

ALASKA LEGISLATURE

1150

HOUSE and SENATE FINANCE COMMITTEE FILES,

1993-1994

224

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 128

(S) Publish Date: 3-18-93

Revision Date: March 17, 1993

Dept. Affected: Governor's Office (OMB)

Title: "An Act Relating to Legislative Audits"

BRU:

Component:

Sponsor: Senate Rules by Request of LB&A

Requestor: Senate State Affairs Committee

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact \$ -0-

Changes in CS SB 128 (STA) have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: (Attach a separate page if necessary)

3/17/93
date Comte Aide (initial)

Prepared by: Portia Babcock, Senate State Affairs Committee Staff

Phone: 465-4522

Division: Senate State Affairs Committee

Date: March 17, 1993

Approved by Commissioner: Senator Loren Leman, Chairman

Date: March 17, 1993

Agency: Senate State Affairs Committee

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FISCAL NOTE

REPORTED OUT OF
4-12-93 No. 1

STATE OF ALASKA
 1993 LEGISLATIVE SESSION

Bill Version: SS 128

(S) Publish Date: 3-18-93

Revision Date: March 17, 1993
 Title: "An Act Relating to Legislative Aunits"

Dept. Affected: Governor's Office (OMB)

BRU: _____

Component: _____

Sponsor: Senate Rules by Request of LB&A
 Requestor: Senate State Affairs Committee

COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact \$ -0-

Changes in SS 128 (STA) have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: (Attach a separate page if necessary)

3/17/93
 date [Signature]
 Comte Aide (initial)

Prepared by: Pontia Babcock, Senate State Affairs Committee Staff Phone: 465-4522

Division: Senate State Affairs Committee Date: March 17, 1993

Approved by Commissioner: Senator Loren Leman, Chairman Date: March 17, 1993

Agency: Senate State Affairs Committee

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SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/93

FURTHER: *not no further*

DATE TURNED INTO OFFICE: 4-12-93

The Finance Committee considered SENATE BILL NO. 128

"An Act relating to legislative audits."

and recommends:

replace with _____ CS _____ (FINANCE)

adopt previous CS SB 128 (STA)

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
S(STA)/Gov.	3-17-93	0	

Appropriation No Fiscal Note

DO PASS.

OTHER RECOMMENDATIONS.

Frank
Steve King No Rec
Ben Whiting No Rec
Al... No Rec
Frank... No Rec

Co-Chair: Signature/Recommendation

Co-Chair: Signature/Recommendation

Adopted as amended
repts it on as amended
4-13-93
FIN

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 128

(S) Publish Date: 3-18-93

Revision Date: March 17, 1993 Dept. Affected: Governor's Office (OMB)

Title: "An Act Relating to Legislative Audits" BRU: _____

Sponsor: Senate Rules by Request of LB&A Component: _____

Requestor: Senate State Affairs Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
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FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact \$ -0-

Changes in CS SB 128 (STA) have no fiscal impact. This fiscal note is appropriate.

ANALYSIS: (Attach a separate page if necessary)

3/17/93
date [Signature]
Comte Aide (initial)

Prepared by: Portia Babcock, Senate State Affairs Committee Staff Phone: 465-4522

Division: Senate State Affairs Committee Date: March 17, 1993

Approved by Commissioner: Senator Loren Leman, Chairman Date: March 17, 1993

Agency: Senate State Affairs Committee

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State of Alaska



Legislative Budget and Audit Committee

Session
Rm. 103
State Capitol
Juneau, AK 99801
(907) 465-4949

Interim
P.O. Box 142
Eagle River AK 99577
(907) 694-4949

Sectional Analysis

SB 128

Section 1:

Provides that the Legislative Budget and Audit Committee may identify audit recommendations that will be monitored by the Office of Management and Budget.

Section 2.

(a) Provides that the Office of Management and Budget shall be responsible for monitoring the implementation of those audit recommendations identified by the Legislative Budget and Audit Committee.

(b) Provides that the Office of Management and Budget report to the Legislative Auditor and to each member of the Legislative Budget and Audit Committee on the status of audit recommendations.

Section 3.

Adds the monitoring of audit recommendations to the duties of the Office of Management and budget

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/22/93

FURTHER: FINANCE

Date of 5-Day Notice 03-01-93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-17-93

STATE AFFAIRS Committee considered SB 128

"An Act relating to legislative audits."

and recommends it be replaced with

and recommends:

replace with _____ CS SB 128 (STA)

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

attaches amendment(s) and report it back as follows

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

DFW

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
Gov. office	3-17-93	<input checked="" type="checkbox"/>	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

 (2) Mike Miller No Rec
 (3) Edwin L. Taylor No Rec.
 (2) J. Duncan - no Rec.

[Signature]
 Chair: Signature and Recommendation

SB

129

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/93

FURTHER:

DATE TURNED INTO OFFICE: 4-15-93

The Finance Committee considered **SENATE BILL NC. 129**

"An Act relating to the state's chief procurement officer."

and recommends:

- replace with CS SB 129 (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
DOT/PF EROS		0	3/2/93

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Dept of Admin		0	3/17/93

Appropriation No Fiscal Note

DO PASS.

OTHER RECOMMENDATIONS:

1. Sharon Do Pass
 Co-Chair: Signature/Recommendation

2. Tracy Grace - 10/255
 Co-Chair: Signature/Recommendation

FISCAL NOTE

No. 2

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: CSSB 129 (STA)

(S) Publish Date: 3-18-93

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to State procurement. BRU: General Services
 Component: Purchasing
 Sponsor: Senate Rules Committee
 Requestor: Senate State Affairs Committee COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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

POSITIONS

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

Estimate of current year (FY93) impact: \$ 0.00

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Dugan Petty, Director
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Nancy Bear Uera
 Agency: Department of Administration

Date: 3/17/93

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3/4/93

Revision Date:
Title: Powers of Chief Procurement Officer

Department Affected: DOT&PF
BRU: E&OS

Sponsor: Rules
Requestor:

Component: D&C
Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

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

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

SB 129

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

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Loren Rasmussen

Phone: 465-2951

Division: Engineering & Operations Standards

Date: March 2, 1993

Approved by Commissioner: Frank G. Turpin

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: March 2, 1993

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8-LS0591NK ✓
Bannister
4/15/93

in deleted
5-18-93
unrev.

CS FOR SENATE BILL NO. 129(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
AUDIT COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to state procurement."**

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

3 *** Section 1. AS 36.30.010(a) is amended to read:**

4 (a) The commissioner shall appoint to the partially exempt service the chief
5 procurement officer of the state. The chief procurement officer must have at least five
6 years of prior experience in public procurement, including large scale procurement of
7 supplies, services, or professional services, and must be a person with demonstrated
8 executive and organizational ability. The chief procurement officer may be removed
9 by the commissioner only for cause. The term of office of the chief procurement
10 officer is six [FOUR] years.

11 *** Sec. 2. AS 36.30.010 is amended by adding new subsections to read:**

12 (c) While a person performs the duties of the chief procurement officer under
13 this chapter, the person may not be employed in or appointed to another position with
14 the state.

1 (d) The annual salary of the chief procurement officer is range 23 of the salary
2 schedule established in AS 39.27.011.

3 * Sec. 3. AS 36.30.080(c) is amended to read:

4 (c) If the department, legislative branch, or judicial branch intends to enter into
5 or renew a lease of real property [OR LEASE-PURCHASE AGREEMENT, EXCEPT
6 AN AGREEMENT RELATED TO A REFINANCING,] with an annual rent to the
7 department, legislative branch, or judicial branch that is anticipated to exceed
8 \$1,000,000, or with total lease payments that exceed \$10,000,000 for the full term of
9 the lease, the department, legislative branch, or judicial branch shall provide notice to
10 the legislature. If the department, legislative branch, or judicial branch intends
11 to enter into or renew a lease-purchase or lease-financing agreement for real
12 property, the department, legislative branch, or judicial branch shall provide
13 notice to the legislature. The notice must include the anticipated annual lease
14 obligation amount, the anticipated total construction, acquisition, or other costs of the
15 project, and the total lease payments for the full term of the lease, if the agreement
16 is a lease-purchase or lease-financing agreement, or if the agreement is a lease
17 other than a lease-purchase or lease-financing agreement and [, IF] the total lease
18 payments for the full term of the lease exceed \$10,000,000 [, THE TOTAL LEASE
19 PAYMENTS FOR THE FULL TERM OF THE LEASE]. The department may not
20 enter into or renew an agreement requiring notice under this subsection unless the
21 project has been approved by the legislature by law. An appropriation for the project
22 does not constitute approval of the project for purposes of this subsection. The
23 department may not enter into an agreement under this subsection if the optional
24 renewal period allowed under the agreement exceeds two years. In this subsection,
25 "term" includes defined renewal options.

26 * Sec. 4. AS 36.30.300(a) is amended to read:

27 (a) A contract may be awarded for supplies, services, professional services, or
28 construction without competitive sealed bidding, competitive sealed proposals, or other
29 competition in accordance with regulations adopted by the commissioner. A contract
30 may be awarded under this section only when the chief procurement officer or, for
31 construction contracts or procurements for the state equipment fleet, the commissioner

1 of transportation and public facilities determines in writing that there is only one
2 source for the required procurement or construction. A sole source procurement may
3 not be awarded if a reasonable alternative source exists. The written determination
4 must include findings of fact that support by clear and convincing evidence the
5 determination that only one source exists. Except for procurements of supplies,
6 services, professional services, or construction that do not exceed the amount for
7 small procurements under AS 36.30.320(a) or (b), as applicable [AS 36.30.320(a)],
8 the authority to make the determination required by this subsection may not be
9 delegated.

10 * Sec. 5. AS 36.30.305(a) is amended to read:

11 (a) A contract for supplies, services, professional services, or a construction
12 contract under \$100,000, may be awarded without competitive sealed bidding or
13 competitive sealed proposals, in accordance with regulations adopted by the
14 commissioner. A contract may be awarded under this section only when the chief
15 procurement officer [COMMISSIONER], or, for construction contracts under
16 \$100,000 or procurements for the state equipment fleet, the commissioner of
17 transportation and public facilities, determines in writing that a situation exists that
18 makes competitive sealed bidding or competitive sealed proposals impractical or
19 contrary to the public interest. Procurements under this section shall be made with
20 competition that is practicable under the circumstance. Except for procurements of
21 supplies, services, professional services, or construction that do not exceed the amount
22 for small procurements under AS 36.30.320(a) or (b), as applicable
23 [AS 36.30.320(a)], the authority to make a determination required by this section may
24 not be delegated.

25 * Sec. 6. AS 36.30.310 is amended to read:

26 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be
27 made under emergency conditions as defined in regulations adopted by the
28 commissioner when there exists a threat to public health, welfare, or safety, when a
29 situation exists that makes a procurement through competitive sealed bidding or
30 competitive sealed proposals impracticable or contrary to the public interest, or to
31 protect public or private property. An emergency procurement need not be made

1 through competitive sealed bidding or competitive sealed proposals but shall be made
2 with competition that is practicable under the circumstances. A written determination
3 by the chief procurement officer of the basis for the emergency and for the selection
4 of the particular contractor shall be included in the contract file. The written
5 determination must include findings of fact that support the determination. Except
6 when there is insufficient time for the chief procurement officer to make the
7 written determination required by this section, the chief procurement officer may
8 not delegate the authority to make the determination.

9 * Sec. 7. AS 36.30 is amended by adding a new section to read:

10 Sec. 36.30.315. DETERMINATIONS BY CHIEF PROCUREMENT
11 OFFICER; CRIMINAL PENALTY. (a) In a determination made by the chief
12 procurement officer under AS 36.30.300 - 36.30.310, the chief procurement officer
13 shall independently examine the material facts of the procurement and independently
14 determine whether the procurement is eligible for the procurement method requested.

15 (b) If the chief procurement officer knowingly makes a false statement in a
16 determination made by the chief procurement officer under AS 36.30.300 - 36.30.310,
17 the chief procurement officer is guilty of a class A misdemeanor.

18 * Sec. 8. AS 36.30.370 is amended to read:

19 Sec. 36.30.370. TYPES OF CONTRACTS. Any [SUBJECT TO
20 LIMITATIONS OF THIS SECTION, ANY] type of contract that will promote the best
21 interests of the state may be used, except that the use of a
22 cost-plus-a-percentage-of-cost contract is prohibited. [A COST-REIMBURSEMENT
23 CONTRACT MAY BE USED ONLY WHEN A DETERMINATION IS MADE IN
24 WRITING BY THE PROCUREMENT OFFICER THAT A
25 COST-REIMBURSEMENT CONTRACT IS LIKELY TO BE LESS COSTLY TO
26 THE STATE THAN ANY OTHER TYPE OR THAT IT IS IMPRACTICABLE TO
27 OBTAIN THE SUPPLIES, SERVICES, PROFESSIONAL SERVICES, OR
28 INSTRUCTION REQUIRED EXCEPT UNDER A COST-REIMBURSEMENT
29 CONTRACT.]

30 * Sec. 9. AS 36.30.610(c) is amended to read:

31 (c) The commissioner of administration or the commissioner of transportation

1 and public facilities, as appropriate, shall, within 15 days from the date the
2 appellant's comments on the protest report are due under AS 36.30.605(c) and (d)
3 [AFTER RECEIPT OF AN APPEAL], notify the appellant of the acceptance or
4 rejection of the appeal and, if rejected, the reasons for the rejection.

5 * Sec. 10. AS 36.30.850(b) is amended by adding new paragraphs to read:

6 (30) contracts that are to be performed in an area outside of the country
7 and that require a knowledge of the customs, procedures, rules, or laws of the area;

8 (31) contracts that are between the Department of Law and attorneys
9 who are not employed by the state and that are for the review or prosecution of
10 possible violations of the criminal law of the state in situations where the attorney
11 general concludes that an actual or potential conflict of interest makes it inappropriate
12 for the Department of Law to review or prosecute the possible violations.

13 * Sec. 11. AS 36.30.150(b) is repealed.

14 * Sec. 12. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding AS 36.30, the
15 Department of Administration, the University of Alaska, the legislature, and the court system
16 may extend for up to a maximum extension of five years a real property lease that is entered
17 into under AS 36.30, including procedures and regulations adopted under AS 36.30.005(c) and
18 36.30.020 - 36.30.030, and that is in existence on the effective date of this Act if a minimum
19 cost savings of

20 (1) 10 percent can be achieved on the rent due under the lease; or

21 (2) five percent can be achieved on the rent due under the lease and the lessor
22 agrees to make modifications of the leased real property to bring the real property into
23 compliance with the requirements of 42 U.S.C. 12101 - 12213 (Americans with Disabilities
24 Act of 1990).

25 (b) The cost savings under (a) of this section shall be calculated on the remaining term
26 of the lease and any renewals, including extensions allowed under (a) of this section.

27 (c) The Department of Administration, the University of Alaska, the Alaska Court
28 System, and the Legislative Affairs Agency shall submit a quarterly report to the Legislative
29 Budget and Audit Committee detailing the leases extended and the cost savings achieved
30 under (a) - (b) of this section. The first report is due July 1, 1994 and must cover the period
31 from the effective date of this Act through March 31, 1994. The subsequent reports shall be

1 made October 1, 1994, January 2, 1995, and April 1, 1995.

2 * **Sec. 13. TRANSITIONAL PROVISIONS.** (a) With respect to the person holding the
3 position of chief procurement officer on the effective date of this Act, the six-year term of the
4 chief procurement officer under AS 36.30.010(a), as amended by sec. 1 of this Act, shall
5 include the time the person holds the position before the effective date of this Act.

6 (b) AS 36.30.010(c) and (d), added by sec. 2 of this Act, apply to the chief
7 procurement officer on and after the effective date of this Act.

8 (c) AS 36.30.300(a), 36.30.305(a), 36.30.310, 36.30.370, amended by secs. 4 - 6 and
9 8 of this Act, and 36.30.850(b)(30) and (31), added by sec. 10 of this Act, apply to a
10 procurement that begins on or after the effective date of this Act.

11 (d) AS 36.30.315, enacted by sec. 7 of this Act, applies to a determination made on
12 or after the effective date of this Act.

13 (e) AS 36.30.610(c), amended by sec. 9 of this Act, applies to a protest report filed
14 under AS 36.30.605 on or after the effective date of this Act.

15 * **Sec. 14.** (a) Subsections 12(a) and (b) of this Act are repealed December 31, 1994.

16 (b) Subsection 12(c) of this Act is repealed April 1, 1995.

AMENDMENT

indented
4-15-93
Frank

IN THE SENATE

BY FRANK

TO: CSSB 129(FIN)

Page 1, line 1, following "procurement" insert:
"and providing for an effective date"



Page 6, after line 16; insert new bill sections to read:

" * Sec 15. section 12 of this Act is retroactive to May 1, 1993.

* Sec. 16. Section 12 and 15 of this Act take effect immediately under AS 01.10.070(c). "

SENATE FINANCE
COMMITTEE

Amendment Number: (3) REVISED
Bill Number: SB 129
Sponsor: FRANK Date: 4/15/93
Logged In By: FRM

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CS SB 129 (FIN) AM

Revision Date: _____
Title: 'An Act relating to State procurement; and providing for an effective date.'
Sponsor: Senate Rules Committee
Requestor: _____

Department Affected: Administration
BRU: Leasing and Facilities
Component: Leasing and Facilities
COMPONENT SERIAL NO. 81

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	*	*	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	*	*	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	*	*	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	*	*	0	0	0	0
TOTAL	*	*	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

*copy to H.F.
4-22-93*

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Dugan Petty, Director
Division: General Services

Phone: _____
Date: _____

Approved by Commissioner: Nancy Bear Userra
Agency: Administration

Date: 4/21/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CS SB 129 (FIN) AM

ANALYSIS: (continued)

Sections 1 through 11 made various changes involving the duties of the Chief Procurement Officer and the procurement process that will have a minimal fiscal impact on the division. Section 12 authorizes the extending of leases during FY 94 and the first half of FY 95 if the lessor will agree to

- a. 10 percent reduction in base rent over the extended term; or
- b. 5 percent reduction of base rent over the extended term if lessors make ADA compliance changes.

This bill would result in lease savings by giving the department the opportunity to extend leases if sufficient savings could be achieved. In practice a lease would have to meet certain criteria before the department would agree to an extension under this bill. For example:

- 1. The lease must have an ongoing and projected need by the agency.
- 2. The lease must meet agency needs.
- 3. Extension of the lease must be an overall good business decision.
- 4. The extension must reduce base rent by a minimum of the required 10 percent or 5 percent.

Not all lessors will agree to a rent reduction in return for an extension, and all leases will not meet our criteria for extension even if the lessor is interested in a cost reduction. It is not possible to accurately predict how much savings will be achieved, but we believe savings could be significant.

FY 94 projected total lease payments are \$31,188.5. There is no way to estimate the fiscal savings at this time. If one-third of our leases average a 5 percent rent reduction and one-third average a 10 percent rent reduction, a \$1,543.8 saving could be achieved. This would result in a base rent reduction for the life of the lease.

CALCULATIONS			
TOTAL LEASE OBLIGATION	PERCENT OF LESSORS AGREEING TO EXTEND		POTENTIAL SAVINGS
31,188.5	at 5%	33%	\$ 514.6
31,188.5	at 10%	33%	<u>1,029.2</u>
			\$1,543.8

This bill gives us significant potential to reduce the current projected lease obligation, but we can only speculate about the actual amount of savings. Several large leases offer very significant opportunity for savings. It is possible savings could fall short or exceed this estimate depending on which lessors are willing to negotiate reductions. The FY 94 leasing budget is comprised of \$26,468.3 in general funds and \$4,720.2 in interagency receipts. Savings could be achieved in both funding sources.

4/28/93

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HCS CSSB 129 (STA)

(S) Await CONC / RECD

Revision Date: _____
Title: 'An Act relating to State procurement; and providing for an effective date.'
Sponsor: Senate Rules Committee
Requestor: _____

Department Affected: Administration
BRU: Leasing and Facilities
Component: Leasing and Facilities
COMPONENT SERIAL NO. 81

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	*	*	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	*	*	0	0	0	0

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	*	*	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	*	*	0	0	0	0
TOTAL	*	*	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

ANALYSIS: (Attach a separate page if necessary.)
See attached.

Prepared by: Dugan Petty, Director *Dugan Petty*
Division: General Services

Phone: _____
Date: _____

Approved by Commissioner: Nancy Bear Usera *NBE*
Agency: Administration

Date: 4/27/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HCS CSSB 129 (STA)

ANALYSIS: (continued)

Sections 1 through 11 made various changes involving the duties of the Chief Procurement Officer and the procurement process that will have a minimal fiscal impact on the division. Section 12 authorizes the extending of leases during FY 94 and the first half of FY 95 if the lessor will agree to

- a. 10 percent reduction in base rent over the extended term; or
- b. 5 percent reduction of base rent over the extended term if lessors make ADA compliance changes.

This bill would result in lease savings by giving the department the opportunity to extend leases if sufficient savings could be achieved. In practice a lease would have to meet certain criteria before the department would agree to an extension under this bill. For example:

- 1. The lease must have an ongoing and projected need by the agency.
- 2. The lease must meet agency needs.
- 3. Extension of the lease must be an overall good business decision.
- 4. The extension must reduce base rent by a minimum of the required 10 percent or 5 percent.

Not all lessors will agree to a rent reduction in return for an extension, and all leases will not meet our criteria for extension even if the lessor is interested in a cost reduction. It is not possible to accurately predict how much savings will be achieved, but we believe savings could be significant.

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CALCULATIONS		
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31,188.5	at 10% 33%	<u>1,029.2</u>
		<u>\$1,543.8</u>

This bill gives us significant potential to reduce the current projected lease obligation, but we can only speculate about the actual amount of savings. Several large leases offer very significant opportunity for savings. It is possible savings could fall short or exceed this estimate depending on which lessors are willing to negotiate reductions. The FY 94 leasing budget is comprised of \$26,468.3 in general funds and \$4,720.2 in interagency receipts. Savings could be achieved in both funding sources.

4-15-93

These amends.
incorporated
within draft
CS5B129 (Fin)
"Kiersion 4-15-93"

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR FRANK

TO: CSSB 129(STA)

Amend #1

Page 4, following line 21:

Insert a new bill section to read:

"* Sec. 11. LEASE EXTENSIONS AUTHORIZED. (a) Notwithstanding AS 36.30, the Department of Administration, the legislature, and the court system may extend for up to a maximum extension of five years a real property lease that is entered into under AS 36.30, including procedures adopted under AS 36.30.020 - 36.30.030, and that is in existence on the effective date of this Act if a minimum cost savings of

University of Alaska

(1) 10 percent can be achieved on the rent due under the lease; or

(2) five percent can be achieved on the rent due under the lease and the lessor agrees to make modifications of the leased real property to bring the real property into compliance with the requirements of 42 U.S.C. 12101 - 12213 (Americans with Disabilities Act of 1990).

(b) The cost savings under (a) of this section shall be calculated on the remaining term of the lease and any renewals, including extensions allowed under (a) of this section.

(c) The Department of Administration, the Alaska Court System, and the Legislative Affairs Agency shall submit a quarterly report to the Legislative Budget and Audit Committee detailing the leases extended and the cost savings achieved under (a) - (b) of this section. The first report is due July 1, 1994, and must cover the period from the effective date of this Act through March 31, 1994. The subsequent reports shall be made October 1, 1994, January 2, 1995, and April 1, 1995."

Renumber the following bill section accordingly.

Page 5, following line 3:

Insert a new bill section to read:

SENATE FINANCE COMMITTEE
Amendment Number: ①
Bill Number: SB 129
Sponsor: FRANK Date: 4/14/93
Logged In By: for

4-14-93 p.m. add University plus University regis. re: procurement

"* **Sec. 13.** (a) Subsections 11(a) - (b) of this Act are repealed December 31, 1994.

(b) Subsection 11(c) of this Act is repealed April 1, 1995."

4-14-93
SF moved
Adopted
8-LS0591N.1
Bannister
4/13/93

A M E N D M E N T

Amend. #2

OFFERED IN THE SENATE
TO: CSSB 129(STA)

Page 2, following line 2:

Insert a new bill section to read:

** Sec. 3. AS 36.30.080(c) is amended to read:

(c) If the department, legislative branch, or judicial branch intends to enter into or renew a lease [OR LEASE-PURCHASE AGREEMENT, EXCEPT AN AGREEMENT RELATED TO A REFINANCING,] with an annual rent to the department, legislative branch, or judicial branch that is anticipated to exceed \$1,000,000, or with total lease payments that exceed \$10,000,000 for the full term of the lease, the department, legislative branch, or judicial branch shall provide notice to the legislature. If the department, legislative branch, or judicial branch intends to enter into or renew a lease-purchase or lease-financing agreement, the department, legislative branch, or judicial branch shall provide notice to the legislature. The notice must include the anticipated annual lease obligation amount, the anticipated total construction, acquisition, or other costs of the project, and the total lease payments for the full term of the lease, if the agreement is a lease-purchase or lease-financing agreement, or if the agreement is a lease other than a lease-purchase or lease-financing agreement and [, IF] the total lease payments for the full term of the lease exceed \$10,000,000 [, THE TOTAL LEASE PAYMENTS FOR THE FULL TERM OF THE LEASE]. The department may not enter into or renew an agreement requiring notice under this subsection unless the project has been approved by the legislature by law. An appropriation for the project does not constitute approval of the project for purposes of this subsection. The department may not enter into an agreement under this subsection if the optional renewal period allowed under the agreement exceeds two years. In this subsection, "term" includes defined renewal options."

*Conceptual:
Add real property*

Renumber the following bill sections accordingly.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 15, 1993

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

1031 W. 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 269-5100
FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P. O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

The Honorable Steve Frank
Alaska State Senate
State Capitol
Juneau, Alaska 99811-1182

Re: Proposed amendment to
CSSB 129 (STA)

Dear Senator Frank:

At the request of your legislative assistant, Rick Solie, we have reviewed the proposed amendment to CSSB 129 (STA) which will allow the Department of Administration, the Alaska Court System, the Legislative Affairs Agency and the University of Alaska to negotiate lease extensions for up to a maximum of five years. It exempts these extensions from the procurement code. This amendment requires that before an extension can be entered into that it result in at least a 10 percent costs savings to the agency. Alternatively, the cost savings may be reduced to minimum of 5 percent provided the leasing entity brings its lease premises into compliance with the American with Disabilities Act of 1990 (ADA) -- assuming they are not currently in compliance. Lease extensions successfully negotiated under this amendment must be reported quarterly to the Legislative Budget and Audit Committee.

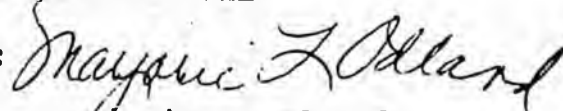
We find no constitutional problems with this amendment. So long as the agency negotiating an extension under this amendment realizes the minimum 10 percent cost savings or minimum 5 percent cost savings with ADA compliance, potential competitive bidders for other lease space will have no viable claim that the state is not in compliance with the procurement code, AS 36.30, because such an extension is exempt under AS 36.30.

We hope this addresses your questions.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

by:



Marjorie L. Odland
Assistant Attorney General

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF REVENUE

TREASURY DIVISION

333 WILLOUGHBY AVENUE, 11TH FLOOR
P.O. BOX 110405
JUNEAU, ALASKA 99811-0405
PHONE: (907) 465-2350
FAX: (907) 465-2394

April 15, 1993

The Honorable Steve Frank, Co-Chair
Senate Finance Committee
State Capitol, Room 518
Juneau, AK 99801-1182

Dear Senator Frank:

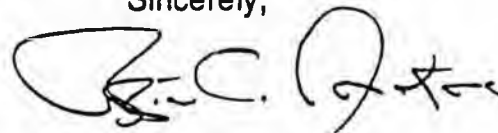
The Department of Revenue (DOR) would like to propose an amendment to CSSB 129 (FIN), Version 8-LS0591\K, "An Act relating to state procurement". This amendment deals with refinancing of capital leases set forth on page 2, Sec. 3. We propose the following change to that section at line 12, following "property" insert:

except an agreement related to a refinancing of outstanding balance owing

This amendment would allow the State Bond Committee to take advantage of interest cost savings at opportune times.

Please feel free to contact me at 465-3750 if you have questions.

Sincerely,



Brian C. Andrews
Debt Manager

93-076

cc: Kris Lethin, Governor's Office

APP. 0.6 1993

XPRT CONSULTANTS

9701 Brier Street
Anchorage, Alaska 99516
(907) 346-3416

2 April 1993

Chairs Frank and Pearce, and Members of the Committee

Senate Finance Committee

Alaska State Senate

SUBJECT: SB 129 - Chief Procurement Officer - Recommendations and Comments

The concept of creating a means to assure better statutory compliance is a good idea and a lofty goal, but probably won't be achieved through additional limitations on the authority of the Chief Procurement Officer (CPO).

SB 129 as proposed does have several aspects which will enhance the role and position of the CPO and which will be beneficial to the overall procurement function. However, the bill needs more work before passage to avert potential misinterpretation.

Comments and suggestions as a result of in-depth review of SB 129 are attached for your review and consideration. Also attached is brief resume of the undersigned consultant, to attest expert qualifications in the field of public procurement.

XPRT Consultants is an independent non-partisan firm established in 1982 for consultation, expert services, and representation in procurement and contracting matters.

In your deliberations, please give weight to the attached recommendations and suggestions regarding SB 129.

If I can be of any further assistance, please call (907) 346-3416.

Sincerely,



PEGGY R. THOMAS, C.P.M.

Chief Executive Officer

Attachment

cc: Senate State Affairs Committee

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1
2 Although certain past procurement transactions may have
3 demonstrated problems regarding statutory approval, there could
4 really be some confusion created if subject bill is enacted as
5 proposed. Based on in-depth review, and for consistency with the
6 existing law, the following changes should be incorporated in SB
7 129 (SB0129a).

8
9 Abuse of authority by ANY procurement officer, including the CPO,
10 should be handled by appropriate discipline and/or enforcement of
11 existing law.

12
13 - Sec. 2.

14
15 AS PROPOSED:

16
17 "AS 36.30.010 is amended by adding new subsections to read:

18 (c) The chief procurement officer may not delegate the duties
19 of the chief procurement officer established under this chapter."

20 (d) While a person performs the duties of the chief
21 procurement officer under this chapter, the person may not be
22 employed in or appointed to another position with the state.

23 (e) The annual salary of the chief procurement officer is
24 range 26, step C, of the salary schedule established in AS
25 39.27.011."

26
27 RECOMMENDATION: Regarding Sec. 2. (c)

28
29 Suggest deletion of that portion of Sec. 2., which adds new
30 subsection (c) to AS 36.30.010, and which prohibits CPO delegation
31 of AS 36.30 established duties.

32
33 RATIONALE:

34
35 AS 36.30.010 sets forth (and in fact prescribes) "duties" of the
36 chief procurement officer (CPO). This proposed amendment, would
37 preclude the CPO's delegating authority to "procure or supervise
38 the procurement of" supplies, services, etc. In other words, all
39 procurement would have to be done by or under the supervision of
40 the CPO.

41
42 As worded, the proposed new AS 36.30.010 (c) will forbid any
43 delegation by the CPO of procurement authority to others. AS
44 36.30.010 (in subsection (b)) among other duties enumerated,
45 already states:

46
47 "Except as otherwise specifically provided in this chapter, the
48 chief procurement officer shall (1) procure or supervise the
49 procurement of all supplies, services, and professional services
50 needed . . ."

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 It should be noted that if the wording in the presently proposed
2 amendment (Sec. 2., adding (c) to AS 36.30.010) is retained, it
3 will impose several undesirable supervisory and organizational
4 relationship changes.

5
6 Also, as drafted, Sec. 2 apparently conflicts with the concept of
7 delegation of authority by the "commissioner" to agencies set forth
8 in AS 36.30.015 (a) and (b). If the CPO is required by AS
9 36.30.010 (c) to either do or to supervise all procurement, AND if
10 the CPO is forbidden to delegate the duty of "procurement" or
11 "supervision of procurement" to others, then all State procurement
12 would have to be done by the CPO or under CPO supervision. This
13 means that no other agency may do State procurement, and conflicts
14 with the statutory provision for delegation by "commissioner" to
15 agencies expressed in AS 36.30.015(a). Thus, in essence, the
16 proposed amendment precludes ANY decentralization of the
17 procurement function.

18
19 The State Procurement Code already forbids the CPO to delegate in
20 excess of the small purchases limitation (presently \$25,000) for
21 the following:

- 22
23 - sole source approval (AS 36.30.300(a)) and
24 - limited competition approval (AS 36.30.305(a)).

25
26 For consistency, if intent is to prohibit delegation for other
27 specific sections of AS 36.30, the limitations should be inserted
28 at the point in the chapter where the limit is imposed, as it is in
29 AS 36.30.300 and 305. On the other hand, although not as
30 consistent, and perhaps harder to read and apply, to further limit
31 CPO's power of redelegation, a more specific statement of the
32 limitations should be given in the proposed amendment, i.e.,

33
34 "(c) The chief procurement officer may not delegate the duties of
35 the chief procurement officer established under AS 36.30.010 xx,
36 xx, xx, xx, or AS 36.30.xxx, xxx, xxx."

37
38 (Insert at the "xx" or "xxx" the specific subparagraphs of the
39 section(s) for which it is intended to forbid delegation.)

40
41 AS 36.30.560 -- 625, identify the procurement officer of the
42 contracting agency as the person who issues appealable decisions in
43 bid protests a /or contract disputes. If delegation by the CPO is
44 not permitted, these references would also need to be further
45 clarified or changed.

46
47 The CPO should never serve in a dual capacity as both defendant and
48 deciding official in cases of bid protest or contract controversy
49 at the appellate level. The CPO must be allowed to delegate
50 procurement authority to the agency level or to other procurement

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 officers who actually perform the procurement process. The
2 University of Alaska Board of Regents through adopted procurement
3 regulations and the President has designated the CPO as the
4 appellate level for purposes of deciding bid protests and contract
5 controversies. If the Code is amended to preclude the CPO's
6 delegation of procurement authority, the University will of
7 necessity have to reorganize its procurement function to eliminate
8 creation of a conflict of interest.
9

10 The University CPO cannot legitimately be involved in actually
11 doing procurement transactions because the CPO is required to make
12 appellate decisions in protests and disputes which are brought
13 against the University and which are initially made and must be
14 defended by the responsible procurement officer, i.e., someone
15 other than the CPO. For the CPO to sit in judgement on appeals of
16 his/her own decisions would be a grave conflict of interest. Thus,
17 it is essential that the CPO may delegate procurement authority to
18 others for conformity with the protest and conflict resolution
19 procedures established in University regulations implementing AS
20 36.30.
21

22 If the CPO is constrained from delegating procurement authority to
23 others, it will require new organization structures in both the
24 State's purchasing department(s) and the University's.
25

26 The executive department's autonomy to determine structure within
27 its administrative functions would be undermined if it cannot
28 exercise its own choice as to procurement organization structure.
29 There should be no statutory requirement to have either a
30 centralized or decentralized procurement office per se, leaving
31 maximum discretion to the department(s) for delegation outside the
32 central environment. All delegations by the CPO to others should
33 be worded in such a way as to exclude what is forbidden by statute
34 to be delegated, thereby assuring legal conformity.
35

36 An appointed CPO has statutory procurement authority per AS
37 36.30.010.
38

39 Certain "commissioners" have statutory procurement authority per AS
40 36.30.015(a). For the University of Alaska, which has no
41 commissioner, special definition of terms is provided by statute in
42 AS 36.30.005(c). The President of the University equates to
43 "commissioner" and has delegated the entire statutory authority of
44 AS 36.30 to the University CPO.
45

46 The State has a commissioner who functions separately from the CPO,
47 a CPO, and in addition, a Director of General Services and Supply
48 (GS&S). The GS&S is a centralized state procurement office where
49 the actual procurement is done for items and services (except
50 construction) which exceed various agencies' delegated authority.

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 Some procurement authority has also been delegated to agencies.

2
3 The diversity of organization and structure within the discretion
4 of the department(s) would not be permitted if AS 36.30.010(c) is
5 amended as proposed to prohibit delegation by the CPO of the CPO's
6 statutory duties.

7
8 Abuse of authority by ANY procurement officer, including the CPO,
9 should be handled by appropriate discipline and/or enforcement of
10 existing law.

11
12 **RECOMMENDATION: Regarding Sec. 2. (d)**

13
14 Suggest that Sec. 2. (d) should be deleted, and the language
15 suggested below be substituted in lieu thereof.

16
17 "(d) The chief procurement officer shall not be assigned additional
18 duties inconsistent with or outside the functions ascribed to the
19 position by this chapter."

20
21 **RATIONALE:**

22
23 This proposed amendment of AS 36.30.010 to add a new subsection (d)
24 as drafted will make it impossible for an incumbent CPO to apply
25 for and/or be hired for any other position with the State, creating
26 a chilling effect on any potential for career progression during
27 the term of appointment. The CPO should not be excluded from
28 consideration for other positions. If the intent is to be certain
29 that other duties are not added to detract from the full attention
30 required for performance of CPO functions, or limit the free
31 exercise of independent judgement, then that is what the amendment
32 should say. The language recommended above could accomplish the
33 latter.

34
35 **- Sec. 4.**

36
37 **AS PROPOSED:**

38
39 "AS 36.30.310 is amended to read:

40 Sec. 36.30.310. EMERGENCY PROCUREMENTS . . . A written
41 determination by the chief procurement officer of the basis for the
42 emergency and for the selection of the particular contractor shall
43 be included in the contract file . . ."

44
45 **RECOMMENDATION: Regarding Sec. 4**

46
47 Suggest the proposed amendment of AS 36.30.310 to require written
48 determination by the chief procurement officer for exercise of
49 emergency procurement authority be deleted in its entirety.

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 RATIONALE:

2
3 Delay occasioned by referral to the CPO for approval will make it
4 impossible for procurement officers to respond appropriately in
5 emergency situations. Timely response to procurement requirements
6 in an emergency is essential in order to mitigate damage and/or
7 loss. When urgency of circumstances demands it, procurement must
8 be accomplished without delay. If routine procedure requires
9 waiting for approval by the CPO before procurement action can be
10 taken to satisfy emergency needs, then it cannot meet expected and
11 appropriate immediate response criteria. The procurement officer
12 with requisite authority who is nearest to the need is the one who
13 has the most knowledge of the urgency, and who is in the best
14 position to exercise independent judgement required to make the
15 written determination regarding a prospective emergency
16 procurement. Restriction for only the CPO to make written
17 determinations for emergency procurement will cripple the State's
18 ability to provide adequate procurement support in response to
19 emergency situations.

20
21 Abuse of authority by ANY procurement officer, including the CPO,
22 should be handled by appropriate discipline and/or enforcement of
23 existing law.

24
25 - Sec. 5.

26
27 AS PROPOSED:

28
29 "AS 36.30 is amended by adding a new section to read:
30 Sec. 36.30.315. DETERMINATIONS BY CHIEF PROCUREMENT OFFICER;
31 CRIMINAL PENALTY. (a) In a determination made by the chief
32 procurement officer under AS 36.30.300 - 36.30.310, the chief
33 procurement officer shall independently examine the material facts
34 of the contract and independently determine whether the contract is
35 eligible for the procurement procedure selected for the contract.
36 (b) If the chief procurement officer knowingly makes a
37 false statement in a determination made by the chief procurement
38 officer under AS 36.30.300 - 36.30.310, the chief procurement
39 officer is guilty of a class A misdemeanor."
40

41 RECOMMENDATION: Regarding Sec. 5. (a)

42
43 Suggest paragraph (a) the proposed addition of new section, (AS
44 36.30.315) be deleted, and language suggested below be substituted
45 in lieu thereof. Also, this amendment should be at AS 36.30.935
46 instead of at AS 36.30.315.

47
48 "Sec. 36.30.935. PROHIBITION AGAINST SUBSTITUTION OF JUDGEMENT IN
49 PROCUREMENT MATTERS. Procurement decisions which form the basis of
50 procurement actions taken within statutory or delegated procurement

1 authority are not voidable after the fact, except for reason of
2 illegality. Decisions taken pursuant to law and regulation by a
3 procurement officer are of necessity the product of the independent
4 judgement of such officials. Exertion of undue influence to change
5 decisions or to adversely affect the competitive and statutory
6 process of public procurement is a violation of this chapter."
7

8 RATIONALE:
9

10 If the intent is to require the independent judgement of the CPO in
11 making determinations under AS 36.30, the concept should be
12 applicable to ALL determinations required by and transactions
13 executed by ANY procurement officer under the authority of AS
14 36.30. The ABA Model from which the statute was spawned carried
15 the intent for exercise of independent judgement by the responsible
16 procurement officer, i.e., the final word and responsibility for a
17 procurement transaction is vested in the procurement officer who
18 executes a procurement document within the limits of his/her
19 delegated authority.
20

21 There is another side to this concept which should also be
22 considered. Of course, if the law states that the independent
23 judgement of the CPO is to be exercised, that precludes anyone's
24 substituting their judgement for that of the CPO either before or
25 after the fact. In effect this will strengthen the authority of
26 the CPO and is a good idea. However, it should be noted that if
27 the intent is to make the CPO more responsible for the decisions
28 and approvals rendered in procurement matters, then ENFORCEMENT of
29 the present law is what is needed, i.e., if ANY procurement
30 officer, including the CPO knowingly violates AS 36.30, action
31 should be taken to prosecute pursuant to the law. The present law
32 adequately covers this, but the proposed amendment actually reduces
33 the penalty instead of imposing a heavier charge for knowing
34 violation of AS 36.30 in a procurement matter. If intent is to
35 lighten the stigma of the potential penalty in hopes that
36 enforcement is more likely to occur, then perhaps it should be
37 amended accordingly at AS 36.30.930.
38

39 If the intent is to be sure that the CPO is not merely rubber-
40 stamping someone else's product, then language similar to that
41 recommended above (added at AS 36.30.935) should be used.
42

43 Abuse of authority by ANY procurement officer, including the CPO,
44 should be handled by appropriate discipline and/or enforcement of
45 existing law.
46

47 The language suggested above will protect procurement officers from
48 undue pressures and insulate against political influence thereby
49 reducing potential for circumvention of the Code.
50

1 **RECOMMENDATION: Regarding Sec. 5. (b)**

2
3 Suggest that paragraph (b) of the proposed amendment (which
4 classifies as a class A misdemeanor, a false statement knowingly
5 made in a determination by the CPO) be added at AS 36.30.930 of the
6 statute, instead of at 36.30.315, if it is to be added at all.
7 Recommend it should not be added.

8
9 **RATIONALE:**

10
11 The State Procurement Code at AS 36.30.930 already says that
12 knowing violation of the statute is a class C felony. In addition,
13 AS 36.30.687(d) states that misrepresentation in connection with a
14 State procurement is a class C felony. The addition of a section
15 making such violations of this nature when committed by the CPO a
16 Class A misdemeanor appears to conflict with sections 687 and 930
17 and lighten the stigma of the charge when the CPO is the offender.
18 The opposite should be true. If the CPO violates the statute,
19 perhaps a more severe penalty should be assessed. At least, if the
20 emphasis is needed or intended, the class of crime should be
21 consistent with present law, or the classes stated in the existing
22 AS 36.30 should also be changed.

23
24 Abuse of authority by ANY procurement officer, including the CPO,
25 should be handled by appropriate discipline and/or enforcement of
26 existing law.

27
28 - Sec. 6.

29
30 The effective dates in this section should be reconciled with any
31 changes which occur as a result of the foregoing comments and
32 recommendations.

33
34 THE CHANGES SUGGESTED ABOVE ARE MOSTLY TECHNICAL, BUT SHOULD BE
35 MADE IN ORDER TO CLEAR UP POSSIBLE MISUNDERSTANDINGS, AND TO
36 MAINTAIN CONSISTENCY WITH OTHER (UNCHANGED) PROVISIONS OF AS 36.30.

37
38
39 - ADDITIONAL COMMENTS ON SECTIONS SUPPORTED WITHOUT CHANGE

40
41 - Sec. 1.

42
43 The concept of a six-year appointment for the CPO is a good one,
44 provided that the person is not restrained from accepting other
45 positions with the state, i.e., is free to apply for other
46 positions and vacate incumbency as CPO. It is appropriate that the
47 CPO not serve in any dual or conflicting role IN ADDITION TO
48 incumbency as CPO, and that the appointing authority be limited as
49 to assignment of extra duties to the CPO.

50

1 - Sec. 2. (e)

2
3 It is consistent with good management and competent salary surveys
4 that the compensation of the CPO be set at the proposed range 26,
5 step C, of the salary schedule established in AS 39.27.011.
6 Putting the CPO salary range into law emphasizes the importance of
7 the role of the CPO. This should make it patently obvious that
8 State procurement is not merely a clerical function.

9
10 - Sec. 3.

11
12 It is consistent with other approval requirements in AS 36.30 to
13 vest authority in the CPO for limited competition procurement.

14
15 Explanation of the underlying philosophy for the concept of limited
16 competition may be helpful in considering how this section of the
17 Code was originally derived. Limited competition in the context of
18 the ABA Model Procurement Code as originally conceived is a
19 function of specification, i.e., whether a purchase description
20 (specification) allows full and open competition or whether it is
21 restrictive. The concept of competition goes all the way back to
22 the basic source of the item, the manufacturer who is the top tier
23 of the distribution system. Full and open competition does not
24 restrict competition at any level. A procurement which by its
25 terms or specification eliminates competition at any tier is
26 restrictive, i.e. limited competition.

27
28 - FULL AND OPEN COMPETITION - GENERIC SPECIFICATION

29
30 Purchase descriptions which are written as a technical
31 specification setting forth all dimensional, material, structural,
32 operational, and other characteristics of an item allow for full
33 and open competition, i.e., any producer who is willing can make
34 it, and any willing source can bid on it. The technical
35 specification in this context is written without calling out a
36 "particular brand name only" or "brand name or equal," and any
37 product which meets the parameters of the technical data will be
38 acceptable.

39
40 - FULL AND OPEN COMPETITION - BRAND NAME OR EQUAL SPECIFICATION

41
42 Purchase descriptions which specify a brand name or several brand
43 names, "or equal" permit the offering of items which are equivalent
44 to the brand name or names specified. This type of specification
45 permits full and open competition because any product which meets
46 the parameters, i.e., is one of the brand name(s) specified, or the
47 equivalent thereof will be acceptable.

SB 129 - CHIEF PROCUREMENT OFFICER AUTHORITY - COMMENTS AND SUGGESTIONS

1 * The ABA Model Procurement Code R4-202.02.2 (b)(v) is cited as
2 follows:
3 "Nonrestrictive Use of Brand Name or Equal Specifications. Where a
4 brand name or equal specification is used . . . the use . . . is
5 **not intended to limit or restrict competition.**"
6 [Emphasis supplied.]

7
8 - LIMITED COMPETITION - BRAND NAME ONLY - NO SUBSTITUTE
9

10 A purchase description which requires a particular brand name and
11 no substitute restricts competition and is not a full and open
12 competition procurement. "Limited competition" is derived from
13 this concept. Several lower tier vendors may be able to supply
14 such an item, but only one manufacturer's product will be
15 considered. A procurement for "brand name only - no substitute",
16 thus limits competition in that it restricts all but a single
17 producer from the distribution pattern, even though it is
18 competitive in the lower tiers. Therefore, such a procurement is
19 restrictive of competition. The competition "tree" does not spring
20 from several production sources and is thus "limited".
21

22 * The ABA Model Procurement Code R4-202.02.2 (c)(i) and (ii) are
23 cited as follows: "Brand Name Specification . . . use . . . is
24 restrictive . . . The Procurement Officer shall seek to identify
25 sources from which . . . the designated brand name . . . can be
26 obtained and shall solicit . . . whatever degree of competition is
27 practicable. If only one source can supply the requirement, the
28 procurement shall be made under . . . Sole Source . . ."
29 [Emphasis supplied.]
30

31 * The ABA Model Procurement Code citations at the asterisks above
32 demonstrate how competitive aspects of procurement are determined
33 by the degree of competition permitted or dictated by the
34 specification.
35

36 NOTE: Based on knowledge and belief the view advanced above in
37 defining the concept of "limited competition" is not incorporated
38 in any existing procurement regulations implementing the State
39 Procurement Code. This is probably due to semantics of discussions
40 prior to adoption of the Code, i.e., some of the meaning was lost
41 through well-meaning substitution of terms. Consequently, this
42 revelation of the underlying philosophy for limited competition may
43 come as a shock even to some procurement professionals.
44
45

PEGGY R. THOMAS

9701 Brien
Anchorage, AK 99516
(907) 786-1650 (Office) 346-3416 (Home)

OBJECTIVE: Qualification information herein is provided as background to an expert opinion rendered on the strength of over 35 years professional procurement and contracting experience gained through continued service and provision of sound procurement leadership in government organizations.

EMPLOYMENT HISTORY:

Sep 1988 to Present **Deputy Chief Procurement Officer**
University of Alaska, Anchorage, AK

Jan 1982 to Present **Owner (Consultant: Contracts and Procurement)**
Xprt Consultants, 9701 Brien, Anchorage, AK

Jan 1982 - Apr 1987 **Manager, Supply Division**
Nov 1979 - Jan 1982 **Manager, Supply & Procurement Division**
The Alaska Railroad, Anchorage, AK

Aug 1979 - Nov 1979 **Municipal Purchasing Officer**
Municipality Of Anchorage, Anchorage, AK

Feb 1978 - Aug 1979 **Chief, Contracting & General Services Branch**
U. S. Fish & Wildlife Service, Alaska Region,
Anchorage, AK

Dec 1976 - Feb 1978 **Chief, Services & Construction Contracts Branch**
Alaskan Air Command (AAC), Base Procurement,
Elmendorf AFB, AK

Sep 1973 - Dec 1976 **Deputy Chief, Procurement & Contracting**
Feb 1972 - Sep 1973 **Chief, Contract Administration Branch**
Sep 1971 - Feb 1972 **Chief, Supplies Procurement Branch**
Base Procurement Division, Mountain Home AFB, ID

Jun 1966 - Sep 1971 **Chief, Supplies Procurement Branch**
Jan 1962 - Jun 1966 **Contract Specialist (Construction)**
Dec 1960 - Jan 1962 **Purchasing Agent (Supplies/Services)**
Apr 1958 - Dec 1960 **Housewife, New Mother, Widowed in 1959**
Nov 1955 - Apr 1958 **Supervisory Purchasing Agent**
Dec 1953 - Nov 1955 **Procurement Administration Clerk**
Procurement Offices, Altus AFB, OK & Dyess AFB, TX

PROFESSIONAL CERTIFICATION: **Certified Purchasing Manager (C.P.M.)**
conferred by National Association of
Purchasing Management

AFFILIATIONS: 1983 - Present **Member of MENSA** (American Mensa Ltd)

Current **Purchasing Management Assoc. of AK**

HONORS AND AWARDS

Oct 1965 Outstanding Performance Rating & Quality Salary Increase
Sustained Superior Performance Award

Nov 1967 Dept. of Air Force Suggestion Program Award

May 1968 USAF Certificate of Achievement - Resources Conservation

Feb 1971 Military Airlift Command Personal Achievement Award

Dec 1972 Dept. of Air Force Suggestion Program Award

Dec 1973 Distinguished Public Service Award, Nationwide Program to
Keep America Beautiful

Jul 1974 Distinguished Public Service Commendation by Cecil D. Andrus
Governor, State of Idaho

Jul 1975 Tactical Air Command Certificate of Achievement

May 1976 Outstanding Performance Rating & Quality Salary Increase
Sustained Superior Performance Award

Jul 1976 Command Achievement Award for Resources Conservation FY 76

Nov 1976 Outstanding Procurement Office Award, Tactical Air Command

1983 Who's Who In America

1981-1983 Who's Who of American Women

1981-1983 World Who's Who of Women

1981-1983 Directory of Distinguished Americans

1982-1983 Personalities of America

1982-1983 Personalities of the West and Midwest

1982-1983 Who's Who in the West

1982-1983 International Who's Who of Intellectuals

1982-1983 Community Leaders of America

1982-1983 Two Thousand Notable Americans

1984-1985 Who's Who of Finance and Industry

1984 International Book of Honor

1984 Dictionary of International Biography



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 129

APPROVED: 

TITLE: Powers of Chief Procurement
Officer

DATE: March 2, 1993

Section 1 changes the term of the chief procurement officer from six to four years.

Section 2 adds two new requirements for the chief procurement officer. First, the duties may not be delegated. This will cause some delays in the procurement process when the chief procurement officer is absent, traveling or the office is vacant. Second, the chief procurement officer may not be employed or appointed to another position. This should not cause any major impact.

Section 3 for Department of Administration's limited procurement under \$100,000 approval is delegated from the Commissioner to the chief procurement officer. This could assist in more timely approval of limited procurements.

Section 4 requires the chief procurement officer make procurement determinations in the event of an emergency. This would make a major revision to emergency procurement procedure. It would require the chief procurement officer to determine an emergency exists before any procurement is made. This may cause significant delays in addressing an emergency in a timely manner.

Section 5 requires the chief procurement officer to independently examine material used to determine an emergency procurement and establishes it is a class A misdemeanor if a false statement is made.

Section 6 provides for the effective dates for the various sections of the bill.

For Further Information contact Katy McHugh at 465-3904.

FISCAL NOTE

No. 1

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: SB 129

(S) Publish Date: 3-18-93

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to the State's Chief Procurement Officer. BRU: General Services
 Component: Purchasing
 Sponsor: Senate Rules Committee
 Requestor: Senate State Affairs Committee COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	11.9	11.9	11.9	11.9	11.9	11.9
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	11.9	11.9	11.9	11.9	11.9	11.9

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

REVENUE FUND SOURCE:	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	11.9	11.9	11.9	11.9	11.9	11.9
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	11.9	11.9	11.9	11.9	11.9	11.9

POSITIONS

FULL-TIME	11.9	11.9	11.9	11.9	11.9	11.9
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ 0.00 (Assuming July 1, 1993 effective date.)

ANALYSIS: (attach a separate page if necessary.)

The fiscal impact of this bill is the difference in salary of the Chief Procurement Officer as currently compensated, and Range 26, step C as indicated in the bill. It is assumed that the range and step will remain constant with no yearly merit increases.

Prepared By: Dugan Pettv, Director *Dugan Pettv*
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Nancy Bear Usura *Nancy Bear Usura*
 Agency: Department of Administration

Date: 3/3/93

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 For further distribution information call the Governor's Legislative Office

AMENDMENT

IN THE SENATE

BY FRANK

TO: CSSB 129(STA)

Page 4, after line 21, insert new sections to read:

" * Sec 11. Notwithstanding AS 36.30, the Department of Administration may extend a lease entered into under AS 36.30 that is in existence on the effective date of this Act, if the department can achieve a cost savings of a minimum of ten percent on the rent due under the lease, or a cost savings of a minimum of five percent on the rent due under the lease if the lessor agrees to modifications to the facility to bring it in compliance with the Americans with Disabilities Act (ADA). An extension authorized under this section may not exceed five years. The department shall submit a quarterly report to the Legislative Budget & Audit Committee detailing the leases extended and cost savings achieved under this section.

* Sec. 12. Section 11 of this Act is repealed December 31, 1994."

Renumber the following sections accordingly.

SENATE FINANCE COMMITTEE

Amendment Number: ①
Bill Number: SB 129
Sponsor: FRANK Date: 4/13/97
Logged In By: (Signature)

AMENDMENT

IN THE SENATE

BY FRANK

TO: CSSB 129(STA)

Page 4, after line 21, insert new sections to read:

" * Sec 11. Notwithstanding AS 36.30, the Department of Administration may extend a lease into under AS 36.30 and that is in existence on the effective date of this Act, if the department can achieve a unit cost savings on the rent due under the lease. An extension authorized under this section may not exceed five years. The department shall submit a monthly report to the Legislative Budget & Audit Committee detailing the leases and cost savings achieved for leases modified under this section.

* Sec. 12. Section 11 of this Act is repealed December 31, 1994."

Renumber the following sections accordingly.

SENATE FINANCE
COMMITTEE ①
Amendment Number: _____
Bill Number: SB 129
Sponsor: Frank Date: 4/13/93
L. _____



OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Administration	DIVISION General Services	BILL NUMBER DRAFT	SPONSOR Senator Frank
SHORT TITLE OF BILL "An Act relating to the extension of existing leases; and providing for an effective date."			
DEPARTMENT POSITION			
PREPARED BY <i>[Signature]</i>	DATE	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 4/1/83

SUMMARY

OTHER AGENCIES AFFECTED BY BILL All Customer Agencies	CONSTITUENT GROUP(S) AFFECTED BY BILL Lessors and Landlords
ORGANIZATIONAL SUPPORT FOR BILL None Known	ORGANIZATIONAL OPPOSITION TO BILL None Known

FISCAL IMPACT NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
(See Attached)

ANALYSIS OF BILL/PROGRAM EFFECTS
(See Attached)

AMENDMENTS PROPOSED

Suggested changes

There is potential opportunity to save approximately 1.6 million in FY 94 by extending the Frontier building lease in return for a rental rollback to \$2.25 per S. F.

Such a renewal could lead to a partial consolidation of resource agencies. Similar offers from the Frontier building management have been declined in the past because of procurement law requirements. The bill as written, would not permit extension because annual payments would be approximately \$3,921,831.00 and exceed the cap of \$300,000.00.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

Section 1

Permits the extension of existing leases if we could achieve rent reductions in return for the extensions. The bill as proposed would encompass approximately 250 leases that have an annual value of approximately \$13,043.8. If an average 5 percent rent reduction could be achieved at the beginning of FY 94, a savings of over \$652.1 would result.

Approximately 18 leases totaling \$18,337.8 would be excluded by the \$300,000.00 annual cap.

This bill would result in lease savings by giving the department the opportunity to extend leases if sufficient cost savings could be achieved. In practice, the lease would have to:

1. Have ongoing projected need for the space;
2. Meet agency needs;
3. Provide ADA compliance;
4. Be a good business decision; and
5. Result in cost savings before we would decide to trade rent for extensions.

There could be potential criticism of the department when discretion is exercised under this bill. Potential lessors with available space could complain that their building would have resulted in greater savings had the space been bid. The argument is hard to defeat without a bid process. However, such a disgruntled lessor would have no standing under statute in this process. The division would need to perform careful analysis prior exercising discretion permitted under this bill.

Currently, 22 leases are on month-to-month and over 30 leases will expire during FY 94. This provides a real vehicle to resolve a growing lease workload crisis. It would permit limited resources to target the leases which must be rebid because they would not meet our criteria for renewal.

This bill would give the division additional opportunity to leverage ADA compliance improvements that we may not otherwise be able to compel lessors to furnish.

In summary, this bill would give the department greater flexibility to:

- Reduce the cost of operating government
- Improve the efficiency and effectiveness of limited resources
- Provide better service to our client agencies.

Section 2

Repeals this window of opportunity after approximately 18 months.

While this is not an excessive window, by elevating this to be a project status, we believe all leases can be reviewed, prioritized, and extensions renegotiated during this time.

Section 3

Make this bill effective immediately.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

DATE: 2/22/93

FURTHER: FINANCE

Date of 5-Day Notice: 3-1-93
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 3-18-93

STATE AFFAIRS Committee considered SB 129

"~~An Act~~ relating to the state's chief procurement officer."

and recommends it be replaced with

and recommends:

replace with _____ CS SB129 (STA)

attaches amendment(s) & a msg of the Cmte reports it back w/ no mem

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

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

phi

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
<i>SB</i> Dept. of Admin.	<i>3-3-93</i>		<input checked="" type="checkbox"/>
<i>CSSB</i> Dept. of Admin.	<i>3-17-93</i>	<input checked="" type="checkbox"/>	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

Adrian I. Taylor - NO Rec
J. Demco - NO Rec
Mike Miller - NO REC

Steven A. Leman NR
Chair: Signature and Recommendation

SB

132

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 4, 1994

FURTHER REFERRALS:

Date of Committee Action: 5/4/94

The FINANCE Committee considered:

CSSB 132(RES) am

CS FOR SENATE BILL NO. 132(RES) am

LOANS FOR IFQ'S

"An Act relating to loans for the purchase of individual fishery quota shares; and providing for an effective date."

RECOMMENDATIONS: CSSB 132(RES) am |] 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: House Resources Committee letter of Intent

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

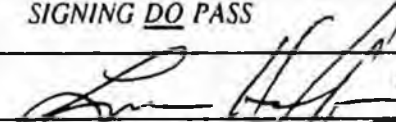
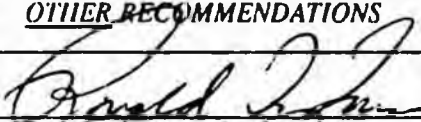
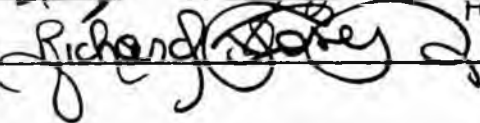
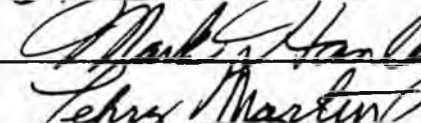
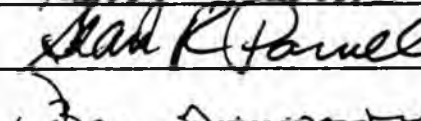
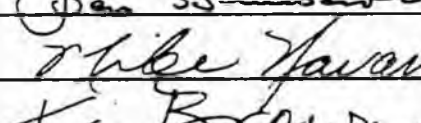
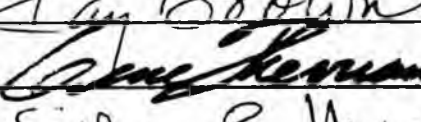
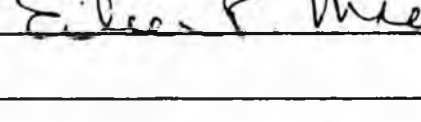
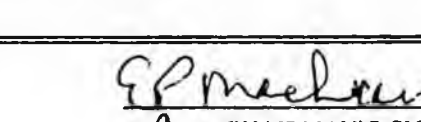
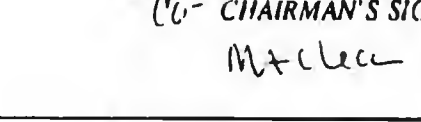
APPROVES PREVIOUS: _____ (Dept/Date)

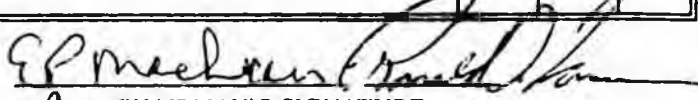
[] fiscal impact _____

[] fiscal note(s) DCED 2/4/94

[] zero fiscal note _____

[] zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
 Hoffman		 Larson		X	
 Foster	*	 Hanley		X	
		 Martin		X	
		 Farnell		X	
		 Grissinger		X	
		 Navarre		✓	
		 Brown		✓	
		 Thurnhill		X	
		Maclean		✓	


 Co- CHAIRMAN'S SIGNATURE
 Maclean Larson

HOUSE CS FOR CS FOR SENATE BILL NO. 132(RES)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RESOURCES COMMITTEE

Offered: 2/4/94
Referred: Finance

Sponsor(s): SENATOR JACKO

REPRESENTATIVE Mackie

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to loans for the purchase of individual fishery quota shares;
 2 and providing for an effective date."

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

4 * **Section 1. PURPOSE AND LEGISLATIVE INTENT.** It is the purpose of this Act to
 5 provide an opportunity for resident fishermen to participate in the sablefish and halibut
 6 fisheries and other fisheries in and off Alaska by authorizing loans for the purchase of quota
 7 shares for those fisheries. It is the intent of the legislature that the authority granted by this
 8 Act be implemented without adversely affecting the availability of funds in the commercial
 9 fishing revolving loan fund for loans to purchase entry permits and to purchase, repair, restore,
 10 or upgrade vessels and gear.

11 * **Sec. 2. AS 16.10.310(a) is amended to read:**

12 (a) The department may

13 (1) make loans [TO]

14 (A) to individual commercial fishermen who have been state



Alaska State Legislature

HOUSE RESOURCES COMMITTEE

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3715

HOUSE RESOURCES COMMITTEE

LETTER OF INTENT

HCS CS SB 132(RES), "AN ACT RELATING TO THE PURCHASE OF INDIVIDUAL FISHERY QUOTA SHARES"

It is the intent of the House Resources Committee that the Commercial Fisheries and Agriculture Bank (C-FAB), within its existing authority under AS 44.81.210, make financing available for the purchase of quota shares for fisheries in or off Alaska.

It is also the intent of the House Resources Committee, that passage of this bill in no way implies either legislative support for, or opposition to, the IFQ program, only a commitment to ensuring that Alaskans have as much opportunity as possible to acquire quota shares if-or-when the IFQ program is implemented.

Signed,

A handwritten signature in cursive script that reads "Bill Williams".

Rep. Bill Williams, Chairman

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCS CSSB 132(RES)

Revision Date: January 24, 1994
Title: Loans for IFQs
Sponsor: Senator Jacko
Requestor: House Resources

Department Affected: Commerce and Economic Development
BRU: Investments
Component: _____
COMPONENT SERIAL NO. 0384

Expenditures/Revenues:

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	46.2	138.8	138.8	138.8	138.8	138.8
TRAVEL	2.0	6.0	6.0	6.0	6.0	6.0
CONTRACTUAL	11.3	33.9	33.9	33.9	33.9	33.9
SUPPLIES	1.5	1.5	1.5	1.5	1.5	1.5
EQUIPMENT	13.5	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	74.5	180.2	180.2	180.2	180.2	180.2

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other C/F LOAN 1036	74.5	180.2	180.2	180.2	180.2	180.2
TOTAL	74.5	180.2	180.2	180.2	180.2	180.2

Estimate of current year (FY 94) cost: \$ 0

POSITIONS

FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Martin J. Richard
Division: Investments

Phone: (907) 465-2510
Date: January 24, 1994

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Date: 1-27-94

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCS CSSB 132(RES)

ANALYSIS: (continued)

This fiscal note assumes that the IFQ program will go into effect on March 1, 1995 as estimated by the United States Department of Commerce. The operating expenses for FY 95 have been adjusted accordingly.

PERSONAL SERVICES

The passage of HCS CSSB 132(RES) will require the addition of two Loan Officer I positions and a Loan Closer I position. The loan officers will process loan requests generated as a result of this legislation. They will also handle inquiries, outreach, loan extensions and other collection activity associated with these loans. The loan closer will develop the documentation used to complete loans processed by the loan officers and will obtain signatures, record collateral documents and disburse loan proceeds.

TRAVEL

It is estimated that loan officers will make an average of six outreach trips to rural Alaska each year, at an average cost of \$1.0 per trip. In FY 95 a total of two trips are anticipated.

CONTRACTUAL

The office space rental for three additional employees is estimated at \$8.9 per year. In addition, the Department anticipates spending an additional \$25.0 per year on outside contractors to help in its outreach efforts in rural communities throughout the State.

SUPPLIES

The Department estimates \$1.5 per year to cover costs of miscellaneous office supplies and printing of application packages and brochures.

EQUIPMENT

The Department estimates a one-time cost of \$13.5 to cover the costs of office furniture and computer equipment for three new employees.

Position Title Loan Officer I		No. of Positions 1	Range / Step 16A	Barg. Unit GGU
Time Status Full-Time	Staff Months 4 months	Location Anchorage		Election District
TYPE OF EXPENDITURE		AMOUNT		
Salary		12.1		
Benefits		4.9		
Premium Pay				
Other				
Total Personal Services		17.0		
Travel		1.0		
Contractual		4.1		
Commodities		.2		
Equipment		4.5		
Other				
Total Cost		26.8		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	C/F Loan 1036			
Justification This position is necessary to process loan requests generated as a result of the passage of this legislation. This position will also handle inquiries, outreach, loan extensions, and other collection activity associated with these loans.				

Request For New Position

AGENCY Commerce and Economic Development
 BRU Investments
 COMPONENT _____

FY 95

Page 1 of 1
 Revised Date: Jan. 24, 1994

Position Title Loan Closer I		No. of Positions 1	Range / Step 10A	Barg. Unit GGU
Time Status Full-Time	Staff Months 4 months	Location Juneau		Election District
TYPE OF EXPENDITURE		AMOUNT		
Salary		8.3		
Benefits		3.9		
Premium				
Other				
Total Personal Services		12.2		
Travel				
Contractual		1.9		
Commodities		.2		
Equipment		4.5		
Other				
Total Cost		18.8		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	C/F Loan 1036			
Justification This position is necessary to develop the documentation used to complete loans processed by the loan officers. This position will also obtain signatures, record collateral documents, and disburse loan proceeds.				

Request For New Position

AGENCY Commerce and Economic Development
 BRU Investments
 COMPONENT _____

FY 95

Page 1 of 1
 Revised Date: Jan. 24, 1994

Position Title Loan Closer I		No. of Positions 1	Range / Step 10A	Barg. Unit GGU
Time Status Full-Time	Staff Months 4 months	Location Juneau		Election District
TYPE OF EXPENDITURE		AMOUNT		
Salary		8.3		
Benefits		3.9		
Premium Pay				
Other				
Total Personal Services		12.2		
Travel				
Contractual		1.9		
Commodities		.2		
Equipment		4.5		
Other				
Total Cost		18.8		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	C/P Loan 1036			
Justification This position is necessary to develop the documentation used to complete loans processed by the loan officers. This position will also obtain signatures, record collateral documents, and disburse loan proceeds.				

Request For New Position

AGENCY Commerce and Economic Development
 BRU Investments
 COMPONENT _____

FY 95

Position Title Loan Closer I		No. of Positions 1	Range / Step 10A	Barg. Unit GGU
Time Status Full-Time	Staff Months 4 months	Location Juneau		Election District
TYPE OF EXPENDITURE		AMOUNT		
Salary		8.3		
Benefits		3.9		
Premium Pay				
Other				
Total Personal Services		2.2		
Travel				
Contractual		1.9		
Commodities		.2		
Equipment		4.5		
Other				
Total Cost		18.8		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
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Justification This position is necessary to develop the documentation used to complete loans processed by the loan officers. This position will also obtain signatures, record collateral documents, and disburse loan proceeds.				

Request For New Position

AGENCY Commerce and Economic Development
 BRU Investments
 COMPONENT _____

FY 95

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Other				
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Travel				
Contractual		1.9		
Commodities		2		
Equipment		4.5		
Other				
Total Cost		18.8		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	C/F Loan 1036			
Justification This position is necessary to develop the documentation used to complete loans processed by the loan officers. This position will also obtain signatures, record collateral documents, and disburse loan proceeds.				

Request For New Position

AGENCY Commerce and Economic Development
 BRU Investments
 COMPONENT _____

FY 95

Page 1 of 1
 Revised Date: Jan. 24, 1994

Position Title Loan Officer I		No. of Positions 1	Range / Step 16A	Barg. Unit GGU
Time Status Full-Time	Staff Months 4 months	Location Juneau		Election District
TYPE OF EXPENDITURE		AMOUNT		
Salary		12.1		
Benefits		4.9		
Premium Pay				
Other				
Total Personal Services		17.0		
Travel		1.0		
Contractual		2.9		
Commodities		.2		
Equipment		4.5		
Other				
Total Cost		25.6		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004			
I-A Receipts	1007			
CIP Receipts	1061			
Other	C/F Loan 1036			
Justification This position is necessary to process loan requests generated as a result of the passage of this legislation. This position will also handle inquiries, outreach, loan extensions, and other collection activity associated with these loans.				

Request for New Position

AGENCY Commerce and Economic Development
 BRU Investments
 COMPONENT _____

FY 95

Page 1 of 1
 Revised Date: Jan. 24, 1994

Position Title Loan Closer I		No. of Positions 1	Range / Step 10A	Barg. Unit GGU
Time Status Full-Time	Staff Months 4 months	Location Juneau		Election District
TYPE OF EXPENDITURE		AMOUNT		Justification This position is necessary to develop the documentation used to complete loans processed by the loan officers. This position will also obtain signatures, record collateral documents, and disburse loan proceeds.
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CIP Receipts	1061			
Other	C/F Loan 1036			

Request For New Position

AGENCY Commerce and Economic Development
 BRU Investments
 COMPONENT _____

FY 95

SENATOR GEORGE JACKO

STATE CAPITOL, ROOM 125 JUNEAU, ALASKA 99801-1182 (907) 465-4942 FAX: (907) 465-2997

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MEMORANDUM

TO: Representative *Ron* Larson, Co-Chair
House Finance Committee

FROM: Senator *George* Jacko, Sponsor
Senate Bill 132

DATE: February 21, 1994

RE: Scheduling request -- CSSB 132 (Resources)

I would like to request the scheduling of House CSSB 132 (Res) am in House Finance at your earliest convenience. CSSB 132 expands the Commercial Fisheries Revolving Loan Fund Program to allow Alaskan fishermen to obtain loans to purchase Individual Fisheries Quotas (IFQs).

The Commercial Fisheries Revolving Loan Fund Program can service debt to purchase limited entry permits, purchase or upgrade vessels, and purchase fisheries related gear.

Barring further legal roadblocks, it appears only a matter of time before the IFQ program for halibut and sablefish will be implemented. As the IFQ program comes on line it is anticipated that many Alaskan fishermen will have difficulty competing against non-resident (outside) fishermen who have access to other sources of capital. Subsequently, many Alaskans may not have the ability to compete on an equal footing to purchase IFQ shares.

Page Two
Representative Ron Larson
February 21, 1994

CSSB 132 will address this problem by restructuring the state fisheries loan program to allow Alaskan residents of two or more years the ability to get financing to purchase IFQ shares. It is the policy of the state loan program to promote a predominantly resident fishery by means of long-term low interest loans.

The issue of IFQs finds many fishermen on opposing sides. It should be emphasized that CSSB 132 is not intended as a vehicle to comment in any manner on the validity of the IFQ program.

Thank you for considering this request. If you need further information please contact my office at 465-4942.

GJ/be



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 20, 1994

MEMORANDUM FOR: Hon. Bill Williams, Chairman
Hon. Bill Hudson, Vice-Chairman
Members of the Committee on Resources
Alaska State House of Representatives

FROM: Philip J. Smith, Chief *Phil Smith*
Restricted Access Management Division
Alaska Region, National Marine Fisheries Service

SUBJECT: **Status Report: Implementation of the IFQ
Program for Pacific halibut and sablefish**

Thank you for the opportunity to provide you with this summary of the steps we are taking to implement the Individual Fishing Quota (IFQ) program for the Pacific halibut and sablefish fisheries. A lot has been happening during the past few months, and it is entirely appropriate that you should be kept apprised of the progress we are making to move this program forward.

It remains our goal to complete the implementation stage of the program by early next year, with the expectation that fishing with IFQs will commence on March 1, 1995. To reach that goal, we must implement an applications process, receive and process applications, award Quota Share to eligible applicants, provide for transfer of Quota Share, determine Individual Fishing Quota (based upon the allowable catch levels established for 1995), issue that IFQ, and provide for reporting and monitoring of the use of IFQ during the open fishing periods.

The time-frame we are following to accomplish those tasks is set out in the Attachment ("A") appended to this Memo. The functional organization of our office is likewise displayed on another Attachment ("B").

Applications Process

On December 31, we distributed over 8,000 copies of the "Request for Application" Package to every vessel owner and/or permit holder who owned or leased a vessel and/or who held a permit card and recorded legal landings during the qualifying years. Included in the package were forms for the potential applicant to complete and return to us. To date, more than 1,000 have been returned to us. At this point, we are preparing pre-printed applications that will display data (from the computerized database -- the "NMFS official record") of vessel ownership, landings by year, etc. That document will become the formal application, and



be sent to the applicant. When it is signed and sent back to us, and if no challenges to the information are lodged by either the applicant or another party, we will issue the quota.

Applicants may, of course, dispute the "NMFS official record" by submitting their own information. If their information is clear and convincing on its face, we will alter the official record and issue quota based upon the new information. If not, the applicant will be given one more opportunity to perfect his/her application prior to final administrative denial and being instructed on how to file a formal appeal (see, Attachment "C" for a display of the flow of applications through the system)

Application Assistance and Public Information

It remains our intent to hold IFQ Workshops in major longline fishing ports -- and, additionally, to provide applications assistance throughout the applications period. We expect that the workshops will commence next month, and we are currently working of schedule them. At the very least, we will with fishermen in Kodiak, Homer, Cordova, Kenai, Soldotna, Anchorage, Juneau, Sitka, Petersburg, Ketchikan, and Wrangel. Additionally, we will monitor the return of both pre-applications and applications from the smaller communities and offer assistance as may be needed.

In a good faith attempt to "spread the word" about the program, I have accepted invitations to speak to various regional groups (for instance, I am speaking to the Southwest Alaska Municipal Conference tomorrow morning).

We are also taking steps to make our office very accessible to fishermen and other members of the industry. By the end of this month, we will have a "1-800" phone line in service (1-800-304-4846) in order to expedite our ability to respond to questions and to provide assistance to QS applicants.

Regulations

1. Regulations to govern the appeals process have been submitted to Washington and the "Draft Proposed Rule" is now being finalized. Since these regulations must be final by late spring (at which time we will begin to deny applications), we will move rapidly to get a final rule published as soon as possible following the comment period.

2. We have conducted a detailed review of the regulations that govern the transfer of QS and IFQ. Since there are some areas that are unclear and/or internally inconsistent, we are developing some technical amendments that will make this section of the regulations more consistent and workable.

3. Related to "2" above, we are also moving quickly on regulations to implement

the "block" restrictions as adopted by the Council in early October. These rules will directly impact transfer decisions.

Conclusion

As noted, it is our intent to have this program fully implemented by March of 1995. Getting from here to there will present challenges, but none of them presently appear to be insurmountable. We hope to maintain good communications with the industry throughout the process, in order to put in place an efficient, responsive, and "user friendly" implementation effort.

Attachments: A - Implementation Time-Lines
 B - Division Organization
 C - Applications Flow Chart

IFQ Implementation Projected Time-Frames

What Happens?

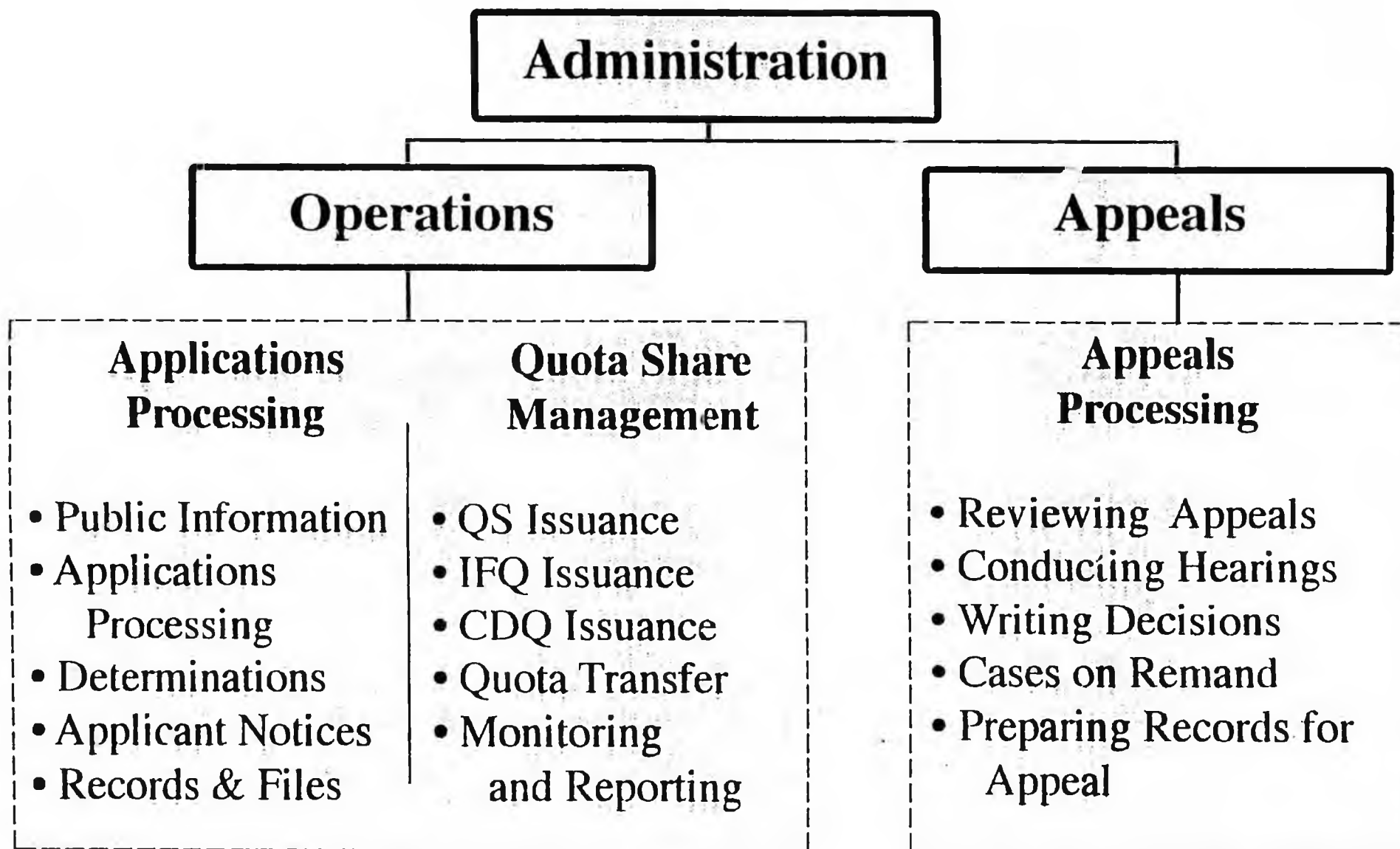
- Pre-Applications Mailed
- Application Period
- Town Meetings & Assistance
- Applications Processing
- Appeals of Determinations
- Quota Share Issued
- Quota Transfers Begin
- 1995 TAC's Established
- IFQ Issued
- IFQ Fishing Begins

When?

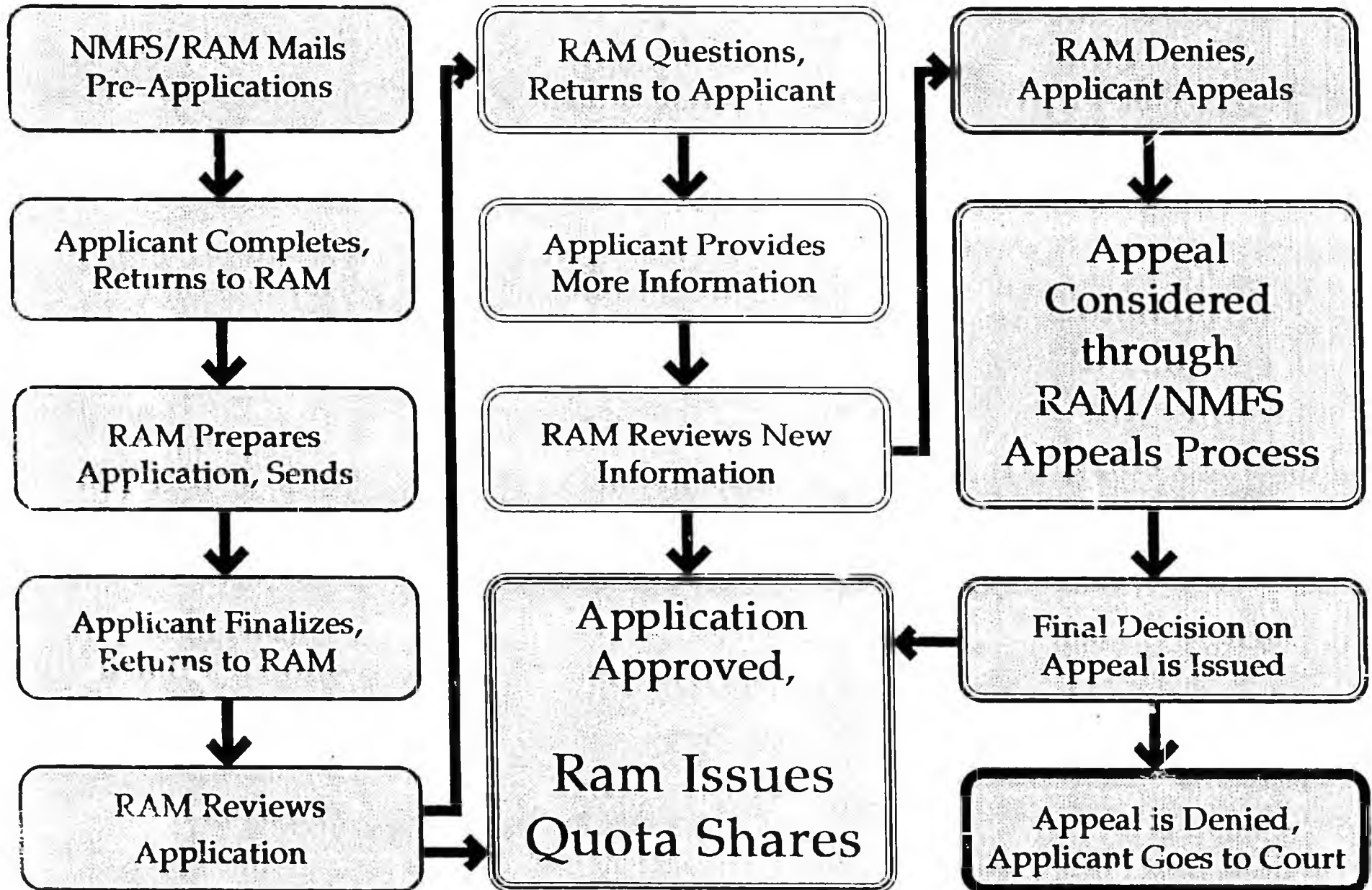
December, '93
Jan - Jun, '94
Feb - Mar, '94
Feb - Oct, '94
Apr - Nov, '94
Nov - Dec, '94
December, '94
January, '95
February, '95
March, '95

Functional Organizational Chart

Restricted Access Management Division



Quota Share Applications Process



Phil Smith Takes IFQ Challenge

Former Limited Entry Commissioner to head RAM division

by Laine Welch

"It's a tantalizing challenge." That's how Phil Smith summed up the Herculean task of implementing the individual fishing quota plan for Alaska's halibut and blackcod fisheries. The IFQ program, hotly contested by fishermen and managers for seven years, made it onto federal law books in early November. The plan will grant approximately 5,000 fishermen annual quotas of sablefish and halibut based on the landings they made during specific qualifying years. The system is scheduled to be in place by March 1995.

As director of the new Restricted Access Management division (RAM) for the National Marine Fisheries Service in Alaska, Smith takes the reins from those who have only conceptualized the complex workings of the IFQ plan. The long-time Alaskan, who grew up in Cordova and now lives in Juneau, has plenty of experience in the limited entry

records. Among other things, the system will maintain processor reports, keep track of quota transfers, and determine when a vessel has reached its caps.

Also under development is an electronic credit card system that fishermen will use to automatically check their IFQ balances. Smith said that task was contracted by NMFS to Computer Services Corporation, which has created major data systems for the Defense Department and other major users. "We've impressed upon our consultants that the system has to be bulletproof," Smith said.

In January, the RAM division expects to begin sending out application notices to those who may be eligible for IFQs. When an application is received by NMFS, the agency will send back a form showing the amount of IFQs compiled from its "official" data base. If an applicant agrees with the NMFS numbers, there

will be an issuance of IFQs to that individual.

Smith was one of three commissioners with the state's Commercial Fisheries Entry Commission. In late October, he was busy carving out space in NMFS regional headquarters for himself and his staff of three. When the offer came to pull together the multi-faceted IFQ program for the feds, Smith said, he simply couldn't turn it down.

From the moment the IFQ rule was published in the Federal Register, NMFS was prepared to begin implementing the program, though certain aspects will continue to be developed or fine-tuned for years. While publication provides a 30-day window for people to file lawsuits against any new federal law, Smith was doubtful that the IFQ program could be stalled or derailed.

"Something unexpected can come out of the woodwork on any new policy decision, but the plan has been adopted at all levels of the government. Unless someone can come up with compelling arguments to convince a federal judge to put it on the shelf, we're prepared to go forward," Smith said.

The monumental computer data base needed to track the IFQ program was nearing completion when Smith came onboard in October. Data requirements include fish ticket and landings information, individual permit files from the CFEC, Halibut Commission reports and other official

records.

If the numbers from the data base don't jibe with an applicant's records, there will be opportunities to dispute the finding.

"Applicants can provide copies of fish tickets, partnership agreements and other information that demonstrates their records are better than the official record at NMFS," Smith said. "That will be evaluated, and we'll either confirm or amend the record, or ask for more information."

If an IFQ claim is denied, an applicant can request an administrative hearing. If that doesn't settle the issue, he or she may appeal to the NMFS regional director who can affirm, reverse or modify a decision of the hearing officer. Ultimately, an unhappy IFQ applicant can file a lawsuit in Federal District Court.

Smith said he is personally committed to making the IFQ application process equitable to everyone who applies. "I want to be as open as possible with the public so everyone knows what's going on. I want to ensure that even though people may be unhappy with the overall program, or with a specific allocation decision, they'll still feel like they've been handled as fairly and efficiently as the system allows," he said.

The new RAM director admitted it's

continued on page 23

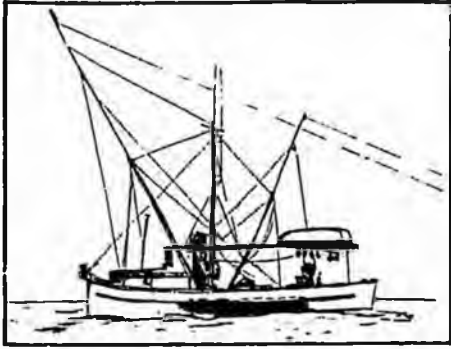
continued from page 20

inevitable that many "nuances" to the IFQ program will be discovered and result in changes along the way. "Lots of things still have people scratching their heads, like the block proposals that are designed to protect the small boat fleets," he said. "These kinds of questions will continue to challenge us, because there's no comparable model anywhere in the world. Nothing like this has been attempted on such a large scale before."

"I know many feel it's like fencing in the open range, and that rubs

against the grain of many rugged individualists," Smith said. "But the potential benefits of ending the 'range wars' are so great."

Two weeks into the job, Smith said he was "upbeat" about the hands-on work ahead. "There's a lot of support at the regional level, and we'll work with the industry and the bureaucrats to try and make the IFQ program as good as we can." He added with a laugh, "I may be beat to a pulp in six months, but I think we're going to pull this off." □



Alaska Trollers Association

130 Seward St., No. 505
Juneau, Alaska 99801
(907) 586-9400
(907) 586-4473 Fax

April 19, 1993

Representative Bill Williams, Chairman
House Resources Committee
State Capitol
Juneau, AK 99811-1182

Dear Representative Williams:

Alaska Trollers Association (ATA) would like to take this opportunity to comment on SB 132, relating to loans for the purchase of individual fishery quota (IFQ) shares. ATA supports the concept of the state making loans available for the purchase of IFQ shares by individual commercial fishermen. However, ATA believes that the \$300,000 limit per person is too high.

ATA requests that the loan amount be lowered to a maximum of \$100,000 per person. This will allow more small boat operators the opportunity to participate in the loan program, which we think is more in line with the intent of the bill.

With the above intent in mind, ATA questions the need to make loans for quota shares available to CDQ participants, since they already have financial assistance available for the purchase of IFQ shares. We suggest this section of the bill be dropped.

Finally, ATA finds the language in HB 123 superior to that of SB 132, as the intent and applications of the bill are much more straight forward. We recommend that the committee amend the bill to more closely reflect HB 123.

We thank the legislature for offering Alaskan fishermen the opportunity to expand thier operations or enter into the halibut and sablefish fisheries, and for considering our suggestions.

Sincerely,

Dale A. Kelley
Executive Director

Alaska Longline Fishermen's Assoc.

P.O. Box 1229 Sitka, AK 99535 (907) 747-3400

April 15, 1993

Representative Williams, Chair
House Resource Committee
Juneau, AK 99801-1182

Dear Representative Williams,

I was disappointed to hear that HB 123, Representative Ulmer's quota share finance bill, has been replaced by SB 132. Our organization worked closely with Representative Ulmer to develop HB 123 and consider it a well-worded, effective bill. I understand that your office was also involved with drafting HB 123, hence I expect that you share our disappointment. I hope that the House Resources Committee will make every effort to amend SB 132 to reflect the intent and application of HB 123. I have identified below specific language our organization believes must be addressed if SB 132 is to be acceptable to Alaska's longline industry.

1. The stated Purpose and Intent of HB 123 is clear and accurate. The Findings in SB 132 are erroneous and misleading. The quota share program will not create a "privileged class" of a few wealthy people any more than the State limited entry program created a privileged class. The cost of entering the sablefish and halibut fisheries will increase in the same manner in which the cost of entering the salmon and crab fisheries increased following limited entry. These costs were--and are--outweighed by the importance of protecting the productivity of the resource and the socioeconomic health of the fishing industry. For those fishermen who have not yet diversified into the longline fisheries, diversification will be more costly; however, under the quota share program the longline fisheries will be worth the investment. The make-it or break-it derbies are risky and wasteful of capital, not to mention lives. Quota shares will stabilize the longline industry, benefiting the people who work in that industry. Under the quota share program the longline fisheries will operate over a nine month season, hence Alaskan residents, rather than summer visitors from out State, will again comprise the work force. Contrary to the Findings in SB 132, the longline quota share program will provide a stable source of income for vessel owners, crew members, Alaskan processors in the State in general.

The Findings in SB132 also state that quota shares will eventually be concentrated in the hands of a few wealthy fishermen. The Council has taken steps to address that concern by limiting the amount of sablefish and halibut quota shares an individual may harvest; the proposed Block Amendments will further limit ownership. Supporting the Block Amendments would be a constructive effort toward safeguarding Alaska's interests under the quota share program; the Findings in SB 132 fail to offer a positive direction. In sum, the Findings should be deleted from SB 132 and replaced with the Purpose and Intent outlined in HB 123.

2. HB 123 includes an IFQ loan eligibility criteria which equates the program to the 'B' loans currently established under the State limited entry loan program. This criteria will ensure that deckhands and small boat operators who do not have ready access to

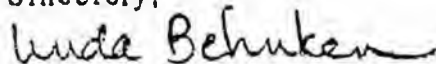
capital from traditional sources will be able to purchase quota shares. ALFA supports amending SB 132 to include this language.

3. Finally: SB 132 expands the quota share loan program to include CDQ recipients. ALFA considers this expansion inequitable. The CDQ program is intended to provide disadvantaged Alaskan communities with an opportunity to become participants in the sablefish and halibut fisheries. The communities have the opportunity to use the revenue generated by CDQs to purchase quota shares. Hence the CDQ program has provided Western Alaska communities with a deserved advantage in purchasing quota shares. ALFA endorsed the CDQ program for the sablefish and halibut program and will continue to support it as outlined in the Council's plan. However, ALFA members maintain that expanding that advantage to allow CDQ recipients (organizations, corporations, etc.) to compete with individual fishermen from around the State for quota share loans would be inequitable. Western Alaska CDQ recipients have a federally granted source of capital for purchasing quota shares; Alaskans from other parts of the State have only this loan program to turn to. ALFA urges the House Resources Committee to delete this section from SB 132.

In closing: on behalf of the Alaska Longline Fishermen's Association I urge the House Resources Committee to substitute language from HB 123 into SB 132 wherever the two bills differ. In particular, ALFA requests that the Committee address the sections cited above and take action to delete or amend these sections.

Thank you for the opportunity to comment.

Sincerely,



Linda Behnken
(Exec. Director, ALFA)



OUTLINE FOR A COMPREHENSIVE QUOTA SHARE LOAN PROGRAM

December 2, 1993

On November 9, 1993, the Secretary of Commerce published the Final Rules establishing the halibut and sablefish Individual Fishing Quota (IFQ) Plan. Implementation of the quota share program is scheduled for March, 1995. Predictably, a significant amount of quota share will change hands during the first few years following implementation as fishermen adjust to the new program. Ensuring that resident Alaska fishermen have ready access to capital for purchasing quota share will ensure that Alaskan communities and the State as a whole derive maximum socioeconomic benefit from the IFQ Plan. With this goal in mind, the Alaska Longline Fishermen's Association (ALFA) proposes that a comprehensive IFQ loan program, involving private, State, native corporation, and community sectors as lenders, be developed and established before the 1995 implementation date. Below is a status report on the development of the loan program to date along with suggestions for expanding the program to effectively incorporate communities and native corporations.

Private Sector

The private sector (e.g., banks and credit unions) will remain the primary source of loans for most Alaskans. The Alaska Department of Commerce and Economic Development, Division of Investments, recently sponsored a workshop to educate representatives from banks about the IFQ Plan and to identify changes that would facilitate loans. If acceptable to industry and managers, these changes will be incorporated into the Plan prior to implementation.

State Sector: Loans to Individuals

During the last legislative session, two quota share loan Bills were introduced to the House. Both Bills sought to expand the existing State loan program (which provides Alaskan residents with loans to purchase fishing vessels and limited entry permits) to include financing for quota shares. Although Representative Ulmer's Bill was effectively eliminated by Representative Jacko's Bill, the former is more widely supported by the longline industry. Our Association is willing to work with the legislature to resolve problematic language, and to move a quota share loan Bill quickly out of committee to the floor. Again, action during the 1994 legislative session is essential.

Community and Native Corporation Sector

In designing this aspect of the loan program, we are asking the Legislature to break new ground. ALFA suggests that communities and Native corporations throughout Alaska be given the opportunity to borrow money from the State to, in turn, lend to community residents or shareholders. The communities and

Native corporations would be required to develop business plans (similar to the western Alaska Community Development Quota (CDQ) plans) specifying loan qualification criteria (e.g., residency within the community, deliveries to processors in the community, etc.) and submit them to the State. State personnel familiar with the CDQ process would review the plans and work with applicants to ensure success. Thus financed, communities and Native corporations will be able to increase participation of residents and local processors in the longline fisheries, maximizing benefits of the IFQ Plan to Alaska. In effect, the loan program as describe will enhance coastal community stability throughout the State, providing additional jobs and increasing the amount of revenue generated by raw fish tax.

The annual ex-vessel (i.e., price paid to fishermen) value of the halibut and sablefish fisheries are approximately 50 million and 100 million dollars, respectively. Estimates are that quota shares will sell for approximately 2-4 times the ex-vessel price. The value of the longline resource and hence the value of the harvesting privileges associated with quota shares is substantial. For that reason, adequately financing the quota share loan program will demand a significant amount of initial capital. ALFA suggests that the State explore the possibility of issuing bonds through AIDEA, using the State's credit rating, then make that money available to communities and Native corporations. Since IFQs provide harvest access or privileges to a specific poundage of sablefish or halibut, the loans will be low risk, the quota shares themselves serving as valuable collateral--i.e., if an individual who borrowed money from a community defaults on a loan, the community will take control of the quota share until another buyer is found; similarly, if a community defaults on a State loan the quota share will accrue to the State.

Summary:

The potential socioeconomic benefits offered by IFQs provide compelling reasons for the State to actively vest itself in the quota share program. By providing capital to individuals, communities, and Native corporations, the State will optimize benefits afforded by IFQs, expanding the community development concept successfully implemented through CDQs. The existing Alaska loan program for commercial fishermen continues to generate significant revenue for the State; due to the nature of IFQs, the quota share loan program is a lower risk investment with potentially much higher returns. The comprehensive quota share loan program outlined above will increase Alaska's involvement in the longline fisheries, increasing employment opportunities, raw fish tax revenues, and socioeconomic stability in Alaska's coastal communities. By designing legislation during *this session* the State will maximize benefits. We urge immediate attention to the quota share loan program.



North Pacific Fisheries Association, Inc.

HEADQUARTERS:

BOX 796 • HOMER ALASKA 99603

TO : HOUSE RESOURCES COMMITTEE
FROM : NORTH PACIFIC FISHERIES ASSOCIATION
RE : SB 132

April 16th, 1993

The North Pacific Fisheries Association is on record of support for the loans for IFOs. The concept we feel is to gain as many shares as possible to the resident fishermen in the State of Alaska, and to help the small time fishermen and crew members that do not have the resources for acquiring loans through commercial banks.

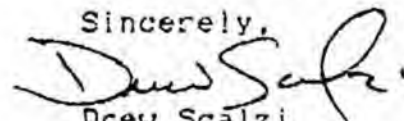
We are opposed however, with SB 132s provision allowing for a CDO corporation to put up collateral toward a matching fund for getting money out of the State loan program. This takes away from the integrity of the loan program. If the CDO corporation has money for collateral, it certainly has money then for purchase of IFOs directly.

What we fear would happen is that a few well financed corporations could tie up a great portion of the State loan program funds. This would leave those that it was intended for out of the loop and unable to capitalize.

Also the CDO corporations and fishermen there of have been allocated the resource from the Bering Sea. The IFOs that will be made transferable will be in the Gulf of Alaska and purchased primarily by residents from Gulf communities. If a CDO corporate fisherman wishes to purchase and fish in the Gulf he may certainly do so, but it would be unjust to tie up State monies with corporate monies and leave a fisherman "on the beach" in his own back yard.

Thank-you for your consideration.

Sincerely,


Drew Scalzi
NPFA/pres

Petersburg Vessel Owners Association

P.O. Box 232

Petersburg, Alaska 99833

Phone (907) 772-9323 Voice and Fax

April 16, 1993

Representative Bill Williams, Chairman
House Resource Committee
Alaska State Legislature
Juneau, Alaska 99801-1182

Dear Representative Williams,

We were extremely disappointed to learn that HB 123, Representative Ulmer's bill relating to loans for the purchase of quota shares, has now been replaced with SB 132. HB 123 has the strong support from many in the longline industry.

SB 132 is simply unacceptable in its current form. The findings in this bill are unfair and very misleading. It is our belief that the IFQ program will provide long-term stability for the resource, the fishers, and Alaska's coastal communities. The IFQ program will protect the health of the fisheries resources and the socio-economic health of the fishing industry and the communities dependent on the industry. The current IFQ program for sablefish and halibut has many safeguards in it that will prevent excessive consolidation of shares, keeps the shares in the hands of individuals, maintains the small boat fleet and the fleet's current complexion. In addition, it will increase safety, reduce bycatch, and improve product quality. The findings in SB 132 should be removed. The purpose and intent of HB 123 is very clear and accurate and would be a very appropriate substitute for the findings in SB 132.

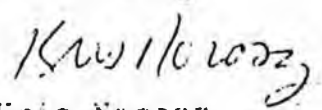
SB 132 allows for the expansion of the loan program to include CDQ recipients. We cannot support this expansion. The CDQ program provides disadvantaged western Alaska communities the opportunity to become players in the halibut and sablefish fisheries. They can then use the monies generated by CDQs to purchase quota shares. We believe it would be unfair to allow CDQ recipients to compete with individual resident fishers for quota share loans. We encourage you to remove this section from SB 132.

HB 123 contains eligibility criteria similar to that found in the State's limited entry loan program for the "B" loans. This allows individuals, who may not be eligible for loans from traditional lending sources, to have the opportunity to purchase quota shares. This could be the situation for many small boat owners or deckhands who are trying to enter the fishery as an owner/operator.

We clearly see the need for expansion of the State loan program to include loans for the purchase of quota shares for the halibut and sablefish longline fisheries. We respectfully request that the Resource Committee seriously consider the changes to SB 132 that we have proposed.

Thank you for your consideration.

Sincerely,



Kris Norosz
Director

cc: House Speaker Ramona Barnes
Representative Grussendorf
Senator Taylor



ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

April 20, 1993

The Honorable Bill Williams
Alaska House of Representatives
Room 128
State Capitol
Juneau, Alaska 99801-1182

Re: CS for SB 132(RES)am

Dear Representative Williams:

The Alaska Crab Coalition is very concerned about many of the provisions contained in CS for SB 132(RES)(am). As it is presently drafted, and unless it is substantially amended, the Alaska Crab Coalition opposes SB 132.

Section 1 of SB 132 contains a findings and intent section. This findings and intent section addresses individual fishing quotas and purports to speak for the "commercial fishing industry" by listing a litany of impacts and problems with IFQs. Section 1(b). We are concerned that any attempts to speak for industry should come from industry, not the legislature. Instead of the polemical statements contained in the findings and intent section of SB 132, we suggest replacing the findings and intent section with more general purpose and legislative intent language such as that contained in HB 123.

The primary reason for bills such as SB 132 and 123 is to provide loans for the purchase of individual fishing quota shares. Yet the language contained in the findings and intent section of SB 132 as amended is far more expansive than necessary, and is much too complex to pass the legislature without a great deal more scrutiny by the commercial fishing industry, revision, and careful consideration.

In addition, SB 132 ignores the role that the North Pacific Fisheries Management Council's role, as authorized by the Magnuson Fisheries Conservation and Magnuson Act, to administer the IFQ program and to prevent many of the alleged impacts that the findings and intent section of SB 132 projects would occur. We suggest a more careful consultation with the

The Honorable Bill Williams
April 20, 1993
Page 2

NPFMC prior to adoption of any finding and intent language to insure first, that the findings and intent language is accurate, and second, that the bill not raise unnecessary fears, concerns, or erroneous opinions and positions in State policy.

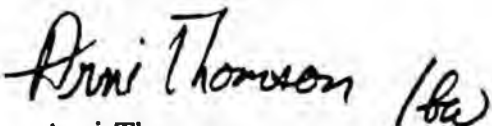
The IFQ program adopted by the Council is new. Any program by the State of Alaska to finance the purchase of IFQ's shares should be adopted by the State one step at a time. This can be done by first authorizing the State to make loans to individual fishermen for IFQs and to set limits on the amount that can be borrowed.

The Alaska Crab Coalition does not oppose the community development quota (CDQ) program for Western Alaska recently adopted by the Council. But relating the purchase of IFQs to the CDQ program. goes too far, too fast, does not consider the impact of the loan program on the future of the CDQ program, nor does it determine whether alternative sources of financing other than the State may be available for CDQ participants. For example, the Clinton Administration is proposing \$2.5 billion for Community Development Block grant programs, to assist economic development for disadvantaged communities. If these federal funds become available they would become a major source of financing for Western Alaska fishermen, without stretching limited State loan funds even thinner.

We will be pleased to work with you to discuss other specific concerns and proposed language that should be considered by the House Resources Committee in its deliberations on SB 132.

We appreciate the opportunity to provide this information to you. If you have any questions, please let us know.

Very truly yours,



Arni Thomson
Executive Director

AT:ltr

JERE T. MURRAY, Ph.D.
P.O. Box 237, Seldovia, Alaska 99663-0237
(907) 234-7646 (Voice or FAX)
January 20, 1994.

Alaska Legislature
House Resources Committee

Via FAX Only: 465-3715

Dear Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify concerning CSHB 123, "An Act relating to loans for the purchase of quota shares for fisheries in or off Alaska."

You need to be aware that the District Court establishing the quota shares" which would be the "value" underlying the loans proposed in this legislation is presently the subject of legal action in Federal District Court. This litigation and subsequent appeals are likely to remain unresolved at the time the initial "orgy of quota share transfers" (Phil Smith, quoted in Alaska Fisherman's Journal, January, 1994, page 10) takes place prior to the start of the IFQ fisheries in 1995. Thus, the State of Alaska fishery loan fund may end up loaning money on entities which turn out to have no value as a result of the court decisions. Should this be the case the State of Alaska may find it difficult at best to secure repayment of these loans.

Even without the cloud of the legal action these loans will be of an inordinately high risk. The ability of any borrower to service this debt through the income generated by the purchased quota shares is highly doubtful. The quota shares themselves have nil or limited intrinsic value as they "represent only a harvesting privilege that may be revoked or amended subject to [applicable law]." The viability of a loan program such as that envisioned by CSHB123 was addressed during the December 1991 meeting of the North Pacific Fisheries Management Council. Mr. Clem Tillion, whom I'm sure you all know, told me then "I wouldn't want to loan them money they won't be able to repay!" There it is - "right from the horse's mouth."

The amount available for loan, last known to me to be \$3 Million, is a pitiful sum in relation to the expected market value of quota shares to be transferred during the first year. This expected value has been estimated to be 80% of the total allocation which will be in the \$300 Million to \$1 Billion range. If this program is to have any significant effect on the flow of quota share out of Alaska, it would appear that much more than 4/10% to 4% of the transferred market value must be available for loan to Alaskans at a very low interest rate for longer than customary loan life.

I believe that all this program can accomplish is increased market price of quota shares, lost money for the State of Alaska and promotion of a few bankruptcies.

Sincerely, Jere Murray