

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

990

64

Alaska Court System
Fiscal Analysis
HB 188

HB 188 amends existing statutes relating to the forfeiture of property used to facilitate drug offenses. It simplifies existing procedures, allows local law enforcement agencies to share in forfeited property, and authorizes the forfeiture of real property and computer equipment which has been used to facilitate a drug offense.

At the present time, state and local law enforcement agencies refer almost all of their drug forfeiture cases to the federal system, because federal procedures are simpler, more comprehensive, and allow agencies to share in the proceeds. Passage of HB 188 will result in these types of cases being filed in state court rather than the federal system.

Based upon information provided by the United States Department of Justice, the Department of Law and the Department of Public Safety, it appears that approximately 70 federal forfeiture proceedings arose in Alaska in 1991, after referral by state or local law enforcement agencies. Many of these cases were handled entirely through the federal administrative forfeiture procedure. The rest were referred to the U.S. Attorney for filing in federal court. All 70 of these cases would have been filed in state court under HB 188.

The federal experience is illustrative of what can be expected. The U.S. Attorney's Office indicates that it filed 25 forfeiture cases in federal court in 1991. Those 25 cases involved 36 separate pieces of real property. Most of the property was located in the Anchorage/Matanuska-Susitna areas, but six pieces were in Washington and California. Other property was also involved in these seizures, including various vehicles, airplanes, cash, ivory, gold coins and jewelry. According to the U.S. Attorney, the vast majority of their forfeiture cases which make it to court, whether for real or personal property, are contested and result in various degrees of litigation. That office has also advised that

[t]he dollar value of the case is not necessarily in direct proportion to its litigation costs. Many smaller cases are vigorously litigated by the claimants, resulting in numerous motions, oppositions and responses being filed by the parties. The discovery process itself seems to engender more litigation than would be expected, as many claimants are extremely reluctant to divulge any information as to their financial/employment status.

While the federal forfeiture system begins at an administrative level, HB 188 does not have a similar procedure; all forfeitures

will be filed in state court, with a resulting cost. Using the 1991 federal figures as a guideline, this fiscal note assumes that approximately 70 cases will be filed and that 25 percent of those filings will be contested. It is estimated that 10 percent will go to trial.

Alaska Court System

Fiscal Analysis

CSHB 188 (JUD)

Personal Services

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Legal Technician/Law Clerk I, Anchorage*, range 13A, PPT - 3 months	\$7,215	\$3,069	\$10,284
Pro-Tem Superior Court Judge, Anchorage*, PPT - 1½ months	3,019	2,104	<u>5,123</u>
	Total Personal Services		<u><u>\$15,407</u></u>

* The court system expects most cases arising from this legislation to be filed in Anchorage. However, the personal services authorization provided by this fiscal note will also be used to supplement staffing in other courts affected by the increased workload.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: CSHB 188(JUD)

Revision Date: 4/22/93 Dept. Affected: Public Safety
 Title: "An Act relating to forfeiture of certain property..." BRU: Alaska State Troopers
 Sponsor: House Rules Component: Criminal Investigation Bureau
 Requestor: House Finance COMPONENT SERIAL NO. 830

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

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

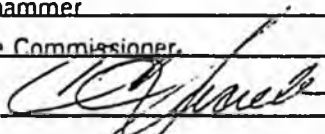
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/AMHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.) This zero fiscal note is based on the assumption that the Department of Admin. will make forfeiture reports available to the Dept. of Public Safety Commissioner to determine recommendations for the transfer of up to 90% of the net value of forfeited property to one or more agencies or political subdivisions of the State as set out in Sec. 17.30.122(4).

Prepared By: C.F. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 4/22/93
 Approved by Commissioner:  Date: 4/22/93
 Agency: Richard I. Burton, Dept. of Public Safety

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HB 188

WALTER J. HICKEL
GOVERNOR



P. O. Box 110001
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(907) 465-3500

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 1, 1993

*The Honorable Ramona L. Barnes
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182*

Dear Speaker Barnes:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill amending the state's asset forfeiture laws to make them more effective. Many of these changes are found in the Model Asset Seizure and Forfeiture Act (1991), prepared by the American Prosecutor's Research Institute. This bill

- permits forfeiture of real property, including buildings;*
- permits tracing of drug money to allow forfeiture of any property purchased with that money;*
- permits forfeiture of all dangerous instruments used by a drug dealer, while existing law requires forfeiture only of firearms;*
- permits the sharing of forfeited assets between municipal police departments and the state;*
- requires the costs of the forfeiture proceedings to be paid by the drug dealer;*

COMMITTEE COPY

The Honorable Ramona L. Barnes

March 1, 1993

Page 2

-- allows the court to forfeit other assets of the drug dealer if the property to be forfeited is commingled with other property, has been removed from the jurisdiction, or has been destroyed by the drug dealer;

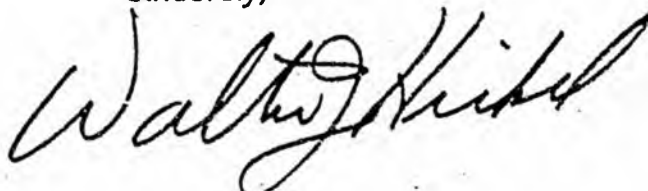
-- gives the state a perfected priority lien on the forfeited property, and thus avoids the pitfalls of Fehir v. State, 739 P.2d 785 (Alaska App. 1987), which permits unsecured creditors to claim forfeited property; and

-- resolves some of the procedural ambiguities in existing forfeiture law noted in Badoino v. State, 785 P.2d 39 (Alaska App. 1990).

This bill is one of four that I am introducing this session to create tough new laws to combat drugs and violent crime. If enacted, these bills will give the state the tools it needs to prosecute serious criminals fairly and effectively.

I urge your favorable action on this bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor

HB

1911

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 19, 1993

FURTHER REFERRALS:

Date of Committee Action: 3/31/93

The FINANCE Committee considered:

HB 191

HOUSE BILL NO. 191

CONTRACTOR OPERATED STATE HATCHERIES

"An Act relating to cost recovery by contractors who operate state-owned hatcheries."

RECOMMENDATIONS: [] the same title
 be replaced with _____ [] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

[] fiscal impact _____

[] fiscal note(s) _____

[] zero fiscal note _____

[] zero fiscal note(s) FISH GAME 3/17/93

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald J. Larson</i>	X	<i>Eileen P. Maclean</i>			✓
<i>Mark Hanley</i>	✓	<i>John Hoffman</i>		✓	
<i>Sean P. Powell</i>	X	<i>Kay Brown</i>		✓	
<i>Ben Somers</i>	X				
<i>Mike Savani</i>	✓				
<i>Tom Kessner</i>	X				
<i>Richard [unclear]</i>	✓				

 CO-CHAIRMAN'S SIGNATURE
 Larson Maclean

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: HB 191

(H) Publish Date: 3/17/93

Revision Date: _____

Department Affected: Fish and Game

Title: An act relating to cost recovery by contractors who operate state-owned hatcheries

BRU: FRED

Sponsor: Williams

Component: FRED

Requestor: _____

COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTLA	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	0.0	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 (FY93) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill would allow funds from cost recovery at a contracted state hatchery to be used for the same purposes that funds from cost recovery at ordinary PNP hatcheries may be used. Under current AS 16.10.480(d), contractors can only use funds generated from cost recovery at a contracted hatchery for operating that hatchery. If insufficient operating funds are generated at a contracted hatchery, the contractor may use funds from one of its own hatcheries to support the state-owned hatchery, but could not use funds from another contracted facility to support the first.

Prepared By: Steve McGee

Phone: 465-4160

Division: FRED

Date: 3/10/93

Approved by Commissioner: Carl L. Rainey

Agency: Department of Fish and Game

Date: 3/14/93

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Committees:
House Resources,
Chairman
Community &
Regional Affairs
Labor & Commerce

Representative William K. Williams

M E M O R A N D U M

TO: Rep. MacLean, Co-chair
✓ Rep. Larson, Co-chair
House Finance Committee

FROM: Rep. Bill Williams *Bill*

DATE: March 20, 1993

RE: Request for scheduling of HB 191 for House Finance hearing

I would like to request a hearing of HB 191 before the House Finance Committee. I am the prime sponsor of this measure, and co-sponsors include Representatives Olberg, Phillips, Grussendorf, G. Davis, and Navarre.

HB 191 pertains to how a contractor (usually a regional aquaculture association) may spend the cost recovery monies generated from a state-owned hatchery which the contractor operates under contract with the state. This bill is strongly supported by aquaculture associations, fishermen, and the Department of Fish and Game. The bill has a zero fiscal note and will in the long run help to save money for the state while maintaining hatchery production. This is because the increased flexibility proposed by the bill will help to make the take-over of operation of state facilities by contractors more feasible, and thus help to accomplish the goal of weaning hatchery operations off of state funding.

HB 191 was passed unanimously by the Fisheries Committee and no one has voiced any opposition to the bill, so I'm sure that the bill would take very little of your committee's time. I would very much appreciate your consideration of scheduling it for a hearing soon.

Back-up information is attached to this request. If further information is needed, please contact my office at 465-3715. Thank you.

DEPARTMENT OF FISH AND GAME

POSITION PAPER

Bill No.: HB 191

Sponsor: Williams

Division: FRED

Bill Title: An act relating to cost recovery by contractors of state-owned hatcheries.

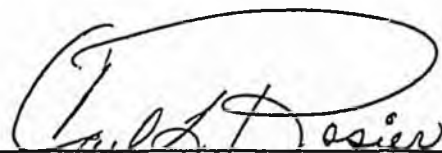
Background/Legislative Intent:

Passage of this bill would allow funds from cost recovery at a contracted state hatchery to be used for the same purposes that funds from cost recovery at ordinary PNP hatcheries may be used. Under current AS 16.10.480(d), contractors can only use funds generated from cost recovery at a contracted hatchery for operating that hatchery. If insufficient operating funds are generated at a contracted hatchery, the contractor may use funds from one of its own hatcheries to support the state-owned hatchery, but could not use funds from another contracted facility to support the first.

Analysis of Bill/Program Effects:

The current law unnecessarily restricts the flexibility of contractors to operate state-owned hatcheries and may result in the closure of productive state facilities that do not have immediate cost-recovery potential sufficient to support their operating costs. Under AS 16.10.450, PNP hatchery operators are able to utilize funds generated from harvests of salmon returning to their facilities for reasonable operating costs, including debt retirement, expansion of facilities, fisheries research or other salmon rehabilitation projects, or operating costs and fisheries-related activities of the regional aquaculture association. This bill would allow contractors of state-owned hatcheries to operate contracted hatcheries with the same flexibility they already have with their own hatcheries. It may also reduce the need for loans or additional state funding for some contracted hatcheries where cost recovery is not possible.

Signature:


Carl L. Rosier, Commissioner

3/14/93
Date

Back-up



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

March 16, 1993

The Honorable Carl Moses, Chair
and Committee Members
House Special Committee on Fisheries
The Capitol Building
Juneau, Alaska 99802-1182

RE: HB 191 - An Act relating to cost recovery by
contractors who operate state-owned hatcheries

Dear Chairman Moses and Committee Members:

The State of Alaska has more or less completed the process of transferring the operations of state-owned salmon hatcheries to regional aquaculture associations. Standard lease agreements with the State allow the regional associations to harvest a portion of the returning hatchery salmon to pay for the cost of producing those salmon. However, under current laws, the revenues received in the cost recovery harvest may only be used to pay for costs at the state-owned facility, and only for operating costs.

This bill, which is unanimously supported by the United Fishermen of Alaska, would allow the regional associations to use cost recovery revenues earned at state-owned hatcheries to pay for all costs that may be associated with producing salmon at those hatcheries. These include administrative, maintenance, and capital costs; program evaluation costs, such as tagging; and, debt retirement of any loans associated with the state-owned facilities.

The bill would also allow the regional associations to use those revenues to pay for costs associated with any other projects or facilities operated by the regional association. This allows an association to pool all cost recovery and enhancement tax revenues for the most efficient and effective use in its program.

The State has transferred the operation of commercially important hatcheries to the regional associations under the presumption that resource users should pay for the programs which benefit them. In order to make these transfers financially feasible, the regional associations have, in many cases, made capital improvements to these facilities.

MEMBER ORGANIZATIONS

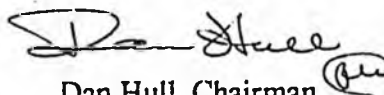
Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association
United Cook Inlet Drift Association • Western Alaska Cooperative Marketing Association

The Honorable Carl Moses, Chair
and Committee Members
House Special Committee on Fisheries
March 16, 1993
Page Two

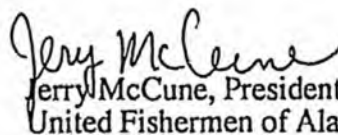
Now that the regional associations have the responsibility to operate these hatcheries, it is important that the State of Alaska also give them the opportunity to make them succeed, and not hobble them with unreasonable constraints. This bill will help to make the transfer program a success by removing one such constraint.

Thank you.

Sincerely,



Dan Hull, Chairman
Aquaculture Committee
United Fishermen of Alaska

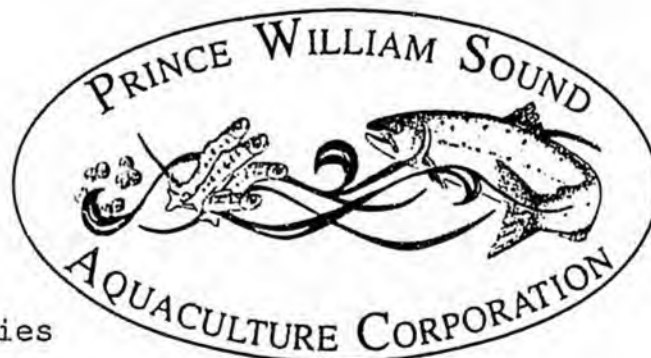


Jerry McCune, President
United Fishermen of Alaska

cc: UFA Board of Directors

FD:Legislation:HB191:HSComOnFish/3-19

March 9, 1993



Carl Moses, Chairman
House Special Committee on Fisheries
State Capitol Building
Juneau, Alaska 99801

Dear Mr. Chairman;

It is my understanding that House Bill 191, an act relating to cost recovery by contractors who operate state owned hatcheries, is scheduled to come before your committee.

This bill is very meaningful to my organization. We fund a state hatchery, located near Paxson on the Gulkana River. The state has asked us to accept full responsibility in FY-94 for the operation of that facility. There is no opportunity for cost recovery at the Gulkana Hatchery because the fish arrive there in spawning condition. Therefore, we must fund that facility with revenue earned at other hatcheries such as the Main Bay sockeye salmon hatchery in Prince William Sound.

The Main Bay Hatchery is owned by the state, but operated by the Prince William Sound Aquaculture Corporation. Current regulations prevent us from using Main Bay cost recovery revenue to fund another hatchery.

HB 191 will enable us to fund the Gulkana hatchery with Main Bay hatchery revenue, which is acceptable to gill net fishermen, since both hatcheries principally supply the gill net fishery plus the subsistence and dip net fisheries on the Copper River.

Thanks very much.

John McMullen
President

copy: Ray Gillespie



COOK INLET
AQUACULTURE ASSOCIATION

HC 2, BOX 849
SOLDOTNA, AK 99869-8707
(907) 283-6781

March 11, 1992

House Special Committee on Fisher
State Capitol
Juneau, Alaska 99801

Dear Special Committee Member:

CIAA urges approval of HB 191 because we need to be able to utilize cost recovery revenues generated at the State owned facilities we operate in exactly the same fashion as cost recovery revenues generated at facilities we own and operate. We need to be able to spend fish sale revenues generated at State owned facilities to:

- 1) make improvements to the State owned facilities. In many instances the complete design was never constructed, vital parts were left out. In other instances, poor construction or poor maintenance has resulted in the need for major improvements. In still other instances new regulations (fuel handling and storage for example) require expensive improvements.
- 2) pay reasonable costs of operating the regional associations. It is not fair that any association overhead must be charged off against those facilities owned by associations. All facilities require administrative services which we call overhead; all facilities should pay a fair share.
- 3) take advantage of the flexibility and security offered by securing operating revenue through a "corporate cost recovery goal". We can use monies generated from facilities owned by associations to operate, maintain or improve State owned hatcheries; We should be able to use monies generated at a State owned facility to operate, maintain or improve another State owned facility or an association owned facility. It is not likely that every facility will generate exactly its individual cost recovery goal every year. Shortages at one facility must be made up by surpluses from other facilities; regardless of who actually owns a particular facility.

I would be happy to answer any questions.

Sincerely,

A handwritten signature in cursive script that reads "Thomas E. Mears".

Thomas E. Mears,
Executive Director

Southern Southeast Regional Aquaculture Association, Inc.

2721 Tongass Avenue
Ketchikan, Alaska 99901
Phone: (907) 225-9605
Fax: (907) 225-1348



House Special Committee Fisheries
RE: HB 191 "An act relating to cost recovery by
contractors who operate state-owned hatcheries"

The Southern Southeast Regional Aquaculture Association (SSRAA) recommends the approval of this act. SSRAA signed an agreement with the Department of Fish and Game on July 1, 1992 to operate the State Sockeye Salmon Hatchery at Beaver Falls for a twenty year period. A cost recovery program is being developed that will pay for the operations of this facility. However, our experience in operating salmon hatcheries over the past fifteen years has shown that return rates and prices are highly volatile, and there will be times when a single species will not cover the operating costs.

One of the strengths of SSRAA's program is the diversification of our species being reared and the multiple sites where these fish are released. SSRAA releases all salmon species, except for pink salmon, and release them at multiple sites. When the return of one species is low or the price is depressed, we can frequently make cost recovery goals on another species for which the return or price is higher and/or harvest at another site.

SSRAA also operates all of our programs from a pool of money derived from the salmon enhancement tax and cost recovery. This pool is budgeted among all projects. It is not practical in our case to make each project pay for itself. This is more efficient and less costly than running each as an independent entity.

The current limitation on SSRAA to operate the State Beaver Falls Hatchery is not consistent with our operations. There will be occasions when the sockeye returns will not provide sufficient funds to operate the hatchery and SSRAA will have to subsidize the state hatchery from our other cost recovery efforts. It is only fair that SSRAA should also be able to use funds from the Beaver Falls cost recovery to meet our other program needs.

If HB 191 is enacted, it will help stabilize our source of revenue and add to our diversification strength. It will help assure that our other salmon enhancement programs will not be jeopardized and it will help assure that SSRAA will be able to meet our debt service to the State Fisheries Enhancement Revolving Loan Fund (FERLF). The recent legislative audit report (08-4445-93) recommends approval of this bill and advises that the bill would also help secure the future of the FERLF for other operators who still need to borrow from the fund.

Sincerely,

Donald F. Amend
General Manager

Revisor's notes. — Reorganized in 1983 to alphabetize the defined terms. Cross references. — For further definitions, see AS 16.05.940.

Sec. 16.10.370. Short title. AS 16.10.300 — 16.10.370 may be cited as the Commercial Fishing Loan Act. (§ 1 ch 134 SLA 1972)

Article 9. Salmon Hatcheries.

Section	Section
375. Regional salmon plans	445. Egg sources
380. Regional associations	450. Sale of salmon and salmon eggs: use of proceeds; quality and price
400. Permits for salmon hatcheries	460. Inspection of hatchery
410. Hearings before permit issuance	470. Annual report
420. Conditions of a permit	480. Contracts for the operation of state hatcheries
430. Alteration, suspension, or revocation of permit	
440. Regulations relating to released fish	
443. Department assistance and cooperation	

Cross references. — For legislative findings and purpose related to AS 16.10.375 — 16.10.560, see § 1, ch. 59, SLA 1979, in the 1979 Temporary and Special Acts and Resolves.

Sec. 16.10.375. Regional salmon plans. The commissioner shall designate regions of the state for the purpose of salmon production and have developed and amend as necessary a comprehensive salmon plan for each region, including provisions for both public and private nonprofit hatchery systems. Subject to plan approval by the commissioner, comprehensive salmon plans shall be developed by regional planning teams consisting of department personnel and representatives of the appropriate qualified regional associations formed under AS 16.10.380. (§ 2 ch 161 SLA 1976; am § 2 ch 154 SLA 1977)

Sec. 16.10.380. Regional associations. (a) The commissioner shall assist in and encourage the formation of qualified regional associations for the purpose of enhancing salmon production. A regional association is qualified if the commissioner determines that it

(1) is comprised of associations representative of commercial fishermen in the region;

(2) includes representatives of other user groups interested in fisheries within the region who wish to belong; and

(3) possesses a board of directors that includes no less than one representative of each user group that belongs to the association.

(b) In this section "user group" includes, but is not limited to, sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities.

(c) A qualified regional association, when it becomes a nonprofit corporation under AS 10.20, is established as a service area in the unorganized borough under AS 29.03.020 for the purpose of providing salmon enhancement services. (§ 2 ch 161 SLA 1976; am § 2 ch 59 SLA 1979)

NOTES TO DECISIONS

Cited in *State v. Alex*, 646 P.2d 203
(Alaska 1982).

Sec. 16.10.400. Permits for salmon hatcheries. (a) The commissioner or a designee may issue a permit, subject to the restrictions imposed by statute or regulation under AS 16.10.400 — 16.10.470, to a nonprofit corporation organized under AS 10.20, after the permit application has been reviewed by the regional planning team, for

- (1) the construction and operation of a salmon hatchery;
- (2) the operation of a hatchery under AS 16.10.480.

(b) The application for a permit under this section shall be on a form prescribed by the department and be accompanied by an application fee of \$100. The commissioner may waive the submission of an application for a permit to operate a hatchery under AS 16.10.480.

(c) A hatchery permit is nontransferable. If a permit holder sells or leases a hatchery for which a permit is issued under this section, the new operator shall apply for a new permit under this section.

(d) *[Repealed, § 19 ch 154 SLA 1977.]*

(e) A qualified regional association formed under AS 16.10.380, if it has become a nonprofit corporation under AS 10.20, has a preference right to a permit under (a)(1) of this section if its proposed hatchery is provided for in the comprehensive plan for that region developed under AS 16.10.375 and the fresh water source exceeds one cubic foot per second minimum flow. Another local nonprofit hatchery corporation approved by a qualified regional association has an identical preference right.

(f) Except for permits issued before June 16, 1976, a permit may not be issued for construction or operation of a hatchery on an anadromous fish stream unless the stream has been classified as suitable for enhancement purposes by the commissioner. The commissioner shall undertake to make such classifications in conjunction with the development of the comprehensive plan under AS 16.10.375.

(g) During the development of a comprehensive plan for a region a permit may not be issued for a hatchery unless the commissioner determines that the action would result in substantial public benefits and would not jeopardize natural stocks. (§ 2 ch 111 SLA 1974; am § 3 ch 161 SLA 1976; am §§ 3, 19 ch 154 SLA 1977; am §§ 2 — 4 ch 14 SLA 1988)

Cross references. — For legislative intent in connection with the enactment of AS 16.10.400 — 16.10.470, see § 1, ch. 111, SLA 1974, in the Temporary and Special Acts.

Effect of amendments. — The 1988 amendment, effective March 31, 1988, in subsection (a), divided the formerly undivided language into an introductory paragraph and paragraph (1), and added paragraph (2); added the second sentence in subsection (b); and, in subsection (e), inserted "under (a)(1) of this section" in the first sentence and substituted "Another" for "Any other" in the second sentence.

Opinions of attorney general. — Since the conditions for issuance of a hatchery permit do not appear to be inconsistent with the operation of a fish processing and marketing facility in conjunction with the hatchery, a nonprofit hatchery can also process and market fisheries' products, but any profit would have to be used for expansion or improvement of facilities, hatcheries research or other authorized purposes of the regional association within which the corporation is located. June 11, 1984, Op. Att'y Gen.

Sec. 16.10.410. Hearings before permit issuance. (a) At least 30 days before the issuance of a permit under AS 16.10.400, a public hearing shall be held in a central location in the vicinity of the proposed hatchery facility.

(b) Notice of the hearing shall be published in a newspaper of general circulation once a week for three consecutive weeks, with completion of the notice at least 10 days before the hearing.

(c) The hearing shall be conducted by the department. At a hearing for a permit under AS 16.10.400(a)(1), the applicant shall present a plan for the proposed hatchery, describing the capacity of the hatchery and other relevant facts that may be of interest to the department or the public. Interested members of the public shall be afforded an opportunity to be heard.

(d) The department shall record and consider objections and recommendations offered by the public at the hearing conducted under this section. It shall respond in writing, within 10 days after the hearing is held, to any specific objections offered by a member of the public at the hearing. (§ 2 ch 111 SLA 1974; am § 5 ch 14 SLA 1988)

Effect of amendments. — The 1988 amendment, effective March 31, 1988, repealed and reenacted subsection (c), which formerly related to the transferability of the hatchery permit.

Sec. 16.10.420. Conditions of a permit. The department shall require, in a permit issued to a hatchery operator, that

(1) salmon eggs procured by the hatchery must be from the department or a source approved by the department;

(2) salmon eggs or resulting fry may not be placed in waters of the state other than those specifically designated in the permit;

(3) salmon eggs or resulting fry, sold to a permit holder by the state or by another party approved by the department, may not be resold or otherwise transferred to another person;

(4) salmon may not be released by the hatchery before department approval, and, for purposes of pathological examination and approval,

the department shall be notified of the proposed release of salmon at least 15 days before the date of their proposed release by the hatchery;

(5) diseased salmon be destroyed in a specific manner and place designated by the department;

(6) adult salmon be harvested by hatchery operators only at specific locations as designated by the department;

(7) surplus eggs from salmon returning to the hatchery be made available for sale first to the department and then, after inspection and approval by the department, to operators of other hatcheries authorized by permit to operate under AS 16.10.400 — 16.10.470;

(8) if surplus salmon eggs are sold by a permit holder to another permit holder, a copy of the sales transaction be provided to the department;

(9) *[Repealed, § 5 ch 110 SLA 1980.]*

(10) a hatchery be located in an area where a reasonable segregation from natural stocks occurs, but, when feasible, in an area where returning hatchery fish will pass through traditional salmon fisheries. (§ 2 ch 111 SLA 1974; am § 5 ch 110 SLA 1980)

Sec. 16.10.430. Alteration, suspension, or revocation of permit. (a) If a permit holder fails to comply with the conditions and terms of the permit issued under AS 16.10.400 — 16.10.470 within a reasonable period after notification of noncompliance by the department, the permit may be suspended or revoked, in the discretion of the commissioner after the regional planning team for the area in which the hatchery is located is notified and granted an opportunity to comment upon the proposed suspension or revocation.

(b) If the commissioner finds that the operation of the hatchery is not in the best interests of the public, the commissioner may alter the conditions of the permit to mitigate the adverse effects of the operation, or, if the adverse effects are irreversible and cannot be mitigated sufficiently, initiate a termination of the operation under the permit over a reasonable period of time under the circumstances, not to exceed four years. During the period of time that the operation is being terminated, the permit holder may harvest salmon under the terms of the permit but may not release additional fish. (§ 2 ch 111 SLA 1974; am § 4 ch 154 SLA 1977)

Sec. 16.10.440. Regulations relating to released fish. (a) Fish released into the natural waters of the state by a hatchery operated under AS 16.10.400 — 16.10.470 are available to the people for common use and are subject to regulation under applicable law in the same way as fish occurring in their natural state until they return to the specific location designated by the department for harvest by the hatchery operator.

(b) The Board of Fisheries may, after the issuance of a permit by the commissioner, amend by regulation adopted in accordance with AS 44.62 (Administrative Procedure Act), the terms of the permit relating to the source and number of salmon eggs, the harvest of fish by hatchery operators, and the specific locations designated by the department for harvest. The Board of Fisheries may not adopt any regulations or take any action regarding the issuance or denial of any permits required in AS 16.10.400 — 16.10.470. (§ 2 ch 111 SLA 1974; am § 24 ch 206 SLA 1975; am § 3 ch 59 SLA 1979)

Sec. 16.10.443. Department assistance and cooperation.

(a) Before and after permit issuance under AS 16.10.400 — 16.10.470, the department shall make every effort, within the limits of time and resources, to advise and assist applicants or permit holders, as appropriate, in the planning, construction, or operation of salmon hatcheries.

(b) Nothing in this section exempts an applicant or permit holder from compliance with AS 16.10.400 — 16.10.470 or from compliance with the regulations or restrictions adopted under AS 16.10.400 — 16.10.470. (§ 1 ch 97 SLA 1975)

Sec. 16.10.445. Egg sources. (a) The department shall approve the source and number of salmon eggs taken under AS 16.10.400 — 16.10.470.

(b) Where feasible, salmon eggs utilized by a hatchery operator shall first be taken from stocks native to the area in which the hatchery is located, and then, upon department approval, from other areas, as necessary. (§ 2 ch 111 SLA 1974)

Sec. 16.10.450. Sale of salmon and salmon eggs: use of proceeds; quality and price. (a) Except as otherwise provided in a contract for the operation of a hatchery under AS 16.10.480, a hatchery operator who sells salmon returning from the natural waters of the state, or sells salmon eggs to another hatchery operating under AS 16.10.400 — 16.10.470, after utilizing the funds for reasonable operating costs, including debt retirement, expanding its facilities, salmon rehabilitation projects, fisheries research, or costs of operating the qualified regional association for the area in which the hatchery is located, shall expend the remaining funds on other fisheries activities of the qualified regional association.

(b) Fish returning to hatcheries and sold for human consumption shall be of comparable quality to fish harvested by commercial fisheries in the area and shall be sold at prices commensurate with the current market. (§ 2 ch 111 SLA 1974; am § 5 ch 154 SLA 1977; am § 6 ch 14 SLA 1988)

Effect of amendments. — The 1988 amendment, effective March 31, 1988, designated the formerly undesignated two sentences as subsections (a) and (b), added "Except as otherwise provided in a con-

tract for the operation of a hatchery under AS 16.10.480" at the beginning of subsection (a), and made a series of minor stylistic changes throughout the section.

Sec. 16.10.460. Inspection of hatchery. (a) As a condition of and in consideration for a permit to operate a hatchery under AS 16.10.400 — 16.10.470, an inspection of the hatchery facility by department inspectors shall be permitted by the permit holder at any time the hatchery is operating. The inspection shall be conducted in a reasonable manner.

(b) The cost of an inspection performed by the department under AS 16.10.400 — 16.10.470 shall be borne by the department. (§ 2 ch 111 SLA 1974; am § 4 ch 110 SLA 1980)

Sec. 16.10.470. Annual report. (a) A person who holds a permit for the operation of a salmon hatchery under AS 16.10.400 — 16.10.470 shall submit an annual report no later than December 15 to the department and to the qualified regional association for the area in which the hatchery is located, to include but not be limited to information pertaining to species; brood stock source; number, age, weight, and length of spawners; number of eggs taken and fry fingerling produced; and the number, age, weight, and length of adult returns attributable to hatchery releases, on a form to be provided by the department.

(b) A person who holds a permit for the operation of a salmon hatchery under AS 16.10.400 — 16.10.470 and each regional association levying a voluntary assessment under AS 16.10.540 shall submit an annual financial report to the Department of Commerce and Economic Development on a form to be provided by the Department of Commerce and Economic Development. (§ 2 ch 111 SLA 1974; am § 6 ch 154 SLA 1977; am § 4 ch 59 SLA 1979; am § 31 ch 14 SLA 1987)

Sec. 16.10.475. Definitions. [Repealed, § 32 ch 14 SLA 1987.]

Sec. 16.10.480. Contracts for the operation of state hatcheries.

(a) If the department determines that it is unable to continue operating a state-owned hatchery or that it is in the best interest of the state to provide for the operation of the hatchery by another person or by another person in cooperation with the state, the department may enter into a contract for the operation or cooperative operation of the hatchery.

(b) Notwithstanding AS 36.30, when selecting a contractor under (a) of this section, the department shall give a preference to the regional association organized under AS 16.10.380 that is located in the region in which the hatchery is located. If the department determines

that the preferred regional association does not meet the criteria established by the department for the contract, the department may not award the contract to the preferred regional association and shall procure the contract under AS 36.30 after considering the recommendations of the preferred regional association.

(c) A contract entered into under this section must provide that the hatchery will be operated under AS 16.10.400 — 16.10.445 and 16.10.460 — 16.10.470 and the regulations adopted under those sections.

(d) The department may issue to a contractor who operates a hatchery under this section a permit to harvest adult salmon during the term of the contract in a quantity sufficient to allow the contractor to recover all or part of the contractor's costs of operating the hatchery.

(e) A contract under this section for the operation of a hatchery may not affect the state's ownership of the hatchery and does not affect the state's responsibility to manage the resource.

(f) The operation of a hatchery under a contract authorized by this section shall be conducted in accordance with the fisheries management and production goals of the department, and must be consistent with the Comprehensive Regional Salmon Plan approved under AS 16.10.375. During the term of the contract, the department may order changes in the operation of the hatchery that are necessary to ensure consistency with the production goals of the Comprehensive Regional Salmon Plan. The contract must specify the species to be raised and the production goals for each species, and these specifications must comply with the Comprehensive Regional Salmon Plan. The department may terminate a contract if the contractor fails to operate the hatchery in accordance with the requirements established by and under this subsection. (§ 1 ch 14 SLA 1988)

Legislative history reports. — For 1988 (CCS SB 410), see 1988 Senate Journal 2422.
legislative letter of intent on ch. 14, SLA

Article 10. Fisheries Enhancement Loan Program.

Section	Section
500. Declaration of policy	525. Repayment of principal and interest on loans
505. Fisheries enhancement revolving loan fund	540. Voluntary assessment on sale of salmon
507. Special account established	555. Disposal of property acquired by default or foreclosure
510. Powers and duties of the commissioner	560. Definitions
520. Limitation on loans	

Cross references. — For legislative findings and purpose related to AS 16.10.375 — 16.10.560, see § 1, ch. 59, SLA 1979, in the 1979 Temporary and Special Acts and Resolves.

MEMORANDUM

State of Alaska

Department of Law

TO: Honorable Carl L. Rosier
Commissioner
Dep't of Fish and Game

DATE August 26, 1992

FILE NO 663-92-0327

TEL NO 465-3600

SUBJECT: Review of hatchery
management contracts

FROM: *Marie Sansone*
Marie Sansone
Assistant Attorney General
Natural Resources Section - Juneau

You requested us to review all existing agreements between the Alaska Department of Fish and Game and the regional aquaculture associations for the operation of state fish hatcheries, particularly with respect to the characteristics of the funds used to operate the hatcheries, including fisheries enhancement tax funds, cost recovery money, designated grants, capital improvement project funds, and oil spill cost recovery funds. To respond to your request, this memorandum first presents general background on the operation of state hatcheries by the regional associations. Next, the various sources of funding are discussed. Pursuant to AS 36.05.030, questions regarding the Little Davis-Bacon Act, AS 36.05, will be referred to the Alaska Department of Labor. Finally, conclusions and recommendations are presented.

This memorandum of advice pertains only to the state hatcheries operated pursuant to AS 16.10.480 by the regional aquaculture associations under contract with the Alaska Department of Fish and Game, and not to the private nonprofit hatcheries constructed and operated by nonprofit corporations pursuant to AS 16.10.400(a)(1). Attachment I to this memorandum lists the contracts and contract amendments reviewed. Attachment II lists previous Department of Law memoranda of advice concerning the hatchery contracts or hatchery finance. Attachment III consists of a set of summary charts comparing the current contractual provisions of all the hatcheries under contract. Attachment IV is a memorandum from Jeffery P. Koenings, Director, Fisheries Rehabilitation and Enhancement Division, Alaska Department of Fish and Game, dated August 19, 1992, that provides a historical perspective of the development of the hatchery management contracts.

The following abbreviations are used in this memorandum:

ADF&G - Alaska Department of Fish and Game
CIAA - Cook Inlet Aquaculture Association

- CIP - Capital Improvements Project
- DCED - Alaska Department of Commerce and Economic Development
- FRED Div. - Alaska Department of Fish and Game, Fisheries Rehabilitation, Enhancement and Development Division.
- KRAA - Kodiak Regional Aquaculture Association
- NSRAA - ^{vne} Northern Southeast Regional Aquaculture Association
_{at}
- PNP - Private Nonprofit (hatchery operator)
- PWSAC - Prince William Sound Aquaculture Corporation
- SSRAA - Southern Southeast Regional Aquaculture Association
- RAA - Regional Aquaculture Association or Regional Association

Ten state hatcheries are currently the subject of operational contracts or cooperative agreements between ADF&G and a regional aquaculture association: CIAA funds and operates the Trail Lakes and Tutka hatcheries and funds a fisheries enhancement program at Crooked Creek; KRAA funds operations at Kitoi and Pillar Creek; NSRAA funds and operates Hidden Falls; PWSAC funds and operates Cannery Creek and Main Bay and funds the operations of Gulkana; and SSRAA funds and operates Beaver Falls. The Big Lake hatchery is the subject of a cooperative agreement with CIAA; however, ADF&G currently funds and operates the hatchery. ADF&G is concerned that as it has negotiated each contract, legal issues may not have been treated consistently. To facilitate the development and modification of contracts, ADF&G seeks consistency in the application of the law to each contract and to ensure compliance with applicable statutes and regulations.

Review of ADF&G's hatchery contracts and Department of Law advice concerning the hatcheries indicates that the contracts and their interpretation are to some extent inconsistent. As discussed in Attachment IV, some inconsistency is to be expected, given the unique characteristics of each hatchery and its salmon production activities. In addition, the nature and extent of the obligations undertaken by the regional associations vary from hatchery to hatchery and from regional association to regional association. However, if the contracts are inconsistent due to an

erroneous interpretation and application of the law or due to the omission of critical contract provisions, then the inconsistencies among the contracts may present legal difficulties. By reviewing Attachment III, the summary charts, it is possible to obtain an overview of the contracts and to identify where the inconsistencies and omissions occur. The Department of Law will continue to work with ADF&G to address any legal concerns over existing or new contracts.

DISCUSSION

Since 1981, the State of Alaska has sought more efficient and economical means of operating its hatcheries. See, e.g., Cannery Creek Contract, Statement of Problem and Background at 3 (June 14, 1988). In 1988, the legislature enacted AS 16.10.480, authorizing ADF&G to enter into contracts for the operation or cooperative operation of state hatcheries, when ADF&G determines that it is unable to continue operating a hatchery or that is in the best interest of the state to provide for the operation or cooperative operation of a hatchery by another person. The legislative history of AS 16.10.480 indicates that its main purpose was to relieve the burden placed on the general fund by the operating costs of certain state hatcheries, while at the same time providing an alternative means of allowing them to remain in operation.¹

¹ The legislature passed the Conference Committee Substitute for Senate Bill 410 in 1988, adding AS 16.10.480 and amending AS 16.10.400, AS 16.10.410, and AS 16.10.450. A memorandum from Representative Ben Grussendorf, Speaker of the House, the prime sponsor of House Bill 454 (which was identical to Senate Bill 410), to Representative Dave Donley, Chairman, House Labor and Commerce Committee, states:

House Bill 454 and Senate Bill 410 are an appropriate response by the Department of Fish and Game to intent language placed in the FY 1988 budget that required the department to develop ways to relieve the burden on the general fund caused by state hatchery operation.

Mem. at 2 (Feb. 22, 1988). See also Minutes of the House Resources Standing Comm. at 5 (Mar. 1, 1988) (Remarks of Doug Rickey, Legislative Assistant to Rep. Ben Grussendorf); Minutes of the Senate Resources Comm. at 4 (Feb. 22, 1988) (Remarks of Sen. Fred Zharoff). The hatcheries immediately affected were Cannery Creek, Hidden Falls, Kitoi, and Trail Lakes. Minutes of the House Resources Comm. at 3 (Mar. 10, 1988) (Remarks of Rep. John Sund).

The contracting of state hatcheries benefits the public by continuing the enhancement of the common property fisheries, while at the same time freeing state resources for other purposes. See Cannery Creek Contract, Statement of Problem and Background at 3 (June 14, 1988). Under AS 16.10.480(f), the operation of a state hatchery under contract must be conducted in accordance with ADF&G's fisheries management and production goals, and must be consistent with its region's Comprehensive Regional Salmon Plan. Under AS 16.10.480(b), when selecting a contractor, ADF&G must give a preference to the regional aquaculture association for the region in which the hatchery is located. If ADF&G determines that the regional association does not meet ADF&G criteria for a contract, then after considering the association's recommendations, ADF&G must follow the State Procurement Code, AS 36.30, in selecting a contractor. So far, ADF&G has contracted with only the regional associations.

Another key feature of AS 16.10.480 is that a contract for the operation of a state hatchery may not affect the state's ownership of the hatchery.² AS 16.10.480(e) provides:

² The legislative history of AS 16.10.480 indicates that the state is to retain ownership of the hatcheries under contract. For example, House Bill 454 and Senate Bill 410 originally provided for the "transfer" of hatchery operations. The House Labor and Commerce Committee Substitute for House Bill 454 deleted the word "transfer" and instead, used the phrase, "provide for the operation of the hatchery." A memorandum concerning the committee substitute states, "This change clarifies the fact that the State of Alaska retains all ownership rights in the hatchery, as well as the right to manage the resource." Mem. from Rep. Ben Grussendorf, Speaker of the House, to Rep. Dave Donley, Chairman, House Labor and Commerce Comm. at 1 (Feb. 22, 1988). See Minutes of the House Labor and Commerce Comm. at 4-5 (Feb. 23, 1988). See also Minutes of the House Resources Comm. at 4 (Mar. 1, 1988) ("[T]he state would retain all ownership rights to the hatcheries and would continue to manage the resource." Remarks of Doug Rickey, Legislative Assistant to Rep. Ben Grussendorf); Minutes of the Senate Resources Comm. at 4 (Feb. 22, 1988) ("The hatcheries would remain in the hands of the state." Remarks of Sen. Fred Zharoff).

The question of the state's continued ownership of the state hatcheries was also explored at the conference committee meeting on Senate Bill 410:

REPRESENTATIVE GOLL: Finally, could you restate for the record whether it is the department's understanding, as it was mine, that not
(continued...)

A contract under this section for the operation of a hatchery may not affect the state's ownership of the hatchery and does not affect the state's ability to manage the resource.

This provision plays a major role in shaping the contract termination provisions, as well as the provisions relating to capital improvements, fixtures, and replacement equipment.

With respect to termination, AS 16.10.480(f) allows ADF&G to terminate a contract when a contract r fails to operate the hatchery in accordance with ADF&G fisheries management and production goals and the Comprehensive Regional Salmon Plan. In addition, most of the contracts contain a variety of provisions relating to termination, including termination at will by the regional association by giving 90 days' notice (Big Lake, Crooked Creek, Kitoi, and Pillar Creek contracts) and termination at will by either the regional association or the state by giving 180 days' notice (Beaver Falls, Cannery Creek, Main Bay, and Tutka contracts). A major concern in drafting and interpreting the contracts, therefore, is ensuring that, in the event of the termination or expiration without renewal of a contract, the hatchery will be returned to the state in a fully operational

² (...continued)

withstanding the phrase "transfer" was used in this hearing, what we're talking about is the contract for personnel to operate these state owned and operated facilities.

ROLAND SHANKS [Special Assistant, ADF&G]: The only intention is that the facility stays in state ownership and we're basically talking about a contract in the operation.

REPRESENTATIVE GOLL: So we're talking about contracting for staff; we're not talking about transferring hatcheries to the private sector, or to [indisc.], or to anybody else.

ROLAND SHANKS: No, we're talking about the operations.

mode.³ This requirement not only safeguards the public's investment in the hatchery structures and equipment, but also enables ADF&G or a successor contractor to immediately step in and manage the broodstock, so that the fishery enhancement efforts at the hatchery and the resource itself will not be jeopardized.

The question of property ownership also figures into the treatment of capital improvements to the hatcheries. All the hatchery contracts provide that the state owns any capital improvements made, regardless of the source of money used to pay for the improvements. This fulfills the intent of AS 16.10.480(e), because to treat capital improvements to state property as private property would inevitably diminish or encumber the state's ownership of the hatchery. Moreover, at many of the state hatcheries, the state owns the facility, but not the underlying land.⁴ Because the ownership of land gives the owner the right to limit any improvements placed on the land, 8,960 Square Feet. More or Less v. State, 806 P.2d 843, 846 (Alaska 1991), ADF&G may have separate, additional contractual obligations with respect to a hatchery that cannot be modified or impaired by a hatchery management contract.

Also of concern are the contractual provisions relating to fixtures. The law related to the removal of trade fixtures is summarized in Interior Energy Corp. v. Alaska Statebank, 771 P.2d 1352 (Alaska 1989). With respect to the treatment of fixtures in the hatchery contracts, the threshold question that must be

³ The Beaver Falls, Cannery Creek, Hidden Falls, Main Bay, Trail Lakes, and Tutka contracts thus require the regional associations to repair and maintain the state hatcheries at a level sufficient to ensure that upon completion of the contract, the site and facility will be returned to ADF&G in their original condition, excluding normal wear and tear.

⁴ ADF&G has U.S. Forest Service special use permits at Cannery Creek, Hidden Falls, and Main Bay; a lease agreement with the Alaska Department of Natural Resources, Division of Land and Water, for Hidden Falls; a lease agreement with the Afognak Corporation for Kitoi; an Interagency Land Management Assignment from the Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation, on designated mental health trust lands, for Tutka; a ground lease with the Cape Fox Corporation for Beaver Falls; and a memorandum of understanding with the U.S. Bureau of Land Management and a pending Interagency Land Management Assignment from the Alaska Department of Natural Resources for Gulkana. At the Crooked Creek hatchery, ADF&G has a U.S. Fish and Wildlife Service special use permit for the Tustumena Lake sockeye salmon project.

considered is who purchased and installed the fixture. If the regional association did not pay for and install the fixture, the regional association has no right to remove the fixture. See id. at 1353-54. Except for those fixtures purchased and installed with state money, the ownership of expansion fixtures upon the termination of a hatchery contract is a matter for negotiation. In the absence of an agreement to the contrary, it will be presumed that the regional association did not intend to donate an expansion fixture to ADF&G. The regional association may remove the fixture, provided it can restore the hatchery to its former condition and provided there is no agreement to the contrary. See id. at 1355-56. It follows that unless there is an agreement to the contrary, the regional association may remove expansion equipment from the hatchery.⁵

Replacement fixtures and replacement equipment, however, must be treated differently. To protect the public investment in the hatcheries and the public interest in their continued operation, the hatcheries must be maintained and returned to the state in the condition they were in when the regional association assumed responsibility for their operation, normal wear and tear excepted. Thus, the Beaver Falls, Cannery Creek, Hidden Falls, Main Bay, Trail Lakes, and Tutka contracts all provide that replacement equipment becomes the property of ADF&G.

The general principles outlined above form the basis for the following discussion of the different funds used by the regional associations to pay state hatchery operating costs. The discussion of each funding source parallels the ADF&G memorandum to the Department of Law dated December 10, 1991, requesting the review of the hatchery contracts. The responses to ADF&G's questions that are presented in outline form are also based upon the above analysis, with further clarification where required. It should be noted that additional requirements may be imposed under the PNP permit issued to a regional association, the Annual Management Plan for the hatchery, any DCED fisheries enhancement loan agreements for enhancement activities at the hatchery, or any special use permits or lease agreements for the hatchery.

I. FISHERIES ENHANCEMENT TAX FUNDS

Statutory provisions relating to the salmon enhancement tax are found in AS 43.76; regulatory provisions, in 3 AAC 89.010-.130. The salmon enhancement tax is a tax that is

⁵ The Beaver Falls, Cannery Creek, Hidden Falls, Main Bay, Trail Lakes, and Tutka hatchery contracts provide that with the exception of replacement equipment, equipment purchased by the regional association belongs to the association.

self-imposed by a regional association on its limited entry permit holders to raise money for the association. The tax rate is established at one, two, or three percent of the value of the salmon the permit holder removes from the state or transfers to a buyer in the state.⁶ AS 43.76.010-.012. The buyer withholds the tax from the permit holder's fish payments, and remits the tax to the Department of Revenue for deposit in the general fund. The proceeds of the tax are state revenues, subject to legislative appropriations. 1987 Inf. Op. Att'y Gen. at 1 (Mar. 19; 663-87-0372). Based upon these revenues, the legislature makes appropriations to DCED for the purpose of providing financing to the regional associations. AS 43.76.025(c).

Under current regulations, DCED disburses money to the regional associations through grant agreements. Grant money is disbursed quarterly in accordance with quarterly cash-flow projections, identified in annual budgets submitted to DCED by the associations. 3 AAC 89.070. The regulations require the associations to include in their final reports "a description of how surplus money remaining in a budget component or cost category or subcategory will be reallocated or carried over." 3 AAC 89.090(a)(3).

With respect to the state hatchery contracts only, the fisheries enhancement tax funds must be treated as follows:

- a. Compliance with procurement law: No. The State Procurement Code does not apply to grants. AS 36.30.850(b)(1).
- b. Little Davis-Bacon applicability: To be determined by the Department of Labor.
- c. Ownership of replacement equipment or buildings: State.
- d. Ownership of buildings constructed: State.
- e. Ownership of expansion fixtures: Negotiable.
- f. Ownership of removable expansion equipment: Regional association.

II. STATE HATCHERY COST RECOVERY FUNDS

The term "cost recovery funds" refers to money derived from the sale of salmon returning from the natural waters of the

⁶ Salmon harvested by a regional association for cost recovery at a state hatchery are not taxed. See AS 43.76.035.

Honorable Carl L. Rosier, Commissioner
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state to specific locations identified by ADF&G for harvest by PNP hatchery operators. Pursuant to statute, these funds are designated to meet hatchery operating costs. See AS 16.10.450; AS 16.10.480(d); 1990 Inf. Op. Att'y Gen. at 2-3 (Aug. 1; 663-90-0327). Cost recovery harvests thus enable the hatcheries to operate on a self-supporting basis.

You asked us to reexamine the status of cost recovery funds to determine whether they are private or public funds. In a previous memorandum, we stated that there are valid arguments on both sides of this issue. We also concluded that cost-recovery funds not used during a fiscal year by a regional association for a state hatchery could be held over for another year, to protect against shortfalls in future years. Any funds remaining at the end of a contract must be returned to the state or, if determined appropriate by ADF&G, turned over to a successor contractor. 1990 Inf. Op. Att'y Gen. at 4-5 (Sept. 14; 663-91-0106).

The statutory provision that controls cost recovery harvests at a state hatchery under contract is found at AS 16.10.480(d):

The department may issue to a contractor who operates a hatchery under this section a permit to harvest adult salmon during the term of the contract in a quantity sufficient to allow the contractor to recover all or part of the contractor's costs of operating the hatchery.

Because AS 16.10.480 does not address the question of whether state hatchery cost recovery funds are private or public funds, it is necessary to consult its legislative history and administrative interpretation. See Nat'l Bank of Alaska v. State, 642 P.2d 811, 814-19 (Alaska 1982).

Our review indicates that the use of cost recovery harvests to pay operating costs at the state hatcheries was patterned after the use of cost recovery harvests at the PNP hatcheries. For example, the bill analysis of the committee substitute for Senate Bill 410 and House Bill 454, dated February 22, 1988, prepared by ADF&G, states:

Further, the amendment provides certain assurances to the state, which must maintain jurisdiction over the facilities, to the general public, which bonded themselves for original capital costs to construct the facilities, and to the fishery user groups who depend on the hatchery-produced fish to supplement the natural stocks in off-years. These assurances arise from the proven

technical and managerial expertise of the RAAs, along with their financial capability and socially and legally acceptable practice of special harvests of hatchery returns to pay hatchery operational costs. This approach allows for continued hatchery production while reducing the impact on the general fund.

A Department of Law memorandum to ADF&G concerning the Cannery Creek hatchery contract also suggests that cost recovery funds are private funds. In that memorandum, we stated:

The funds provided by PWSAC do not fall under the definition of "state funds" merely because the expenditures will be made on a state-owned facility. Furthermore, the state will not be paying PWSAC state money to perform this contract. Instead, the consideration being provided is similar to a lease agreement. In consideration of a 20-year contract to operate and maintain the Cannery Creek Hatchery, PWSAC may harvest and sell eggs, conduct cost recovery harvests, and retain any other revenue generating procedures at the hatchery in keeping with the Annual Management Plan and statutes. This will allow PWSAC to recover all or part of its costs of operating the hatchery. The state will not be receiving any of the revenue from the hatchery during the term of the agreement. Instead, the contract provides that PWSAC must ensure that upon completion of the contract the hatchery is returned to ADF&G in a fully operational mode similar to when the contract was initially let.

1988 Inf. Op. Att'y Gen. at 1-2 (June 14; 663-93-0037) (re-dated for purposes of indexing, Jan. 1, 1992) (citations omitted).

Likewise, a memorandum from Don W. Collinsworth, Commissioner, ADF&G, to Grace Berg Schaible, Attorney General, dated August 5, 1988, states:

ADF&G and Department of Law staffs had discussions about whether or not state money would be involved in operations, maintenance, and capital improvements. They determined along with the Department of Transportation and Public Facilities, that the principal source of money would be cost recovery of salmon returning to the hatcheries and other release sites stocked with fish from hatchery sites. This money would belong to the hatchery

permittee and operators as is the case with other private nonprofit hatcheries permitted under AS 16.10.375, et seq.

Based upon our review of the legislative history and administrative interpretation of AS 16.10.480, we conclude that state hatchery cost recovery funds have the same status as private funds as PNP hatchery cost recovery funds. However, as discussed below, because section 480(d) only authorizes the use of state hatchery cost recovery funds to pay all or part of the operating costs of the hatchery under contract, we also conclude that any surplus cost recovery funds remaining at the completion or termination of a contract must be returned to ADF&G.

With respect to the state hatchery contracts only, cost recovery funds must be treated as follows:

a. Compliance with procurement law: No. The Procurement Code only applies to expenditures of "state money by the state." AS 36.30.850(b). "State money" is defined as "any money appropriated to an agency or spent by an agency irrespective of its source" AS 36.30.990(20). Cost recovery money is neither appropriated to nor spent by ADF&G, and therefore is not "state money." See 1988 Inf. Op. Att'y Gen. (June 14; 663-93-0037) (re-dated for purposes of indexing, Jan. 1, 1992).

b. Little Davis-Bacon applicability: To be determined by the Department of Labor.

c. Ownership of replacement equipment or buildings: State.

d. Ownership of buildings constructed with: State.

e. Ownership of expansion fixtures: Negotiable.

f. Ownership of removable expansion equipment: Regional association.

g. Residual money left at end of contract: State.

You also asked whether surplus cost recovery funds returned to ADF&G at the end of a contract could be allocated to a new contractor, or whether the funds must be deposited in the general fund. ADF&G's authority to expend funds derives from legislative appropriations. See Alaska Const. art. IX, § 12. Further, the Alaska Constitution prohibits the dedication of funds to a special purpose. Art. IX, § 7; see State v. Alex, 646 P.2d 203, 207-11 (Alaska 1982). Therefore, any surplus funds returned to ADF&G must be remitted to the Department of Revenue for deposit

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into the general fund. This money will then be available to the legislature for appropriation to ADF&G for the hatchery, if the legislature so chooses, in much the same manner as the DCED fisheries enhancement tax appropriations.

With respect to your questions regarding the purchase of equipment with cost recovery funds, it is not so much the character of the funds, but rather the regional association's contractual obligation to return the hatchery to the state in a fully operational condition, along with the underlying statutory requirement of AS 16.10.480(e) that a hatchery contract may not affect the state's ownership of the hatchery, that controls the ownership of equipment. As discussed above at page 7, replacement fixtures and equipment are owned by the state. The ownership of removable expansion fixtures is negotiable. Unless there is an agreement to the contrary, the regional associations are presumed to own removable expansion equipment.

Finally, a regional association may not spend funds derived from a cost recovery harvest at a state hatchery to support its other hatcheries or fisheries activities not directly related to the hatchery under contract. Under AS 16.10.480(d), cost recovery harvests at a state hatchery are limited to the quantity of salmon sufficient to allow the association to recover part or all of its costs of operating the hatchery.

*
2
AS 16.10.480 does not define "costs of operating the hatchery"; however, AS 16.10.450, which concerns the sale of salmon and salmon eggs by PNP hatchery operators, defines "reasonable operating costs" to include debt retirement, expansion of hatchery facilities, salmon rehabilitation projects, fisheries research, or the costs of operating the qualified regional association for the area in which the hatchery is located. We previously found that under section 450, ADF&G has the discretion to provide contractually for the manner in which a contractor operating a state hatchery under section 480 may spend cost recovery money, and thus can allow a regional association to use cost recovery funds for capital improvements at a state hatchery. See 1991 Inf. Op. Att'y Gen. (Mar. 14; 663-91-0280). To the extent our previous opinion may be interpreted more broadly, for the reasons stated below, it is overruled.

Section 480 specifically concerns cost recovery at the state hatcheries, and must take precedence over section 450, the general statute applicable to PNP hatcheries. See City of Cordova v. Medicaid Rate Comm'n, 789 P.2d 346, 352 (Alaska 1990). Section 480(c) specifically omits section 450 from the PNP statutory provisions made directly applicable to the state

hatcheries.⁷ While section 450 would permit a regional association to spend cost recovery money on "other fisheries activities of the qualified regional association" (a category of expenditures not included in the definition of "reasonable operating costs"), such expenditures are impermissible under section 480, which only authorizes recovery of all or part of the costs of operating the state hatchery under contract.

Nowhere in the legislative history of section 480, nor the 1988 amendment to section 450, did we find any indication that state hatchery cost recovery funds could be used for purposes other than the state hatchery under contract or expenses directly related to the state hatchery. To the contrary, the legislative history indicates that cost recovery under section 480 is limited to the costs of operating and expanding the hatchery under contract.

For example, with respect to the cost recovery language of AS 16.10.480, the Attorney General's bill review letter states:

The bill provides that a contractor may be issued a permit to harvest salmon in a quantity sufficient to recover all or part of its cost of operation of the hatchery during the term of the contract. . . . Under this provision, the department will have the latitude to allow only part of the cost of operation to be recovered through salmon harvest, or to allow operation costs during a year of low return to be recovered in other years if the term of the contract is for multiple years. Section 1 of the bill.

. . . .

The bill amends AS 16.10.450 to allow the department flexibility in providing contractually for the manner in which a contractor under AS 16.10.480 may spend money received as a result of the sale of salmon harvested by the contractor. This will allow the department to require, for example, that any money received in excess of actual operating costs be used solely for

⁷ AS 16.10.480(c) states:

A contract entered into under this section must provide that the hatchery will be operated under AS 16.10.400 - 16.10.445 and 16.10.460 - 16.10.470 and the regulations adopted under those sections.

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Page 14

enhancement of the state hatchery facility.
Section 6 of the bill.

Letter from Grace Berg Schaible, Attorney General, to Steve Cowper, Governor, at 2 (Mar. 29, 1988) (emphasis added).

ADF&G arrived at the same conclusion with respect to the Kitoi hatchery:

Review of the amendment language clarifies that the first intent of the amendment was to harvest in the Kitoi Hatchery Special Harvest Area, the pink salmon made inaccessible to the fishermen because of the [Exxon Valdez Oil Spill] and, secondarily, to be certain any revenue from that harvest would not be used for any other purpose except for the original intent of the contract; that is, supporting operational costs of the hatchery. Having been involved in the negotiation of the amendment, I can reach no other interpretation of the intent. Any diversion of these funds for fisheries enhancement purposes at other locations or for administrative costs not directly connected with Kitoi Hatchery operations would constitute violation of the contract.

Letter from Norman A. Cohen, Deputy Commissioner of ADF&G, to Oliver Holm, president of KRAA at 2 (Apr. 27, 1990). The memorandum from Jeffery P. Koenings, Director, FRED Division, ADF&G, dated August 19, 1992), Attachment IV, further explains that the initial contracts did not envision the regional associations using cost recovery money to support activities unrelated to the hatchery under contract.

Based on the above, we conclude that under AS 16.10.480, cost recovery money derived from harvesting salmon at the state hatchery may not be spent on other hatcheries operated by the regional associations nor on other fisheries activities not directly related to the state hatcheries. Cost recovery money derived from harvesting salmon at a state hatchery may be spent only on the state hatchery under contract and on any operationally-related facilities and activities.

Listed below are several examples of operationally-related facilities and activities for which cost recovery funds may be spent. First, cost recovery funds may be used to fully reimburse a regional association for the money it spends out of its own coffers in operating the state hatchery during those years when cost recovery is insufficient to fund hatchery operations.

Accounting procedures, mutually agreed upon by ADF&G and the regional association, must be in place to verify the expenditures.

Second, the regional associations may use cost recovery funds to meet their direct and indirect costs of operating the hatcheries. For example, the Beaver Falls, Kitoi, Pillar Creek, Trail Lakes, and Tutka contracts specifically allow cost recovery funds to be used for indirect costs or administrative overhead. The Beaver Falls contract recognizes that cost recovery funds may be used to pay for the legal and professional services necessary for hatchery management.

Third, cost recovery funds may be used to pay expenses incurred in outstocking from the state hatchery. These activities include planning, constructing, and operating supportive infrastructure such as weirs and cabins; planning stocking programs; site surveys; lake fertilization; transporting fish and stock to stocking sites; and evaluating returns of fish outstocked from a contracted hatchery operated as a central incubation facility. In short, cost recovery funds generated by a state hatchery under contract can be used to finance structures and activities directly related to that hatchery.

III. DESIGNATED GRANTS

Designated grants are governed by AS 37.05.316. ADF&G disburses grants to the regional associations for various purposes, including planning, construction, and lake studies. In a previous memorandum, we found that the State Procurement Code, AS 36.30, does not apply to ADF&G's allocation to PNP hatchery operators of federal funds granted to Alaska in connection with the U.S. - Canada Pacific Salmon Treaty. 1988 Inf. Op. Att'y Gen. (Apr. 13; 663-88-0413).

Unless otherwise specified in the grant agreement, for the state hatchery contracts only, designated grants are treated as follows:

- a. Compliance with procurement law: No. The State Procurement Code does not apply to grants. AS 36.30.850(b)(1).
- b. Little Davis-Bacon applicability: To be determined by the Department of Labor.
- c. Ownership of replacement equipment or buildings: State.
- d. Ownership of buildings constructed with: State.
- e. Ownership of expansion fixtures: Negotiable.

f. Ownership of removable expansion equipment: Regional association.

IV. CAPITAL IMPROVEMENTS PROJECT MONEY

"Capital projects" and "capital improvements" are defined in the Executive Budget Act as "an allocation or appropriation item for an asset with an anticipated life exceeding one year and a cost exceeding \$25,000 and include land acquisition, construction, structural improvement, engineering and design for the project and equipment and repair costs." AS 37.07.120.

In 1991, the legislature appropriated \$5 million from the general fund to ADF&G for capital improvements projects. Sec. 163, ch. 96, SLA 1991. The FRED Division allocated \$3 million to Main Bay Hatchery, operated by PWSAC, and \$2 million to Tutka Hatchery, operated by CIAA. You asked if ADF&G can transfer the full amount to the regional associations at the initiation of the contract amendments.

Generally, it is not appropriate to prepay or otherwise disburse public money to a contractor in advance of performance of a public contract. Our office has repeatedly advised state agencies that unless there is evidence of legislative intent that appropriations are to be used for investment purposes, such as the case with "seed money," money appropriated for a specific purpose may not be diverted for use as investment capital or to capitalize an investment program. 1988 Inf. Op. Att'y Gen. at 2 (Mar. 22; 661-88-0396). For example, in a previous opinion on the appropriation of salmon enhancement tax proceeds to a regional association, we stated, "To be constitutional, the appropriation must directly impact the designated or recognized public purpose (salmon enhancement), such as providing financing of current construction, operations, or maintenance." 1987 Inf. Op. Att'y Gen. at 2 (Mar. 19; 663-87-0372) (emphasis added).

Section 35.100 of the Alaska Administrative Manual (1990), however, provides an exception to the general rule against prepayment when prepayment is in the state's best interest. Prepayment requires the approval of the Department of Administration and the Department of Revenue. ADF&G has obtained approval to prepay the Main Bay and Tutka CIP contract amendments in order to provide the regional associations the maximum benefit from the limited funding available through legislative appropriation.

To assure that the capital improvement project funds are applied to the purpose which the legislature intended, the hatchery contracts or contract amendments for capital improvements should require the regional associations to promptly undertake and

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complete all construction and renovation. 1992 Inf. Op. Att'y Gen. (Apr. 24; 663-92-0501). The contracts should also require progress reports and an accounting and audit on a regular basis. Further, the requirements of any other agreements or permits relating to capital improvements at the hatcheries must be met.

In the state hatchery contracts, CIP funds must be treated as follows:

a. Compliance with procurement law: Yes. The State Procurement Code must be adhered to for any capital project that involves state general operating or capital improvement funds. 1988 Inf. Op. Att'y Gen. at 1 (June 14; 663-93-0037) (re-dated for purposes of indexing, Jan. 1, 1992).

b. Little Davis-Bacon applicability: Yes. The Little Davis-Bacon Act applies to "public construction in the state, as defined by AS 36.95.010." AS 36.05.010. "Public construction" is defined as "the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state. . . ." AS 36.95.010(3). Capital improvements to the hatcheries are "public construction"; thus, the Little Davis-Bacon Act applies. *

c. Ownership of replacement equipment or buildings: State.

d. Ownership of buildings constructed: State.

e. Ownership of expansion fixtures: State.

f. Ownership of residual funds: State. The unexpended balance of a capital appropriation is valid for the life of the project. Upon completion of the project, the unexpended balance will lapse. See Alaska Const. art. IX, § 13; AS 37.25.020.

V. OIL SPILL COST RECOVERY MONEY

During the 1989 Exxon Valdez oil spill, commercial salmon fisheries in the Kodiak and Prince William Sound areas were closed due to concern for contamination of the fish and fishing gear. However, because oil containment booms were present at the Kitoi and Main Bay hatcheries, KRAA and PWSAC were allowed to conduct a terminal harvest in excess of hatchery broodstock needs inside the booms. KRAA obtained \$10 million from this harvest; PWSAC, \$500,000. Under contract amendments between ADF&G and the regional associations, the associations were to deposit these funds in interest-bearing accounts. These funds are to be spent, with

approval from both ADF&G and the associations, on operating and expanding the Kitoi and Main Bay hatcheries.

You asked whether these funds should be treated the same as other cost recovery money. We examined this matter closely, revisiting the initial advice given ADF&G during the oil spill crisis. The only difference between the oil spill cost recovery harvest and a typical cost recovery harvest at a state hatchery appears to be the magnitude of the recovery and the state's contribution to the harvest in setting up and maintaining the oil containment booms. First, the magnitude of the harvest should not in itself result in different treatment of these funds. As discussed above, the intent of AS 16.10.480 was to allow a carry-over of funds from one year to another to safeguard against years of low return. Given the uncertainty of future cost recovery harvests due to the oil spill, it was consistent with the intent of section 480 to allow the harvest of salmon in excess of broodstock needs and to save the proceeds to guard against lean years. Second, the state's contribution to the oil spill cost recovery harvest does not appear to differ significantly from other cooperative efforts between the state and the regional associations at the state hatcheries. We conclude therefore that the funds from the oil spill cost recovery harvest should be treated in the same manner as state hatchery cost recovery funds.

ADF&G need not take any further steps to implement this decision. However, to assure that these funds are properly used, ADF&G should require on a regular basis an accounting and audit of KRAA's and PWSAC's financial records for the Kitoi and Main Bay hatcheries.

You also asked whether the oil spill cost recovery funds are still being considered by the oil spill defendants as partial mitigation of the damages claimed by the fishermen in the Kodiak and Prince William Sound areas. We understand that the fishermen's claims are still pending. Because the oil spill cost recovery funds are to be treated in the same manner as state hatchery cost recovery funds, and because KRAA and PWSAC must use the funds pursuant to AS 16.10.480(d) for their costs of operating the Kitoi and Main Bay hatcheries, the status of the fishermen's claims should not affect how the oil spill cost recovery funds are treated in the hatchery contracts.

CONCLUSIONS AND RECOMMENDATIONS

The state hatchery contracts present complex and difficult legal and policy issues. ADF&G is appropriately concerned with the consistent treatment of legal requirements in the hatchery contracts and with complying with all applicable laws. Considering the issues that have arisen with the development of new

contracts, it appears that statutory amendments to AS 16.10 could benefit the hatchery program.

1. You indicated that the regional associations wish to use the cost recovery funds generated at state hatcheries at other PNP hatcheries or for their other fisheries activities not directly related to the state hatchery under contract. Statutory amendments will be required to enable the regional associations to use state hatchery cost recovery funds on their other activities. There are several options you may wish to consider, including:

a. an amendment to AS 16.10.480(c) to include AS 16.10.450 among the statutes that are directly applicable to the state hatcheries; and

b. an amendment to AS 16.10.480(d) to allow the contractor to recover not only the contractor's cost of operating the state hatchery, but also the costs of the contractor's fisheries activities; or, alternatively,

c. an amendment to AS 16.10.480 that spells out the categories of costs which may be recovered.

2. Another question that has come up is whether a regional association may conduct cost recovery harvests at a state hatchery following the termination or completion of a contract. An amendment to AS 16.10.480 to expressly allow a contractor to conduct cost recovery harvests following the termination or completion of a hatchery contract for purposes of recouping its costs of operating the state hatchery would provide greater certainty for the regional associations.

3. You may also wish to consider an amendment to AS 16.10.480 to address the disposition of surplus cost recovery funds upon the termination of a contract. While we believe our analysis to be sound, legislative direction on this matter would be appropriate.

If we can be of further assistance regarding this matter, please do not hesitate to contact us.

cc: / Jeffery P. Koenings, FRED Div., ADF&G
Larry Jones, Div. of Administration, ADF&G
Dave Massey, Div. of Investments, DCED

ATTACHMENT I

List of Contracts and Contract Amendments Reviewed

Beaver Falls Hatchery -- SSRAA
IHP-93-001
Cooperative Agreement (Coop 91-009) -- August 28,
1990
Amended -- July 24, 1991
Agreement -- July 2, 1992

Big Lake Hatchery -- CIAA
IHP-91-010
Cooperative Agreement -- October 23, 1990
Letter of Agreement -- October 23, 1990

Cannery Creek Hatchery -- PWSAC
IHP-88-196
Agreement -- June 14, 1988
Amended -- April 11, 1989
Amended -- September 12, 1991

Crooked Creek Hatchery -- CIAA
IHP-91-009
Cooperative Agreement -- October 23, 1990
Letter of Agreement -- October 23, 1990
Amended -- November 27, 1991

Gulkana Hatchery -- PWSAC
Coop-91-007
Cooperative Agreement -- July 1, 1990
Amended -- August 14, 1991

Hidden Falls Hatchery -- NSRAA
IHP-88-229
Agreement -- June 24, 1988
Amended -- October 14, 1988
Amended -- January 8, 1990
Amended -- July 17, 1991
Amended -- June 25, 1992

Kitoi Hatchery -- KRAA
IHP-88-239
Agreement -- July 11, 1988
Amended -- August 9, 1989
Amended -- September 11, 1990
Amended -- September 6, 1991

Main Bay Hatchery -- PWSAC
IHP-92-001
Oil Spill Cost Recovery Agreement (IHP-89-090) --
July 17, 1989
Agreement -- September 5, 1991

Amended -- September 5, 1991
Amended -- November 7, 1991

Pillar Creek Hatchery -- KRAA
IHP-92-006
Cooperative Agreement -- December 10, 1991

Trail Lakes Hatchery -- CIAA
IHP-88-228
Agreement -- July 11, 1988
Amended -- September 14, 1988
Amended -- July 11, 1990

Tutka Hatchery -- CIAA
IHP-92-002
Agreement -- August 22, 1991
Amended -- April 3, 1992
Amended -- April 23, 1992

ATTACHMENT II

List of Memoranda of Advice Reviewed

- 1992 Inf. Op. Att'y Gen. (Apr. 24; 663-92-0501) (CIP amendment to Tutka hatchery).
- Letter from Douglas L. Blankenship, Deputy Attorney General, to Jaki Sanders, ADF&G (June 14, 1992) (PWSAC contract provisions on termination and ownership of documents).
- 1990 Inf. Op. Att'y Gen. (Sept. 11; 663-91-0106), superseded, Letter from Elizabeth J. Kerttula, Assistant Attorney General, to Norman A. Cohen, Deputy Commissioner, ADF&G (Sept. 28, 1990; 663-91-0106), revised, 1991 Inf. Op. Att'y Gen. (Mar. 14; 663-91-0280) (Main Bay hatchery contract; cost recovery funds), overruled in part, 1992 Inf. Op. Att'y Gen. (Aug. 26; 663-92-0327).
- 1990 Inf. Op. Att'y Gen. (Aug. 1; 663-90-0327) (ADF&G authority to manage fisheries for hatchery broodstock and cost recovery).
- 1988 Inf. Op. Att'y Gen. (June 14; 663-93-0037) (re-dated for purposes of indexing, Jan. 1, 1992) (Cannery Creek hatchery contract; application of State Procurement Code).
- 1988 Inf. Op. Att'y Gen. (June 8; 663-88-0501) (Baranoff Warm Springs Hatchery development options).
- 1988 Inf. Op. Att'y Gen. (Apr. 13; 663-88-0413) (Application of AS 36.30 to allocation of federal funds related to U.S. - Canada Pacific Salmon Treaty).
- 1987 Inf. Op. Att'y Gen. (Mar. 19; 663-87-0372) (Appropriation of salmon enhancement tax proceeds to aquaculture association).
- 1984 Inf. Op. Att'y Gen. (June 11; 366-180-84) (Vertical integration of nonprofit fish hatchery).
- 1982 Inf. Op. Att'y Gen. (Sept. 9; 366-086-83) (Authority to transfer hatcheries).
- 1982 Inf. Op. Att'y Gen. (Mar. 30; 366-197-82) (Transfer of operation of state hatcheries).

HB

191

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/19/94

FURTHER:

DATE TURNED INTO OFFICE: 4-27-94

The Finance Committee considered HOUSE BILL NO. 191

"An Act relating to cost recovery by contractors who operate state-owned hatcheries."

and recommends:

replace with _____ CS _____ (FINANCE)

or adopt previous _____ CS _____

attaches amendment(s)

same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
DFAG	12/17/93	-0	

Appropriation No Fiscal Note

DO PASS:

Steve Riege

Greg Stuber

Tim Kelly

Bob Noyes

1. _____
 Co-Chair: Signature/Recommendation

OTHER RECOMMENDATIONS:

2. _____
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 2

Bill Version: HB 191

(S) Publish Date: 4/19/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: 11/19/93 Dept. Affected: Fish and Game
 Title: Contractor Operated State Hatcheries BRU: CFM&D
 Component: Fisheries Management
 Sponsor: Representative Williams
 Requestor: Senate Resources COMPONENT SERIAL NO. 1941

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	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	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY94) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Bob Clasby
 Division: Commercial Fisheries Management and Development
 Approved by Commissioner: [Signature]
 Agency: Fish and Game

Phone: 465-4210
 Date: 11/19/93
 Date: 12/17/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

No. 1
Bill Version: HB 191
(H) Publish Date: 3/17/93

Revision Date: _____
Title: An act relating to cost recovery by contractors who operate state-owned hatcheries
Sponsor: Williams
Requestor: _____

Department Affected: Fish and Game
BRU: FRED
Component: FRED
COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	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	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

CAPITAL	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
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REVENUE FUND SOURCE:	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
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FUNDING:

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	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	\$0.0	\$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 (FY93) impact: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill would allow funds from cost recovery at a contracted state hatchery to be used for the same purposes that funds from cost recovery at ordinary PNP hatcheries may be used. Under current AS 16.10.480(d), contractors can only use funds generated from cost recovery at a contracted hatchery for operating that hatchery. If insufficient operating funds are generated at a contracted hatchery, the contractor may use funds from one of its own hatcheries to support the state-owned hatchery, but could not use funds from another contracted facility to support the first.

Prepared By: Steve McGee Phone: 465-4160
Division: FRED Date: 3/10/93
Approved by Commissioner: Carl L. Rosen
Agency: Department of Fish and Game Date: 3/14/93

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195

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FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred:

FURTHER REFERRALS:

Date of Committee Action: 1/19/94

The FINANCE Committee considered:
HOUSE BILL NO. 195

HB 195
AUTHORIZING YOUTH COURTS

"An Act authorizing youth courts by which to provide for peer adjudication of minors who have allegedly committed violations of state or municipal laws, renaming the community legal assistance grant fund and amending the purposes for which grants may be made from that fund in order to provide financial assistance for organization and initial operation of youth courts, and relating to young adult advisory panels in the superior court."

RECOMMENDATIONS:

be replaced with CS HB 195 (FIN) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dep't) _____

APPROVES PREVIOUS: (Dep't/Date) _____

fiscal impact _____

fiscal note(s) _____

zero fiscal note ^{HFC} F.C.C.R.A., H.S.S.

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Ronald L. Linn</i>	X	<i>Eileen P. Muehlen</i>		✓	
<i>Mark Stanley</i>	X				
<i>Terry Martin</i>	X				
<i>Paul F. Farrell</i>	X				
<i>Ben S. ...</i>	X				
<i>Tom Hoff</i>					
<i>Mike ...</i>	X				
<i>Jay Brown</i>	✓				
<i>Gene ...</i>	X				
<i>Richard ...</i>	X				

Ronald L. Linn *E.P. Muehlen*
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 195 (HES)

Revision Date: 01/14/94 Dept. Affected: Health and Social Services
 Title: An Act authorizing youth courts for peer adjudication of minors... BRU: Family & Youth Services
 Sponsor: Representatives Sitton, Ulmer Component: Southeastern, Southcentral, & Northern Regions
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. 0258,0254,0255

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
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 EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGES IN REVENUES						
---------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 94) impact: 0.0

ANALYSIS: (Attach a separate page if necessary)

There would be no fiscal impact to the department if this bill were to become law.

Prepared by: Deborah R. Wing, Director *Deborah R. Wing*
 Division: Division of Family & Youth Services
 Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. *Margaret R. Lowe*
 Agency: Department of Health & Social Services

Phone: 465-3191
 Date: 01/14/94
 Date: 01/14/94

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FISCAL NOTE

REQUEST:

Revision Date: _____ Dept. Affected CR&A- _____
 Title: An Act Authorizing Youth Courts
 Sponsor: Sitton, Ulmer BRU: Administration & Support
 Requestor: House Finance Committee Components: Administrative Services
 #68+

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	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	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUNDING: (THOUSANDS OF DOLLARS)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	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	0.0	0.0	0.0	0.0	0.0	0.0

ESTIMATE OF ANY CURRENT YEAR (FY 94) COST \$

_____ none _____

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Rep. Ron Larson
Rep. Ron Larson, Co-Chair

Prepared By: Rep. Eileen MacLean, Co-Chair
 Division: House Finance Committee
 Approved By: _____
 Agency: _____

465-3878
 Phone: 465-4833
 Date: 4/25/93

 Date: _____

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Representative Joe Sitton

Sponsor Statement
House Bill 195 - relating to the establishment of youth courts
by

Representative Joe Sitton

House Bill 195 establishes the authority for the establishment of a youth program as a juvenile diversion program under the Department of Health and Social Services. Under the provisions of this legislation, youths under the age of 18 who have allegedly committed an offense may choose to go through a youth court proceeding instead of through the regular court system, provided they have the approval of the juvenile intake authorities and the consent of their parents.

While other states have youth (or teen) courts, in Alaska, only Anchorage has developed such a program; it has been in existence since 1989. It has enjoyed a tremendous success and is highly supported by the community. Out of a total of 69 cases, only four juveniles were arrested for a second offense.

Perhaps one of the greatest reasons for its success is the close working relationship between the different agencies involved: the Department of Health and Social Services, the Alaska Court System, the Alaska Bar Association, the Anchorage Bar Association, the school district, and law enforcement agencies.

In the Anchorage program, cases are referred by juvenile probation officers. Referrals may also be made by other entities, such as a store alleging shoplifting.

Defendants and their parents must agree to allow the Youth Court to hear the case and the Youth Court must accept jurisdiction. Court proceedings insure them the right to be represented by a lawyer, the right to trial by jury, the right to cross-examine witnesses, the right against self-incrimination, and the right to appeal.

The court is composed of students under 18 years of age who volunteer as judges, jurors, bailiffs, clerks, prosecutors and defense attorneys. To be

eligible to sit on the court, students must attend an 8-10 week class and pass a youth court bar examination. Legal advisors are available to assist student prosecutors and defense lawyers in preparing their cases for trial.

House Bill 195 would provide a similar mechanism for other communities in Alaska, both rural and urban. Each community would be able to tailor the youth court system to its own unique needs and resources. A great deal of effort has gone into crafting legislation which would provide a structure for a youth court program while at the same time providing maximum flexibility for communities to create a program which would work best for them.

This legislation provides for the establishment of a youth court program under the aegis of the Department of Health and Social Services; it is this department's juvenile intake officers who have jurisdiction over juvenile offenders.

In addition, the legislation amends AS 44.47.200, the community legal assistance grant fund to provide for "juvenile justice" grants to communities and to non-profit corporations to establish and organize a youth court program in a community. The grant amount may not exceed \$5,000 and the grant must be matched by cash or in-kind contributions. The burden of success thus lies with a community's commitment.

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Representative Joe Sitton

SECTIONAL ANALYSIS CS HOUSE BILL 195 (JUD) - Youth Courts

This analysis outlines the principal features of CS House Bill 195 (Jud), a measure authorizing youth courts in order to provide for peer adjudication of minors charged with violations of state laws or municipal ordinances. The bill also proposes to broaden (and rename) the use of the community legal assistance grant fund as a source of financial support for new youth courts.

The major difference between the Judiciary CS and the original bill consists in the elimination of references to the court system. It is the juvenile intake unit of the Department of Health and Social Services, rather than the court system, which provides for waivers to diversion programs and it was at the request of the court system that the references to the court system have essentially been deleted.

Section 1 and 2. Sets out the purpose and background of this legislation.

Section 3. This bill section, the measure's principal operative provision, adds a new section to codified law. AS 18.05.100 is added as a part of the title concerned generally with health and safety matters. The section authorizes establishment of youth courts. Specifies that only one youth court may be established within the boundaries of a municipality. Subsection (c) establishes nonprofit corporations as entities which may serve as youth courts.

Bill Sections 4-8 rename and revise the objectives of the existing Community Legal Assistant Grant Fund.

Section 4. AS 44.47.200 [COMMUNITY] LEGAL ASSISTANCE AND JUVENILE JUSTICE GRANT FUND.

The amendments proposed to AS 44.47.200 by this bill section change the name of the fund and authorize use of money in the fund to help nonprofit corporations start operations as youth courts.

Section 6. The addition of AS 44.47.210(b) proposed by this bill section permits nonprofit corporations planning to operate youth courts to apply for a grant

from the fund, direct that the grant be matched, but permit waiver of the match requirement under the circumstances noted.

Section 8. The addition of AS 44.47.220 (b) proposed by this bill section sets limits on the amount that may be awarded as a grant from the fund to a nonprofit corporation planning to operate a youth court, and limits on the proper use by the grantee of the money received by the grant.

Sections 5 and 7. The changes made by these two bill sections are technical changes to existing law made in light of the proposed additions set out in bill sections 4, 6, and 8

Alaska State Legislature

Legislative Research Agency



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October 25, 1990

MEMORANDUM

TO: Senator Jay Kerttula

FROM: Maureen Weeks ^{MW}
Legislative Analyst

RE: Teen Courts in Alaska and Other States
Research Request 90.364

You asked for information about teen courts (courts in which young defendants charged with minor offenses appear before juries of their contemporaries). This memorandum begins with information about teen courts in general and continues with brief descriptions of teen courts in Anchorage, Alaska; Hillsborough County, Florida; Denver, Colorado; Odessa, Texas; and Pasco County, Florida. For comparison, selected characteristics of the five model courts are presented in the attached table.

Background

Most youthful, first-time offenders who commit misdemeanors do not go to court, do not appear before a jury and are not sentenced by a judge. Instead, they receive a letter warning them not to offend again and they may be ordered to attend several hours of class for shoplifters or substance abusers. Teen courts are an effort to change this. They replace the "slap on the wrist" of a letter with the intimidating formality of a court appearance. Furthermore, they ask young people to appear before juries composed of other young people--tribunals which juvenile justice experts say tend to be harder on young offenders than adult jurors would be. By giving young, first-time offenders a glimpse of "real life" before judge and jury, these courts function as juvenile diversion, early intervention programs. Their purpose is to stop the progress from misdemeanor to felony by asking young offenders to take responsibility for their acts and accept sanctions determined by their peers.

Teen courts are composed of student volunteers who act as jurors and sometimes lawyers, clerks and bailiffs. Most are conducted by volunteer adult judges. Cases are generally screened. Defendants may be referred by the police, school officials, judges and, sometimes, private businesses. Most cases involve petty crimes. Teen courts are not recognized as courts of original or appellate jurisdiction.

Senator Kerttula
October 25, 1990
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Although the five courts we have chosen as models for discussion in this memorandum differ in many ways, all offer teen-age defendants the right to trial by their peers--defined in these courts as trial by one's contemporaries. Three carry this principle further by also using young people as prosecutors, defense lawyers, clerks and bailiffs. One (the Anchorage Youth Court) expands the concept to its fullest by allowing students to preside as judges.

All five teen courts hold their proceedings in local courtrooms to impress upon defendants that the session is "real." How court is conducted varies, however. For example, while the East Pasco Juvenile Court stresses the authenticity of the hearing by seating teens as jurors in regular juvenile court proceedings (presided over by a sitting judge and argued by actual prosecutors and public defenders), the Anchorage Youth Court asks teen-age defendants to accept verdicts and fulfill sentences determined solely by what many young people consider the most formidable of forums--other teen-agers.

The role of the jury also varies with the court. Three of the five courts we studied accept only defendants who are willing to admit guilt. In these courts, the teen-age jury hears arguments before determining an appropriate sentence. Two teen courts, however, allow not-guilty pleas. In one (East Pasco County Juvenile Court), young jurors recommend a verdict and, where appropriate, a sentence to the sitting juvenile court judge. In another (Anchorage Youth Court), young people are allowed much more authority. Here, after listening to arguments by youthful prosecutors and defense lawyers, teen juries determine a verdict and teen judges pronounce sentence.

Teen courts differ from each other in other ways. The Odessa Teen Court, begun in 1983 and the oldest of the courts we studied, emphasizes family responsibility by requiring parents of teen-age defendants to attend parent training workshops. The Denver Teen Court, which opens next month, is designed to replace school suspension and expulsion (which many students perceive as rewards) with community service and restitution. The Hillsborough County Teen Court stresses a variety of sentencing options by allowing student jurors to impose modified house arrest and restrict a defendant's driving privileges.

The advantages of teen courts are several. First, they place young, first-time misdemeanants before a court, a forum they take seriously. Second, they allow young people to be tried and sentenced by juries of their peers. Third, they allow defendants to pay their debts to society without incurring criminal records. Fourth, sentences by youth courts encourage a sense of responsibility by stressing redress to the community. Fifth, teen courts allow young people--defendants and court officials--to learn court proceedings first hand. And sixth, teen courts reduce the volume of cases brought before regular juvenile courts.

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Teen Courts

Anchorage Youth Court

Contact: Blythe Marston
Chair, Youth Court Advisory Committee
Bogle & Gates
907-276-4557 or

Sharon Leon, Coordinator
Anchorage Youth Court
274-5986 (between 1 p.m. and 5 p.m.)

The court is composed of middle school and high school students (ages 12 to 18) who volunteer as judges, jurors, bailiffs, clerks, prosecutors and defense attorneys. To be eligible to sit on the court, students must attend an eight-to-ten week class and pass a Youth Court Bar Examination. About 100 students are members of the bar, with another 200 in preparation classes where they are taught constitutional law, criminal law and procedure, ethics and advocacy. Legal advisors prepare student prosecutors and defense lawyers before their cases go to trial.

Judges are elected by members of the Youth Bar Association. They must have argued twice as prosecutors and twice as defense attorneys. The chief judge and assistant chief judge must have served at least once as associate judge.

Defendants, who are also between the ages of 12 and 18, are usually first offenders charged with petty crimes. They have been referred through the juvenile probation department, but they may be referred by other organizations, such as a store alleging shoplifting. Defendants and their parents must agree to allow the Youth Court to hear the case. Court proceedings insure them the right to be represented by a lawyer, the right to trial by jury, the right to cross-examine witnesses, the right against self-incrimination and the right to appeal.

At arraignment, defendants may plead guilty or not guilty. Student jurors and judges hear arguments before they determine the verdict and set the sentence.

Offenses include petty crimes, but the Youth Court has also heard felonies and civil suits.

Sentences include community service and restitution. A defendant who wishes to appeal a verdict or sentence must submit the appeal within three days of the sentence. Once a sentence is served satisfactorily, the record is expunged.

Miscellaneous: This court is the most developed of teen courts we studied. It is the only court in which students serve as judges, the only court in which student lawyers argue cases for defendants who have pleaded not guilty, and the

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only court which requires students to pass a bar examination before qualifying to sit on the court.

The court has heard between 30 and 40 cases in the three years it has existed. (Juvenile probation officers have begun to refer cases increasingly frequently, according to Ms. Marston.) Trials are conducted at the Anchorage Courthouse in the evening.

The court is administered by two groups. A 16-member administrative board of lawyers, judges, police officers and students meets quarterly to oversee funding. This board is composed equally of adults and students. In addition, the Anchorage Youth Court Bar Association, composed of students who have passed the bar examination, meets weekly. The court was originally funded solely by the Anchorage Bar Association. Recently, funds have been appropriated from the Interest On Lawyers' Trust Association (IOLTA) funds. Private individuals also contribute to the court.

We will send under separate cover an Anchorage Youth Court video tape of the case of *State v. Pat O'Shea*, in which the defendant is accused of "minor assault" the night of March 23, 1989, after an evening of dancing at the Flaming Turban. The tape shows a three-judge panel presiding with youthful lawyers arguing before an attentive jury in procedures modeled after state court proceedings.

Hillsborough County, Florida

Contact: Bob Sleczkowski,
Director, Juvenile Services,
Thirteenth Judicial Circuit, Florida
813-272-5110

The court is composed of students from area high schools who volunteer to serve as prosecutors and defense attorneys, as well as bailiffs, court clerks and jurors. They must complete a three-hour orientation and training before they are allowed to participate on the court.

The judge is a volunteer from the Young Lawyers Association.

Defendants, who are between 13 and 17 years old, participate voluntarily in teen court. No defendant appears before court officials from his or her own high school. Defendants are referred by the police through the state's attorney. First-time misdemeanants who do not qualify for teen court hearings may go to juvenile arbitration.

Defendants are required by statute to plead guilty. Jurors hear arguments and decide the sentence.

Offenses heard in teen court include school offenses (e.g. battery, trespassing) and alcohol offenses.

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Sentences last for five weeks. They include community service, modified house arrest, driver's license restriction, attendance at Alcoholics Anonymous meetings, written apologies, essays and jury duty. Sentences must be served exactly as determined by the teen court. After five weeks, the director of juvenile services rehearses the case and, if the sentence is completed satisfactorily, the record is expunged.

Miscellaneous: The Hillsborough County teen court was established in March 1990. It meets Tuesday and Thursday nights in a county courtroom. Four cases are heard each night. Nineteen area high schools participate in teen court on a rotating basis (each school sends a teen court once every six weeks). Adult staff includes the teen court coordinator, counselor, a secretary and director of juvenile services for the Thirteenth Judicial Circuit.

Denver, Colorado

Contact: Jan Church
Chair, Teen Court Advisory Board
1700 Lincoln, Suite 4100
Denver, Colorado 80203
303-861-7000

The court is composed of students who volunteer to serve as jurors and prosecutors and defense attorneys.

The judge is a volunteer retired judge.

Defendants are students in trouble in middle school and high school who have committed acts for which they would be suspended or expelled from school (but not serious enough to warrant a criminal charge). They participate in teen court voluntarily, although court organizers ask school principals to "strongly encourage" young people to choose teen court over traditional punishments which keep them out of school.

To appear in court, a teen must sign a contract admitting guilt. Jurors hear arguments and set the sentence.

Offenses heard by teen court include stealing, fighting, trespassing and possessing alcohol on campus.

Sentences include community service, apology to the victim and restitution. Those who do not comply with the teen court sanction are referred to the school or the police department.

Miscellaneous: The purpose of this program is to replace traditional negative school punishment, such as suspension and expulsion, with sanctions which keep the student in school and encourage him or her to serve the community. It is an attempt to intervene before students commit more serious offenses for which

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Page 6

they will be charged. Teen court, sponsored by the Denver Bar Association, holds its first hearing in November 1990. This court replaces a teen court begun in the 1970s and disbanded in the mid-1980s.

Odessa, Texas

Contact: Natalie Rothstein
201 N. Grant
Odessa, Texas 79761
415-333-3641

The court is composed of teen-agers who volunteer to act as jurors, bailiffs, clerks, prosecutors and defense lawyers. A master jury trained in interview and assessment skills hears traffic cases; other juries hear miscellaneous cases. Student court officials are trained during pre-trial and post-trial meetings with the judge and the teen court director.

The judge is a volunteer retired district court judge.

Defendants are referred by police, local courts, the justice of the peace courts and the schools. They participate in teen court voluntarily. No defendant may go through the teen court twice.

To qualify for teen court, defendants must plead guilty. Jurors hear arguments before determining the sentence.

Offenses heard in teen court include traffic offenses and Class C and B misdemeanors, including some drug possession cases.

Sentences include community service and jury duty. Alcohol or drug offenders must take a chemical abuse workshop. The parents of all offenders must take a parenting workshop. If the sentence is satisfactorily completed, the record is labeled "dismissed through Teen Court."

Miscellaneous: The Odessa Teen Court was established in November 1983. It meets every Tuesday night in the county courthouse, with seven juries hearing 21 trials. One "master jury" hears 15 traffic cases each night, while six other juries hear other cases. Parent participation is mandatory. Parents must be present at the initial interview with the teen court director, as well as at the trial. In addition, parents must attend three-hour parenting workshops, taught by the court director and by her husband, a professor at the University of Texas. The director says this parent training is vital to the program's success. The program is sponsored by the Junior League of Odessa. Two-thirds of the program's funding is from the city council and one-third is from the schools.

Senator Kerttula
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Pasco County, Florida

Contact: Judge Lynn Tepper
East Pasco Juvenile Court
813-996-7341

The court is composed of students from the local high school (Zephyrhills High School). Jurors, selected from the school's law studies class, sit as the jury in actual cases heard by the East Pasco Juvenile Court. Jurors are trained by the law studies teacher, who discusses jury instructions in class, and by the sitting judge, who appears before the class once each semester to discuss the state's juvenile justice system. The judge also asks the state's attorney, the public defender and a pre-trial case worker to speak to the class. During court, jurors sit in the jury box. The trial proceeds as with a non-jury trial, except that all objections by lawyers must be made and argued on the floor where the jurors can hear them. Bench conferences, voir dire and objection to particular jurors are not allowed.

The judge is Circuit Court Judge Lynn Tepper (replacing Judge Maynard F. Swanson, Jr., who began the program).

Defendants are juveniles whose cases are on the regular docket; cases are not screened.

Defendants may plead guilty or not guilty. Jurors recommend the verdict by majority vote and, if the verdict is guilty, jurors also recommend sentencing. (Judge Swanson says his verdict differed from the jury's only once; he attributes that anomaly to his mistake in not properly instructing the jury.)

Offenses include any offense on the juvenile court docket.

Miscellaneous: This is the only court we studied in which jurors serve under a sitting judge. It has received national publicity on both the NBC Today Show and NBC Nightly News.

We attach an article describing the Pasco County Teen Court ("Pasco Juvenile Justice Program Wins National Fame," *Florida Bar News*, May 15, 1990); a description of the Hillsborough County Teen Court ("Teen Court," provided by Bob Sleczkowski, director of juvenile services in Tampa, Florida); and an article describing the Odessa Teen Court (Robert Rothstein, "Teen Court: A Way to Combat Teen-age Crime and Chemical Abuse," *Juvenile & Family Court Journal*, 1987, p. 1-4). In addition, we attach several documents from the Anchorage Youth Court. The documents include step-by-step instructions in how to set up similar courts in other areas ("Anchorage Youth Court: Trial by Peers") and the Anchorage Youth Court Constitution.

I hope this information is useful. If you have any questions, or want additional information, please contact this agency.

ANCHORAGE YOUTH COURT CONSTITUTION

* (As Revised Spring, 1991)

Preamble

Municipality of Anchorage youths, recognizing the importance of respect for the law, and firmly believing that acceptance of responsibility is essential toward being conscientious citizens, hereby establish the Anchorage Youth Court as a practical application of their responsibility to themselves and their community.

Statement of Purpose

Anchorage Youth Court is intended to provide benefits of citizenship to the youth of the Municipality of Anchorage. It shall do so by providing an alternate adjudication and sentencing procedure for young offenders. It shall offer an opportunity for those who make mistakes early in their lives to constructively pay their debt to society without incurring a criminal record. It shall foster an atmosphere of respect for the law through the principle of judgement by peers and restitution for wrongs committed.

The Anchorage Youth Court will emulate adult proceedings so as to provide an opportunity for youths to learn about criminal justice. Unless an action or procedure is specifically addressed by this constitution, the general principles of court proceedings shall apply as far as practicable.

Article I: Organization

Section 1. The Anchorage Youth Court is not recognized as a court of original or appellate jurisdiction by the laws of the State of Alaska. All cases tried must be referred to the Anchorage Youth Court by a Referring Authority as defined in Section 2, below, (hereinafter "Referring Authority"), and all referrals will be made solely at the discretion of the appropriate Referring Authority. The Anchorage Youth Court's findings and recommendations in a case shall be returned to the Referring Authority before final disposition.

Section 2. For purposes of the Anchorage Youth Court, a Referring Authority shall include but is not limited to the Department of Health and Social Services and all recognized courts within the State of Alaska.

Section 3. The Anchorage Youth Court shall have only such power to enforce a sentence as is delegated by the Referring Authority. A person tried by the Anchorage Youth Court is not discharged from the jurisdiction of the Referring Authority until a recommendation of discharge of the case has been made by the Anchorage Youth Court to the Referring Authority, and the individual is discharged. Failure to comply with the sentence imposed by the Anchorage Youth Court will result in an automatic return of the case to the Referring Authority.

Section 4. The Anchorage Youth Court shall have jurisdiction over only those individuals who are charged with delinquent conduct occurring in the Municipality of Anchorage and are enrolled in grades 7 through 12 and/or are 12 to 18 years of age. Younger

defendants may be considered upon special agreement and with the understanding that the defendant will be adjudicated by 7 - 12 graders.

Section 5. Anchorage Youth Court shall consist of one or more organized courts.

Article II: Administrative Board

Section 1. Composition. The Administrative Board shall consist of residents of the Municipality of Anchorage. An equal number of members shall represent the youth community and the adult community, each to serve for a term of one year. Nomination of Board members shall be made by a nominating committee comprised of the existing Administrative Board (except that the first nominating committee shall be the establishing constitutional committee). Any member of the Anchorage Youth Court Bar Association may nominate a member for a position on the Administrative Board, and that nomination must be given to the nomination committee within ten (10) days of the due date of nominations. The nominating committee shall be formed no less than 30 days prior to the due date of the list of nominees.

Youth nominees shall be selected from and represent one from each school which has students participating in Anchorage Youth Court. **Youth nominees must maintain active status and attend Executive Board Meetings.** Adult nominees may be selected from and represent the following:

- 1) the judiciary;
- 2) juvenile probation;
- 3) the field of law enforcement;
- 4) the field of education;
- 5) the Anchorage Bar Association
- 6) the adult community at large; or
- 7) parents of youths over whom the Anchorage Youth Court has

jurisdiction.

The list of nominees shall be given to the Anchorage Youth Court Coordinator who shall provide a written notice of the appointees within 15 days of receiving the list of nominees.

Section 2. Duties. The Administrative Board shall promote the purpose of this constitution. The duties of the board shall include, but are not limited to fiscal matters, appointing staff members, maintaining liaisons between the Anchorage Youth Court and law enforcement agencies of the State of Alaska and the Municipality of Anchorage, as well as general supervision of the Anchorage Youth Court. The Administrative Board may adopt any lawful resolution necessary to further the purposes of the Anchorage Youth Court not in conflict with the Anchorage Youth Court Constitution.

Section 3. Meetings. The Administrative Board shall meet at least once each semester with advance notice.

Article III: Advisory Staff

Section 1. The advisory staff of the Anchorage Youth Court shall be appointed by the Administrative Board and shall consist of a Coordinator and a Legal Advisor, and such other staff deemed necessary. The advisory staff shall report to the Administrative Board. The term of service for an advisory staff member shall be one year.

Section 2. In selecting a Coordinator, special consideration shall be given to applicants with some interest, experience, or education in law. It shall be the responsibility of the Coordinator to review and approve, together with the Legal Advisor, referrals to the Anchorage Youth Court; to establish, oversee, and direct such procedures and perform such duties as are required to ensure the smooth and proper operation of the Anchorage Youth Court network; to maintain accurate, current records of costs and expenses of the Anchorage Youth Court; and to act as liaison between the Anchorage Youth Court Bar Association and membership, and the Administrative Board and the Anchorage court system at large. In so far as elected positions are concerned, the Coordinator shall be responsible for receiving nominations, preparing and distributing ballots, and publishing election results.

Section 3. Legal Advisor. The Legal Advisor preferably should be an attorney. The duties and responsibilities of the Legal Advisor shall be to review and approve, together with the Coordinator, referrals to the Anchorage Youth Court; and to generally confer with advise, and direct Anchorage Youth Court staff and members as requested, required, or needed.

Article IV: Membership and Positions

Section 1. Membership. To qualify as a member of the Anchorage Youth Court, a person must be enrolled in a grade between 7 and 12 in a public or private school in the Municipality of Anchorage, and must successfully complete a training course and pass an Anchorage Youth Court Bar examination. In order to qualify as an active member, a member must have attended a majority of Anchorage Youth Court Bar Association meetings held within the last three months. A member may avoid inactive status, when necessary, by making prior arrangement with the coordinator for pending absence. Upon return, the member may re-establish his or her standing by participating in a Youth Court function. All members are subject to the rules and guidelines established by the ethics committee.

Section 2. Nomination. The Administrative Board shall be responsible for appointing nominating committees from time to time. A nominating committee shall be responsible for compiling a list of nominees for positions of the administrative board and for obtaining written confirmation from those nominees of their willingness to serve. Except as provided in Article II, Section 1, and Section 5, below (Special Elections), a nominating committee shall be formed in a reasonable time prior to the due date of a final list of nominees. The final list of nominees shall be due no later than three weeks prior to the election and shall be given to the Coordinator. Nomination for candidacy for elected office shall be made verbally at the Bar Association meeting prior to the meeting at which elections are held. In order to become a candidate for office, one must be an active Bar Association member and within two (2) weeks of nomination submit a written letter of intent outlining expected duties, responsibilities, and level of commitment if elected.

Section 3. Election. Members of the Anchorage Youth Court shall elect from among members nominated pursuant to Article IV, Section 2, one Chief Judge, one Assistant Chief Judge, a pool of at least six Associate Judges, one Clerk, one Anchorage Youth Court Bar Association President, one Vice President, one Treasurer, and one Secretary. The term of each of these offices shall be one year. Elections shall be held annually in February at a meeting announced two weeks in advance in writing to all Anchorage Youth Court Bar Association members. A simple majority of those present and

voting shall be required for election to any office. Officers will assume positions the first of April, following election.

No one shall hold more than one elected position at any time. A vacancy of an elected position may be filled by the appointment of any active bar member, including members holding elected positions at the time. To assume the appointed position on a permanent and elected basis as outlined in Section 5 below, the said officer must resign his first position. If any member elected to a position is unable to fill that position, a new vote must be taken as soon as practicable.

Voting shall be by secret, written ballot. Each voter may cast one vote for each position to be elected. All ballots shall be placed by the voter in a sealed ballot box. At the conclusion of voting, the ballot boxes shall be delivered to the **graduating seniors**, who shall count and tally all ballots under the supervision of the Coordinator and report the results to the membership.

Section 4. Removal. Any person elected may be removed from office by a two-thirds majority of the votes cast by the members of Anchorage Youth Court, but only after the grounds therefor have been presented to the person in writing and the person has had an opportunity for a hearing before the Anchorage Youth Court Bar Association membership at a meeting set for that purpose.

Section 5. Vacancies. In the event of a vacancy in an elected position, the officers of the Anchorage Youth Court Bar Association (i.e., Bar Association President, Bar Association Vice President, Bar Association Secretary) shall have the authority to appoint a temporary replacement, if necessary, until an election can be held to fill the position. But no appointment shall be for more than 45 days, and an appointment shall end immediately upon election of a person to fill the position. Elections shall be held in the same manner as provided in Sections 2 and 3, above.

Section 6. Anchorage Youth Court Bar Association President. Any attorney who is at least 16 years old or at least a junior in high school is eligible to hold the office of Bar President. The Anchorage Youth Court Bar Association President shall chair all meetings of the Anchorage Youth Court Bar Association, assign attorneys to Youth Court cases, supervise all other business of the Bar Association with the assistance of the Coordinator, and serve as the student representative of the Anchorage Youth Court to the community. The Anchorage Youth Court President is authorized to create and fill any position he or she deems necessary. The Anchorage Youth Court Bar Association may remove appointees by 2/3 vote of the members present. The President shall preside over the executive board, which will consist of officers or their representatives, appointees and representatives from each active committee. This board will meet with the coordinator at a regularly scheduled time.

Section 7. Anchorage Youth Court Bar Association Vice President Any attorney who is at least 16 years old or is a junior in high school is eligible to hold the office of Bar Association Vice President. The Anchorage Youth Court Bar Association Vice President shall serve in the absence of or at the request of the Anchorage Youth Court President, and in that event shall serve in place of and with the same power and authority of the Anchorage Youth Court Bar Association President.

Section 8. Secretary. Any member who is at least 16 years old or is at least a junior in high school is eligible to hold the office of Secretary. The Secretary shall take minutes and keep recordings of all Anchorage Youth Court Bar Meetings, maintain all

current membership records and attendance records, and assist the Anchorage Youth Court Bar Association President. The Secretary shall publish the minutes of all Anchorage Youth Court Bar Association Meetings and keep Anchorage Youth Court Bar Association members informed of the time and date of upcoming meetings.

Section 9. Treasurer. Any member who is at least 16 years old or is at least a junior in high school is eligible to hold the position of Treasurer. Duties of the Treasurer are, but not limited to; control of student funds, maintain and keep current records, provide treasurer's reports at all Anchorage Youth Court Bar Association meetings.

Section 10. Judges. All judges must be enrolled in grades 10, 11, or 12, and must have served at least two times as prosecuting attorney and at least two times as defense attorney, unless candidates with these qualifications are not available. In case the above qualifications cannot be met, the nominee must have been involved in at least one case. **Three Associate Judge positions must be filled by students with fall enrollment in grades 10 or 11.**

To qualify for the position of Chief Judge or Assistant Chief Judge, a person must have been an Associate Judge at least once.

The Assistant Chief Judge shall serve in the absence of or at the request of the Chief Judge, and in that event shall serve in place of and with the same power and authority as the Chief Judge.

Section 11. Clerk. Any member in grade 7-12 may be elected to the position of Clerk. Under the supervision of the coordinator, the Clerk shall set the Anchorage Youth Court calendar, and send out timely court notices to the Referring Authority and defendants as required. The Clerk of the Anchorage Youth Court shall be responsible for tape-recording all court proceedings, maintaining the tape library of the Anchorage Youth Court, keeping the records of all the Anchorage Youth Court proceedings, maintaining defendant files, and generally assisting the Chief Judge. The Clerk may appoint such assistants, not to exceed three (3), as the Clerk deems necessary.

Section 12. Baliff. Any member in grade 7-12 may be appointed to the position of Baliff. Baliff shall be appointed by the Bar President on a case-by-case basis. The Baliff shall swear-in witnesses, assist in setting up the courtroom, and assist the Chief Judge in maintaining order and decorum in the courtroom.

Section 13. Attorneys. Any member in grade 9-12 may be appointed as an Attorney. Under special circumstances and/or exceptional evaluations, and after consultation with the Chief Judge, the Coordinator may approve the appointment of an Attorney who is in grade 7 or 8.

The selection of attorneys to serve on cases that are referred to the Anchorage Youth Court shall be made by the Bar Association President on a rotating, case-by-case basis. Attorneys shall zealously represent their client to the best of their ability in accordance with the Alaska State Court and American Bar Association rules.

Section 14. Jurors. All youth in grades 7 through 12 and enrolled in a public or private school in the Municipality of Anchorage are eligible to serve as jurors, including any Anchorage Youth Court member.

The method for selecting jurors shall be established by the Administrative Board. The Coordinator shall be responsible for maintaining a list of available jurors.

Jurors are bound to maintain the confidentiality of the defendant and all court proceedings.

Article V: Referral Procedure

Section 1. After a preliminary investigation, the Referring Authority may refer a case to the Anchorage Youth Court. The Referring Authority will meet with the defendant and his/her custodial parent or guardian and explain the purpose of Anchorage Youth Court and its procedures, including sentencing. After an opportunity to confer with counsel, the defendant will be given the choice of proceeding to Anchorage Youth Court or being handled through regular channels, which may include a formal court hearing and a record.

Section 2. If the defendant and his/her custodial parent or guardian agrees to proceed with Anchorage Youth Court, they will sign a voluntary agreement, with the understanding their case will be held open for one hundred twenty (120) days to complete the process. This voluntary agreement will also state that failure to comply with Anchorage Youth Court and other established conditions, once agreed to, may result in having their case handled in formal court proceedings.

Section 3. Anchorage Youth Court proceedings will begin with the referral from the Referring Authority. The Coordinator will receive a copy of the signed voluntary agreement to participate in Anchorage Youth Court, available arrest reports and other related documents. If the case is not accepted by Anchorage Youth Court, the case will be returned to the Referring Authority, together with all documents relating to the case.

Article VI: Anchorage Youth Court Procedure

Section 1. Proceedings in Anchorage Youth Court shall be conducted as far as practicable in substantial conformity with rules and statutes governing adult proceedings in the Alaska court system. The rules and statutes shall be applied and modified as necessary to promote the prompt and just resolution of cases and legal education.

Section 2. At all times, Anchorage Youth Court proceedings will be conducted to ensure that the defendants' rights guaranteed by the Alaska and United States constitutions are protected, including but not limited to the following:

1. the right to be represented by an Anchorage Youth Court attorney;
2. the right to trial by jury;
3. the right to call and cross-examine witnesses;
4. the right against self-incrimination; and
5. the right to appeal.

At all times, Anchorage Youth Court proceedings will be conducted to ensure confidentiality.

Section 3. The Chief Judge or his appointee shall preside over all courtroom proceedings of the Anchorage Youth Court, with the assistance of two associate judges.

Section 4. If after an Anchorage Youth Court court proceeding, the defendant pleads guilty or is found guilty at trial, the judges will determine an appropriate sentence at a sentencing hearing to be held within five (5) days of the verdict or plea. Sentencing shall be in accordance with the informal sentencing guidelines established by the Referring Authority and the Anchorage Youth Court Judges.

Section 5. The Chief Judge shall submit to the Coordinator the findings, recommendations, and sentence of the Anchorage Youth Court. The Coordinator shall submit the findings, recommendations, and sentence to the Referring Authority before final disposition of the case.

Section 6. If the defendant chooses to exercise his right to appeal either a verdict or a sentence, he shall submit a written statement, including reasons for appeal, to the Chief Judge within three (3) days of the sentence. The Chief Judge shall appoint a three-member appeals panel.

There are seven grounds for appeal:

1. verdict not in conformity with Alaska Constitution, statutes or rules;
2. verdict not supported by the evidence;
3. sentence not supported by the evidence;
4. improper legal procedure;
5. inadequate legal representation;
6. new evidence discovered which substantially affects the case; and
7. plea not voluntarily given.

If the appeals panel finds for the defendant, the case shall be remanded for a new trial.

Section 7. The Coordinator shall oversee the defendant's compliance with the Anchorage Youth Court sentencing order (s) and provide status reports to the Referring Authority as required.

Article VII: Voting and Adoption of Rules

Section 1. All members of the Anchorage Youth Court may vote concerning Anchorage Youth Court matters.

Section 2. All matters put to a vote shall be decided by a simple majority of those present unless otherwise specified in this constitution.

Section 3. The Anchorage Youth Court Bar Association may pass rules deemed necessary to its proper functioning, as long as such rules do not conflict with this constitution or the bylaws.

Article VII: Amendments and Ratification

Section 1. In order to ratify and amend this constitution, a constitution committee shall publicize the proposed constitution or the proposed revisions or amendments and provide notice of the voting date and place in a reasonable manner best calculated to reach the largest number of qualified voters as defined below.

Section 2. A qualified voter, for the purpose of ratification and amendment of this constitution, shall be any active member of Anchorage Youth Court Bar Association.

Section 3. The constitutional committee shall have the responsibility of preparing and distributing ballots for voting. Each qualified voter may cast one secret, written ballot for each proposal. The constitution committee will be responsible for counting and tallying of all ballots.

Section 4. A majority of all persons in grades 7 through 12 voting on the proposal (s) shall be required for ratification and amendment.

Section 5. The constitution committee shall promptly announce the outcome of the vote.

* Amendments passed March and April, 1991 in bold type.

Youth court could help

We're intrigued by an idea that could help more of Alaska's young people decide to go straight instead of falling into a life of crime.

Already in place in Anchorage, youth courts in which first-time young offenders are tried and judged by other teens could be set up in other Alaska communities under legislation under consideration by Rep. Joe Sitton, D-Fairbanks.

Sitton's proposal, which has not been introduced yet, would provide \$5,000 state grants to communities that want to set up a youth court to handle first-time misdemeanor crimes committed by young people ages 12-18.

The Anchorage Youth Court has been operating since 1989. The American Bar Association recently gave the program its top awards for outstanding partnership programs and outstanding public education programs.

Under the program, volunteer attorneys train teen prosecutors, defense attorneys, judges, clerks, bailiffs and jurors in grades seven through 12. They represent and judge their peers in actual criminal cases of first-time offenders referred from Anchorage's juvenile court intake.

Youths prosecuted in these courts have a significantly lower rate of recidivism than defendants who participate in the traditional juvenile justice system, according to the bar association.

Youths serving on the court gain an awareness of their legal responsibilities to society in a way unmatched in an classroom setting.

If youth courts could be set up in other Alaska communities, Rep. Sitton believes law-breaking would lose some of the glamor it now has among some groups of young people who apply peer pressure in negative ways. Students would be more likely to take their actions seriously if they are being judged in a court of their peers, he believes.

We think the idea has merit, and encourage lawmakers to give it serious consideration.

2/20/95 FDR

JOURNAL of LAW

Section **B**

1993

Section B to THE ALASKA JOURNAL OF COMMERCE

Justice Kotzebue

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Port inking shment

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Photo by Naomi W. Klouda

Attorney Donna Willard, who will accept the award in Boston for the Youth Court, celebrates with Jesse Kahl, Youth Court Chief Justice; Mina Kumar, Youth Court Mediator; Bryan Clark, Youth Bar President; and attorney volunteers Blythe Marston and Jon Ealy.

Anchorage Youth Court wins national ABA award

By Naomi Warren Klouda
For the Journal of Commerce

Anchorage Youth Court has won the 1993 American Bar Association/Information America Public Education Project award for working in partnership with the justice system to produce a program involving teen lawyers, judges and defendants.

Donna Willard, local attorney and ABA board governor for the district which

includes Alaska, will accept the award on behalf of the teen winners Feb. 5 in Boston at the National Conference of Bar Presidents luncheon. Some 188 teens, ranging from 7th to 12th graders are recipients of the award, which came with a \$5,000 cash grant as well as the Outstanding Partnership Award.

After finishing a 10-week law class, the students worked in actual courtroom settings with juvenile first-offenders arrested for misdemeanor and some felony

crimes. Youth clients were represented and prosecuted by teenage lawyers - and sentenced by teenage judges. No adults are allowed to speak in the court, though teen attorneys can consult adult counsel present in the courtroom. Teen jurors were called in to decide some cases.

Sharon Leon, executive director of the four-year-old Youth Court, says the Anchorage program was
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