authorized for state boards under AS 39.20.180.

(b) The panel consists of

(1) three members who are not owners or representatives of owners of small business stationary sources, two of whom are selected by the governor to represent the general public and one of whom is selected by the governor to represent either environmental or health interests;

(2) one member selected by the commissioner to represent the department; and

(3) four members, who are owners or representatives of owners of small business stationary sources, selected as follows:

(A) one shall be selected by the president of the senate and one shall be selected by the speaker of the house;

(B) if there are members of the senate who are not part of the majority caucus of the senate, the leader of the largest nonmajority group shall select a panel member; if all members of the senate are in the majority caucus, then the president of the senate shall select a second panel member in addition to the selection authorized under (A) of this paragraph;

(C) if there are members of the house who are not part of the majority caucus of the house, the leader of the largest nonmajority group shall select a panel member; if all members of the house are in the majority caucus, then the speaker of the house shall select a second panel member in addition to the selection authorized under (A) of this paragraph.

(c) The compliance advisory panel shall

(1) elect a chair and agree upon procedures by which the panel will function;

(2) meet semi-annually at the call of the chair and give public notice of panel meetings as required under AS 44.62.310 - 44.62.312;

(3) prepare advisory opinions concerning the effectiveness of the small business assistance program, difficulties encountered in making the program efficient and effective, and degree of enforcement and severity of air pollution offenses;

(4) make periodic reports to the administrator concerning the compliance of the

small business assistance program with requirements of 44 U.S.C. 3501 (Paperwork Reduction Act), as amended, 5 U.S.C. 601 (Regulatory Flexibility Act), as amended, and 5 U.S.C. 504 (Equal Access to Justice Act), as amended;

(5) review information designed to assist small business facilities in complying with AS 46.03.140 - 46.03.249 to ensure that the information is understandable by laypersons; and

(6) have the small business advocate designated under AS 46.03.182(a)(12) assist the panel in the development and dissemination of panel reports and advisory opinions.

Sec. 46.03.185. RESPONSIBILITIES OF OWNERS AND OPERATORS. Unless specifically indicated otherwise, the responsibilities of AS 46.03.140 - 46.03.249 and of regulations adopted under AS 46.03.140 - 46.03.249 are imposed on the owner and the operator of a facility subject to AS 46.03.140 - 46.03.249. If the owner and operator of the facility are separate persons, only one person is required to discharge a specific responsibility. Both persons are liable for noncompliance with the requirements of AS 46.03.140 - 46.03.249 or of regulations adopted under AS 46.03.140 - 46.03.249.

Sec. 46.03.186. ADMINISTRATIVE PENALTIES FOR AIR POLLUTION. (a) The department may assess an administrative penalty against a person who violates, or causes, or allows to be violated a provision of AS 46.03.140 - 46.03.249, a regulation adopted under AS 46.03.140 - 46.03.249, or a term or condition of an order, permit, or approval of the department under AS 46.03.140 - 46.03.249.

(b) An administrative penalty assessed under this section may not exceed $10,000 a day for each offense. Each provision, regulation, term, or condition violated is a separate and distinct offense. If a violation of a provision, regulation, term, or condition continues from day to day, each day is a separate offense. In determining the amount of a penalty assessed under this section, the department shall consider the effect of the offense on the public health or the environment, prior history of compliance or noncompliance with AS 46.03.140 - 46.03.249, the need to deter future offenses, the economic benefit of noncompliance realized by the offender, and other factors that the department considers relevant. The department shall, by regulation, prepare, publish, and make available to interested persons, a penalty policy describing the factors to be considered in setting penalties, the methods for weighing the factors, and other aspects of penalty computation.

(c) If a penalty is assessed under this section, the department shall provide the assessment notice to the person affected, by personal service or by certified mail, return receipt requested. An administrative penalty assessed under this section becomes a final agency action 30 days after service or mailing of the assessment notice unless an administrative hearing is requested by the person against whom the penalty is assessed. Failure to request an administrative hearing within 30 days after service or mailing of the assessment notice constitutes a waiver of that person's right to an administrative hearing. The department may extend the time periods specified in this subsection for good cause.

(d) If an administrative hearing is requested, the department shall grant a hearing and conduct the hearing in accordance with its adjudicatory hearing procedures. After the hearing, the department may modify, rescind, or affirm the administrative penalty. The modification, rescission, or affirmation of a penalty under this subsection is a final agency action.

(e) A person against whom an administrative penalty is assessed may obtain judicial review of the administrative penalty as provided in Alaska Rules of Appellate Procedure. The court may set aside, or adjust the amount of, the administrative penalty only if the administrative record, taken as a whole, does not contain a reasonable basis to support the finding of offense or the amount of penalty assessed by the department.

(f) Action under this section by the department does not limit or otherwise affect the authority of the department to enforce AS 46.03.140 - 46.03.249, or to recover damages, restoration expenses, investigation costs, court costs, attorney fees, and other necessary expenses. The court shall reduce a judicial penalty subsequently imposed under AS 46.03.760 by any amount ordered to be paid under this section by the same person for the same offense.

(g) The assessment of an administrative penalty under this section does not affect the obligation of a person to comply with AS 46.03.140 - 46.03.249 or with a regulation, order, permit, or approval of the department under AS 46.03.140 - 46.03.249.

(h) If a person fails or refuses to pay an administrative penalty assessed under this section after the penalty has become a final agency action, the department may request the attorney general to commence a judicial action or take other appropriate steps to bring an action to collect the penalty. If the department prevails in court, the court shall order the person to pay

(1) the amount of the administrative penalty assessed;

(2) interest at the statutory rate under AS 45.45.010(a) from the date the penalty

became a final agency action; and

(3) reasonable attorney fees and costs incurred by the department in the collection action before the court.

Sec. 46.03.187. CLEAN AIR PROTECTION FUND. (a) The clean air protection fund is established. The fund consists of

(1) fees, penalties, and interest collected by the department under AS 46.03.161 and 46.03.162, as required by 42 U.S.C. 7661a(b)(3)(C)(iii) (Clean Air Act, sec. 502(b)(3)(C)(iii)), as amended, for state participation in the federal emission control permit program; and

(2) appropriations to the fund.

(b) The money deposited into the clean air protection fund under (a)(1) of this section may be used solely to cover the reasonable direct and indirect costs, including court costs and attorney fees, required to support the permit program under AS 46.03.140 - 46.03.160, and those activities of the small business assistance program that are directed at facilities subject to AS 46.03.140 - 46.03.249.

Sec. 46.03.188. SPECIAL ACCOUNT. An administrative penalty, and any interest, attorney fees, and costs collected under AS 46.03.186, and any civil penalties, assessments, or damages collected under AS 46.03.760 or 46.03.790 as a result of a violation relating to AS 46.03.140 - 46.03.249, shall be deposited in the general fund.

*** Sec. 8.** AS 46.03.190 is repealed and reenacted to read:

Sec. 46.03.190. MOTOR VEHICLE POLLUTION. (a) When the department determines that the state of knowledge and technology may allow or make appropriate the control of emissions from motor vehicles to further air quality control, the department may provide, by regulation, for the control of the emissions from motor vehicles. The regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of this equipment.

(b) Unless otherwise exempted by law, a person shall maintain in operating condition any element of the air pollution control system or mechanism of a motor vehicle if the department adopts regulations requiring that an air pollution control system or mechanism be maintained in or on the motor vehicle. Failure to maintain a required system or mechanism in operating condition subjects the motor vehicle's registration to suspension or cancellation. A motor vehicle

whose registration has been suspended or canceled under this subsection is not eligible for subsequent registration until the owner or operator obtains certification from the department, based on a demonstration that the air pollution control system or mechanism is restored to operating condition.

(c) The department shall consult with the Department of Public Safety regarding implementation of the motor vehicle pollution control program. The Department of Public Safety shall cooperate with the department in implementing the program.

(d) If the department adopts regulations requiring the maintenance of air pollution control systems or mechanisms in motor vehicles to control emissions from the vehicle, a motor vehicle subject to those regulations may not be issued a certificate of inspection unless the required air pollution control system or mechanism has been inspected in accordance with the standards, testing techniques, and instructions furnished by the department and the motor vehicle has been found to meet those standards. A valid certificate of inspection for the emission control system, if required by the department, must be presented to the Department of Public Safety before that department may register a motor vehicle.

* Sec. 9. AS 46.03.210 is repealed and reenacted to read:

Sec. 46.03.210. LOCAL AIR QUALITY CONTROL PROGRAMS. (a) With the approval of the department, a municipality with a population of 1,000 or more may establish and administer within its jurisdiction a local air quality control program that is consistent with all or part of the department's air quality program as established under AS 46.03.140 - 46.03.249. A first or second class borough may administer an air quality control program approved by the department under this subsection on an areawide basis and is not subject to the restrictions for acquiring additional areawide powers specified in AS 29.35.300 - 29.35.350. A third class borough may administer an air quality control program approved by the department under this subsection only in a service area formed under AS 29.35.490(b) or (c).

(b) With the approval of the department, two or more municipalities or other entities may create a local air quality district for the purpose of jointly administering an air quality control program within the boundaries of the air quality district.

(c) The department may require expansion or contraction of the jurisdictional boundaries of a local air quality control program approved under (a) or (b) of this section to include an adjacent municipality or contiguous area in the unorganized borough if the department determines

that the expansion or contraction is necessary for the effectiveness and efficiency of the administration of a local program based upon an evaluation of

(1) the location, character, or extent of particular concentrations of population;

(2) local air contaminant sources; or

(3) relevant geographic, topographic, or meteorological factors.

(d) A municipality or a local air quality district seeking department approval for a local air quality control program shall enter into a cooperative agreement with the department. The cooperative agreement must include provisions specifying

(1) the respective duties and authority of the department and the municipality or local air quality district in the administration of the local air quality control program;

(2) the authority of the municipality or the local air quality district to employ staff to administer the local air quality control program;

(3) duties of staff employed under (2) of this subsection;

(4) respective enforcement responsibilities of the department and the municipality or the local air quality district.

(e) A local air quality control program shall provide for the exemption of a locally registered motor vehicle from motor vehicle emission requirements adopted under AS 46.03.190 if the motor vehicle is not used within the program's jurisdiction.

(f) A municipality or a local air quality district administering a program under this section shall administer its local air quality control program according to this chapter, regulations adopted under AS 46.03.140 - 46.03.249, and its cooperative agreement under (d) of this section, except that a municipality's or local air quality district's program may be more stringent than the program administered by the department if the municipality or district has additional legal authority authorizing additional requirements.

(g) A decision, order, permit, or other determination made or issued under a local air quality control program is considered to be a decision, order, permit, or other determination of the department.

* **Sec. 10.** AS 46.03.220 is repealed and reenacted to read:

Sec. 46.03.220. INADEQUACY OF LOCAL PROGRAM. (a) If a municipality or a local air quality district has an approved air quality control program under AS 46.03.210 and the department determines that the program is being implemented in a manner that fails to prevent

or control air pollution in the jurisdiction to which the program applies, the department shall give written notice, setting out its determination, to the municipality or local air quality district. Within 45 days after giving written notice, the department shall conduct a public hearing on the matter.

(b) If, after the hearing, the department upholds the determination made in the written notice, the department shall provide the municipality or local air quality district with a written finding setting out the nature of the deficiencies and a description of the necessary action to be taken in order for the program to prevent or control air pollution. The department shall provide its finding to the municipality or district within 45 days after the closure of the public hearing record. The department shall set a reasonable period of time for the municipality or local air quality district to take corrective action in response to the department's finding.

(c) If the municipality or local air quality district fails to take corrective action within the time period set by the department under (b) of this section, the department shall terminate the cooperative agreement and resume management of the program in the affected jurisdiction. If the municipality or the local air quality district partially remedies, to the department's satisfaction, the deficiencies found in the determination, the department shall amend the cooperative agreement to reflect a modified allocation of responsibilities between the department and municipality or the local air quality district.

(d) A municipality or local air quality district that has had its cooperative agreement terminated may resume, with the department's approval, a local air quality control program if the municipality or district agrees to comply with AS 46.03.210 and with any corrective action plan required by the department.

(e) If the department finds that control of a particular class of facility or source, because of its complexity or magnitude is beyond the reasonable capability of the municipality or the local air quality district or may be more efficiently and economically controlled at the state level, the department may assume and retain jurisdiction over the class of facility or source. Classifications under this subsection may be based on the nature of facilities or sources involved, their size relative to the size of the communities in which they are located, or other basis established by the department.

* **Sec. 11.** AS 46.03.230 is repealed and reenacted to read:

Sec. 46.03.230. STATE AND FEDERAL AID. A municipality or local air quality

district with a local air quality control program may apply for, receive, administer, and spend state or federal aid for the control of air emissions or the development and administration of the program if an application is first submitted to and approved by the department. Subject to available money appropriated by the legislature, the department shall approve an application if it is consistent with the terms and conditions of the applicable cooperative agreement and meets the requirements of AS 46.03.140 - 46.03.249.

* **Sec. 12.** AS 46.03.245 is repealed and reenacted to read:

Sec. 46.03.245. LIMITATIONS. AS 46.03.140 - 46.03.249 do not

(1) grant jurisdiction or authority with respect to air contamination existing solely within a residential dwelling or a commercial or industrial plant, workplace, or shop;

(2) affect the relations between employers and employees with respect to or arising out of a condition of air contamination or air pollution; or

(3) supersede or limit the applicability of a law or an ordinance relating to sanitation, industrial health, or safety.

* **Sec. 13.** AS 46.03 is amended by adding a new section to article 4 to read:

Sec. 46.03.249. DEFINITIONS. Notwithstanding AS 46.03.900, in AS 46.03.140 - 46.03.249,

(1) "air contaminant" means a regulated air contaminant or a hazardous air contaminant;

(2) "ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access;

(3) "ambient air quality standard" means a standard, other than an emission limitation or standard, adopted under AS 46.03.140 - 46.03.150 or 42 U.S.C. 7409 (Clean Air Act, sec. 109), as amended;

(4) "certificate of inspection" means a form prepared or approved by the department, signed by a qualified mechanic who attests that the mechanic has inspected a motor vehicle and that the motor vehicle has passed an emissions inspection or received a waiver, and bearing the statement above the mechanic's signature that false statements are punishable as a crime under AS 11.56.210 and AS 46.03.790(a);

(5) "commissioner" means the commissioner of environmental conservation;

(6) "construct" or "construction" means to fabricate, erect, or install, or to make

a physical change, that would result in emissions;

(7) "contaminant outlet" includes exhaust stacks, flares, vents, and other openings in a facility from which an air contaminant could be emitted;

(8) "department" means the Department of Environmental Conservation;

(9) "emission" means a release of one or more air contaminants to the atmosphere;

(10) "equivalent emission limitation" means

(A) a limitation for hazardous air contaminants established by the federal administrator or the commissioner on a case-by-case basis that is equivalent to the limitation that would apply to a source or facility if an emission standard had been adopted in a timely manner under 42 U.S.C. 7412(d) (Clean Air Act, sec. 112(d)), as amended; or

(B) if the criteria of the early reduction program established in 42 U.S.C. 7412(i)(5) (Clean Air Act, sec. 112(i)(5)), as amended, are met, a limitation established under that subsection and 42 U.S.C. 7412(j)(5) (Clean Air Act, sec. 112(j)(5)), as amended;

(11) "facility" means one or more structures, buildings, installations, or properties upon which a source or sources are located, that are contiguous or adjacent, and that are owned or operated by the same person or by persons under common control;

(12) "federal administrator" means the administrator of the United States Environmental Protection Agency;

(13) "fugitive emissions" means emissions of an air contaminant that could not reasonably be emitted from a contaminant outlet;

(14) "hazardous air contaminant" means a pollutant listed in or under 42 U.S.C. 7412(b) (Clean Air Act, sec. 112(b)), as amended;

(15) "local air quality control program" means a program authorized under AS 46.03.210 to implement some or all of the provisions of AS 46.03.140 - 46.03.249;

(16) "major facility" means a facility that emits or has the potential to emit at least

(A) 100 TPY of a regulated air contaminant;

(B) 10 TPY of a hazardous air contaminant; or

(C) 25 TPY, in the aggregate, of two or more hazardous air contaminants;

(17) "modification" or "modify" means to make a change or a series of changes in operation, or any physical change or addition to a facility or source that increases the actual emissions of an air contaminant;

(18) "operator" means a person or persons who direct, control, or supervise a facility or source that has the potential to emit an air contaminant to the atmosphere;

(19) "owner" means a person or persons with a proprietary or possessory interest in a facility or source that has the potential to emit an air contaminant to the atmosphere;

(20) "person" has the meaning given in AS 01.10.060 and also includes an agency of the United States, a municipality, the University of Alaska, the Alaska Railroad Corporation, and other departments, agencies, instrumentalities, units, and corporate authorities of the state;

(21) "reconstruct" means to replace components of a facility with new components to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility;

(22) "register" or "registration" means vehicle registration under AS 28.10;

(23) "regulated air containment" means

(A) a material, compound, or element for which a national or state ambient air quality standard has been adopted;

(B) oxides of nitrogen;

(C) a volatile organic compound; and

(D) a pollutant that is addressed by a standard adopted under 42 U.S.C. 7411 - 7412 (Clean Air Act, sec. 111 - 112), as amended;

(24) "small business facility" means a facility that

(A) is owned or operated by a person who employs 100 or fewer persons;

(B) is a small business concern as defined in 15 U.S.C. 631 (Small Business Act), as amended; and

(C) emits less than 100 TPY of regulated air contaminants;

(25) "source" means a device, process, activity, or equipment that causes, or could cause, a release of an air contaminant;

(26) "TPY" means tons per year.

*** Sec. 14.** AS 29.35 is amended by adding a new section to read:

Sec. 29.35.055. LOCAL AIR QUALITY CONTROL PROGRAM. A municipality may

establish a local air quality control program as provided in AS 46.03.210 only if the municipality has obtained the consent of its governing body through an ordinance authorizing the participation.

* **Sec. 15.** AS 37.05.146(4) is amended by adding a new subparagraph to read:

(P) clean air protection fund (AS 46.03.187).

* **Sec. 16.** AS 46.03.790(a) is amended to read:

(a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person with criminal negligence

(1) violates a provision of this chapter, AS 46.04, or AS 46.09, a regulation or order of the department, or a permit, approval, or acceptance, or a term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, or AS 46.09;

(2) fails to provide information or provides false information required by AS 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under AS 46.03.755, AS 46.04, or AS 46.09; [OR]

(3) makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.250 - 46.03.314 applicable to hazardous wastes or a regulation adopted by the department under AS 46.03.250 - 46.03.314;

(4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.140 - 46.03.249 or a regulation adopted under AS 46.03.140 - 46.03.249; or

(5) renders inaccurate a monitoring device or method required to be maintained under AS 46.03.140 - 46.03.249, a regulation adopted under AS 46.03.140 - 46.03.249, or a permit issued by the department or a local air quality control program under AS 46.03.140 - 46.03.249.

* **Sec. 17.** AS 46.03.790 is amended by adding a new subsection to read:

(h) Notwithstanding AS 12.55.035(b), upon conviction of an offense related to AS 46.03.140 - 46.03.249 and described in (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than $10,000 for each separate offense.

* **Sec. 18.** AS 46.08.075(a) is amended to read:

(a) The state has a lien for expenditures by the state from the oil and hazardous substance

release response fund or from any other state fund, for the costs of response, containment, removal, or remedial action resulting from an oil or hazardous substance release [SPILL], or, with respect to response costs, the substantial threat of a release of oil or a hazardous substance against all property owned by a person who is determined by the commissioner to be liable for the expenditures under this chapter, AS 46.03, AS 46.04, 42 U.S.C. 9607, or other state or federal law. The lien includes interest, at the maximum rate allowable under AS 45.45.010(a), from the date of the expenditures. The state may file an action in a court of competent jurisdiction in order to foreclose on the lien.

*** Sec. 19.** AS 46.08.900(6) is amended to read:

(6) "hazardous substance" means an element or compound that, when it enters into the atmosphere or into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil in an amount of 10 gallons or less;

*** Sec. 20.** AS 46.09.900(4) is amended to read:

(4) "hazardous substance" means (A) an element or compound that, when it enters into the atmosphere, or into or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to the public health or welfare, or to fish, animals, vegetation, or any part of the natural habitat in which fish, animals, or wildlife may be found; or (B) a substance defined as a hazardous substance under 42 U.S.C. 9601 - 9657 (Comprehensive Environmental Response, Compensation, and Liability Act of 1980); "hazardous substance" does not include uncontaminated crude oil or uncontaminated refined oil;

*** Sec. 21.** AS 46.03.170 and 46.03.225 are repealed.

*** Sec. 22.** HAZE AND HYDROCARBON STUDIES; REPORT. (a) The Department of Environmental Conservation shall contract with qualified experts to perform studies of haze and hydrocarbon air pollution in areas of the state that are carbon monoxide nonattainment areas under federal law. The studies must include

(1) monitoring in neighborhoods, industrial centers, and areas of high vehicular use;

(2) determination of the major components and sources of haze and hydrocarbon pollution;

(3) assessment of the health, safety, and environmental effects of haze and hydrocarbon pollution;

(4) identification of program alternatives designed to prevent, abate, and control haze and hydrocarbon pollution.

(b) The Department of Environmental Conservation shall, by January 15, 1994, report to the legislature concerning the studies performed under (a) of this section. The report must include the department's legislative recommendations for program authorization to prevent, abate, and control haze and hydrocarbon air pollution, including recommendations concerning whether the state should have ambient or emission standards relating to these types of pollution that are more stringent than applicable federal standards.

* Sec. 23. REPORT TO LEGISLATURE. (a) By January 31, 1993, the Department of Environmental Conservation shall submit a report to the legislature that includes

(1) the department's recommendations for legislation to establish an air quality control permit and permit fee program that will

(A) meet the requirements of 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended; the department shall solicit the comments of appropriate officials in the federal Environmental Protection Agency as to the legal adequacy under federal law of the recommended legislation and submit to the legislature any comments received from the federal officials;

(B) equitably allocate direct and indirect costs of the program among owners and operators of facilities that are required to have permits under AS 46.03.140 - 46.03.160; and

(C) ensure maximum efficiency and minimize total cost of all program elements that will be financially supported by the permit fees, including staffing for permit applications and meetings;

(2) the department's recommendations for a fee schedule for permits issued under AS 46.03.140 - 46.03.160, including

(A) a detailed discussion of the facts and rationale for the proposed schedule;

(B) a detailed comparison between the cost and staffing data for the department's air quality permit program and other similar regulatory programs administered by the department, based on the number of permits issued or otherwise processed annually; and

(C) a comparison of the proposed fee schedule with the fee schedules of at least five other states that have air quality permit programs that are operating in compliance with 42 U.S.C. 7401 - 7671q (Clean Air Act), as amended; and

(3) a summary of the public comments received under (b) of this section, including alternative fee schedules suggested by the public, and the department's analysis of the public comments.

(b) In preparation for submitting the final report required under (a) of this section, the Department of Environmental Conservation shall, by November 15, 1992, publish a draft report for public review and comment. The draft report must contain the information required under (a)(1) and (2) of this section.

*** Sec. 24.** COOPERATION. The Department of Transportation and Public Facilities and the Department of Environmental Conservation shall cooperate with each other as necessary to achieve implementation of AS 36.30.097, enacted by sec. 3 of this Act, by July 1, 1994.

*** Sec. 25.** LIMITATION. This Act does not authorize the Department of Environmental Conservation to adopt regulations that establish

(1) ambient air quality standards;

(2) emission standards; or

(3) classifications of facilities or sources according to characteristics relating to air quality.

*** Sec. 26.** Sections 2 and 3 of this Act take effect July 1, 1994.

*** Sec. 27.** AS 46.03.161, 46.03.162, 46.03.165, and 46.03.167, enacted by sec. 5 of this Act; and secs. 4 and 6 - 25 of this Act take effect immediately under AS 01.10.070(c).

*** Sec. 28.** AS 46.03.163, 46.03.164, 46.03.166, 46.03.168, and 46.03.169, enacted by sec. 5 of this Act, take effect November 15, 1993.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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April 2, 1992

Re: In what ways does HB 377 exceed requirements of the Federal Clean Air Act?

To Interested Parties:

You may be familiar with the section-by-section analysis of HB 377 which compares every section of that bill to the Federal Clean Air Act (CAA) and existing Alaska law. This correspondence is intended to supplement that analysis. This correspondence has a narrower scope, however.

Members of the regulated community have expressed concern that HB 377 goes far beyond federal requisites. To date, that concern has been levied as a generic condemnation of the bill. This correspondence lists the specific areas in which HB 377 exceeds Federal statutory requirements. It is offered as guidance so that concerns can be focused on specific phrases or provisions of HB 377.

The following provisions of HB 377 have no direct counterpart in Federal law or exceed Federal law in some way:

1. Sec. 14.09.030 Alternative-fueled Buses

This provision instructs the Department of Education to encourage school bus operators to use buses which run on alternative fuels. It has no direct counterpart in the CAA.

2. Sec. 36.30.097 Procurement of certain vehicles

The Department of Transportation and Public Facilities is instructed to procure alternatively fueled vehicles. The Federal law does not do this.

3. Sec. 46.14.010 Emission Control Regulations

While this statutory provision does not, itself, go beyond the CAA, it empowers the Department of Environmental Conservation to "adopt regulations under this chapter as necessary to prevent, abate, control, or identify air pollution . . . ." The department could exercise this authority to create standards not imposed by the United States Congress.

This provision closely tracks existing Alaska law. AS 46.03.140 states:

> The department may adopt air pollution control regulations that in its judgment are necessary to prevent, abate, or control air pollution.

This has been Alaska law since 1971. It has never been abused. It has been invoked beyond federal minima only on two occasions; when regulating ammonia and hydrogen sulfide. This 21-year track record unequivocally demonstrates that concerns over potential abuse of proposed section 46.14.010 are baseless.

4. Sec. 46.14.215(a)(1) State Air Quality Plan

This section notes that the state's policy is to have an approved state implementation plan (SIP). Such a plan exists and it guides Alaska's air quality program. While federal law does not contain a word-for-word equivalent to this section, it does tell states to adopt such plans. CAA § 110(a)(1).

5. Sec. 46.14.240 General Operating Permits

Federal law allows, but does not require, a state to issue general operating permits. Alaska has exceeded the requirements of the CAA by allowing for such general permits.

6. Sec. 46.14.255 Penalty and Interest for Nonpayment of Fees

If an Alaskan business fails to pay a fee imposed by the State of Alaska, that business may be liable for a penalty up to 25 percent of the fee. In the absence of a state program, a federal program will be implemented. If an Alaskan business fails to pay a fee imposed by the U.S.-EPA, that business shall be liable for a penalty of 50 percent of the fee. In this respect, HB 377 differs from the CAA in that HB 377 is less onerous.

7. Sec. 46.14.410(b) Scope of Small Business Program

The federally established small business program is limited to very small facilities. Alaska believes that some larger facilities may need the assistance this program will provide. Subsection 46.14.410(b) allows DEC to assist larger facilities.

8. Sec. 46.14.500 Local Air Quality Programs

Under Federal law, Alaska does not have to allow local governments control over air programs. However, for the past 19 years Alaska has found it politic to do so. *See* AS 46.03.210. Fairbanks, Juneau, and Anchorage have taken advantage of this opportunity to locally control localized air pollution problems. Proposed section 46.14.500 would allow Juneau to control wood smoke, allows Fairbanks to control ice fog, and allows Anchorage to control vehicular pollution.

9. Sec. 46.14.820 Responsibilities of Owners and Operators

Both owners and operators are liable for noncompliance with the CAA. Both owners and operators will be liable for noncompliance with HB 377. In neither case are both owners and operators expected to duplicate each other's efforts at compliance. Thus, the intent of HB 377 is coextensive with the intent of the CAA.

However, the Federal law speaks to the "owner or operator." U.S.-EPA, the Department of Justice, and the Federal courts have read this to mean "owner and/or operator." *E.g.*, *United States v. Tzavah Urban Renewal Corp.*, 696 F. Supp. 1013, 1015 and 1021 (D.N.J. 1988) (construing air regulations [40 C.F.R. 61.146] which use the term "owner or operator" as meaning "owner and/or operator.") DEC prefers statutory candor. Thus, it proposed section 46.14.820. That says in statute what the fed's say in court.

10. Sec. 46.14.830 Administrative Penalties for Air Pollution

It is true that Congress did not require states to have the ability to levy administrative penalties. It is also true that Congress did require "adequate enforcement." CAA § 502(b)(3)(C)(i); § 502(b)(5)(E); § 502(i)(1). This term is given meaning by the enforcement powers Congress created in the CAA. Under the Federal CAA, enforcers may: