

Leg. Finance-House & Senate Finance Comte Files (1991-1992) 897

1 policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any
2 manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified
3 patient or the withholding or withdrawal of cardiopulmonary resuscitation from an insured
4 patient who possesses DNR identification or for whom a do not resuscitate order has been
5 issued, notwithstanding any term of the policy to the contrary.

6 * Sec. 8. AS 18.12.080(c) is amended to read:

7 (c) A physician, health care facility, or other health care provider, and a health care
8 service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or
9 nonprofit hospital plan, may not require a person to execute a declaration, obtain a do not
10 resuscitate order from a physician, or possess DNR identification as a condition for being
11 insured for, or receiving, health care services.

12 * Sec. 9. AS 18.12.080(d) is amended to read:

13 (d) This chapter creates no presumption concerning the intention or intended treatment
14 of an individual who does not have DNR identification, has not executed a declaration, or for
15 whom a do not resuscitate order has not been issued with respect to the use, withholding, or
16 withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures [IN THE
17 EVENT OF A TERMINAL CONDITION].

18 * Sec. 10. AS 18.12.080(e) is amended to read:

19 (e) Nothing in this chapter increases or decreases the right of a patient to make decisions
20 regarding use of cardiopulmonary resuscitation or other life-sustaining procedures as long as
21 the patient is able to do so, or impairs or supersedes any right or responsibility that a person has
22 to effect the withholding or withdrawal of medical care in a lawful manner. In that respect, the
23 provisions of this chapter are cumulative.

24 * Sec. 11. AS 18.12.090 is amended to read:

25 Sec. 18.12.090. RECOGNITION OF DECLARATIONS AND ORDERS EXECUTED
26 OR ISSUED IN OTHER STATES. A declaration, do not resuscitate order, or DNR
27 identification executed, issued, or authorized in another state or a territory or possession of the
28 United States in compliance with the law of that jurisdiction is effective for purposes of this
29 chapter.

30 * Sec. 12. AS 18.12.100 is amended by adding new paragraphs to read:

31 (8) "cardiopulmonary resuscitation" means cardiopulmonary resuscitation or a

1 component of cardiopulmonary resuscitation;

2 (9) "DNR identification" means identification substantially similar to that
3 approved under AS 18.12.037;

4 (10) "do not resuscitate order" means a directive from a licensed physician that
5 emergency cardiopulmonary resuscitation should not be administered to a particular person;

6 (11) "do not resuscitate protocol" means the protocol developed under
7 AS 18.12.035(b).

8 * Sec. 13. The commissioner of health and social services shall promptly begin the procedure to
9 adopt regulations implementing AS 18.12.035 and 18.12.037, enacted by sec. 1 of this Act, so that the
10 regulations can take effect as soon as practicable.

11 * Sec. 14. AS 18.12.035(b) and 18.12.037, enacted by sec. 1 of this Act, and sec. 13 of this Act take
12 effect immediately under AS 01.70.070(c).

13 * Sec. 15. Except as provided in sec. 14 of this Act, this Act takes effect on the effective date of the
14 regulations adopted under AS 18.12.035 or 18.12.037, enacted by sec. 1 of this Act, whichever is later.
15 The commissioner of health and social services shall notify the revisor of statutes and the lieutenant
16 governor of that date.

POSITION PAPER

SENATE BILL NO. 365

A Bill for an Act entitled: "An Act relating to living wills and do not resuscitate orders; and providing for an effective date."

ANALYSIS


SB 365 complements current statutes on the rights of the terminally ill by adding specific recognition of do not resuscitate (DNR) orders to the existing legislation on the rights of the terminally ill to make a declaration relating to the use of life-sustaining procedures. A new section (18.12.035), allows attending physicians to issue do not resuscitate orders, requires the Department of Health and Social Services, with the approval of the State Medical Board, to issue regulations adopting a standardized protocol governing the withholding of cardiopulmonary resuscitation by physicians and other health care providers, and establishes the requirements under which health care providers other than physicians must comply with do not resuscitate orders. Section 18.12.037 requires the Department of Health and Social Services to develop standardized designs for DNR identification cards, forms, necklaces, and bracelets to indicate that the possessor has executed a living will or that a DNR order has been issued by a physician. Other provisions of the Bill amend existing statutory provisions by including DNRs along with living wills in areas such as immunities for health care providers acting under the provisions of living wills and DNR orders, penalties, etc.

Do not resuscitate orders are issued only in the case of terminal illness. Existing statutes on living wills appear to apply only to physicians, persons participating in the withholding or withdrawal of life-sustaining procedures from a qualified patient under the direction of with the authorization of a physician, and health care facilities in which the withholding or withdrawal occurs. Under existing practice, emergency response providers (EMT's and paramedics) are required to institute cardiopulmonary resuscitation on site even if the sick person has a living will. A properly executed DNR order and procedural protocol recognized by all concerned parties would help to avoid futile and unwanted interventions. Similarly, within health care institutions, DNR orders are necessary in the absence of a living will when attempts at resuscitation serve only to prolong the process of dying.


POSITION

The Department of Health and Social Services supports enactment of: SB 365.

Recommended:


Peter M. Nakamura, MD, MPH
Director
Division of Public Health

Approved:

 1/30/92
Theodore A. Mala, MD, MPH
Commissioner
Health and Social Services

POSITION PAPER
OFFICE OF THE ALASKA DEPARTMENT OF HEALTH & SOCIAL SERVICES

SB 3666

SENATE FINANCE COMMITTEE REPORT

DATE: 3/11/92

FURTHER:

DATE TURNED INTO OFFICE: ~~3/11/92~~

The Finance Committee considered SENATE BILL NO. 366

"An Act providing for establishment of work camps for juveniles adjudicated delinquent."

and recommends:

- replace with CS S.A. 366 (FINANCE) same title
- or adopt previous CS () new title
- attaches amendment(s) 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 _____

~~DOA, OPA~~

fiscal notes _____

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes ~~FDHSS 2973~~

DO PASS:

Lee Adams
Spring Hill
Bill Stutz

OTHER RECOMMENDATIONS:

John Duncan - No Rec

1. *Pat Faulkner novel*
Co-Chair: Signature/Recommendation

2. _____
Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 1

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL Bill Version: SB 366

(S) Publish Date: 3-11-92

Revision Date January 22, 1992

Dept. Affected Health and Social Services

Title: "An act providing for establishment of work camps for juveniles adjudicated delinquent."

BRU: Family and Youth Services

Component: Central Office

Sponsor: Senator Collins

Requestor: Senate HSS Committee

COMPONENT SERIAL NO. 0259

Expenditures/Revenues

(Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	7.3	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	1.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	1.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	9.3	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE						
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FUNDING:

(Thousands of Dollars)

GENERAL FUND	9.3	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	9.3	0.0	0.0	0.0	0.0	0.0

POSITIONS:

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

Estimate of current year impact:

NONE

ANALYSIS: (Attach a separate page if necessary)

SB366 would allow the Department to establish juvenile work camps for youth adjudicated delinquent. This fiscal note is for the administrative costs associated with the adoption of standards and regulations for the design, construction, repair, maintenance, and operation of all juvenile work camps. This would include the adoption of formal regulations, the publication of standards for accreditation of work camp programs, consistent with the accreditation of other state youth correction programs.

This fiscal note does NOT fund the operation of a work camp.

Prepared by: Brian Saylor, Deputy Commissioner *Brian Saylor*
Division: Division of Family and Youth Services

Phone: 465-3030

Date: March 3, 1992

Approved by Commissioner: *[Signature]*

Date: 3/3/92

Agency: Department of Health and Social Services

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor

Changes in CSB 366 (FIN) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

5-4-92 *[Signature]*
date Comte Aide (initial)

Changes in CSB 366 *[Signature]* have no fiscal impact. This fiscal note is appropriate.
11/11/92 *[Signature]*
date Comte Aide (initial)

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. SB 366

Revision Date: _____
 Title: An Act providing for establishment of work camps for juveniles adjudicated delinquent.
 Sponsor: Collins
 Requestor: Senate Health, Education and Social Services

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy

COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

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

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

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

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: January 29, 1992

Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Date: 2/18/92

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

CS FOR SENATE BILL NO. 366 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS COLLINS, Halford

A BILL
FOR AN ACT ENTITLED

1 "An Act providing for establishment of work camps for juveniles adjudicated delinquent,
2 and extending to all cities and to nonprofit corporations authority to maintain facilities for
3 juveniles."

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

5 * Section 1. AS 47.10.080(b) is amended to read:

6 (b) If the court finds that the minor is delinquent, it shall

7 (1) order the minor committed to the department for a period of time not to
8 exceed two years or in any event extend past the day the minor becomes 19, except that the
9 department may petition for and the court may grant in a hearing (A) two-year extensions of
10 commitment that do not extend beyond the child's 19th birthday if the extension is in the best
11 interests of the minor and the public; and (B) an additional one-year period of supervision past
12 age 19 if continued supervision is in the best interests of the person and the person consents to
13 it; the department shall place the minor in the juvenile facility that the department considers
14 appropriate and that may include a juvenile correctional school, juvenile work camp, detention

1 home, or detention facility; the minor may be released from placement or detention and placed
2 on probation on order of the court and may also be released by the department, in its discretion,
3 under AS 47.10.200;

4 (2) order the minor placed on probation, to be supervised by the department, and
5 released to the minor's parents, guardian, or a suitable person; if the court orders the minor
6 placed on probation, it may specify the terms and conditions of probation; the probation may be
7 for a period of time, not to exceed two years and in no event extend past the day the minor
8 becomes 19, except that the department may petition for and the court may grant in a hearing

9 (A) two-year extensions of supervision that do not extend beyond the
10 child's 19th birthday if the extension is in the best interests of the minor and the public;
11 and

12 (B) an additional one-year period of supervision past age 19 if the
13 continued supervision is in the best interests of the person and the person consents to it;

14 (3) order the minor committed to the department and placed on probation, to be
15 supervised by the department, and released to the minor's parents, guardian, other suitable person,
16 or suitable nondetention setting such as a family home, group care facility, or child care facility,
17 whichever the department considers appropriate to implement the treatment plan of the
18 predisposition report; if the court orders the minor placed on probation, it may specify the terms
19 and conditions of probation; the department may transfer the minor, in the minor's best interests,
20 from one of the probationary placement settings listed in this paragraph to another, and the
21 minor, the minor's parents or guardian, and the minor's attorney are entitled to reasonable notice
22 of the transfer; the probation may be for a period of time, not to exceed two years and in no
23 event extend past the day the minor becomes 19, except that the department may petition for and
24 the court may grant in a hearing

25 (A) two-year extensions of commitment that do not extend beyond the
26 child's 19th birthday if the extension is in the best interests of the minor and the public;
27 and

28 (B) an additional one-year period of supervision past age 19 if the
29 continued supervision is in the best interests of the person and the person consents to it;

30 (4) order the minor to make suitable restitution in lieu of or in addition to the
31 court's order under (1), (2), or (3) of this subsection;

1 (5) order the minor committed to the department for placement in an adventure
2 based education program established under AS 47.21.020 with conditions the court considers
3 appropriate concerning release upon satisfactory completion of the program or commitment under
4 (1) of this subsection if the program is not satisfactorily completed; or

5 (6) in addition to an order under (1) - (5) of this subsection, if the delinquency
6 finding is based on the minor's violation of AS 11.71.030(a)(3) or 11.71.040(a)(4), order the
7 minor to perform 50 hours of community service; for purposes of this paragraph, "community
8 service" includes work

9 (A) on a project identified in AS 33.30.901; or

10 (B) that, on the recommendation of the city council or traditional village
11 council, would benefit persons within the city or village who are elderly or disabled.

12 * Sec. 2. AS 47.10.150 is amended to read:

13 Sec. 47.10.150. GENERAL POWERS OF DEPARTMENT OVER JUVENILE
14 INSTITUTIONS. The department may

15 (1) purchase, lease, or construct buildings or other facilities for the care, detention,
16 rehabilitation, and education of children in need of aid or delinquent minors;

17 (2) adopt plans for construction of juvenile homes, juvenile work camps, juvenile
18 detention facilities, or other juvenile institutions;

19 (3) adopt standards and regulations under this chapter for the design, construction,
20 repair, maintenance, and operation of all juvenile detention homes, work camps, facilities, and
21 institutions;

22 (4) inspect periodically each juvenile detention home, work camp, facility, or
23 other institution to ensure that the standards and regulations adopted are being maintained;

24 (5) reimburse cities maintaining and operating juvenile detention homes, work
25 camps, and facilities;

26 (6) enter into contracts and arrangements with cities and state and federal agencies
27 to carry out the purposes of this chapter;

28 (7) do all acts necessary to carry out the purposes of this chapter;

29 (8) adopt the regulations necessary to carry out this chapter;

30 (9) accept donations, gifts, or bequests of money or other property for use in
31 construction of juvenile homes, work camps, institutions, or detention facilities;

1 (10) operate juvenile homes when municipalities are unable to do so;

2 (11) receive, care for, and place in a juvenile detention home, the minor's own
3 home, a foster home, or a correctional school, work camp, or treatment institution all minors
4 committed to its custody under this chapter.

5 * Sec. 3. AS 47.10.160(a) is amended to read:

6 (a) The department shall

7 (1) accept all minors committed to the custody of the department and all minors
8 who are involved in a written agreement under AS 47.10.230(c), and provide for the welfare,
9 control, care, custody, and placement of these minors in accordance with this chapter;

10 (2) require and collect statistics on juvenile offenses and offenders in the state;

11 (3) conduct studies and prepare findings and recommendations on the need,
12 number, type, construction, maintenance, and operating costs of juvenile homes, work camps,
13 facilities, and the other institutions, and adopt and submit a plan for construction of the homes,
14 work camps, facilities, and institutions when needed, together with a plan for financing the
15 construction programs;

16 (4) examine, where possible, all facilities, institutions, work camps, and places
17 of juvenile detention in the state and inquire into their methods and the management of juveniles
18 in them.

19 * Sec. 4. AS 47.10.170 is amended to read:

20 Sec. 47.10.170. AUTHORITY [POWER OF CITIES] TO MAINTAIN AND OPERATE
21 HOME, WORK CAMP, OR FACILITY. (a) A city or a nonprofit corporation [HAVING
22 A POPULATION OF 1700 OR MORE, ACCORDING TO THE LATEST DECENNIAL
23 CENSUS, OR FOUND BY THE DEPARTMENT TO HAVE A PRESENT POPULATION OF
24 1700 OR MORE] may maintain and operate a juvenile detention home, a juvenile work camp,
25 or a juvenile detention facility.

26 (b) The city or nonprofit corporation may receive grants-in-aid from the state for costs
27 of operation of the homes, work camps, or facilities maintained and operated under (a) of this
28 section.

29 * Sec. 5. AS 47.10.180(a) is amended to read:

30 (a) The department shall adopt standards and regulations for the operation of juvenile
31 detention homes, juvenile detention work camps, and juvenile detention facilities in the state.

1 * Sec. 6. AS 47.10.190 is amended to read:

2 Sec. 47.10.190. CONDITIONS GOVERNING DETENTION. When the court commits
3 a minor to the custody of the department, the department shall arrange to place the juvenile in
4 a detention home, work camp, facility, or another suitable place that the department designates
5 for that purpose. A juvenile detained in a jail or similar institution at the request of the
6 department shall be held in custody in a room or other place apart and separate from adults.

7 * Sec. 7. AS 47.10.990 is amended by adding a new paragraph to read:

8 (10) "juvenile work camp" means a separate residential establishment, exclusively
9 devoted to the detention of minors, in which the minors who are committed to the custody of the
10 department and placed in the facility may be required to labor on the buildings and grounds or
11 perform any other work or engage in any activities that do not conflict with regulations adopted
12 by the Department of Health and Social Services under this chapter for the care, rehabilitation,
13 education, and discipline of minors in detention.

AMENDMENT # 1

Adopted

OFFERED IN THE SENATE
TO: CSSB 366 (HES)

BY SENATOR COLLINS

Page 1, line 2, after "all cities":
Insert "and to nonprofit corporations"

Page 4, lines 19 - 25:
Delete all material and insert:

"Sec. 47.10.170. AUTHORITY [POWER OF CITIES] TO MAINTAIN AND OPERATE HOME, WORK CAMP, OR FACILITY. (a) A city or a nonprofit corporation [HAVING A POPULATION OF 1700 OR MORE, ACCORDING TO THE LATEST DECENNIAL CENSUS, OR FOUND BY THE DEPARTMENT TO HAVE A PRESENT POPULATION OF 1700 OR MORE] may maintain and operate a juvenile detention home, a juvenile work camp, or a juvenile detention facility.

(b) The city or nonprofit corporation may receive grants-in-aid from the state for costs of operation of the homes, work camps, or facilities maintained and operated under (a) of this section."

5-4-92
Adopted
7-LS1781NG.4
Chenoweth
05/02/92

AMENDMENT # 2

OFFERED IN THE SENATE
TO: CSSB 366(HES)

Page 5, lines 8 - 9:

Delete "prescribed by persons responsible for operation of the facility"

Insert "that do not conflict with regulations adopted by the Department of Health and Social Services under this chapter for the care, rehabilitation, education, and discipline of minors in detention"

Alaska State Legislature

During Session
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2823



During Interim
3111 C Street, Suite 540
Anchorage, Alaska 99503
(907) 561-2040

Senator Virginia Collins

CSSB 366 (HES)

Juvenile Work Camps

CSSB 366 (HES) allows for the establishment of juvenile work camps, or "boot camps," for youths who are adjudicated delinquent.

Eager to improve the effectiveness and reduce the cost of juvenile corrections, many states are experimenting with boot camps for juvenile offenders. The purpose is to scare kids straight so they won't end up in adult prisons.

The intent behind CSSB 366 (HES) is to permit courts to place juvenile delinquents in work camps patterned after Nevada's China Spring Youth Camp -- a setting that stresses academics, physical labor, and structured discipline.

At China Spring, the boys start their day by cleaning the dormitory and, after breakfast, the kitchen. They attend school from 8:00 to 3:30 then work on such projects as digging ditches for water and sewer lines, hauling wood, raising chickens, and farming. After work, they have a mandatory hour for studies and another hour for counseling for problems such as alcohol and drug abuse.

Although there are no cost estimates for an Alaska boot camp, we do know that the U.S. Justice Department awarded Ohio's Cuyahoga County a \$779,000 grant for an 18-month pilot boot camp program housing 30 boys at a time.

Many members of the public have called in support of the bill because they see it as a measure tough on crime. CSSB 366 (HES) seeks not to replace the current corrections system, but to enhance it -- and perhaps dissuade young criminals from returning to a life a crime.





Official Business

Alaska State Legislature

Senate

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

M E M O R A N D U M

April 24, 1992

SUBJECT: Sectional Analysis of CSSB 366 (HES)
TO: Members, Senate Finance Committee
FROM: Senator Virginia Collins *[Signature]*

What follows is a sectional analysis of the above described bill. As a preliminary matter, please note that a sectional analysis of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 - Amends AS 47.10.080(b) to allow the department of health and social services to place in a juvenile work camp a delinquent minor committed to the department by the court.

Section 2 - Amends AS 47.10.150 by adding juvenile work camps to the types of juvenile institutions over which the department has certain powers.

Section 3 - Amends AS 47.10.160(a) to include juvenile work camps in the list of specific duties the department must perform under the chapter governing juvenile institutions.

Section 4 - Amends AS 47.10.170 to allow a city to maintain and operate a juvenile work camp; and, to allow a city to receive grants for the operation of a camp.

Section 5 - Amends AS 47.10.180(a) to authorize the department to adopt regulations for the operation of juvenile work camps.

Section 6 - Amends AS 47.10.190 by applying to work camps the conditions governing the detention of juveniles.

Section 7 - Amends AS 47.10.990 by adding a definition of "juvenile work camp".



JAN 17 1992

(702) 782-9870

Post Office Box 218 • Minden, Nevada 89423

DOUGLAS COUNTY

January 13, 1992

Senator Virginia Collins
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811

Dear Senator Collins:

Pursuant to your request, enclosed please find a brief history of China Spring. You may also wish to obtain a copy of Nevada Revised Statutes 234.297 to 244.299 as amended in Chapter 31 of the 1960 Nevada State Legislature.

Please advise if we can be of further assistance.

Sincerely,

Michael J. Harper
Director

MJH:sc

CHINA SPRING YOUTH CAMP

LOCATION

2.5 miles south of Bodie Flat, in Douglas County, approximately nine miles from Minden and Gardnerville. The mailing address is Post Office Box 218, Minden, Nevada 89423.

HISTORY

In 1979 District Judge Howard McKibben, Chief Probation Officer James Estabrook and members of the local community perceived a need for a juvenile placement facility to serve as an alternative to the Nevada Youth Training Center at Elko. Jewel and Stoddard Jacobsen, of Gardnerville, donated forty acres of land for the project. China Spring Youth Camp obtained an energy conservation grant, service clubs assistance, and an additional community fund raising effort raised \$80,000.00. During the summer of 1981, using a CETA Youth Work Project Grant and with the cooperation of local contractors, a road was cut into the property. In August of 1983, the Camp was opened and operated until July of 1985.

The Camp underwent major renovations from 1985 to 1987. It was reopened in June of 1987 with a 30 bed capacity and is presently a self-contained facility located in a wilderness setting. The facility utilizes solar energy, "state of the art" in energy conservation. The Camp consists of seven facilities: a dormitory, messhall, office/laundry, hatchery, school facility and administrative offices. The Camp has its own water system.

Since China Spring Youth Camp re-opened, the staff has continued to develop in-house programs designed to give the residents every opportunity to make meaningful and positive changes in their lives. Each day is filled with academics, physical training, work projects and counseling. Each resident learns self discipline and task completion.

The China Spring Youth Camp is currently capable of housing 30 mid-level juvenile offenders. We offer a staff secured facility that provides a structured environment that develops self discipline, confidence and improved academic standing. The Camp has accepted placement from all Nevada Judicial Districts.

MISSION

The China Spring Youth Camp is a regional training, residential facility for mid-level juvenile offenders. The Camp is established as a staff-secured facility whose purpose is to provide the structure and programs necessary for the resident youth to

overcome their delinquent and anti-social behaviors, and to facilitate a positive reintegration into the family and the community.

GOALS

1. To modify the behavior patterns of residents by providing an opportunity for achievement in a controlled and structured environment.
2. To work with the residents through the different programs to enable him to have the skill to function appropriately when he re-enters his home, school and community.

COMMITMENT CRITERIA/PROCEDURE

1. The child be adjudicated a delinquent child within the purview of Chapter 62 of the Nevada Revised Statutes.
2. Child to be committed to the care and custody and control of the Superintendent of the Nevada Youth Training Center at Elko.
3. That commitment be suspended and the child be placed on formal probation with the condition that he successfully complete the program.

The above procedure will allow for the sending county to maintain jurisdiction of the child upon the release from the Camp and his return to the community.

CAMP DISCIPLINE

The China Spring Youth Camp Program is based on accountability and achievement. The Camp is not a punitive institution. The clients of the Camp are taught social and personal responsibility in a structured environment in which privileges are earned. For every privilege granted to a client, an equal responsibility is assigned.

EDUCATION

Educational programming is provided by the Douglas County School District. General academic programs are offered. Additional instruction is available in the use of computers and vocational classes. Apprenticeships are implemented in welding, cooking and various agricultural activities.

Emphasis in the educational setting is on obtaining the basic skills that facilitate their integration into society and the work place. As most residents have had academic problems, additional emphasis is placed on making up any credits they may be deficient in for graduation.

COUNSELING

The youth at Camp need direction, guidance and the experience of taking personal responsibility for their actions. The Camp is committed to an intensive, dedicated, caring and professional approach. The staff work to enable the youth to take charge of their lives and develop the confidence and self esteem to satisfactorily adjust to the community.

Each resident is involved in private and individual counseling. The Camp has on staff, state certified alcohol and drug counselors, and a program administrator for alcohol and drugs.

Residents are involved in counseling that includes programs from the Bureau of Alcohol and Drug Abuse, reality therapy, behavior modification, personal hygiene, personal finance, ethics, the youth and the law, goal setting, job search skills and others in an ongoing process.

STAFF

The China Spring Youth Camp employs and trains a professional counseling staff. Staff members must possess skills that lend themselves to all areas of the program. The resident must have access to a skilled counselor on a 24 hour a day basis. China Spring Youth Camp staff does not perform straight supervision duties, with their skills they set the tone for an environment conducive to behavioral change.

TREATMENT

The residents shall have a treatment plan completed within the first thirty (30) days of residence. The plan will be prepared by staff counselors in cooperation with the resident. The plan shall include the following goals: behavioral, educational, psychological, family and community, and work.

WILDERNESS PROGRAM

The developmental concept of wilderness training is to provide an opportunity for achievement in a setting dissimilar from the settings of a juvenile offenders non-achievement. Any person's

ability to become proficient in the social skills necessary to become a contributory element of society is dependent on the individual's concept of self worth, his perception of his functional social abilities, and his degree of self discipline.

In an attempt to overcome a history of societal failure, a youth referred to the China Spring Wilderness Program is given an opportunity to achieve in a highly structured setting. The program functions by providing problem solving tasks set in a unique physical social environment which impels the learner to mastery of these tasks.

The participants are exposed to natural laws and their consequences. Unlike many of society's laws, the problems they present tend to be straightforward, but often, their solutions require flexibility and creativity. In the wilderness setting, the youth is no longer able to rationalize his failures as being the fault of another person or institution. The counselors provide the instruction and the expertise necessary for the youth to be successful; it is the youth's efforts, however, that will determine his success. Once a youth has learned that the degree of his success is limited, only by his efforts and knowledge, that lesson is transferred to the other elements of camp life and into a redevelopment of self awareness and self esteem, and this changes the direction of his problem solving behavior in the general society.

ADDITIONAL TRAINING

Residents are involved in daily activities that provide benefits to the Camp and develop new skills for the residents. These have included community projects of laying sod at schools and county facilities, landscaping of Camp grounds, care of chukar project, building maintenance, fence building, gardening, construction tasks and vocational training.

FOOD SERVICES

The Food Service Unit is responsible for providing nutritious, well balanced meals that will ensure the necessary daily dietary requirements for each resident. Meals will be in compliance with guidelines set by the United State Department of Health and Welfare in conjunction with the National School Lunch Program through the State Department of Education.

MEDICAL SERVICES

Medical services are available 24 hours a day.

AFTERCARE

The children who are released from China Spring Youth Camp will return to their original jurisdiction. The committing Probation Officer or Youth Parole Service retains custody of the child and is kept informed of the residents progress. Family counseling for the children who reside in outlying counties will be provided by Rural Clinics Community Mental Health Center of the State of Nevada.

FUTURE GOALS

As the Camp continues to grow many goals and projects still lie ahead. As the need arises, China Spring Youth Camp is prepared to expand to a capacity of 40 residents. Nevada has a rapidly growing population and consequently increasing need for residential juvenile facilities. The State of Nevada already faces continual over crowding at its training center. China Spring Youth Camp provides a viable low cost alternative to expansion of State facilities.

Future projects include the construction of a vocational arts building, completion of athletic fields, an additional water well and a reservoir for increased fire protection.

SB 368

SENATE FINANCE COMMITTEE REPORT

DATE: 5/1/92

FURTHER:

DATE TURNED INTO OFFICE: _____

The Finance Committee considered SENATE BILL NO. 368

"An Act making a special appropriation to the Alaska Seafood Marketing Institute for a domestic Alaskan salmon sales promotion program; and providing for an effective date."

DIED

and recommends:

replace with _____ CS _____ (FINANCE) same title
 adopt previous _____ CS _____ () new title
 attaches amendment(s) 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 _____

fiscal notes _____

appropriation--no fiscal note

DO PASS:

1. _____
Co-Chair: Signature/Recommendation

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

OTHER RECOMMENDATIONS:

2. _____
Co-Chair: Signature/Recommendation

STATE OF ALASKA
1992 LEGISLATIVE SESSION

No. 1

Bill Version: SB 368

(S) Publish Date: 5-1-92

Revision Date: April 28, 1992

Department Affected

Title: "An Act authorizing AIDEA to issue bonds for the Kethikan Shidvard"

BRU: AIDEA

Component: DCED

Sponsor: Senator Jones

Requestor: Senate Labor & Commerce

COMPONENT SERIAL NO.

1	2	3	4
---	---	---	---

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: -0-

ANALYSIS: (Attach a separate page if necessary.)

This bill provides bonding authorization and will have no fiscal impact on AIDEA.

Prepared By: William H. Scott, Ex. Director

Phone: (907) 561-8050

Division: AIDEA

Date: 4/28/92

Approved by Commissioner: Glenn A. Olds

Agency: DCED

Date: 4.28.92

CS FOR SENATE BILL NO. 368 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 5/1/92
Referred: Finance

Sponsor(s): SENATORS JONES, Zharoff, Duncan

A BILL

FOR AN ACT ENTITLED

1 "An Act authorizing the Alaska Industrial Development and Export Authority to issue
2 bonds in an amount not to exceed \$15,000,000 to finance the Ketchikan shipyard facility;
3 modifying the purpose for which the Alaska Industrial Development and Export Authority
4 is authorized to issue bonds in an amount not to exceed \$85,000,000 to finance aircraft
5 maintenance/air cargo/air transport support facilities at Anchorage International Airport;
6 authorizing the Alaska Industrial Development and Export Authority to issue bonds in an
7 amount not to exceed \$40,000,000 to finance public use aircraft fueling facilities located
8 at Anchorage International Airport; authorizing the Alaska Industrial Development and
9 Export Authority to issue bonds in an amount not to exceed \$50,000,000 to finance a
10 seafood facility at or near Anchorage International Airport; and providing for an effective
11 date."

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

SB0368b

-1-

CSSB 368(L&C)

New Text Underlined [DELETED TEXT BRACKETED]

COMMITTEE COPY

1 * Section 1. The Alaska Industrial Development and Export Authority may issue bonds to finance
2 the design, construction, reconstruction, improvements, and equipping of the Ketchikan shipyard facility
3 to be owned by the Authority. The principal amount of the bonds may not exceed \$15,000,000. This
4 section grants the legislative approval required by AS 44.88.095.

5 * Sec. 2. Section 25, ch. 123, SLA 1990 is amended to read:

6 Sec. 25. The Alaska Industrial Development and Export Authority may issue bonds to
7 finance the acquisition, design, and construction of [A MULTI-BAY] aircraft maintenance/air
8 cargo/air transport support facilities [FACILITY] located at Anchorage International Airport,
9 to be owned by the Authority. The principal amount of the bonds may not exceed \$85,000,000
10 [\$50,000,000]. This section grants the legislative approval required by AS 44.88.095.

11 * Sec. 3. The Alaska Industrial Development and Export Authority may issue bonds to finance the
12 acquisition, design, and construction of public use aircraft fueling facilities located at Anchorage
13 International Airport, to be owned by the Authority. The principal amount of the bonds may not exceed
14 \$40,000,000. This section grants the legislative approval required by AS 44.88.095.

15 * Sec. 4. The Alaska Industrial Development and Export Authority may issue bonds to finance the
16 acquisition, design, and construction of a facility for the offloading, processing, storage, and transloading
17 of seafood located at or near Anchorage International Airport, to be owned by the Authority. The
18 principal amount of the bonds may not exceed \$50,000,000. This section grants the legislative approval
19 required by AS 44.88.095.

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

SENATE BILL NO. 368

IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATORS JONES, Zharoff, Duncan

Introduced:	1/22/92	
Referred:	L&C, Finance	
Funding Information:	General Fund	\$10,000,000
	Other Funds	<u>-0-</u>
		\$10,000,000

A BILL

FOR AN ACT ENTITLED

1 "An Act making a special appropriation to the Alaska Seafood Marketing Institute for a
2 domestic Alaskan salmon sales promotion program; and providing for an effective date."

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

4 * Section 1. The sum of \$10,000,000 is appropriated from the general fund to the Department of
5 Commerce and Economic Development, Alaska Seafood Marketing Institute, for a domestic Alaskan
6 salmon sales promotion program for the fiscal years ending June 30, 1992 and June 30, 1993.

7 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

SB369

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 16, 1992

FURTHER REFERRALS:

Date of Committee Action: 4/28/92

The FINANCE Committee considered:

SB 369

SENATE BILL NO. 369

RATIFY SETTLEMENT W/ARCTIC SLOPE REG CORP

"An Act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation; establishing procedures for implementing the agreement; and providing for an effective date."

RECOMMENDATIONS:

be replaced with SB 369 the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) DNR 1/24/92

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eileen P. MacLean</i> MacLean	✓	_____			
<i>Mike Navarre</i> NAVARRE	✓				
<i>Maria Boyer</i> Boyer	X				
<i>Thomas Koponen</i> Koponen	✓				
<i>Charles Jack</i> JACK	X				
<i>Don Sharp</i> SHARP	✓				
<i>Paul Phillips</i> PHILLIPS	✓				
<i>Ronald Hanson</i> HANSON	X				
<i>Adrian Ulmer</i> ULMER	✓				
<i>Ronnie Barnes</i> BARNES	✓				

Mike Navarre & *E.P. MacLean*
 (6) CHAIRMAN'S SIGNATURE

1 exchange undivided interests in the subsurface of submerged lands and uplands in the Point Lay and
2 Nuiqsut areas and establish a fixed revenue sharing percentage for those lands.

3 * Sec. 2. RATIFICATION. Notwithstanding any provision of AS 38 or any other provision of state
4 law, the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of
5 Alaska" (including the exhibits to it) is hereby ratified as to the rights, duties, agreements, and
6 obligations of the state provided for or contemplated in it.

7 * Sec. 3. RULES AGAINST PERPETUITIES AND RESTRAINTS ON ALIENATION. No statutory
8 or common law rules against perpetuities, including AS 34.27.010, or restraints on alienation of property
9 apply to the settlement agreement ratified by this Act or to any interest or power created by it.

10 * Sec. 4. COMMISSIONER AUTHORITY. The commissioner of natural resources is authorized and
11 directed to implement the terms of the settlement agreement ratified by this Act, including, without
12 limitation, to execute and deliver patents to ASRC as provided for in the settlement agreement,
13 notwithstanding any procedural requirement or other provision of Alaska law that might otherwise be
14 deemed a restriction on the commissioner's authority to implement the agreement. The commissioner
15 may not materially amend the settlement agreement without legislative approval.

16 * Sec. 5. RECORDATION. (a) The commissioner of natural resources shall record a true and
17 authenticated photocopy of the settlement agreement ratified by this Act, and any conveyance document
18 required by it, in the recording office of the appropriate recording district, and shall incorporate the
19 settlement agreement in the land records system maintained by the Department of Natural Resources.

20 (b) The commissioner of natural resources shall deliver a signed original of the settlement
21 agreement to the archivist in the Department of Administration, for preservation.

22 * Sec. 6. ACTIONS. (a) Notwithstanding any other provision of Alaska law, no person may bring
23 an action challenging the legality of the settlement agreement ratified by this Act, in whole or in part,
24 or the legality of a provision of this Act, unless the action is commenced in a state superior court within
25 six months after the effective date of this Act.

26 (b) Nothing in this Act is intended to create a right in any person to challenge the legality of
27 the settlement agreement ratified by this Act, in whole or in part, or the legality of a provision of this
28 Act.

29 * Sec. 7. WAIVER OF SOVEREIGN IMMUNITY. The State of Alaska waives its sovereign
30 immunity from suit by ASRC and its successors or assigns seeking to enforce or protect rights conferred
31 on ASRC under the settlement agreement ratified by this Act, but only if that action is brought in state

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 16, 1992

FURTHER REFERRALS:

Date of Committee Action: 4/28/92

The FINANCE Committee considered:

SB 369

SENATE BILL NO. 369

RATIFY SETTLEMENT W/ARCTIC SLOPE REG CORP

"An Act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation; establishing procedures for implementing the agreement; and providing for an effective date."

RECOMMENDATIONS:

be replaced with SB 369 the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

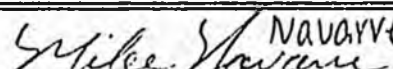
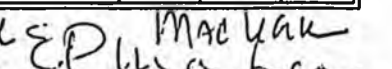
fiscal impact _____

fiscal note(s) FINR 1/24/92

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Eileen P. MacLean	✓	[Signature]			
Mike Navarre	✓				
Marie Boyer	X				
[Signature] Koponen	✓				
George Jackson	X				
Bob Sharp	✓				
Carol Phillips	✓				
Ronald Hanson	X				
William Ulmer	✓				
Ronnie Barnes	✓				



 (6) CHAIRMAN'S SIGNATURE

SENATE BILL NO. 369

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/24/92

Referred: O&G, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act ratifying an agreement settling litigation between the State of Alaska and the
2 Arctic Slope Regional Corporation; establishing procedures for implementing the agreement;
3 and providing for an effective date."

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

5 * Section 1. PURPOSE. The purpose of this Act is to provide for the settlement of certain claims
6 raised in litigation between the State of Alaska and the Arctic Slope Regional Corporation (ASRC) in
7 "State of Alaska v. Arctic Slope Regional Corporation," Alaska Superior Court, Third Judicial District,
8 Case No. 3AN-85-15523, and to improve the marketability of certain land titles in the Nuiqsut and Point
9 Lay areas. The litigation arose over a 1974 agreement under which ASRC and the state were to
10 exchange certain potentially valuable mineral lands in the Point Lay and Nuiqsut areas in exchange for
11 which the state was to withdraw challenges to the eligibility, under the Alaska Native Claims Settlement
12 Act (ANCSA), of the villages of Nuiqsut (Kuukpik Corporation) and Point Lay (Cully Corporation).
13 For reasons that the State and ASRC disputed, the land exchanges of the 1974 agreement were never
14 completed. Under the 1991 Settlement Agreement that this Act ratifies, the state and ASRC will

1 exchange undivided interests in the subsurface of submerged lands and uplands in the Point Lay and
2 Nuiqsut areas and establish a fixed revenue sharing percentage for those lands.

3 * Sec. 2. RATIFICATION. Notwithstanding any provision of AS 38 or any other provision of state
4 law, the "1991 Settlement Agreement Between Arctic Slope Regional Corporation and the State of
5 Alaska" (including the exhibits to it) is hereby ratified as to the rights, duties, agreements, and
6 obligations of the state provided for or contemplated in it.

7 * Sec. 3. RULES AGAINST PERPETUITIES AND RESTRAINTS ON ALIENATION. No statutory
8 or common law rules against perpetuities, including AS 34.27.010, or restraints on alienation of property
9 apply to the settlement agreement ratified by this Act or to any interest or power created by it.

10 * Sec. 4. COMMISSIONER AUTHORITY. The commissioner of natural resources is authorized and
11 directed to implement the terms of the settlement agreement ratified by this Act, including, without
12 limitation, to execute and deliver patents to ASRC as provided for in the settlement agreement,
13 notwithstanding any procedural requirement or other provision of Alaska law that might otherwise be
14 deemed a restriction on the commissioner's authority to implement the agreement. The commissioner
15 may not materially amend the settlement agreement without legislative approval.

16 * Sec. 5. RECORDATION. (a) The commissioner of natural resources shall record a true and
17 authenticated photocopy of the settlement agreement ratified by this Act, and any conveyance document
18 required by it, in the recording office of the appropriate recording district, and shall incorporate the
19 settlement agreement in the land records system maintained by the Department of Natural Resources.

20 (b) The commissioner of natural resources shall deliver a signed original of the settlement
21 agreement to the archivist in the Department of Administration, for preservation.

22 * Sec. 6. ACTIONS. (a) Notwithstanding any other provision of Alaska law, no person may bring
23 an action challenging the legality of the settlement agreement ratified by this Act, in whole or in part,
24 or the legality of a provision of this Act, unless the action is commenced in a state superior court within
25 six months after the effective date of this Act.

26 (b) Nothing in this Act is intended to create a right in any person to challenge the legality of
27 the settlement agreement ratified by this Act, in whole or in part, or the legality of a provision of this
28 Act.

29 * Sec. 7. WAIVER OF SOVEREIGN IMMUNITY. The State of Alaska waives its sovereign
30 immunity from suit by ASRC and its successors or assigns seeking to enforce or protect rights conferred
31 on ASRC under the settlement agreement ratified by this Act, but only if that action is brought in state

- 1 superior court. Nothing in this Act is intended to waive the state's immunity from suit in federal court
- 2 under the eleventh amendment of the Constitution of the United States.
- 3 * Sec. 8. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

No. 1

Bill Version: SB 369

(S) Publish Date: 1/24/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. _____

Revision Date: _____ Department Affected: Natural Resources & Law
 Title: Short Title: ASRC Settlement BRU: Division of Oil & Gas
 Components: _____
 Sponsor: Rules Committee
 Requestor: Governor COMPONENT SERIAL NO. _____ 439

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						
Funding Source:	N/A					

FUNDING: (Thousands of Dollars)

GENERAL FUND	N/A					
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	N/A	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0					
PART-TIME	0.0					
TEMPORARY	0.0					

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attachment

Prepared by: Bob Loeffler Phone: 762-2578
 Division: Oil & Gas Date: 15-Jan-92

Approved by Commissioner: Harold C. Heinz Date: _____
 Agency: Department of Natural Resources

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

Attachment

Arctic Slope Regional Corporation Settlement Agreement

If the agreement is approved by the Legislature, no additional funds or positions will be needed to implement it.

If the agreement is not approved by the Legislature, the Department of Law would expend significant funds litigating the dispute. The Department of Natural Resources would need a portion of a position to support the litigation.

In addition, the settlement is needed if the state is to lease lands in the Nuiqsut area now scheduled for sale Oil and Gas Lease Sale 75 during December, 1992. If the agreement is approved this year, the lease sale could include approximately 60,000 acres of land covered in the agreement (about one quarter of the total acreage of Sale 75). If the agreement is not approved this session, the Nuiqsut acreage (assuming the litigation is settled) could not be leased until 1995 because of oil and gas lease sale procedural requirements. The Nuiqsut area lands have moderate oil and gas potential. Including them in the lease sale would bring significant new revenues to the state.

ALASKA STATE LEGISLATURE

Representative Eileen Panigeo MacLean
Co-Chair House Finance Committee
P.O. Box 830
Barrow, Alaska 99723

WHILE IN JUNEAU
State Capitol
Juneau, Alaska 99801-1182
465-4525
465-4833
463-3241 FAX

HOUSE OF REPRESENTATIVES

MEMORANDUM

District 22

North Slope
Borough

Anaktuvuk Pass
Atkasuk
Barrow
Kaktovik
Nulqsut
Point Hope
Point Lay
Wainwright

Northwest Arctic
Borough

Ambler
Buckland
Deering
Kiana
Kivalina
Kobuk
Kotzebue
Noatak
Noorvik
Selawik
Shungnak

TO: Rep. Mike Navarre *Mike*
Co-Chair, House Finance Committee

FROM: Rep. Eileen MacLean *Eileen*

DATE: April 20, 1992

RE: Request for hearing of SB 369

This is a request for a hearing in the Finance Committee on SB 369, An Act ratifying an agreement settling litigation between the State of Alaska and the Arctic Slope Regional Corporation.

SB 369 is identical to HB 416, which was approved with a unanimous "Do Pass" recommendation in the House Finance Committee. The bill has a zero fiscal note. For these reasons, I am asking that you put this bill on the consent agenda as soon as possible.

SB 369 settles an 18-year land dispute between the State of Alaska and the Arctic Slope Regional Corporation. The dispute arose when the Federal government allowed the Nuiqsut and Point Lay village corporations to select ANCSA lands that had been transferred to the State. The State protested the selections and agreed to a land exchange. However, the exchange was never completed. Oil was discovered in 1984, and both the State and ASRC filed lawsuits against each other.

The parties have finally negotiated an agreement that provides for joint ownership of oil and gas rights. This is the first land agreement resulting in joint ownership by the State and a Native corporation.

The agreement is a good one for both parties, and consequently this is good legislation. I urge you to schedule SB 369 in the Finance Committee as soon as possible.

WALTER J. HICKEL
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 23, 1992

The Honorable Richard I. Eliason
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Eliason:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would ratify the "1991 Settlement Agreement Between the State of Alaska and the Arctic Slope Regional Corporation" (1991 Settlement Agreement). This bill would resolve longstanding litigation between the State of Alaska and the Arctic Slope Regional Corporation (ASRC) over ownership of potentially valuable mineral lands in the Point Lay and Nuiqsut areas of the North Slope. The litigation arose out of a 1974 land exchange agreement (1974 Agreement), discussed below, which followed passage of the Alaska Native Claims Settlement Act of 1971 (ANCSA). The bill also would remove impediments to title marketability to the disputed lands and to create a long-term partnership between the state and ASRC, aimed at maximizing revenue for both parties.

The 1991 Settlement Agreement - Background

The 1991 Settlement Agreement resolves a dispute over land entitlement stemming from a 1974 land exchange agreement. The 1974 Agreement was intended to resolve state challenges to the BIA-certified eligibility of two ANCSA village corporations by requiring the state and ASRC to exchange certain lands in the Nuiqsut and Point Lay areas, in exchange for which the state agreed to withdraw its challenges to the ANCSA eligibility of Point Lay (Cully Corporation) and Nuiqsut (Kuukpik Corporation).

Under the 1974 Agreement, ASRC agreed to quitclaim any interest it had in 69,120 acres of Nuiqsut area subsurface then tentatively approved to the state, the surface of which Kuukpik Corporation could select under ANCSA. The state agreed to convey to ASRC about 65,000 acres of lands owned by the state in the Point Lay area. Although the state did withdraw its challenges to the eligibility of Point Lay and Nuiqsut, the land exchange provisions of the 1974 Agreement were never completed, for reasons which ASRC and the Department of Natural Resources (DNR) dispute.

The Honorable Richard I. Eliason
January 23, 1992
Page 2

In 1985 Texaco made a promising oil strike northeast of the Nuiqsut area lands. At that point, DNR sought to implement the land exchange provisions of the 1974 Agreement. ASRC refused, asserting that the state had abandoned the 1974 Agreement by 11 years of inaction and that the 1974 Agreement was in violation of the Alaska Statehood Act, the Constitution of Alaska, and various state and federal laws. Negotiations between the parties failed, and litigation was filed in state and federal court.

After the initiation of litigation and extensive motion practice, DNR and ASRC, faced with the uncertainties of litigation and the speculative values of both the Nuiqsut and Point Lay parcels, reentered negotiations and in 1986 reached an agreement in principle that contemplated an even split of the contested uplands at both locations. This "50/50" split of the lands subject to the 1974 Agreement remains at the heart of the 1991 Settlement Agreement.

However, after the basic settlement concept was agreed to in 1986, DNR and ASRC engaged in extensive research and discussions concerning the boundaries, extent, and location of uplands and of the state's wholly-owned submerged lands (to which ASRC was not entitled), and regarding which party would manage the lands involved and under what conditions.

The most difficult issue during settlement negotiations concerned the boundaries, extent, and location of submerged lands. ASRC claimed that the extent of the state's wholly-owned submerged lands (including submerged lands underlying lakes, rivers, and tidelands) totalled substantially less in acreage than that claimed by DNR. The parties realized that the inability to agree on the submerged lands would inevitably result in further litigation and make it difficult if not impossible for either party to market its respective interests. Therefore, the parties tentatively agreed to merge title to the uplands and submerged lands and share the revenue from oil and gas development on a section-by-section basis, with the state to get more than 50 percent when, arguably at least, there were submerged lands in a section.

For three years the parties analyzed aerial photos, maps, United States Fish and Wildlife Service and Bureau of Land Management data, and other data in an effort to reach a common data base for determining what the state's wholly owned submerged lands were and what the uplands to be split between the parties were. It took a settlement conference before a United States District Court judge to force the parties to resolve this issue; in that 1989 settlement conference the parties compromised their respective positions. Since then, the parties have continued to negotiate the details of how the lands would be managed.

The resulting 1991 Settlement Agreement, as recommended to me by Attorney General Cole, has the following principal components:

1. The litigation is dismissed and the rights of the parties under the 1974 Agreement are superseded unless the 1991 Settlement Agreement is overturned by a court.

2. The state and ASRC acquire by exchange equal, undivided interests in the subsurface estate of all lands previously subject to the 1974 Agreement.

3. The state and ASRC merge their titles to uplands and submerged lands and establish a formula for percentages of undivided ownership, on a section-by-section basis. This merger would resolve all disputes regarding the existence, extent, and location of state-owned submerged lands and avoid, for all time, the ambiguities otherwise created by constantly shifting boundaries caused by accretion, reliction, and avulsion.

4. The state retains the "executive rights" (leasing authority) to lease all lands on behalf of ASRC and the state. ASRC has the opportunity to review and comment on proposed oil and gas lease terms, with a dispute-resolution mechanism in the event of disagreement. ASRC and the state each retain the right to separately enforce the lease with respect to their respective interests.

5. Revenue generated from the undivided interests is paid directly to the state and ASRC, respectively, in proportion to their percentage ownership interests in the subsurface estates.

6. The state did not give up any of its duties to the public imposed by law. The state will still have to determine whether a sale is in the best interest of the state, and must follow relevant procedural requirements for leasing or exploring for natural resources. The state retains all rights under state law to ensure that development of the subsurface complies with laws concerning natural resource management and protection.

The 1991 Settlement Agreement contains a number of complex, technical provisions dealing with existing oil and gas leases at Nuiqsut, status of state submerged lands, boundary problems, and land management rights and duties. The following describes in more detail the major provisions of the settlement agreement.

1991 Settlement Agreement - Substantive Provisions

Under the 1991 Settlement Agreement, the parties agreed to quantify the extent of state-owned submerged lands by splitting the difference between the state's calculations of submerged lands and those of ASRC. Title problems were resolved by combining the interests of the state and ASRC on a section-by-section basis, with each party receiving an undivided percentage ownership reflecting a 50/50 division of the agreed-to uplands within each section, and the state receiving full (i.e., 100 percent) credit for any agreed-to submerged lands within the section. The state retains full sovereign powers over submerged lands, notwithstanding ASRC's undivided ownership interest.

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The net effect of the cross-conveyances called for in the 1991 Settlement Agreement is an exchange of undivided interests in the subsurface estate such that the titles to submerged lands and uplands are merged and the parties, for all time, will own their respective undivided percentage interests in each section according to the schedules set out in Exhibits E and F to the 1991 Settlement Agreement. This percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in any section from time to time.

In order to eliminate any possible future disputes over the boundary of the settlement area along the coastline and along the National Petroleum Reserve-Alaska (NPRA) boundary, the parties agreed to extend section lines into the ocean and across the NPRA boundary so that the area subject to the 1991 Settlement Agreement will include only full sections whose location can be protracted at any time without reference to changes brought about by accretion, reliction, or avulsion. In this manner, approximately 4,000 acres of ocean submerged lands owned by the state outside the 1974 Agreement area, and approximately 9,000 acres of NPRA subsurface owned by ASRC also outside the 1974 Agreement area, were included in the 1991 Settlement Agreement. In each instance the parties' undivided percentage interest in any section so extended was adjusted to provide a 100 percent credit for lands contributed by the state or ASRC from outside the original 1974 Agreement boundaries.

Finally, the parties agreed that the state would hold the "executive rights" for both parties' interests. As defined in the 1991 Settlement Agreement, "executive rights" empower the state to enter into leases and other subsurface agreements on behalf of both ASRC and the state. The 1991 Settlement Agreement contemplates that the commissioner will exercise the executive rights consistent with statutory constraints; the agreement does not waive any sovereign powers of the state.

The parties to the 1991 Settlement Agreement also discussed the issue of section 6(i) of the Alaska Statehood Act, which generally prohibits the state from alienating any interest in mineral estates it owns. Congress has authorized an exception to this provision under sec. 22(f) of ANCSA, which authorizes exchanges of land with ANCSA corporations. In order to resolve any question as to whether the exchange contemplated in the settlement agreement would require approval of the Secretary of Interior, the state has requested, and expects to receive shortly, an opinion from the Interior Solicitor ruling that no Secretarial approval is required for the 1991 Settlement Agreement.

The Bill

The attached bill ratifies the 1991 Settlement Agreement and establishes procedures for implementing it. Section 1 of the bill sets out the overall purposes of the bill and settlement agreement.

Section 2 of the bill specifies that the 1991 Settlement Agreement is ratified "notwithstanding any provision of AS 38 or any other provisions of Alaska law." This clarifies that the exchange of undivided interests in land contemplated by the 1991 Settlement Agreement is not subject to the provisions, in particular, of AS 38.50.

AS 38.50 provides authority for exchanges of the state's mineral estate, including the mineral estate in submerged lands. For a variety of reasons, however, that chapter does not provide an appropriate vehicle for the settlement of litigation. For example, AS 38.50 contemplates a voluntary exchange of land for equal values and requires appraisals and a series of public hearings on proposed exchanges. Although the state and ASRC believe that the consideration given and received under the settlement agreement is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Finally, settlement negotiations have necessarily and appropriately been conducted in closed sessions. Public involvement is provided through the process of legislative ratification, but could not realistically have been provided earlier in the process, as contemplated under AS 38.50.

In addition to addressing AS 38.50, the "notwithstanding any other provision of Alaska law" language is intended to ensure that no other provision of state law might subsequently be raised to challenge the settlement itself. The bill deliberately uses broad language to accomplish this result. This language is intended to make it clear, for example, that in carrying out the provisions of the settlement the commissioner is acting under the mandate of the legislature as provided in this bill and not exercising the commissioner's discretion under other statutory provisions that authorize administrative disposition of state lands. Specifically, this language, together with sec. 3 of the bill, discussed below, relieves the commissioner of any further notice, hearing, or public interest finding requirements before making the conveyances required by the 1991 Settlement Agreement.

The exemption as to other provisions of Alaska law extends, however, only to those actions mandated by the 1991 Settlement Agreement necessary to implement the settlement. The 1991 Settlement Agreement contemplates that, following conveyance, the commissioner will exercise management responsibilities consistent with statutory constraints, and does not waive any sovereign powers of the state. Any exploration and development activities that occur subsequent to the exchange will be fully subject to the normal statutory and regulatory procedures applicable to administration of state lands. Specifically, lease sales will be conducted in the normal manner and all regulatory requirements will be observed, including coastal zone consistency and public interest findings. To the extent that ASRC exercises powers as a landowner, this legislation does not exempt ASRC from federal, state, or local requirements otherwise applicable to private landowners.

Section 3 of the bill provides that "no statutory or common law rules against perpetuities . . . or restraints on alienation of property shall apply to the settlement agreement . . . or to any interest or power created by it." The 1991 Settlement Agreement commits the state and ASRC permanently to merge their titles with no right of partition, to jointly lease and develop their interests, and to take a number of other steps, including contemplation of sales, with respect to their lands for an indefinite period of time. The law is generally hostile to perpetual restrictions or restraints on alienation. For example, AS 34.27.010 provides that an interest that would violate the rule against perpetuities may be reformed by a court. If these rules were to apply, the 1991 Settlement Agreement might be challenged and stricken down or modified in ways that were never intended.

A major consideration for both the state and ASRC in entering into the 1991 Settlement Agreement is to improve the marketability of title. This objective, and the benefits of the settlement, would be frustrated if the merging of title, prohibition against partition of those interests, and "executive rights" provisions were ever successfully challenged as violative of the rule against perpetuities or as unreasonable restraints on alienation. Accordingly, sec. 3 exempts the 1991 Settlement Agreement from these requirements.

Sections 4 and 5 of the bill outline the authorities and duties of the commissioner of natural resources to carry out the terms of the 1991 Settlement Agreement, including issuing and recording the appropriate land conveyances.

Section 6 of the bill limits the time within which the bill or the 1991 Settlement Agreement can be challenged in court. In order to minimize the possibility that the exchange might be altered or invalidated by a court after the state and ASRC have committed themselves to making the conveyances and taking the other actions required by the 1991 Settlement Agreement, sec. 6 provides that any action challenging the legality of the 1991 Settlement Agreement must be commenced within six months after the effective date of the legislation. A joint lease sale involving lands subject to the settlement agreement is scheduled for December 1992. Any uncertainty as to the validity of the 1991 Settlement Agreement or the implementing legislation could adversely affect the marketability of the leases. Although the six-month limitation period is rather short, the parties most likely to have standing to challenge the settlement agreement are the state and ASRC or entities in privity with them. We believe that the short limitation period is reasonable in light of the extensive past negotiations between the parties and the need to provide some finality to the litigation and to allow for future uses of the lands. Also, sec. 6 of the bill provides that the bill may not be construed as creating any right in any party not privy to the 1991 Settlement Agreement to challenge that Agreement or the Act.

Finally, sec. 7 of the bill waives the sovereign immunity of the state to any suit brought by ASRC to enforce the 1991 Settlement Agreement if that action is commenced in a superior court of the state. The state does not waive its protection from suit in federal court under the eleventh amendment of the Constitution of the United States.

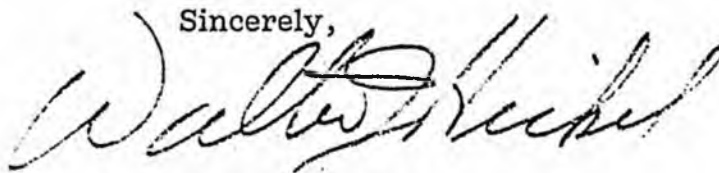
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The 1991 Settlement Agreement is a compromise, and settles highly disputed issues. Because of that, it is not without risks to both the state and ASRC. However, I believe that these risks are outweighed by the benefits to the state of finally resolving this 18-year-old dispute. The 1991 Settlement Agreement not only settles long-standing litigation between ASRC and the state, it also anticipates and resolves disputes regarding the existence, extent, and location of submerged lands owned by the state in the Nuiqsut and Point Lay areas. Finally, by merging title to uplands and submerged lands and vesting "executive rights" in the state, the 1991 Agreement will result in maximum certainty and predictability for potential lessees, which in turn will make the interests of both the state and ASRC more marketable.

Copies of the 1991 Settlement Agreement will be provided to the senate secretary and the clerk of the house. Additional copies are available through the Department of Natural Resources.

I urge your prompt consideration and passage of this bill.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter J. Hickel".

Walter J. Hickel
Governor

EXPLANATION OF HB416/SB369¹

"An Act relating to the approval of an agreement settling litigation between the State of Alaska and Arctic Slope Regional Corporation; and providing for an effective date."

The "1991 Settlement Agreement Between Arctic Slope Regional Corporation and State of Alaska" ("1991 Agreement") is an historically significant attempt to resolve disputes and forge new partnerships between the State of Alaska and Alaska Native Regional Corporations. The 1991 Agreement proposes to resolve a long-standing dispute between the State and the Arctic Slope Regional Corporation ("ASRC") over ownership of potentially valuable mineral lands on the North Slope. More importantly, it proposes to do so in a way that will remove impediments to title marketability and create a long term partnership between the State and ASRC aimed at maximizing revenues for both parties. Because the 1991 Agreement involves an exchange of the State's mineral estate and contemplates conferring new management powers on the Commissioner of Natural Resources unique to the 1991 Agreement, legislative approval is required.

The purpose of this memorandum is to acquaint the reader

¹ This document was prepared by counsel for Arctic Slope Regional Corporation. It is being supplied to House and Senate staff to assist in analysis of HB416/SB369. It replaces a draft supplied to House and Senate staff on January 30, 1992. Please refer any questions to counsel for ASRC, David C. Crosby (586-6262).

I. HISTORY OF THE DISPUTE LEADING TO NEGOTIATION
OF THE 1991 AGREEMENT.

Shortly after statehood, the State of Alaska filed selections in the delta of the Colville River immediately east of the National Petroleum Reserve No. 4 (since renamed the National Petroleum Reserve - Alaska, or "NPRA"). These lands are located approximately 50 miles west of Prudhoe Bay, and at the time of their selection were believed to be prospective for oil and gas. The selections were Tentatively Approved by the Secretary of the Interior and some of the lands were subsequently leased. An exploration program resulted in several dry holes.

II. In the mid-1960's the Arctic Slope Native Association filed aboriginal land claims to much of the North Slope, including the Colville Delta. The pendency of these and other Native claims led to the Secretarial land freeze order of 1968, and the eventual settlement of the claims of Alaska Natives by Congress in the Alaska Native Claims Settlement Act of 1971 ("ANCSA"). The basic land settlement contemplated selection of surface estate surrounding historic village sites by Village Corporations, with conveyance of the subsurface estate under the village land to the appropriate Native Regional Corporation. ANCSA identified roughly 200 Native villages and withdrew 25 townships of land, including lands previously Tentatively

While the appeals were pending before the Alaska Native Claims Appeals Board, ASRC proposed to settle the certification disputes by relinquishing its ANCSA entitlement to the Colville Delta subsurface. In return, the State would withdraw its selections and permit ASRC to select and receive conveyance to the surface and subsurface of approximately 65,000 acres of lands that had previously been TA'd to the State in the Point Lay area. When the federal government refused to cooperate on the ground that the Secretary had no discretion not to convey the subsurface estate under village surface conveyances, the settlement was hastily recast as a two party exchange of ASRC's subsurface in the Colville Delta for the slightly smaller amount of land owned by the State in fee in the Pt. Lay area. The deal was finalized in a "1974 Settlement Agreement" and the State's appeal of the village certifications was dismissed.

Although the 1974 Settlement Agreement contemplated an immediate exchange of quitclaim deeds to the parties' respective interests, the Department of Natural Resources declined ASRC's proffered conveyance, stating that it would prefer to await ASRC's receipt of conveyances to the Nuiqsut subsurface before finalizing the exchange. In 1977, the Alaska Supreme Court decided in State v. Lewis, 559 P.2d 630 (1977), strongly suggesting that any attempt to alienate the State's mineral estate without the prior consent of Congress and the Alaska Legislature would violate Section 6 of the Alaska Statehood Act.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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with the 1991 Agreement and HB416/SB369. This memorandum is organized in three parts: Section I explains the historical setting that gave rise to the 1991 Agreement. Section II is a more detailed section-by-section explanation of the 1991 Agreement. Section III explains the provisions of the Bill.

I. HISTORY OF THE DISPUTE LEADING TO NEGOTIATION
OF THE 1991 AGREEMENT.

Shortly after statehood, the State of Alaska filed selections in the delta of the Colville River immediately east of the National Petroleum Reserve No. 4 (since renamed the National Petroleum Reserve - Alaska, or "NPRA"). These lands are located approximately 50 miles west of Prudhoe Bay, and at the time of their selection were believed to be prospective for oil and gas. The selections were Tentatively Approved by the Secretary of the Interior and some of the lands were subsequently leased. An exploration program resulted in several dry holes.

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Approved to the State, in the vicinity of each village. Within this area, eligible Village Corporations organized under ANCSA were permitted to select and receive title to up to three townships (69,120 acres) of lands Tentatively Approved to the State of Alaska.

The Colville Delta was the site of the historic Native Village of Nuiqsut (or "Nooiksut"), which was listed in Section 11(b) of ANCSA as a "Native village subject to this Act." That section also required the Secretary of the Interior to review the eligibility of listed Villages to determine whether they met the eligibility requirement of 25 or more residents as of the 1970 census. The Secretary's regulations defined "residence" broadly in terms of traditional Native occupancy patterns.

In 1974 the Secretary certified eight Inupiat villages in the Arctic Slope region as eligible to receive land benefits under ANCSA. The State of Alaska appealed the certification of two of these villages -- Nuiqsut and Pt. Lay -- on the ground that they did not satisfy the residency requirements for certification. Nuiqsut, because of its proximity to Prudhoe Bay and the possibility that ASRC would receive up to three townships of State TA'd lands in the Colville Delta if its certification were upheld, was of the greatest concern. The appeals were contested by ASRC on behalf of its villages.

While the appeals were pending before the Alaska Native Claims Appeals Board, ASRC proposed to settle the certification disputes by relinquishing its ANCSA entitlement to the Colville Delta subsurface. In return, the State would withdraw its selections and permit ASRC to select and receive conveyance to the surface and subsurface of approximately 65,000 acres of lands that had previously been TA'd to the State in the Point Lay area. When the federal government refused to cooperate on the ground that the Secretary had no discretion not to convey the subsurface estate under village surface conveyances, the settlement was hastily recast as a two party exchange of ASRC's subsurface in the Colville Delta for the slightly smaller amount of land owned by the State in fee in the Pt. Lay area. The deal was finalized in a "1974 Settlement Agreement" and the State's appeal of the village certifications was dismissed.

Although the 1974 Settlement Agreement contemplated an immediate exchange of quitclaim deeds to the parties' respective interests, the Department of Natural Resources declined ASRC's proffered conveyance, stating that it would prefer to await ASRC's receipt of conveyances to the Nuiqsut subsurface before finalizing the exchange. In 1977, the Alaska Supreme Court decided in State v. Lewis, 559 P.2d 630 (1977), strongly suggesting that any attempt to alienate the State's mineral estate without the prior consent of Congress and the Alaska Legislature would violate Section 6 of the Alaska Statehood Act.

The ruling cast a cloud on the State's ability to convey any mineral estate to ASRC at Pt. Lay.

Following inquiries by ASRC in 1977, neither side showed any further interest in implementing the 1974 Settlement Agreement until Texaco announced a discovery in the Colville Delta in 1985. When the Commissioner of Natural Resources served a demand that ASRC consummate the 1974 Settlement Agreement, ASRC filed suit in federal District Court asserting that the exchange provisions of the 1974 Settlement Agreement violated Section 6 of the Statehood Act and were unenforceable. The State countered by filing suit for specific performance of the 1974 Settlement Agreement in Superior Court.

The litigation posed significant problems for both parties. On the one hand, ASRC appeared to be reneging on a deal. On the other hand, the State was forced to concede in its briefing to the Court that it had no authority to deliver a significant portion of the agreed upon consideration -- the Pt. Lay mineral estate. To further complicate matters, subsequent events seemed to suggest that the Texaco discovery might not be as significant as it was initially believed to be and the Pt. Lay lands were known to contain substantial coal deposits that could prove valuable in the future.

Faced with the uncertainties of litigation and the highly

speculative values of both the Nuiqsut and Pt. Lay parcels, then Commissioner of Natural Resources Esther Wannicke and ASRC reached an agreement in principle in 1986 to settle the litigation by splitting the disputed lands in such a way that each side would receive half of the disputed lands at Pt. Lay and half of the disputed lands at Nuiqsut. In this manner, neither side "lost," and both sides spread the risk that one or the other of the two speculative tracts might prove to be substantially more valuable than the other. This "50/50" split remains at the heart of the 1991 Settlement Agreement.

After shaking hands on a conceptual settlement that was believed to be fair to both sides, the negotiations bogged down over the description of the lands that were subject to the settlement. The difficulties focused on the State's claims of ownership to submerged lands underlying bodies of water alleged to be navigable. ASRC took the position that a 1942 public land order (PLO 82) withdrew the entire North Slope of Alaska for national defense purposes and precluded the State from acquiring title to any submerged lands as a matter of law. The matter had been clarified to some extent in the Colville Delta by Section 1431(n) of ANILCA, which retained ownership of the principal channels (often referred to as the "named channels") of the Colville River "in public ownership" (without specifying whether "public" meant federal or State ownership). Since the United States concede the right of the State of Alaska to select

submerged lands in the area covered by the former PLO 82 withdrawal (which was rescinded shortly after statehood), and the State had in fact selected all available lands in the Colville Delta, there was no question that the State was the undisputed owner of submerged lands under the named channels. There, however, the agreement ended.

The State contended that the extent of submerged lands under the named channels was substantially greater than ASRC was prepared to concede. In addition, the State claimed exclusive ownership of a number of other smaller channels and sloughs in the Colville Delta, as well as the Kukpowruk River running through the Pt. Lay lands, and a number of lakes in both places. ASRC contended that submerged lands, other than the named channels of the Colville mentioned in Section 1431(n) of ANILCA, should be treated as subject to the settlement and divided 50/50. The State insisted that since ANCSA did not entitle ASRC to receive conveyance to any submerged lands under navigable waters, these submerged lands were not subject to the settlement. To further complicate matters, the law provides that title to submerged lands changes as the banks and shores of water bodies shift due to accretion, reliction and erosion. Thus, the boundary line between State and ASRC lands would be constantly shifting, especially in the Colville Delta. This fact alone would tend to make titles uncertain and decrease the marketability of title for both owners. Future litigation over

the existence and extent of State ownership of submerged lands was almost a certainty.

Ultimately, the parties concluded that the settlement should anticipate and resolve as many future disputes as possible, even if those disputes did not, strictly speaking, have to be resolved in order to settle the controversy over the 1974 Settlement Agreement. The parties concluded that the optimal settlement would (1) dispose of the dispute regarding the enforceability of the exchange provisions of the 1974 Settlement Agreement; (2) lay to rest disputes regarding the existence and extent of State owned submerged lands; (3) resolve the ambiguity created by the problem of accretion, reliction and erosion; and (4) provide for common management of uplands and submerged lands.

The parties had already agreed in principle to a 50/50 split of lands subject to the exchange provisions of the 1974 Settlement Agreement. They next agreed to quantify the extent of State owned submerged lands by splitting the difference between the State's calculations and those of ASRC. Title problems were resolved by pooling the interests of the State and ASRC on a section-by-section basis with each party receiving an undivided percentage ownership reflecting a 50/50 division of the stipulated uplands within the section, with the State receiving full (i.e., 100 percent) credit for any stipulated submerged lands within the section. (The State retains full sovereign

powers over submerged lands, notwithstanding ASRC's undivided interest.) In order to eliminate any possible future disputes over the boundary of the settlement area on the coastline and the NPRA boundary (where the original 1974 settlement area followed the sinuosity of the constantly shifting ocean boundary and the west bank of the Nechelik Channel of the Colville River), the parties agreed to extend section lines into the ocean and across the NPRA boundary so that the area subject to the 1991 Agreement will include only full sections whose location can be protracted at any time without reference to changes brought about by accretion, reliction and erosion. In this manner, approximately 4,000 acres of ocean submerged lands owned by the State outside the 1974 Settlement Agreement area and approximately 9,000 acres of NPRA subsurface owned by ASRC and outside the 1974 Settlement Agreement area were included in the 1991 Agreement. In each instance the parties' undivided percentage interest in each section so extended was adjusted to provide a 100 percent credit for lands outside the original 1974 Settlement Agreement area.

Finally, the parties agreed that the State of Alaska would be the executive rights holder for both parties' interests. As defined by the 1991 Agreement, the State is authorized to enter into leases on behalf of both ASRC and the State. Lease sales will be conducted in the usual manner as provided by Title 38 of Alaska Statutes, subject to all legal requirements otherwise applicable to leasing of State lands. The 1991 Agreement

includes provisions to insure that ASRC is treated fairly in the leasing process.

Thus, the 1991 Agreement not only settles long-standing litigation between ASRC and the State, it anticipates and resolves disputes regarding the existence, extent and location of submerged lands owned by the State of Alaska. Finally, ASRC and the Department believe that by merging title to uplands and submerged lands and vesting executive rights in the State, the 1991 Agreement will result in maximum certainty and predictability for potential lessees, which in turn will make the interests of both the State and ASRC more marketable.

On November 28, 1989, the United States District Court for the District of Alaska approved the agreement in principle, including the section-by-section percentages set out in Exhibits E and F to the Agreement. (These percentages have since been adjusted slightly by mutual agreement to correct errors in calculation and make allowance for contingencies relating to future disposition of Native allotment claims.)

II. SECTION-BY SECTION ANALYSIS OF THE 1991 AGREEMENT

The following section provides a more detailed section-by-section explanation of the terms of the 1991 Agreement. Much of the complexity of the document derives from the confused state of title in the Colville Delta and the technical nature of the executive rights arrangement. The underlying consideration given by the parties -- the cross conveyance of 50% undivided interests in the lands subject to the 1974 parcel-for-parcel Exchange -- is straightforward.

No effort has been made to treat each subsection individually. Emphasis is placed on drawing attention to significant issues and summarizing complex technical provisions.

Introduction.

This section explains that the purpose of the agreement is to settle pending litigation between ASRC and the State regarding the enforceability of the 1974 Settlement Agreement and to eliminate the potential for future ownership disputes over submerged lands by exchanging undivided interests in the subsurface of submerged lands and uplands and establishing fixed revenue sharing percentages for the settlement lands that will not change in the event of accretion, reliction or avulsion.

Section 1: LEGISLATIVE APPROVAL.

This section provides for submission of the 1991 Agreement to the legislature (1.1) and commits the parties to the form of the legislation approving the same (1.2). The parties may withdraw at any time prior to enactment of an acceptable bill approving the 1991 Agreement (1.3(a)). If an acceptable bill is enacted, the litigation will be dismissed (1.4) and the 1991 Agreement will supersede the obligations of the parties under the 1974 Settlement Agreement, unless the statute, the 1991 Agreement or any conveyance authorized by the 1991 Agreement is set aside by the courts (1.3(b)). The parties commit not to create any third party interests in the lands subject to the 1991 Agreement pending deliberations on the bill (1.5).

Section 2: LANDS SUBJECT TO THE 1991 SETTLEMENT AGREEMENT

2.1 describes the intent of the parties with respect to inclusion of submerged lands in the 1991 Agreement, including offshore lands under the Beaufort Sea, the Chukchi Sea and the Kasegaluk Lagoon necessary to describe settlement lands by full sections.

2.2 describes the current ownership of the Nuiqsut subsurface, including ASRC's right to receive future conveyances, the status of outstanding third party interests created by either

the State or ASRC, and State claims of ownership to submerged lands.

2.3 explains possible changes regarding ownership of the Nuiqsut subsurface (and corresponding corrections to ownership percentages) contingent upon disposition of pending Native allotment applications and possible exclusion of sections from the settlement area in the event Kuukpik Corporation does not receive title to the surface estate. This latter provision is now moot. The BLM recently determined that Kuukpik was under-selected by approximately 500 acres, none of which may be selected from State TA'd lands. As a consequence, all of the lands identified in the Agreement will in fact remain in the Agreement. Any references to "over-selection" by Kuukpik should be disregarded.

2.4 provides a comparable analysis the State's title to the Point Lay subsurface.

Section 3: CONVEYANCE OF INTEREST IN LANDS

3.1 commits ASRC to convey to the State the applicable percentage undivided interest, according to Exhibit E, in each section of ASRC's Nuiqsut subsurface as soon as that section has been fully conveyed to ASRC, retaining to the State its own percentage interest, also according to Exhibit E. (Conveyances

are not called for until all title contingencies have been resolved.)

3.2(a) commits the State to convey the applicable percentage undivided interest in the Point Lay subsurface, including any submerged lands therein, as set forth in Exhibit F, to ASRC within 30 days of the final effective date of the 1991 Agreement, retaining its own percentage interest, also as described in Exhibit F.

3.2(b) obligates the State to make a cross conveyance to ASRC of the applicable undivided percentage interest in the Nuiqsut subsurface, including any submerged lands therein, as set forth in Exhibit E, retaining the applicable percentage interest to itself, also as described in Exhibit E.

3.3 states that no change in the boundary, location or extent of submerged lands or uplands will affect the percentage undivided interest conveyed pursuant to the 1991 Agreement.

The net effect of the cross-conveyances called for in Section 3 is an exchange of undivided interests in the subsurface estate such that the title to submerged lands and uplands has been merged and the parties, for all time, will own their respective undivided percentage interest in each section according to the schedules set forth in Exhibits E and F. This

percentage is fixed and will not change regardless of the amount or location of submerged lands that may be contained in the section from time to time.

Section 4: SUBSURFACE AGREEMENTS AFFECTING NUIQSUT
SUBSURFACE AND POINT LAY SUBSURFACE; GRANT OF RIGHTS TO
EXECUTIVE; RIGHTS AND DUTIES OF EXECUTIVE.

4.1 ASRC grants to the State of Alaska executive rights in the Point Lay and Nuiqsut subsurface. Executive rights are defined in section 11.8 as the right to formulate and issue Subsurface Agreement Solicitations and to negotiate and execute Subsurface Agreements -- primarily oil and gas leases -- on behalf of ASRC with respect to ASRC's interest in the Nuiqsut and Point Lay subsurface.

4.2 requires that the State will be held to a prudent landowner standard, except to the extent that obligations imposed on the State by law require it to act otherwise. The State must treat ASRC's interest in the same manner as it treats its own and may not act so as to benefit itself at the expense of ASRC. The limited prudent landowner standard does not create a fiduciary duty to ASRC by the State. The State may not assign its executive rights without the consent of ASRC (7.2).

4.3 provides for notice to and consultation with ASRC prior

to exercise of executive rights by the State. It also provides a mechanism for resolving disputes if the two parties are unable to agree on the substantive terms of subsurface agreements or solicitations. ASRC may refer disputes to a member of a panel of qualified independent consultants who is charged with determining whether the action proposed by the State is consistent with the limited prudent landowner standard. A decision in favor of the State is binding on ASRC without right of appeal. The State is not bound by a decision in favor of ASRC, but is exposed to future damages if it proceeds and a court subsequently upholds the qualified independent consultant.

4.6 provides that the executive rights of the State with respect to a subsurface agreement cease upon execution of the agreement. Thereafter, each side may execute amendments or changes with respect to its own undivided interest only.

4.8 relieves the State, as executive rights holder, of any obligation to conduct operations on the lands. Rather, the 1991 Agreement contemplates that the State will fulfill its obligations by entering into agreements with third parties.

4.9 provides that the State has no right, obligation, or duty to enforce the terms of subsurface agreements once they are executed. ASRC is responsible for enforcing the terms of any such agreement as they relate to its interests, and the State is

not exposed to any liability for failure to enforce such agreements.

In order to acquire title to subsurface within NPRA, ASRC entered into an agreement with the surface owner, Kuukpik Corporation, not to develop the subsurface of any NPRA subsurface without first obtaining Kuukpik's consent. Approximately 9,000 acres (all deemed to be 100 owned by ASRC) are affected by this consent. Kuukpik may also have consent rights for lands in the vicinity of the village under Section 14(f) of ANCSA. Although the State will hold executive rights to all of this acreage, it is not liable for failure to lease any such land if Kuukpik's consent is required and cannot be obtained. The 1991 Agreement resolves title disputes between ASRC and the State of Alaska. It does not purport to affect the rights of Kuukpik as against ASRC or the State (or vice versa). Kuukpik and its counsel have been fully informed of the negotiations and have been supplied with copies of the Agreement, which it supports.

4.14 precludes communitizing settlement acreage in a lease with non-settlement acreage. Nor will the inclusion of two or more sections of acreage in a common lease result in pooling or communitizing of the interests in those sections. Revenues are shared strictly on a section-by-section basis according to the respective percentages set out in Exhibits E and F. This section prevents prejudice that might result to either party if

unproductive sections could be averaged in with productive sections.

4.15 provides that until sections become fully conveyed such that the parties are obligated to execute cross conveyances with respect to that section, neither party will grant third party interests in any such sections without the consent of the other party.

Section 5: MINIMUM COVENANTS REQUIRED IN ALL SUBSURFACE AGREEMENTS

This section describes certain minimum requirements for all subsurface agreements executed by the State in the exercise of its executive rights. Subsection 5.2 provides a limited exception to the general rule that the executive powers of the State cease following execution of a subsurface agreement. In the event the State exercises its discretion under a lease containing a term permitting the Commissioner to set or adjust royalty valuation, the Commissioner's determination shall bind ASRC's interest as well. This section does not require the Commissioner to exercise his discretion under any such lease and does not expose the State to any liability for the Commissioner's exercise (or refusal to exercise) of his discretion.

Section 6: SUSPENSION OF EXECUTIVE RIGHTS

The 1991 Agreement contemplates that the State, in the exercise of its executive rights, will be bound by all provisions of State law governing its conduct as a public land owner and sovereign. The 1991 Agreement further contemplates that occasions may arise in which the State concludes that entering into a subsurface agreement would not be in the public interest or would conflict with sovereign obligations. The State is not liable to ASRC in such instances. Section 6.1 (a) provides that after giving appropriate notice to the State, however, executive rights are suspended ASRC is then free to lease its own interest.² Executive rights return to the State if ASRC rescinds its election to suspend executive rights under Section 6.1(a) prior to executing a subsurface agreement with respect to its interest (6.3(a)). The State's executive rights are also suspended if either the State or ASRC exercise their power to terminate a subsurface agreement and the other party elects not to do so (6.1(b)). Executive rights return to the State automatically at such time as neither the State's nor ASRC's interest is subject to a subsurface agreement (6.3).

During any period of time that executive rights is suspended, the rights and duties of the parties to one another

² The respective rights of the parties would be governed by the common law of cotenancy. Because the lessee would be required to account to the State for its unleased 50 percent of any oil produced, such a lease would be economically unattractive and therefore improbable. In effect, the lessee would be required to pay a royalty to ASRC on 50% of the oil produced and give a 50% net profits working interest to the State.

are governed by the law of cotenancy in common. Either party may develop the subsurface and the other will still receive its percentage share of the proceeds, after deduction of the cotenant's costs of development.

Section 7: MISCELLANEOUS RESTRICTIONS ON BOTH PARTIES

7.1 provides that while the State holds executive rights, neither the State nor ASRC may become a lessee of the lands or engage in self-development without the consent of the other.

7.3 provides that neither side may convey its interest in the Point Lay subsurface or the Nuiqsut subsurface without the consent of the other, and any such consent may be conditioned on termination of executive rights. In such case, the respective holders of the percentage interests would be cotenants in common.

Section 8: STATE'S RIGHTS AS SOVEREIGN

8.1 explicitly provides that nothing in the agreement diminishes ~~or~~ affects the sovereign rights of the State with respect to regulation or management of submerged lands, fish and game, or natural resources. ASRC's only recourse is under subsection 8.2 to challenge the constitutionality of a statute, or the validity of a regulation, if it feels that the statute or regulation singles out settlement lands for different treatment

from that accorded to other land in the State, or causes injury-in-fact to any rights expressly granted to ASRC under the 1991 Agreement.

Section 9: PREEXISTING LEASES OF THE NUIOSUT SUBSURFACE

This section describes the current status of leases affecting the Nuiqsut subsurface, provides for separate administration and enforcement of the parties respective percentage interests in existing leases, and provides for an equitable division of revenues received by either party with respect to leased lands prior to the effective date of the 1991 Agreement. The Section is complicated by the fact that ASRC has not received conveyances from the United States for all the Nuiqsut subsurface to which it is entitled. 1991 Agreement does not contemplate an exchange of interests with respect to any section until that section has become fully conveyed to ASRC (as defined in Section 11.12). Also, the State has waived its administration rights with respect to leases on some of the lands conveyed to ASRC by the United States, but has not waived with respect to other lands so conveyed. Consequently, it took a lot of verbiage to align all the preexisting legal relationships so that they conform to the basic pattern contemplated by the 1991 Agreement. The principles, however, are straightforward.

Section 10: MISCELLANEOUS

This section contains a number of routine provisions relating to interpretation and administration of the 1991 Agreement. Notable provisions include a requirement that subsurface data be shared to the maximum extent permitted by preexisting legal constraints (10.3), subject to strict confidentiality requirements (10.1); subsection 10.11 commits the parties to joint defense of the 1991 Agreement, unless the challenge relates to ASRC's revenue sharing obligations to other ANCSA Corporations, in which case ASRC must defend, indemnify and hold the State harmless from such claims.

Section 11: DEFINITIONS

This Section defines key terms used throughout the 1991 Agreement.

EXHIBITS

Exhibits include the form of proposed legislation (Exhibit A, discussed in Section III, below), maps of the lands subject to the 1991 Agreement (Exhibits C and D), schedules of the respective percentage undivided interest in each section of land subject to the 1991 Agreement (Exhibits E and F), and specimen copies of various instruments called for in the 1991 Agreement (Exhibits G - J).

III. SECTION-BY-SECTION EXPLANATION OF HB416 AND SB369.

Section 1. PURPOSE. Provides that the purpose of the Bill is to provide for the settlement of outstanding litigation between the State and ASRC.

Section 2. RATIFICATION. This Section ratifies the 1991 Agreement "notwithstanding any other provision of law." Because the 1991 Agreement involves an exchange of the State's mineral interests in the Nuiqsut and Point Lay subsurface, legislative approval is required. Alienation of the State's mineral interest is prohibited by Section 6(i) of the Alaska Statehood Act. In 1976, however, Congress amended Section 22(f) of the Alaska Native Claims Settlement Act to permit the State of Alaska to enter into exchanges of land "for the purpose of effecting land consolidations or to facilitate the management or development of the land, or for other public purposes." Exchanges must be of equal value unless found to be in the public interest "by the appropriate Secretary." The United States has confirmed that its consent to the exchange is not required and that the requirements of Section 6(i) of the Statehood Act and 22(f) of ANCSA will be satisfied as long as the appropriate State approving authority finds the exchange to be in the public interest.

Chapter 50 of Title 38 of Alaska Statutes provides authority

for exchanges of the State's mineral estate, including the mineral estate in submerged lands. For a variety of reasons, however, that Chapter does not provide an appropriate vehicle for the settlement of litigation. Among other things, Chapter 50 contemplates a voluntary exchange for equal values and requires appraisals and a series of public hearings on proposed exchanges. Although the State and ASRC believe that the consideration given and received in the exchange is roughly equal, no effort has been made to appraise the lands. The terms of the exchange are influenced by factors other than land values (which are highly speculative, in any event), including each side's assessment of the risks of litigation. Finally, settlement negotiations have necessarily and appropriately been conducted in closed sessions. Public involvement is provided through the process of legislative ratification, but could not realistically have been provided earlier in the process, as contemplated for a voluntary exchange under Chapter 50. The "notwithstanding any other provision of Alaska law" will clarify that the exchange contemplated by the 1991 Agreement is not subject to the requirements of Chapter 50.

In addition to AS 38.50, the "notwithstanding any other provision of Alaska law" is intended satisfy any other provision of State law that might subsequently be raised to defeat the settlement itself. The Bill deliberately uses broad language to accomplish this result. Among other things, this language is intended to make it clear that in carrying out the provisions of

the settlement the Commissioner is acting pursuant to the mandate of the legislature and not exercising his discretion under other statutory provisions that authorize administrative disposition of ~~state lands.~~ Specifically, this language, ~~together with section~~ 3 of the Bill discussed below, relieve the Commissioner of any further notice, hearing or public interest finding requirements prior to making the conveyances required by the 1991 Agreement.

This exemption extends only to those actions mandated by the 1991 Agreement necessary to carry out the settlement and ratified by the Bill. Since the 1991 Agreement contemplates that the Commissioner will exercise his executive rights consistent with statutory constraints and does not waive any sovereign powers of the State of Alaska, any development activities that occur subsequent to the exchange will be fully subject to the statutory and regulatory procedures normally applicable to administration of State lands. Specifically, lease sales will be conducted in the normal manner and all regulatory requirements will be observed, including coastal zone consistency and public interest findings. To the extent that ASRC exercises powers as a landowner, ~~this~~ legislation does not exempt ASRC from federal, state or ~~local~~ requirements otherwise applicable to private landowners.

Section 2 also provides that "no statutory or common law rules against perpetuities or restraints of alienation of