

ALASKA LEGISLATURE

1437

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

IN THE SUPREME COURT OF THE STATE OF ALASKA

ROGER BERGER, d/b/a FRONTIER)
FINANCIAL SERVICES,)
Appellant,)
v.)
STATE OF ALASKA, Department)
of Revenue,)
Appellee.)

Supreme Court No. S-607A

ORDER

Superior Court No. 3AN-89-8710 Civil

Before: Compton, Chief Justice, Rabinowitz, Matthews, and
Eastaugh, Justices. [Moore, Justice, not
participating.]

IT IS ORDERED:

1. Opinion No. 4289, published on December 1, 1995, is
WITHDRAWN.
2. Opinion No. 4316 is issued on this date in its
place. The major changes to the opinion can be found on pages 4,
5 and 9.

Entered by direction of the Court at Anchorage, Alaska
on January 26, 1996.

CLERK OF THE SUPREME COURT



JAN HANSEN

Notice: This opinion is subject to correction before publication in the Pacific Reporter. Readers are requested to bring errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, phone (907) 264-0607, fax (907) 275-5808.

THE SUPREME COURT OF THE STATE OF ALASKA

ROGER BERGER, d/b/a FRONTIER)
FINANCIAL SERVICES,)

Appellant,)

v.)

STATE OF ALASKA, Department)
of Revenue,)

Appellee.)

Supreme Court No. S-6078

Superior Court No.
3AN-89-8710 CI

O P I N I O N

[No. 4316 - January 26, 1996]

Appeal from the Superior Court of the State of
Alaska, Third Judicial District, Anchorage,
Dana A. Fabe, Judge.

Appearances: Mark A. Sandberg, Sandberg,
Smith, Wuestenfeld & Corey, Anchorage, for
Appellant. Vincent L. Usera, Assistant
Attorney General, Bruce M. Botelho, Attorney
General, Juneau, for Appellee.

Before: Moore, Chief Justice, Rabinowitz,
Matthews, Compton and Eastaugh, Justices.

MATTHEWS, Justice.
COMPTON, Justice, with whom RABINOWITZ, Justice,
joins, dissenting in part.

I. BACKGROUND

A. Facts and Proceedings

In 1989, Roger Berger bought the rights to approximately
3000 permanent fund dividends (PFDs). He paid sellers between \$325

and \$400 for their PFDs.¹ To guarantee that he would receive the purchased PFDs, Berger had the sellers send the State a PFD change of address form with Berger's address on it and sign a power of attorney permitting Berger to cash the PFD check. In addition, each seller agreed to pay Berger the amount of the 1989 PFD if the State refused to honor the change of address request or the purchase. Finally, Berger had each seller sign a confession of judgment form so that he could collect the PFD amount from each seller if the State refused to honor the change of address request or the purchase.

Berger went to these lengths to guarantee collection because he knew that the Department of Revenue (DOR) did not favor PFD assignments. During the 1980s, DOR proposed regulations that would have prohibited PFD assignments. In each instance, the Attorney General advised DOR that the proposed regulation violated state law. Nonetheless, in 1989 a regulation was promulgated banning assignments "unless the assignee named is a government agency." 15 Alaska Administrative Code 23.220 (1989). Berger continued to purchase PFDs.

In October 1989, the sellers received a letter from DOR saying DOR would not honor the change of address forms and that DOR would mail PFDs to the sellers. In response, Berger filed suit, requesting damages, an injunction to force the State to honor the

¹ Each PFD was estimated to be worth \$840, and turned out to be worth \$873.16.

PFD assignments, and a declaratory judgment that the regulation barring PFD assignments is invalid.

The superior court denied injunctive relief, and this court denied Berger's petition for review. In 1991, the superior court found that the regulation was beyond the scope of DOR's authority and invalid.² Consequently, the superior court granted partial summary judgment for Berger. The court declined, however, to address whether the transactions were usurious, as claimed by DOR. In 1992, the superior court refused to grant either party summary judgment; it found that the State could not raise the defense of usury because the defense of usury is personal to a borrower, but found that the State could raise the Alaska Small Loans Act (ASLA) as a defense. Finally, in 1993, the superior court found that the PFD purchases were illegal and unenforceable under ASLA, and granted summary judgment for the State. Berger appeals.

B. Usury and the Small Loan Laws

The American colonies adopted English usury laws prior to independence to limit the amount of interest a lender could charge on a loan. See generally Howard J. Alperin & Roland F. Chase, Consumer Law: Sales Practices and Credit Regulation § 497 (1986). While usury laws prevented one evil, they fostered another: loansharking. Usury interest limits were so low that small loans were not profitable. Many people needed to take out

² In 1992 the legislature amended AS 43.23.069(a) to prohibit PFD assignments. This amendment has no effect on the 1989 assignments.

small loans, and turned to loansharks for small loans at illegal interest rates. Because these loans could not legally be enforced, lenders used extra-legal means for collection. 54 Am. Jur. 2d Moneylenders & Pawnbrokers § 7 (1971); National Consumer Law Center, Usury and Consumer Credit Regulation §§ 2.3.3.1, 9.3.5.2 (1987).

In an attempt to curb the loanshark problem, legislatures began passing small loan acts in the early 1900s. These acts often were modeled after the Uniform Small Loan Law drafted by the Russell Sage Foundation. National Consumer Law Center, supra, §§ 2.3.3.1, 9.3.5.2. Small loan laws were special usury statutes, intended to be an exception to the general usury laws. Small loan laws primarily provided a licensing framework by which lenders could become licensed to offer small loans at interest rates higher than those allowed under general usury laws. These laws also prohibited unlicensed lenders from making small loans at rates higher than the general usury rates. Barbara A. Curran, Trends in Consumer Credit Legislation 15-45 (1965); F.B. Hubachek, Small Loan Series: Annotations on Small Loan Laws - Based on the Sixth Draft of the Uniform Small Loan Law (1938).

Alaska followed this general trend. Alaska's usury laws are codified at AS 45.45.010-.090. Under AS 45.45.010(a) the rate of interest is "10.5 percent a year and no more . . . except as provided in (b) of this section." Subsection (b) provides that interest charged by express agreement may not exceed "five percentage points above the annual rate charged member banks for

advances by the 12th Federal Reserve District" on the day the agreement is made, and that an agreement greater in amount than \$25,000 "is exempt from the limitation of this subsection."³ Borrowers are provided with civil remedies if their lender charges too much interest. AS 45.45.010, .030. In 1955 the legislature passed the Alaska Small Loans Act, modeled after the sixth draft of the Uniform Small Loan Law.⁴ Ch. 73 SLA 1955. ASLA describes the licensing process, AS 06.20.010-.220, and provided civil and criminal⁵ penalties for both licensed and unlicensed lenders who violate its provisions. AS 06.20.320. ASLA also prohibits unlicensed lenders from lending less than \$25,000 with interest higher than the legal rate. AS 06.20.300. It is this clause that the State claims Berger violated. However, before discussing whether Berger violated ASLA, we must first address whether the State can raise ASLA as a defense.

³ Subsection (b) was passed at a time when the rate it permitted was substantially higher than the 10.5 percent rate allowed under subsection (a). At this writing, however, the rate charged by the Federal Reserve is 5.25 percent and the permissible rate under subsection (b) is therefore 10.25 percent. This obviously paradoxical situation would appear to be worthy of legislative attention.

⁴ The legislative history does not state this, but the Uniform Small Loan Law and the original Alaska Small Loan Act are nearly identical. Compare Ch. 73 SLA 1955 with Hubachek, supra, at 181.

⁵ In 1993 the legislature repealed ASLA's criminal penalty provision. Ch. 26, § 102, SLA 1993.

II. DISCUSSION

A. The State May Raise the Alaska Small Loans Act as a Defense

Berger contends that the State cannot raise ASLA as a defense. Berger points out that ASLA is a form of usury statute. Traditionally, only borrowers (or their trustees) could raise usury as a defense. Because ASLA is a special usury statute, he argues that only the "borrower" (or, in this case, original PFD holder) can raise it as a defense.

The State addresses Berger's contention as a standing issue.⁷ The State first points out that ASLA is not the State usury statute. And, contrary to the usury statute, ASLA had provisions for criminal enforcement by the Attorney General.⁸ Additionally, the Attorney General has the power to intervene in cases in the public's interest. Since the Attorney General can affirmatively act to enforce ASLA, the State argues that he can raise ASLA as a defense.

⁶ Whether the State can raise ASLA as a defense is a question of law. We review questions of law using our independent judgment and apply the "rule of law which is most persuasive in light of precedent, policy and reason." Summers v. Hagen, 852 P.2d 1165, 1169 (Alaska 1993).

⁷ The State also argues that the doctrine of "estoppel" does not apply. Berger does not use the term estoppel, but claims that because the State did not raise ASLA until other claims failed, "the State's position is one of convenience rather than conviction." He does not cite any legal authority or explain why this is legally significant. Therefore, we do not address the estoppel argument. Adamson v. University of Alaska, 819 P.2d 886, 889 n.3 (Alaska 1991).

⁸ Although the State speaks in the present tense, the legislature repealed ASLA's criminal penalty provision in 1993. Ch. 26, § 102, SLA 1993.

The superior court found that the State had standing to raise ASLA as a defense:

[ASLA] provides that violation of certain of its requirements . . . constitutes a misdemeanor. This court agrees with the State's argument that if the attorney general has the power to bring an action to enforce a state law it must follow that the attorney general has standing to raise [a] violation of that statute in an action for damages against the state.

We agree with the superior court and the State. We have held that the State, through the Attorney General, can act to enforce certain statutes. For example, in Public Defender Agency v. Superior Court, 534 P.2d 947, 949-50 (Alaska 1975), we held that the Attorney General may enforce child support orders. The Attorney General's authority to enforce the support orders stems, in part, from the fact that "willful non-support [is] a misdemeanor." Id. at 949. Additionally, the Attorney General has the common law power "to bring any action which he thinks necessary to protect the public interest." Id. at 950. We reaffirmed Public Defender Agency in State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982). In First National the Attorney General brought suit against several fraudulent real estate developers. Id. at 408-09. The State sought an injunction against further fraudulent sales and restitution for fifty-three defrauded purchasers. Id. at 408. The developers argued "that the State was without authority to enforce the common law rights of these purchasers." Id. at 420. We held that the Attorney General could

bring a suit even "in the absence of express statutory authority."
Id. at 421.

This case is similar to Public Defender Agency. The legislature has expressed an interest in protecting Alaskans from usurious small loans by making such transactions misdemeanors. Additionally, the State argues that invalidating the transactions is in the public interest. Thus, as in Public Defender Agency, we hold that the State can act to enforce a statute, in this case by raising ASLA as a defense to Berger's suit.

B. The Alaska Small Loans Act Does Not Prohibit These Transactions

1. The scope of the Alaska Small Loans Act.

Alaska Statute 06.20.300(a) prohibits unlicensed persons from making small loans, or similar transactions, at a greater interest rate than that allowed under Alaska's general usury statute. The statute states:

Except as authorized in this chapter, a person may not directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than that which the person would be permitted by law to charge if the person were not a licensee, upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of \$25,000 or less.

AS 06.20.300(a).

⁹ Whether ASLA applies to these transactions is a question of law. We review questions of law using our independent judgment and apply the "rule of law which is most persuasive in light of precedent, policy and reason." Summers v. Hagen, 852 P.2d 1165, 1169 (Alaska 1993).

The superior court ruled that Berger violated the plain language of AS 06.20.300(a):

[Berger] "contracted for" a "consideration" upon the "forbearance" of a "thing in action". The contract entered into between [Berger] and the individual applicant provided that [Berger] would receive consideration in the form of the applicant's 1989 Dividend (a "thing in action") or its cash equivalent. [Berger] would forbear the right to receive the Dividend or payment until January 1, 1990. Therefore, AS 06.20.300 required that the consideration received by [Berger] in these transactions not be greater than authorized by law.

This misconstrues AS 06.20.300. Berger will receive a handsome return on his purchases. However, the statute only forbids handsome returns -- those in excess of the legal rate -- where there is (1) a loan/use/forbearance of money/goods/things in action, or (2) a loan/use/sale of credit.

In this case Berger relinquished money. Thus, AS 06.20.300 only prohibits the transaction if, when Berger paid each PFD seller, he was engaging in the loan or forbearance of money.¹⁰

It is clear that Berger did not engage in the forbearance of money;¹¹ whether he loaned money is less clear. There are two

¹⁰ We interpret the word "use," in this context, to be parallel and similar in meaning to the word "loan" and to apply when the subject matter is goods or things in action rather than money.

¹¹ To forbear money is to refrain from collecting a debt. See Boerner v. Colwell Co., 577 P.2d 200, 204 n.7 (Cal. 1978) ("A 'forbearance' of money is the giving of further time for the repayment of an obligation or an agreement not to enforce a claim at its due date."); H.V. Tvgrrett v. University Gardens Homeowners' Ass'n, 687 S.W.2d 481, 483 (Tex. App. 1985) ("'Forbearance' occurs when there is a debt due or to become due, and the parties agree to extend the time of its payment.").

methods for determining whether Berger loaned money. First, did Berger's transactions fit the objective definition of a loan? Second, were the transactions loans disguised as sales? If the answer to either question is yes, Berger loaned money in violation of ASLA.¹²

2. The transactions do not fit the definition of a loan.

A loan is the payment of money by a lender to a borrower in exchange for an agreement to repay with or without interest. See Southwest Concrete Prods. v. Gosh Constr. Corp., 798 P.2d 1247, 1249 (Cal. 1990) ("A loan of money is the delivery of a sum of money to another under a contract to return at some future time an equivalent amount."); Liberty Nat'l Bank & Trust Co. v. Travelers Indem. Co., 295 N.Y.S.2d 983, 986 (N.Y. App. 1968) ("A loan is defined in Webster's New Twentieth Century Dictionary (1964) as ' . . . anything furnished for temporary use to a person at his request, on the condition that it shall be returned, or its equivalent in kind, with or without a compensation for its use'"); Consumer Credit Code (1974 Act) § 1.301(25)(a)(i) (defining loan as including "the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third person for the account of the debtor").

A sale is the payment of money by a buyer to a seller in exchange for title and possession of property. See Cullen v.

¹² The superior court analyzed the transactions to determine if they were disguised loans, but found that "it [was] not necessary to address this argument, given the fact that ASLA specifically covers the transactions."

Bragg, 350 S.E.2d 798, 799-800 (Ga. App. 1987) (assignment of expected tax refund of \$474 for immediate payment of \$296.53 a sale rather than a loan); Grinnell Corp. v. United States, 390 F.2d 932, 947-48 (Ct. Cl. 1968) (describing sale as, normally, transfer of property for a price); Kline v. Robinson, 428 P.2d 190, 194 (Nev. 1967) ("A sale is the transfer of the property in a thing for a price in money. The transfer of the property in the thing sold for a price is the essence of the transaction."); U.C.C. § 2-106(1) (1987) ("A 'sale' consists in the passing of title from the seller to the buyer for a price.").

In this case, Berger gave each seller money in exchange for a PFD and a promise to repay Berger the value of the PFD if the State did not send Berger the proceeds. These transactions thus contain elements of both definitions but do not exactly fit either. The conditional guarantees add the element of possible repayment (found in a loan) to a transfer of property for money (a sale).

Case law holds that repayment guarantees do not necessarily turn sales into loans. Where such guarantees exist, however, transactions must be scrutinized to determine if they are disguised loans. See Investors Thrift v. AMA Corp., 63 Cal. Rptr. 157, 159 (Cal. App. 1967) ("[A] guarantee of the validity of accounts implemented by an agreement to repurchase 'uncollectible or dispute accounts' [does] not, per se, render the transaction a loan."); Refinance Corp. v. Northern Lumber Sales, 329 P.2d 109, 113 (Cal. App. 1958) ("[T]he giving of a guaranty is simply an item of testimony or evidence which the trial court may consider in

determining whether the transaction is in fact a loan"); Webster v. Sterling Fin. Co., 195 S.W.2d 509, 515 (Mo. 1946) ("[S]ome or all of the unsold installments in each note were pledged to secure the payment of the alleged sold installments, but we find no case or text that such would be evidence tending to show that the transactions were not sales, as stated in the sale agreements."); Coast Fin. Corp. v. Ira F. Powers Furniture Co., 209 P. 614, 615 (Or. 1922) ("The great weight of authority is that [a guaranteed] transaction should be regarded as a valid sale of a chattel with a warranty of soundness"); Val Zimmermann Corp. v. Leffingwell, 318 N.W.2d 781, 790 (Wis. 1982) (When unsure if a guarantee makes a transaction a loan, "examine all of the allegations . . . to determine whether . . . [it is] a usurious loan."). Because the presence of the guarantees precludes finding that the transactions were by definition either loans or sales, we turn to the question of whether the transactions were disguised loans.

3. The transactions are not disguised loans.

Courts often "pierce" suspicious commercial transactions to examine their true nature. See, e.g., Milana v. Credit Discount Co., 163 P.2d 869, 871 (Cal. 1945) ("The courts have been alert to pierce the veil of any plan designed to evade the usury law and in doing so to disregard the form and consider the substance."). See generally Hubachek, supra, at 145-78 (discussing small loan law evasion). Berger's transactions are sale-loan hybrids and should be subjected to the disguised loan analysis we articulated in two

prior cases, McGalliard v. Liberty Leasing Co., 534 P.2d 528 (Alaska 1975), and Metcalf v. Bartrand, 491 P.2d 747 (Alaska 1971).

We first addressed a disguised loan transaction in Metcalf. The transactions at issue began when Bartrand was denied a bank loan. Id. at 748. Her friend, Metcalf, offered to buy part of Bartrand's land for \$3,500, but allow her to keep possession of the land. Id. at 748-49. In return, Bartrand agreed to buy the land back from Metcalf for \$7,000 over three years. Id. When Bartrand later needed more money, Metcalf purchased another parcel of her land for \$5,000 and she agreed to buy it back from him for \$10,000 over two years. Id.

When Bartrand failed to keep up her purchase payments, Metcalf filed a foreclosure action claiming that Bartrand was in default on her contract payments. Id. Bartrand raised usury as a defense. Id. At trial, Metcalf testified that the transactions were sales and repurchases. Id. Bartrand testified that they were loans, and that she had intended to repay the money she had received. Id. The trial court found that the parties intended to make a loan, and that it was usurious and void. Id.

On appeal, we upheld the trial court's characterization of the transactions as disguised usurious loans. Id. at 750-51. We held that the court must look "not to the form but to the substance of the transactions." Id. at 751. We listed six factors for trial courts to consider in deciding whether a transaction is a disguised loan: (1) adequacy of consideration, (2) possession, (3) parties' conduct, (4) parties' financial status, (5) parties'

expectations, and (6) accuracy of documents. Id. at 750. We also held that Bartrand did not have to prove mutual intent to disguise a loan. Id. at 750-51. We concluded that the evidence presented at trial, including Bartrand's testimony of her intent to repay the money she received, was sufficient to support the trial court's finding of a disguised usurious loan. Id.

Our second disguised loan case was McGalliard v. Liberty Leasing Co., 534 P.2d 528 (Alaska 1975). The McGalliards desired to acquire trade fixtures. They selected what they wanted from a fixture supplier, Western Fixtures. It was arranged that Liberty Leasing would pay \$17,836.88 to Western for the fixtures and lease them to the McGalliards who would make thirty-six lease payments totalling \$24,721.92 to Liberty. Id. at 529. At the end of three years, Liberty would extend the lease indefinitely for annual payments of \$1,783.68. Id. After one extension Liberty would normally abandon leased property to its lessees. Id. at 532.

When the McGalliards defaulted after making nineteen payments, Liberty sued them for the balance of the lease. Id. at 529. The McGalliards raised usury as a defense. Id. The trial judge found that the usury statute did not cover the transaction and the McGalliards appealed. Id. In deciding McGalliard, we again listed several factors to consider in determining whether a transaction is a disguised loan: (1) the parties' intent, (2) the parties' discussion of alternatives, (3) the parties' relationship, (4) trade custom, (5) adequacy of consideration, and (6) computation of "charges in a manner in which loan interest is

usually computed." Id. at 530. We found that there was substantial evidence that both parties intended to treat the transaction as a loan. Id. at 530-33. We reversed the trial judge and held that the "transaction was a third-party loan," id. at 533, that is a loan by Liberty, the proceeds of which were used by the McGalliards to buy fixtures from Western.

These cases seem to illustrate that one constant element of a loan is that the borrower has an expectation to repay the money advanced unconditionally, and not merely in default of some other occurrence.¹³ See McGalliard, 534 P.2d at 530; Metcalf, 491 P.2d at 750; see also Kline v. Robinson, 428 P.2d 190, 194 (Nev. 1967) (holding that a loan is the transfer of money under a contract to repay, "and if such be the intent of the parties the transaction will be deemed a loan regardless of its form"). In both Metcalf and McGalliard the borrowers intended to repay the entity which had advanced money, not only because there was a legal obligation to do so, but because that was in their economic interest at the time each transaction was entered into. McGalliard, 534 P.2d at 529-30; Metcalf, 491 P.2d at 749-50.¹⁴

¹³ By contrast, the lender may not expect the borrower to repay the money advanced and, as in Metcalf, may hope that it is not repaid because the value of the security exceeds the amount owed. Metcalf, 491 P.2d at 749.

¹⁴ Repayment by the borrower in Metcalf was in the borrower's interest because the security was worth more than the amount owed. In the case of McGalliard, repayment was in the borrower's interest because the secured property was needed for the borrower's business.

In the present case, it is obvious from the structure of the questioned transactions that the PFD sellers did not have an unconditional repayment expectation, as distinct from knowledge that repayment might be forced upon them as a secondary remedy.¹⁵ To cast the transactions in the present case in lender/borrower terms, forfeiture of the security (the PFD) is what the borrower intends and expects. Payment of the whole amount of the PFD to the lender (Berger), as distinct from allowing the forfeiture of the security, has no particular advantage from the borrower's standpoint because the security is the exact equivalent of the amount owed and is not independently useful to the borrower. These transactions thus lack an essential element of disguised loans and are therefore not forbidden by ASLA.

¹⁵ In the accounts receivable financing cases cited by the dissent, the "seller" of the accounts receivable continued to collect the proceeds due under the accounts from the account debtors and forward them to the "buyer" of the accounts receivable. Brierley v. Commercial Credit Co., 43 F.2d 724, 726 (E.D. Pa. 1929); Milana v. Credit Discount Co., 163 P.2d 869, 871 (Calif. 1945); Dorothy v. Commonwealth Commercial Co., 116 N.E. 143, 147 (Ill. 1917); Mercantile Trust Co. v. Kastor, 112 N.E. 988, 989 (Ill. 1916); Western Auto Supply Co. v. Vick, 277 S.E.2d 360, 366 (N.C. 1981). Thus the "seller" expected to repay the buyer (by forwarding payments from account debtors) if the transaction proceeded as the seller expected that it would; the obligation to repay the buyer was thus not merely activated in default of receipt of payments by account debtors. Thus these cases are consistent with our decision in the present case. Further, unlike the present case, the accounts receivable financing cases involve continuing business relationships between the parties which are in substance indistinguishable from traditional lender/borrower roles.

III. CONCLUSION

Because Berger did not loan or forbear money, ASLA does not cover his purchase of PFD rights, and the State cannot successfully raise ASLA as a defense to paying Berger. Therefore, we REVERSE the decision of the superior court and REMAND for proceedings consistent with this opinion.

COMPTON, Justice, with whom RABINOWITZ, Justice, joins, dissenting in part.

I conclude that the transactions at issue were disguised loans subject to the interest rate limitation of the Alaska Small Loans Act. Since the monetary return to Berger exceeded that limitation, the loan may not be enforced. AS 06.20.310. Thus, I dissent from Section II(B)(3) of the opinion.

The court concludes that the transactions were not disguised loans because the "sellers did not have an unconditional repayment expectation, as distinct from knowledge that repayment might be forced upon them as a secondary remedy." A fair reading of the record, however, reveals that the sellers did have an unconditional repayment expectation.¹ By signing the Purchase Agreement the sellers knew that there was no condition under which the money represented by the permanent fund dividend would not be paid to Berger. Furthermore, the sellers knew that they were ultimately responsible for this payment.

While the court minimizes the importance of the repayment

¹ The "Purchase Agreement" provided,

In the event that the Seller's Alaska Permanent Fund Dividend or cash equivalent thereof is not transferred to the Buyer by January 1, 1990, due to the Seller's failure to qualify for an Alaska Permanent Fund Dividend, non-delivery of the Alaska Permanent Fund Dividend to the Buyer, or a claim to the Seller's Alaska Permanent Fund Dividend paramount to the Buyer's then the Seller shall be in material breach of this agreement.

This clause was followed by a confession of judgment.

guarantees, I consider them crucial to resolving the sale/loan question. An appropriate analogy, given the sui generis nature of permanent fund dividends, is to the sale of accounts receivable at a discount. Parties holding accounts receivable often sell them at less than their face value to obtain immediate cash in hand. If the seller of the accounts is "absolutely released from the obligations imposed by the instrument upon its discount and subsequent transfer," Western Auto Supply Co. v. Vick, 277 S.E.2d 360, 369 (N.C. 1981), aff'd on rehearing, 283 S.E.2d 101 (1981), then the transfer is considered a true sale not subject to usury laws. See Milana v. Credit Discount Co., 163 P.2d 869, 871 (Cal. 1945) ("Contractors are free to buy and sell their property, and this may include promissory notes and other instruments, at a price agreed upon, and when the bona fides of the parties is established the percentage of profit has no relation to the usury law.").

Conversely, if the seller of the accounts remains ultimately responsible for repayment, by means of an endorsement or guarantee, then such transfers are considered loans subject to usury laws, regardless of how the parties describe the transaction. See, e.g., Western Auto Supply, 277 S.E.2d at 368 ("[I]f the purchaser of a note requires the endorsement of the seller as a guaranty of payment . . . the transaction is, in effect, a loan."); Dorothy v. Commonwealth Commercial Co., 116 N.E. 143 (Ill. 1917) (a purported sale of discounted accounts receivable was actually a pledge of those accounts for a loan of money, due to the fact that the seller guaranteed payment of the accounts); Mercantile

Trust Co. v. Kastor, 112 N.E. 988, 991 (Ill. 1916) ("Calling the transaction a sale of accounts does not alter the fact that the transaction is merely an advancement of money, to be repaid by the borrower with a rate of interest greater than that allowed by law."); Brierley v. Commercial Credit Co., 43 F.2d 724, 727 (E.D.Pa. 1929) ("[The seller] got money from the credit company and was bound to see that money in the same amount was returned to the credit company when the accounts came due. What it paid for the accommodation of getting the money from the credit company, instead of having to wait to collect it from its customers, was really interest, though it was called by another name."); Milana v. Credit Discount Co., 163 P.2d at 872 ("The significant fact is that if the defendants had really purchased the accounts and had taken absolute title there would be no occasion for the provision or practice relating to guarantees of payment within specified periods. . . .").

The distinction these cases draw between sales and loans, a distinction which focuses on the alleged seller's continuing obligations to the buyer, offers a more meaningful method of rooting out disguised loans than the rule established by the court today. I would apply this authority to the present case. By requiring permanent fund dividend "sellers" to guarantee repayment unconditionally, the Purchase Agreement "create[d] a debit and credit relationship which [was] not terminated until replacement of the sum borrowed with agreed interest." Id. at 871. In other words, the Purchase Agreement created a loan. I would so hold.



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IN THE SUPREME COURT FOR THE STATE OF ALASKA

ROGER BERGER, d/b/a FRONTIER FINANCIAL SERVICES,)

Appellant,)

vs.)

THE STATE OF ALASKA, Department of Revenue,)

Appellee.)

Supreme Ct. No. S-6078 Civil

PETITION FOR REHEARING

The State of Alaska respectfully seeks a rehearing of the decision in this case on the grounds that the Court has misperceived the essential elements of a loan and overlooked the applicability of AS 06.20.290.

The Court has held that an essential element of a loan is that "the borrower has an expectation to repay the money advanced unconditionally, and not merely in default of some other occurrence." Slip Op. at 14-15. From this holding, the Court derives the proposition that the value of the security must exceed the amount of the loan, thus inducing in the borrower the economic motivation to repay, rather than allow a forfeiture of the security. Slip Op. at 15-16.

These holdings were neither advanced nor advocated by Berger in this appeal. Accordingly, the State has not had an opportunity to address this unique restatement of the law concerning small loans, or alert the Court to the pitfalls of adopting this narrow definition of "loan." The State requests an

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1
2 opportunity to brief and argue this question.

3
4 A. No legal authorities that define the term "loan" support the holdings that
5 subjective expectation of unconditional repayment and that the value of
6 collateral exceed that of principal are essential elements of a loan.

7 The State has found no support for the holding of *Berger* that a
8 transaction is not a loan if the value of the security does not exceed the principal
9 of the loan. None of the authorities cited in the opinion or consulted by the State
10 mention this requirement as an element of a loan, much less the linchpin of the
11 analysis. The following definition, on the other hand, appears in a leading treatise
12 on banking law and is echoed in virtually every authority consulted by the State:

13 A loan of money is a contract by which one delivers a sum of
14 money to another and the latter agrees to return at a future
15 time a sum equivalent to that which he borrows. In order to
16 constitute a loan there must be a contract whereby, in sub-
17 stance one party transfers to the other a sum of money which
18 that other agrees to repay absolutely, together with such
19 additional sums as may be agreed upon for its use.

20 6A MICHIE ON BANKS AND BANKING ch. 11, § 1 (1995).¹

21 1.. The State has researched authorities which define and discuss the elements
22 of loans. In none is there even an allusion to the proposition that the value of the
23 collateral is a determinant of whether a transaction is a loan or a sale. The following
24 authorities either define "loan" or discuss the elements of a loan in various contexts,
25 some finding a loan to exist, others finding in the negative. None support the *Berger*
26 test. See *In Re Bellanca Aircraft Corp.*, 850 F.2d 1275, 1277 (8th Cir. 1988);
Ghirardo v. Antonioli, 883 P.2d 960, 967 (Cal. 1994); *Southwest Concrete Prods.*
v. Gosh Constr. Corp., 798 P.2d 1247, 1249 (Cal. 1990); *Baxter v. Stevens*, 773
P.2d 890, 892 (Wash. 1989); *Tyrcha v. Wesolek*, 543 N.E.2d 222, 224 (Ill. App.
1 Dist. 1989); *Halco Fin. Serv., Inc. v. Foster*, 770 S.W.2d 554 (Tenn. App. 1989);
Edwards v. Alabama Farm Bureau Mutual Casualty Co., 509 So.2d 232, 235 (Ala.
Civ. App. 1986); *Brown v. Loveland*, 678 P.2d 292, 296 (Utah 1984); *Rouse v.*
People's Leasing Co., Inc., 638 P.2d 1245, 1247 (Wash. 1982) citing *Hafer v.*
Spaeth, 156 P.2d 408 (Wash. 1945); *Rinyu v. Teal*, 593 S.W.2d 759, 761 (Tex.

(continued...)

1
2 Under this definition, the key elements of a loan are the transfer of
3 money and an agreement for repayment. The difficult cases are those like
4 *McGalliard* and *Metcalf*, where the loans were disguised as a sale of a *res*.
5
6 *McGalliard v. Liberty Leasing Co.*, 534 P.2d 528 (Alaska 1975); *Metcalf v.*
7 *Bartrand*, 491 P.2d 747 (Alaska 1971). Here, the case is easy, because no *res*
8 was transferred. Money was transferred; money was to be repaid. In the
9 superior court, Berger himself admitted that this transaction was a loan.²
10

11 1.(...continued)

12 Civ. App. 1980); *Boerner v. Colwell Co.*, 577 P.2d 200, 204 (Cal. 1978); *Florence*
13 *v. New York Life Ins. Co.*, 357 N.E.2d 35, 37 (Ohio 1976); *Lenes v. Dean*, 135 Cal.
14 Rptr. 14, 15 (Cal. App. 1976) quoting *Milana v. Credit Discount Co.*, 163 P.2d 869,
15 871 (Cal. 1945); *Johns v. Jaeb*, 518 S.W.2d 857, 860 (Tex. Civ. App. 1974);
16 *Carper v. Kanawha Banking and Trust Co.*, 207 S.E.2d 897, 909 (W. Va. 1974);
17 *State v. J. C. Penney Co.*, 179 N.W.2d 641, 645 (Wis. 1970); *Kline v. Robinson*,
18 428 P.2d 190, 194 (1967); *Whittemore Homes, Inc. v. Fleishman*, 12 Cal. Rptr.
19 235, 236 (Cal App. 1961); Debora L. Threedy, *Loan Participations - Sales or Loans?*
20 *Or is that the questions?*, 68 OR. L. REV. 649 (1989); Barry J. Dichter, *Bankruptcy*
21 *and Insolvency Considerations in Structured Finance Transactions*, 314 Practising
22 Law Institute - Real Estate 89 (1988); Jack M. Feder, *Either A Partner or A Lender*
23 *Be: Emerging Tax Issues in Real Estate Finance*, 36 Tax Law. 191 (1983); Justin T.
24 Toth, *Texas Usury Law: When is A Borrower's Promise to Repay Absolute?*, 32-Oct.
25 Hous. L. Rev. 42 (1994); Joseph W. Gelb and James F. Lerner, *Update By*
26 *Subcommittee on Interest Rate Regulation*, 46 Bus. Law. 1255 (1991); BLACK'S LAW
DICTIONARY 936 (6th ed. 1990); BALLENTINE'S LAW DICTIONARY 748 (3rd ed. 1969);
25 PROOF OF FACTS 2D 521, 528.

2. The Court's holding that "the borrower [must have] an expectation to repay
the money advanced unconditionally, and not merely in default of some other
occurrence" does not lead to a finding that these assignments of rights to receive
permanent fund dividends were not loans. Here, as the dissent points out, the
overwhelming evidence--including a personal guarantee and a confession of
judgment--demonstrates that the assignors fully expected to repay the loan with
substantial interest. This case turns on the Court's holding that the value of the
security must exceed the principal of the loan, which, as the state argues in this
petition, is neither a universal nor necessary feature of a loan.

(continued...)

1
2 B. Under the rule of law announced in *Berger*, many usurious transactions will
3 now not be considered loans

4 The law concerning loans in Alaska is now at odds with the rest of
5 the country. Under *Berger*, a usurious loan made with no collateral, or collateral
6 with a value equal to the principal, is no longer a loan. Thus, a typical signature
7 loan, secured only by the borrower's good credit standing, would no longer be a
8 loan and usury laws would not apply. Perhaps most anomalous is the result that
9 a "handshake" loan--a loan secured only by word of mouth, or, perhaps, threat of
10 physical harm--could no longer be considered a loan. As the Court acknowl-
11 edged, it is this very practice of loansharking that usury ceilings and small loans
12 acts were meant to curb. Slip Op. at 3-4.

13
14
15 C. The Court has overlooked that, by analogy, AS 06.20.290 establishes the
16 general principle that money advanced against an assignment of a right to
17 receive a payment of money is a loan

18 In its analysis, the Court has overlooked the implications of
19 AS 06.20.290, which provides that money advanced against an assignment of

20 2. (...continued)

21 Yet, many problems exist with the Court's expression of the requirement of
22 an "intent to repay." Slip Op. at 15. A loan may remain a loan even if the borrower
23 intends to welsh. A better test would focus on the degree of risk. A transaction
24 involving the sale of a right to receive money is a loan if the right is unconditional or
25 guaranteed. Where the right is conditional or otherwise risky, however, the
26 transaction looks more like a sale. See, e.g., *Ghirardo v. Antonioli*, 883 P.2d 960,
967 (Cal. 1994); *Rinyu v. Teal*, 593 S.W.2d 759, 761 (Tex. Civ. App. 1980);
Boerner v. Colwell Co., 577 P.2d 200, 204 (Cal. 1978).

This expression of the test retains the feature seized upon by the Court in
Berger, an "expectation" of repayment. When, as here, the transaction is relatively
risk-free, the parties clearly expect repayment to occur. Focussing on degree of risk,
however, switches the analysis from a focus on subjective intent to quantifiable
market indicators that the courts can more easily and accurately evaluate.

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wages, salary, commissions, or other compensation for services is a loan for purposes of the Small Loans Act.³ Although the Permanent Fund Dividend (PFD) technically may not be governed by this statute, the transactions here are highly analogous to the assignment of wages or compensation.⁴ Alaska Statute 06.20.290 states a general policy that assignments of vested rights to receive money should be considered loans, not sales. Because the PFD is so akin to the payments covered by AS 06.20.290, it should receive the same treatment.⁵

3. Were it not for AS 06.20.290, under *Berger*, an assignment of wages could never be considered a loan.

4. Further, the legislature views the PFD as "compensation" to the people of Alaska for use of their natural resources. The PFD was initiated for three purposes, the first two of which are germane to this discussion:

- (1) provide a mechanism for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth derived from the development and production of the natural resources *belonging to them as Alaskans*; [and] (2) to encourage persons to maintain their residence in Alaska and to reduce turnover in the state[.]

Williams v. Zobel, 619 P.2d 448, 458 (Alaska 1980) quoting § 1(b), ch. 21 SLA 1980.

5. By contrast, the Georgia State Legislature has adopted a different view and policy regarding assignments of certain rights to receive money. See *Cullen v. Bragg*, 350 S.E. 2d 798, 799-800 (Ga. App. 1987) (Georgia statute requires that assignment of expected tax refund in exchange for immediate payment is a sale, not a loan). To the extent that the Court relied on *Cullen* in *Berger*, the Court must have overlooked that *Cullen* was based on statute, not a common law definition of "loan." To the extent that the Court is examining statutes to determine the definition of "loan," the State submits that AS 06.20.290 is a better indicator of Alaska policy than the Georgia statute that governed the decision in *Cullen*.

ATTORNEY GENERAL, STATE OF ALASKA
DIMOND COURTHOUSE
P.O. BOX 110300, JUNEAU, ALASKA 99811
PHONE: 465-3600

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DATED this 11th day of December, 1995 at Juneau, Alaska.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Vincent L. Usara
Assistant Attorney General

The undersigned certifies that on this date,
a true and correct copy of the foregoing was
served by mail on:

Mark Sandberg, Esq.

Rebecca J. Baxter

12/11/1995

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ROGER BERGER d/b/a FRONTIER FINANCIAL SERVICES,

Appellant,

vs.

STATE OF ALASKA, D.O.R.,

Appellee.

Supreme Court No. S-6078 CIV

Superior Court No. 3AN-89-8710 CV

OFFER OF JUDGMENT

Pursuant to Civil Rule 68, plaintiff hereby offers to allow entry of judgment in the amount of \$3,500,000 in favor of the plaintiff against the State of Alaska. This amount is inclusive of all costs, interest and attorney fees accrued through February 15, 1996. Any judgment entered upon this offer shall bear interest at legal rate from February 16, 1996 until satisfied.

DATED this 15 day of February, 1996, at Anchorage, Alaska.

SANDBERG, WUESTENFELD & COREY Attorneys for Appellant

By: [Signature] Mark A. Sandberg

ACCEPTANCE

The State of Alaska accepts the offer described above and stipulates to entry of a final judgment on those terms.

DATED this 15 day of February, 1996.

STATE OF ALASKA

By: [Signature]

Sandberg, Wuestenfeld & Corey WEST 17TH AVENUE SUITE 100 ANCHORAGE, AK 99501 394-4268

**CSHB 468
FY 96 SUPPLEMENTAL APPROPRIATIONS**

Hse Sec #		DEPT.	BRU/ COMPONENT	DESCRIPTION	CSHB 468 (Fin) am 2/22/96					Governor's Request (Am thru 2/16/96)					Gov's Sec #	
					GF	GF/PR	GF/ Mental Health	Other	Total Funds	GF	GF/PR	GF/ Mental Health	Other	Total Funds		
1	(a)	DOA	Admin Services	Reduce Finance to Fund Public Defender	(49.0)				(49.0)	(49.0)				(49.0)	1	(a)
1	(a)	DOA	Public Defender	Public Defender Bethel Caseload	49.0				49.0	49.0				49.0	1	(a)
1	(b)	DOA	Public Defender	Increased operating costs		195.0			195.0		217.0			217.0	1	(b)
1	(c)	DOA	Office of Public Advocacy	Increased Operating costs	356.4				356.4	356.4				356.4	1	(c)
1	(d)	DOA	Leasing	Increased Operating costs	870.0				870.0	870.0				870.0	1	(d)
1	(e)	DOA	Retirement & Benefits	Increased investment management & record keeping fees				450.0	450.0				450.0	450.0	1	(e)
1	(f)	DOA	Longevity Bonus Grants	Ratify FY 95 xfer of auth from Senior Services	Accepted										1	(f)
2		DCED		Tokyo office lease space	61.2				61.2	61.2				61.2	2	
3	(a)	C&RA	Local Government Assist	Revenue sharing for Kluti-Kaah	(8.3)				(8.3)	(8.3)				(8.3)	3	(a)
3	(a)	C&RA	Municipal Revenue Sharing	Revenue sharing for Kluti-Kaah	8.3				8.3	8.3				8.3	3	(a)
3	(b)	C&RA	Employment Training/Rural Development	Extend lapse date for Rural Development grants June 30, 1997	Accepted										3	(b)
		C&RA	Community & Rural Development	RDLF loans to AIDEA	Not Accepted								650.0	650.0	3	(c)
		C&RA	Community & Rural Development	Recapitalize Rural Dev Initiative Fund	Not Accepted					650.0				650.0	3	(d)
		DCED	AIDEA	Section (c) & (d) contingent on payment to general fund to purchase loans	Not Accepted										3	(e)
3	(c)	C&RA	Commissioner's Office	Grant to Alaska Legal Services Corp.	200.0				200.0	200.0				200.0	3	(f)
3	(d)	C&RA	Commissioner's Office	(f) Contingent on payment of attorney's fees	Accepted										3	(g)
4	(a)	DOC	Admin & Support/ Commissioner's Office	Cleary lines for FY 95 & FY 96	936.6				936.6	936.6				936.6	4	(a)
4	(b)	DOC		(a) Contingent on payment of attorney's fees	Accepted										4	(b)
5	(a)	DOE	Foundation Program	Lapse balance	(1,225.0)				(1,225.0)	(1,225.0)				(1,225.0)	5	(a)
5	(a)	DOE	Foundation Program	Reappropriate lapse to fund disparity	1,225.0				1,225.0	1,225.0				1,225.0	5	(a)

CSHB 468
FY 96 SUPPLEMENTAL APPROPRIATIONS

Hse Sec #	DEPT.	BRU/ COMPONENT	DESCRIPTION	CSHB 468 (Fin) am 2/22/96					Governor's Request (Am thru 2/16/96)					Gov's Sec #			
				GF	GF/PR	GF/ Mental Health	Other	Total Funds	GF	GF/PR	GF/ Mental Health	Other	Total Funds				
	DOE	K-12	Extend lapse from sec 104(a), ch. 103, SLA 1995, page 28, line 6 to June 30, 1997	Not Accepted										5	(b)		
6	(a)	DEC	Spill Prevention & Response/Underground Storage Tanks	Extended Lapse through June 30, 1997										6	(a)		
6	(b)	DEC	Storage Tanks Assistance	Reapp encumbrances through June 30, 1997					Accepted					6	(b)		
7		DFG	Admin Services					32.7	32.7				32.7	32.7	8	(a)	
		DFG	Title Change Section 10, ch. 4. FSSLA 1994 Arctic Yukon Kuskokwim Salmon Fisheries Stock Assessment <u>Projects</u> [EQUIPMENT]	Not Accepted										0.0	8	(b)	
8	(a)	HSS	Assistance Payments	Lapse balance	Match	(4,000.0)			(500.0)	(4,500.0)	(4,000.0)			(500.0)	(4,500.0)	9	(a)
8	(a)	HSS	Public Assistance Admin	Reappropriate lapse to fund costs of welfare reform	Match	500.0			500.0	1,000.0	500.0			500.0	1,000.0	9	(a)
8	(b)	HSS	Public Assistance Admin	Reappropriate lapse to fund costs of welfare reform		1,900.0			1,600.0	3,500.0	3,500.0				3,500.0	9	(b)
8	(c)	HSS	Family & Youth Services	Lapse balance		(250.0)				(250.0)	(250.0)				(250.0)	9	(c)
8	(c)	HSS	Youth Facility Services	Reappropriate lapse to fund increased operating costs for youth facilities		250.0				250.0	250.0				250.0	9	(c)
8	(c)	HSS	Medical Assistance	Lapse balance	Match	(3,500.0)				(3,500.0)	(3,500.0)				(3,500.0)	9	(c)
		HSS	Reappropriate lapse from Medical Assistance to Alaska Family Independence Program	Not Accepted										3,500.0	3,500.0	9	(d)
8	(d)	HSS	API	Judgment - Helmut v. API				426.9		426.9			426.9		426.9	9	(e)
9	(a)	Law	Legal Services Operations	Judgments & Claims		130.4		13.6	225.3	369.3	130.4		13.6	225.3	369.3	10	(a)
9	(b)	Law	Legal Services Operations	Judgment - Toksook Bay		1,285.0				1,285.0	1,285.0				1,285.0	10	(b)
9	(c)	Law	Oil & Gas Litigation	Reduce to fund Bethel D.A.					(66.6)	(66.6)			(66.6)	(66.6)	(66.6)	10	(d)
9	(c)	Law	Prosecution	Increased caseload-Bethel					66.6	66.6	66.6			66.6	66.6	10	(d)

**CSHB 468
FY 96 SUPPLEMENTAL APPROPRIATIONS**

Hse Sec #	DEPT.	BRU/ COMPONENT	DESCRIPTION	CSHB 468 (Fin) am 2/22/96					Governor's Request (Am thru 2/16/96)					Gov's Sec #		
				GF	GF/PR	GF/ Mental Health	Other	Total Funds	GF	GF/PR	GF/ Mental Health	Other	Total Funds			
9	(d) Law	Legal Services Operations	Judgment - Berger v. State	3,605.8				3,605.8	3,605.8					3,605.8	10	(c)
10	(a) MilVets	Military retirement trust fund	Increased costs National Guard Retirement	6,500.0				6,500.0	1,480.5					1,480.5	11	(a)
10	(b) MilVets	Disaster Relief Fund	Costs of declared disasters	1,557.3				1,557.3	557.3					557.3	11	(b)
11	DNR	Fire Suppression	FY 96 Fire suppression	5,258.6				5,258.6	5,258.6					5,258.6	12	
	DPS	Capital Appropriation	Section 10, ch. 4, FSSLA 94, page 12, line 13 License Plates/Driver Manuals/Equipment											0.0	13	
12	(a) REV	AHFC	Lease costs				198.2	198.2					198.2	198.2	14	(a)
12	(b) REV	Rev Ops/Ak State Pension Investment Board - Benefits Systems Receipts	Change fund sources				67.0	67.0					67.0	67.0	14	(b)
12	(b) REV	Rev Ops/Ak State Pension Investment Board -PERS	Change fund sources				(67.0)	(67.0)					(67.0)	(67.0)	14	(b)
13	(a) DOTPF	M&O	Hwy & bridge repair southcentral flood disaster	1,010.0			3,000.0	4,010.0	1,010.0				3,000.0	4,010.0	15	(a)
13	(b) DOTPF	M&O	Copper River Highway Restoration	720.0				720.0	720.0					720.0	15	(b)
	UofA	Statewide	Monetary terms - CEA						455.6				6.7	462.3	16	(a)
	UofA	Statewide	Monetary terms - ACCIT						473.0				33.4	506.4	16	(b)
	GOV	OMB	Emergency disaster & fires FY 96 & FY 97											1,500.0	17	
14	(a) DOA	Admin Services	Misc claims, stale date warrants	12.6				12.6	12.6					12.6	18	(a)
14	(a) C&RA	Admin Services	Misc claims, stale date warrants	0.5				0.5	0.5					0.5	18	(a)
14	(a) DOC	Admin Services	Misc claims, stale date warrants	11.2				11.2	11.2					11.2	18	(a)
14	(a) DOE	Admin Services	Misc claims, stale date warrants	0.5				0.5	0.5					0.5	18	(a)
14	(a) DFG	Admin Services	Misc claims, stale date warrants	1.6				1.6	1.6					1.6	18	(a)
14	(a) HSS	Admin Services	Misc claims, stale date warrants	64.3				64.3	64.3					64.3	18	(a)
14	(a) LABOR	Admin Services	Misc claims, stale date warrants	0.1				0.1	0.1					0.1	18	(a)
14	(a) LAW	Admin Services	Misc claims, stale date warrants	0.1				0.1	0.1					0.1	18	(a)
14	(a) DPS	Admin Services	Misc claims, stale date warrants	1.6				1.6	1.6					1.6	18	(a)
14	(a) DOTPF	Admin Services	Misc claims, stale date warrants	2.9				2.9	2.9					2.9	18	(a)
14	(b) DOTPF	Admin Services	Misc claims, stale date warrants				6.3	6.3					6.3	6.3	18	(b)
14	(c) DEC	Admin Services	Misc claims, stale date warrants				0.3	0.3					0.3	0.3	18	(c)

Cross-Ref. to HB 468

SENATE BILL NO. 260

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/2/96

Referred: Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act making supplemental appropriations for the expenses of state
2 government and making and amending appropriations; ratifying certain state
3 expenditures; and providing for an effective date."

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

5 * Section 1. DEPARTMENT OF ADMINISTRATION. (a) To meet increased caseloads
6 at the public defender agency in Bethel, the following are amended to read:

7 (1) Section 47, ch. 94, SLA 1995, page 16, line 5:

	APPROPRIATION	GENERAL	OTHER
	ITEMS	FUND	FUNDS
10 Centralized Administrative	<u>26,146,200</u>	<u>14,765,000</u>	11,381,200
11 Services	[26,195,200]	[14,814,000]	

12 (2) Section 47, ch. 94, SLA 1995, page 15, line 38:

	APPROPRIATION	GENERAL
	ITEMS	FUND

1 Public Defender Agency 8,153,300 8,153,300
 2 [8,104,300] [8,104,300]

3 (b) The sum of \$217,000 is appropriated from general fund/program receipts to the
 4 Department of Administration, public defender agency, for increased operating costs for the
 5 fiscal year ending June 30, 1996.

6 (c) The sum of \$356,400 is appropriated from the general fund to the Department of
 7 Administration office of public advocacy, for increased operating costs for the fiscal year
 8 ending June 30, 1996.

9 (d) The sum of \$870,000 is appropriated from the general fund to the Department of
 10 Administration for the leasing program for the fiscal year ending June 30, 1996.

11 (e) The sum of \$450,000 is appropriated from benefits systems receipts to the
 12 Department of Administration, retirement and benefits program, for increased investment
 13 management and record keeping fees due to higher than projected growth in retirement system
 14 assets, for the fiscal year ending June 30, 1996.

15 (f) To meet increased costs of the longevity bonus program for the fiscal year ending
 16 June 30, 1995, the following are amended to read:

17 (1) Section 42, ch. 3, FSSLA 1994, page 13, line 34, as amended by sec. 44,
 18 ch. 4, SLA 1995:

	APPROPRIATION	GENERAL
	ITEMS	FUND
21 Longevity Bonus Grants	<u>72,733,000</u>	<u>72,733,000</u>
22	[72,709,900]	[72,709,900]

23 (2) Section 42, ch. 3, FSSLA 1994, page 13, line 35:

	APPROPRIATION	GENERAL	OTHER
	ITEMS	FUND	FUNDS
26 Senior Services	<u>43,905,100</u>	<u>36,983,900</u>	6,921,200
27	[43,928,200]	[37,007,000]	

28 * Sec. 2. DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT. The
 29 sum of \$61,200 is appropriated from the general fund to the Department of Commerce and
 30 Economic Development to lease less expensive office space in Tokyo, for the fiscal years
 31 ending June 30, 1996 and June 30, 1997.

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HB 4168
P O Box 110001
Juneau, Alaska 99811 3001
(907) 465-3500
Fax (907) 465-3532

February 1, 1996

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

In the first two weeks of my administration, I made a public commitment not to play the supplemental game. The FY96 supplemental request I am submitting to you now makes good on that promise. It falls within the \$20 million level anticipated in the FY96 budget plan approved by the legislature last May and signed by me. I have insisted that agencies manage their resources in a manner consistent with overall appropriations. This is the lowest supplemental request in nearly ten years, a far cry from the \$37 million to \$168 million requests of recent years.

You will find requests which are customary and entirely appropriate for the supplemental process such as legal judgments and claims, ratifications of past year expenditures, extensions of lapse dates and miscellaneous claims and stale-dated warrants. Three categories -- wild land fire fighting activities, flood disasters, and facility leases -- were identified in the last appropriation cycle as expenditures which the Legislature explicitly preferred to fund through supplementals.

In a few cases, we propose adjusting appropriations within a department to meet needs that were unanticipated when the budget was passed last May. In keeping with responsible budget discipline, I asked agencies to find ways to cover these needs within their existing appropriations if at all possible. As a result of this effort, you will find several net-zero proposals that realign projected savings within an agency to cover anticipated shortfalls for FY96.

We have encountered several problems as a result of the Legislature's decision to fund fire and disaster activities in supplementals. It was sometimes difficult during the interim to reach legislative leaders to get their approval for disaster relief. We are anticipating that the extremely low temperatures and snowfall in Alaska this year may mean worse than usual fire and disaster seasons. The Department of Natural Resources must begin negotiations with contractors very soon on contracts for the upcoming fire season and

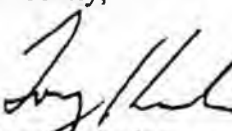
emergency fire fighter wages. We do not have funding authorization for these contracts; it will be needed by March so final agreements can be signed. Despite working diligently to close out past disaster accounts, as it stands now, the Department of Military and Veterans Affairs will not have sufficient general fund authorization for this spring's floods.

To rectify these problems, I am recommending that the supplemental budget include approximately \$2 million to restore an appropriate funding mechanism for the types of disasters and fires that occur every year. Since we have kept other supplementals to a minimum, we can fix this problem within the \$20 million projected for total supplementals. My Office of Management and Budget would like to work with the finance committees to address the Legislature's concerns about cost control, timely close-out of past disaster accounts and the ability to respond quickly to disasters and fires.

This supplemental proposes investing in three important components of welfare reform using anticipated lapses due to reduced caseloads in Medicaid and Aid to Families with Dependent Children. To meet new federal requirements, we absolutely must revamp our eligibility determination computer systems. We can get a head start on this two to three year project using AFDC funds that would otherwise lapse. Additional child care funds will enable us to help even more parents move from welfare to work this year. The family independence emergency fund would allow us to keep future AFDC appropriations lower by providing a back-stop in case the number of families on welfare does not drop as quickly as we project.

To ensure budget discipline, I urge your early consideration of this supplemental bill. Additional information about these requests will be provided by the Office of Management and Budget.

Sincerely,



Tony Knowles
Governor

Department of Community and Regional Affairs						
Rural Development Grants						
Fiscal Year carryforward balances						
Front section (3b) in supplemental bill (HB468)						
FY	GF Auth	GF Carryforward	GF Grant Carryfrwd	Fed Auth	Fed Carryfrwd	Comments
94	1,595,200	209,857	196,436	0	0	
95	1,518,100	1,091,145	1,089,936	600,000	407,201	Federal carryforward is all grants
96	1,042,100	100,000	100,000	400,000	0	Estimated total carryforward

HB

482

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 15, 1996

FURTHER REFERRALS:

Date of Committee Action: 4/25/96

The FINANCE Committee considered:

HB 482

HOUSE BILL NO. 482

STATE PROCUREMENT PRACTICES & PROCEDURES

"An Act relating to state procurement practices and procedures; and providing for an effective date."

recommends it be replaced
with the following committee substitute

CS HB 482 (FIN)

the same title
 a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DUA (i) fiscal note(s) DUTPF 2/9/96

zero fiscal note(s) (ii) zero fiscal note(s) ² DUA 2/9/96; DCED 2/9/96; DC 2.3 2/9/96; 900 2/9/96; DHSS 2/9/96; Labor 2/9/96; Law 2/9/96; DMV 2/9/96; CORR 2/9/96; EDUC 2/9/96; DEC 2/9/96; F&G 2/9/96; DNR 2/9/96; DPS 2/9/96; DOR 2/9/96; STATEWIDE 2/9/96

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Richard Foster</i>	X			
<i>Mark Mulder</i>			X	
<i>Terry Martin</i>	X			
<i>John Parnell</i>			X	
<i>Vic Kohring</i>			X	
<i>Ben Grossenhardt</i>			X	
<i>Mike Navarre</i>			X	
<i>Tom Brown</i>	X			
<i>Mark Kelly</i>			X	
<i>Gene Theriault</i>			X	
<i>Mark Hanley</i>			X	

CO CHAIR'S SIGNATURE Mark Hanley Richard Foster

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 1
Bill Version: HB 482
(H) Publish Date: 2/9/96

Revision Date: _____ Dept. Affected: Administration
Title: "An Act relating to state procurement practices and procedures and providing for ..." BRU: Various
Sponsor: Rules Component: Various
Requestor: Governor COMPONENT SERIAL NO. 45

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITUR	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY 96) cost: \$ 0.0 _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Sharon Barton, Director
Division: Administrative Services

Phone: 465-5655
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 2/7/96

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FISCAL NOTE

No. 3
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: State Procurement Practices
 Sponsor: Rules
 Requestor: Governor

Department: Commerce and Economic Development
 BRU: Administrative Services
 Component: Administrative Services
 COMPONENT SERIAL NO. 1028

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ _____

POSITIONS

FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Guy Bell, Director
 Division: Division of Administrative Services
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2505
 Date: February 1, 1996
 Date: 2-1-96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 482

ANALYSIS: (continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT Fiscal Note Calculations for

This bill amends provisions within the State Procurement Code (AS 36.30) in order to streamline procedures by removing unnecessarily burdensome requirements affecting both state agencies and the private business community. These changes, along with corresponding changes in regulations and administrative procedures, will reduce the time currently spent by staff on the procurement of services and items. This will allow staff to spend less time on procurement matters and more time on their programs and areas of expertise.

The changes will also reduce the paperwork and effort now required of vendors in responding to the State's solicitations less than \$50,000. This may result in an increase in competition among the private sector which may reduce the cost of services and items to the department.

Because the department does not have positions devoted to procurement matters, enactment of this bill will not result in a direct savings. It will result in indirect savings by allowing staff to spend more time on their specific programs and an increase in competition among the private sector.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

r.j. 4
Bill Version: HB 482
(H) Publish Date: 2/9/96

Revision Date: 2/1/96 Dept. Affected: Community & Regional Affairs
Title: An Act relating to state procurement practices and procedures BRU: none
Sponsor: Rules Committee Component: none
Requestor: Governor COMPONENT SERIAL NO. _____

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()						
Revenue Code						

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

Estimate of current year (FY 95) impact: \$ none

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson, Director *Remond Henderson* Phone: 465-4808
Division: Administrative Services *Mike Irwin* Date: 2/2/96
Approved by Commissioner: _____ Date: 2/2/96
Agency: Mike Irwin, Dept. of Community & Reg. Affairs

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FISCAL NOTE

10. 5
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act Relating to state procurement practices and BRU: ALL
procedures; and providing for an effective date Component: _____
 Sponsor: Rules Committee
 Requester: Governor COMPONENT SERIAL NO. #0694

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This new draft bill proposes an increase to small procurement from \$25,000 to \$50,000 for the agency. Currently, the agency has approximately fifty (50) active Contract Awards established that are annually maintained by DOA/GS&S. Under this bill, approximately twenty-seven (27) of this number of purchase requisitions (PR) would be returned to this agency when it is time for them to be rebid. The additional workload varies from year to year and would be completed by existing staff.

Prepared by: Jerry Shriner
 Division: Office of the Commissioner
 Approved by Commissioner: Margaret Pugh Margaret Pugh
 Agency: Department of Corrections

Phone: 465-4652
 Date: 2/5/95
 Date: 2/5/95

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FISCAL NOTE

No. 6
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: State Procurement Practices

 Sponsor: Rules Committee
 Requester: Governor

Department Affected: Education
 BRU: Executive Administration
 Component: Administrative Services

COMPONENT SERIAL NO. _____ 157

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ 0.0

ANALYSIS: (Attach a separate page if necessary.)

This legislation improves state procurement practices and procedures in the state procurement code, AS 36.30. No fiscal impact on the Department of Education is anticipated. The revisions will reduce staff time required for small procurements of \$5,000 or less and will increase staff time needed for procurements between \$25,000 and \$50,000. Purchasing practices between \$5,000 and \$25,000 will remain virtually unchanged. Each department will receive increased purchasing authority up to \$50,000. These organizational changes to the state procurement code will result in a clearer understanding of the intent of the law by government employees and the public.

Prepared by: Ginger Patton Phone: 465-8656
 Division: Administrative Services Date: January 29, 1996
 Approved by Commissioner: *Shirley J. Holloway* Shirley J. Holloway, Ph. D.
 Agency: Education Date: January 29, 1996

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FISCAL NOTE

N 7
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: 1-Feb-96
 Title: State Procurement Practices and Procedures
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Environmental Conservation
 BRU: Department-wide
 Component: Department-wide

COMPONENT SERIAL NO. 633

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

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

Estimate of any current year (FY96) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

Efficiencies in procurement of goods and services should be realized by streamlining measures proposed in the legislation. Due to the limited number of procurement positions in the Department of Environmental Conservation, it is not anticipated that any cost savings will be realized.

Prepared by: Lawrence Jones
 Division: Director, Division of Administrative Services

Phone: 465-5010
 Date: 2/1/96

Approved by Commissioner: [Signature]
 Agency: Department of Environmental Conservation

Date: 2-1-96

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FISCAL NOTE

No. 8
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Fish and Game
 Title: "An Act relating to state procurement practices and procedures; and providing for an effective date." BRU: Administration and Support
 Component: Administrative Services
 Sponsor: Rules Committee
 Requester: Governor COMPONENT SERIAL NO. 479

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ _____

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends provisions of the State Procurement Code (AS 36.30) in order to streamline procedures and to correct specific deficiencies within the existing statute which have proven to be unnecessarily burdensome on both state agencies and the private business community. These changes, along with corresponding changes in both regulation and department policies and procedures, should increase the speed and overall efficiency of the department's procurement efforts. The department has a number of labor intensive procurements related to its mission that are scientific and technical in nature, especially in the Exxon Valdez Oil Spill program. This bill should reduce the amount of time it takes to complete these purchases as well as other large and small procurements, and should help to reduce the backlog of procurement requests now experienced in the department. Because the department has a small procurement staff, this bill will not result in any direct savings. However, it will result in speedier, more efficient service to both vendors and the department's staff who depend upon the procurement services of this division.

Prepared by: Kevin Brooks, Director *Kevin Brooks* Phone: 465-5999
 Division: Administrative Services Date: 1/30/96
 Approved by Commissioner: *[Signature]* Date: 1/30/96
 Agency: Fish and Game

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FISCAL NOTE

No. 9
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: "An Act relating to state procurement practices
and procedures; and providing for an effective date." BRU: All BRUs
 Sponsor: Rules Committee Component: All Components
 Requester: Governor COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 100	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Michael A. Nizich, Director Phone: 465-3876
 Division: Administrative Services Date: 1/29/96
 Approved by Commissioner: Jim Ayers, Chief of Staff Date: 1/29/96
 Office of the Governor

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STATE OF ALASKA
1996 LEGISLATIVE SESSION

o. 10
Bill Version: HB 482
(H) Publish Date: 2/9/96

Revision Date: _____
Title: State Procurement Practices
Sponsor: Rules Committee
Requestor: Governor

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Administrative Services Support
COMPONENT SERIAL NO. 320
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY96) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

The increase in small procurement authority from \$25,000 to \$50,000 will increase workload in volume and complexity. Fiscal impact should be offset by other streamlined procurement procedures.

Prepared by: Janet Clarke
Division: Administrative Services

Phone: 465-3082
Date: 02/06/96

Approved by Commissioner: Karen Perdue
Agency: Department of Health & Social Services

Date: 2/7/96

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FISCAL NOTE

No. 11
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to state procurement practices and procedures...
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Labor
 BRU: All
 Component: All

COMPONENT SERIAL NO. 340

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY96) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

This bill amends state procurement practices and procedures in the state procurement code, AS 36.30. The department anticipates no significant financial impact associated with the bill.

Prepared by: Arbe Williams Phone: 465-2720
 Division: Administrative Services Date: 1/30/96
 Approved by Commissioner: Tom Cashen
 Agency: Department of Labor Date: 1/30/96

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FISCAL NOTE

No. 12
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to state procurement practices and procedures; and providing for an effective date."
 Sponsor: Rules/Request of the Governor
 Requestor: Governor's Office/

Department Affected: Law
 BRU: All
 Component: All
 COMPONENT SERIAL NO. 2085, 2087 thru 2092, 2095

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE:

(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	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill amends provisions within the State Procurement Code (AS 36.30) in order to streamline procedures and to correct specific deficiencies within the existing statute which have proven to be unnecessarily burdensome on both state agencies and the private business community. These changes, along with corresponding changes in both regulation and department policies and procedures, should increase the speed and overall efficiency of the department's procurement efforts. This should result in a decrease in the time it takes to complete both large and small procurements and should reduce the backlog of procurement requests now experienced within the department. Because the Dept. of Law has only two positions devoted to procurement matters, enactment of this bill will not result in a savings. However, it will result in speedier, more efficient service to both vendors and the department's staff who depend upon this service.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: January 26, 1996
 Date: January 26, 1996

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FISCAL NOTL

No. 13

Bill Version: HB 482

(H) Publish Date: 2/9/96

STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: Original Dept Affected Military & Veterans Affairs
 Title: An Act relating to state procurement practices and procedures; and providing for an effective date. BRU: Alaska National Guard
 Sponsor: Rules Committee Component: Commissioner's Office
 Requestor: Governor Knowles Component Serial No. 414

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02	
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0	

FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1006 GF/MHTIA							
Other							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

Estimate of any current year (FY96) cost: \$ none

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

ANALYSIS: (Attach a separate page if necessary)

We believe passage of this bill relating to state procurement will provide for efficiencies in department operations. It will require less approvals at higher authorities which will result in fewer total man-hours required for certain types of procurements. However it is likely this will be offset by more work and responsibilities delegated to the department level and little, if any, of the existing work performed will go away.

More man-hours will be needed initially to draft and implement new policies and procedures and provide training to staff who are delegated new responsibilities. In the long run we see the likelihood that streamlined procedures will allow program managers with more flexibility in determining the overall "best value" approach to procuring the goods and services needed to run their programs. Procurements made under shorter time frames will allow the state to take advantage of changing market conditions and hopefully reduce costs for goods and services to the state.

For the near term we can not predict with any accuracy direct hard dollar savings the department may achieve from the passage of this bill.

Prepared by: Carol Carroll, Director Phone: 485-2408
 Division: Administrative Services Date: 1-Feb-96
 Approved by Commissioner: [Signature] Date: 1-Feb-96
 Agency: Military & Veterans Affairs

FISCAL NOTE

No. 1
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: An Act relating to state procurement practices BRU: Management & Administration
 and procedures; and providing for an effective date. Component: Administrative Services
 Sponsor: Rules Committee
 Requestor: Governor Knowles Component Serial No. 424

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ none

POSITIONS

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

ANALYSIS:

(Attach a separate page if necessary)

We believe passage of this bill relating to state procurement will provide for efficiencies in department operations. It will require less approvals at higher authorities which will result in fewer total man-hours required for certain types of procurements. However it is likely this will be offset by more work and responsibilities delegated to the department level and little, if any, of the existing work performed will go away.

More man-hours will be needed initially to draft and implement new policies and procedures and provide training to staff who are delegated new responsibilities. In the long run we see the likelihood that streamlined procedures will allow program managers with more flexibility in determining the overall "best value" approach to procuring the goods and services needed to run their programs. Procurements made under shorter time frames will allow the state to take advantage of changing market conditions and hopefully reduce costs for goods and services to the state.

For the near term we can not predict with any accuracy direct hard dollar savings the department may achieve from the passage of this bill.

Prepared by: Nico Bus, Acting Director Phone: 465-2406
 Division: Support Services Date: 1-Feb-96
 Approved by Commissioner: Nico Bus for the Governor 1-Feb-96
 Agency: Natural Resources

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Page 1 of 1

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FISCAL NOTE

.. 15
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to state procurement practices BRU: DPS Statewide Support
and procedures Component: Admin Services
 Sponsor: Rules Committee
 Requestor: Governor COMPONENT SERIAL NO. 525

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

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-

Estimate of current year (FY 96) impact: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

This bill amends provisions within the State Procurement Code (AS 36.30) to streamline procedures and to correct specific deficiencies which have proven to be unnecessarily burdensome. These changes, along with corresponding changes in both regulation and department policies and procedures, should increase the speed and overall efficiency of the procurement process. This should result in a decrease in the time it takes to complete both large and small procurements and should reduce the backlog of procurement requests now experienced. This bill will have no discernible fiscal impact on the Department of Public Safety.

Prepared By: Kenneth E. Bischoff, Director Phone: 465-4338
 Division: Administrative Services Date: 2/8/96
 Approved by Commissioner: *Ronald L. Otte* Date: 2/8/96
 Agency: Ronald L. Otte, Dept. of Public Safety

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Revision Date: _____ Dept. Affected: Revenue
 Title: State Procurement Practices & Procedures BRU: All
 Component: All
 Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

We have reviewed the proposed legislation and feel that there will be no financial impact on the Department.

Prepared by: Bob Baratko Phone: 465-2312
 Division: Administrative Services Date: 1/30/96
 Approved by Commissioner: Deborah Vogt Date: 1/30/96
 Agency: Department of Revenue

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FISCAL NOTE

to. 17
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date:
 Title: An Act relating to state procurement practices and procedures;
 and providing for an effective date.
 Sponsor: Rules
 Requestor: Governor

Department Affected: **University of Alaska**
 BRU:
 Component:

COMPONENT SERIAL NO. All components

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY97	FY98	FY99	FY00	FY01	FY02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE FD SOURCE						
-------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 FEDERAL FUNDS						
1003 GF MATCH						
1004 GENERAL FUND						
1006 GF/MHTIA						
OTHER						
TOTAL FUNDING	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Marylou Burton, Director
 Division: Statewide Budget Office

Phone: 463-3086
 Date: 1/31/96

Approved by: *MB* Marylou Burton, Director
 Agency: Statewide Budget Office

Date: 1/31/96

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

FISCAL NOTE

No. 19
 Bill Version: HB 482
 (H) Publish Date: 2/9/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revisor Date _____ Dept Affected DOT:PF
 Title State Procurement Practices and Procedures BRU Department Wide
 Component: Comm Ofc
 Sponsor Rules Committee
 Requester Governor COMPONENT SERIAL NO. Comm Ofc

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
1005 GF Program Receipts						
1006 GF MHTIA						
Other - All CIP Sources						
TOTAL	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)

Estimate of any current year (FY96) cost: \$ _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Savings associated with passage of this legislation (see attachment) will be in staff time not required due to elimination of procedural requirements at various levels that involve time and effort to accomplish. This time can then be spent on more productive tasks.

Other than that, savings resulting from passage of this act will be in the form of reduced costs for Contractual items, such as postage for mailing TBs and RFPs and telephone calls between the field and Headquarters. Savings will also be realized in the supplies area, as fewer documents will be produced and reproduced at various levels. These cost savings are difficult to separate and objectively measure; however, because they are department wide and diffuse into various areas - i.e., paper, copier usage, copier supplies, fax machine supplies, etc.

(Continued on Attachment)

Prepared by: Sam Kito III Phone: 465-3900
 Special Assistant
 Division: Office of the Commissioner Date: _____
 Approved by: *Joseph L. Dubina* Date: 2/2/96
 Commissioner
 Agency: Department of Transportation and Public Facilities

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FISCAL NOTE ATTACHMENT

HB 432

The passage of this legislation will have a positive and multi-fold effect on the department's project efficiency. Sections 8, 10, 11, 15, 16, 18, 22, 28, 32, 33, 34, 35, and 42 will directly impact DOTPF.

As previously stated briefly, passage of this bill will improve administrative efficiencies. However, cost savings are difficult to quantify and most will not accrue to the department as a direct budget reduction (intangible benefit).

Examples of intangible benefits by selected sections of the bill are:

Section 8

Section 8 permits the procurement officer to reduce the circulation period for bids and proposals when there is adequate competition.

- On average, three (3) requests for reduced circulation typically occur per year.
- The average cost for receipt, review, and completion of reduced time requests is estimated to be \$ 500. Under this bill these requests will no longer be necessary.

Calculation: 3 requests x \$ 500 cost per request = \$1.5K savings in staff time. (Includes both GF and CIP funded positions)

Section 10

Section 10 provides discretion to the procurement officer to decide when to use a competitive sealed proposal rather than a competitive sealed bid. Law currently requires the determination to be made by the Chief Procurement Officer, resulting in several reviews and written determinations that are eliminated by this section.

- On average, two (2) requests for use of Competitive Sealed Proposal in lieu of a Competitive Sealed Bid are processed each year.
- The average cost for receipt, review, and completion of determinations to use a Competitive Sealed Proposal is estimated to be \$ 500 each.

Calculation: 2 determinations x \$ 500 cost per determination = \$1K savings in staff time. (Includes both GF and CIP funded positions)

Section 22

Section 22 extends small procurement procedures to purchase of goods, services, and professional services up to \$50,000, construction to \$100,000, or lease of space that does not exceed 5,000 square feet. Procurement officers may reduce time and complexity in purchases by using a quote rather than formal Invitation to Bid.

- The department processes an average of 30 - 35 administrative bid waivers per year which involve procurements or projects that exceed the current limits for small procurements. The average cost to process an administrative bid waiver (Request for Alternate Procurement [RAP]) is approximately \$ 500. Under this bill these waivers will no longer be required at the headquarters level.

Calculations: 30-35 administrative bid waivers (RAPs) x \$ 500 cost per waiver (RAP) = \$15K - \$16.5K savings in staff time. (Includes both GF and CIP funded positions)

Greater efficiencies may well occur in the capital budgets, and will be, in essence, rolled back into other projects, resulting in project enhancements such as better roads and facilities. As an example of cost savings on Capital Improvement Projects (CIP) that are not fiscal but do accrue as efficiencies benefiting the projects, consider the following:

- Statewide in FY 95, there were 54 construction projects bid between \$25K and \$100K. The average savings from not having to formally prepare, advertise and award would be approximately \$7.5K.
- Statewide in FY 95, there were 29 Professional Service Agreements (PSA) established that were between \$25K and \$100K. The average savings from not having to perform consultant selection through the formal process would be approximately \$ 9.5K.

Calculations: 54 Construction projects @ \$7.5K (Advertisement costs) = \$405K.
29 PSA contracts @ \$ 9.5K (Selection costs) = \$ 275.5K.
 Total Possible (Intangible) CIP Benefit = \$680.5K

adopted NO/08j

4/25/96 pm

PROPOSED AMENDMENT

by Dept. of Admin,
Div. of General Services

Amendment Number I

TO: CSHB 482(STA), VERSION "F" DATED 4/15/96

Page 13 following line before contract

Delete "a" and ^{add} replace with:

line 6.

an award of

Rein a insert

TO : Dugan Petty
Fax 2189

FROM : G. Dozier
House L&C

RE : CS HB 482 (L&C)

DATE : 4-5-96

Please see attached. In particular, I direct your attention to paragraph 6, in case you may want to make adjustments.

96 APR 4 PM 12 14
DIVISION OF GENERAL
SERVICES & SUPPLY

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 27, 1996

SUBJECT: Final of CSHB 482(L&C)
(Work Order No. 9-GH2020\C, 3-27-96)

TO: Representative Pete Kott, Chair
House Labor and Commerce Committee
Attn: George Dozier

FROM: ^{TD} Theresa Barnister
Legislative Counsel

This memo accompanies the bill described above.

The following comments are brought to your attention.

1. The first report under sec. 36.30.083(c) is temporary law and is placed in a separate section at the end of the bill entitled "First Lease Extension Report." As a result the language at the end of the subsection is altered to reflect this change. In sec. 36.30.083(a), a comma has been added after "AS 36.30.020."
2. In sec. 36.30.085(e), "or improve" is included in the unamended text because it is in the current statute.
3. Secs. 36.30.311 and 36.30.313 are combined in one bill section because they are sequential.
4. In sec. 36.30.331, in the second sentence, "shall" was changed to "must" in two instances to reflect legislative drafting style.
5. In sec. 36.30.335 "and" was deleted after "(c)".
6. In sec. 36.30.550, the language appears to be inconsistent with its succeeding sections in statute (e.g. AS 36.30.560). It is suggested that "and a contract" read "and a contract award" or some form of that phrase.

Representative Pete Kott

March 27, 1996

Page 2

7. In sec. 36.30.565(a), "notwithstanding the other provisions in this subsection" was added to clarify the application of the third sentence.

8. In sec. 36.30.580(b) a comma was added after "or."

9. In the bill section entitled "Revisor's Changes" "art. 5" replaces "article 5" in two places and the second period is removed after "Preferences."

T&B:glc
96-184.glc

Enclosure

By Dept of Administration,
Div. of General Services
4/25/96 pm

PROPOSED AMENDMENT

WOBj / adopted.

Amendment No. 3

TO: CSHB 482(STA), VERSION "F" DATED 4/15/96

Page 2, line 15:

Delete "15" and replace with: "10":

Page 2, line 16:

Delete "10" and replace with: "5".

FISCAL NOTE

STATE OF ALASKA BILL NO. CSHB 482(STA)
1996 LEGISLATIVE SESSION

ANALYSIS: (continued)

Twenty leases are anticipated to have the greatest potential for cost savings resulting from negotiations under this bill. Maximum savings anticipated under this bill are projected at the minimum 15% rate reduction. While we have not included them in this list, we anticipate some leases extended in 1994 under similar provisions of SB 129 may also be candidates for negotiated concessions.

We have used 15% as a rent concession factor because most leases now include ADA compliance language, are in buildings upgraded as a result of negotiations, or have had compliance issues addressed through programmatic changes.

Actual fiscal impacts depend on whether an extension is in the state's best interest, and the lessor's willingness to grant rent concessions. If we successfully negotiate 40% of the maximum potential for savings in FY 97 and FY 98, savings can be achieved in excess of \$50,000.00 in FY 97 and \$100,000.00 in FY 98.

Our FY 97 leasing budget set a goal of reducing FY 97 operating lease costs by an additional \$417,700.00. This bill provides opportunity to achieve a portion of our goal through reductions in lease payments in return for lease extensions. Since our budget is based on reductions to be accomplished, zero fiscal impact is shown for FY 97.

Assumptions:

- 13 leases are renegotiated for FY 97
- 7 leases were renegotiated for FY 98
- 40% of the leases result in 15% savings reduction
 - FY 97 \$ 55,968.15 Maximum potential savings x 40% = \$22,387.00
 - FY 98 \$269,558.77 Maximum potential savings x 40% = \$107,824.00

*DRAFT
OFFICIAL FISCAL
NOTE ON THE WAY*

CANDIDATE LEASES FOR EXTENSION UNDER HB 288

LOCATION	LEASE NO	EXPIRE DATE	CURRENT RATE	SG FT	MONTHLY RATE	NEW MONTHLY REDUCED 15%	DIFFERENCE PER MONTH	MONTHS FY 97	MAXIMUM FY 97 SAVINGS	MONTHS FY 98	MAXIMUM FY 98 SAVINGS
ANCHORAGE	2318/A (10)	MON-TO-MON	\$0.80	14,926	\$11,940.80	\$10,149.68	\$1,791.12	11	\$19,702.32	1	\$1,791.12
ANCHORAGE	1328 (08)	01/31/96	\$1.03	7,200	\$7,386.48	\$6,278.51	\$1,107.97	5	\$5,539.85	7	\$7,755.80
BARROW	1940 (03)	01/31/96	\$6.07	1,202	\$7,296.62	\$6,202.13	\$1,094.49	5	\$5,472.47	7	\$7,661.45
FAIRBANKS	2086 (20)	01/31/96	\$1.34	4,720	\$6,345.57	\$5,393.73	\$951.84	5	\$4,759.18	7	\$6,662.85
JUNEAU	2179 A (07)	04/30/96	\$1.66	7,207	\$11,970.11	\$10,174.59	\$1,795.52	2	\$3,591.03	10	\$17,955.16
GLENNALLEN	2343 (12)	04/30/96	\$1.95	1,884	\$3,674.93	\$3,123.69	\$551.24	2	\$1,102.48	10	\$5,512.40
SOLDOTNA	2090 (06)	05/21/96	\$1.22	8,425	\$10,305.46	\$8,759.64	\$1,545.82	1	\$1,545.82	11	\$17,004.01
KOTZEBUE	2182/A (12)	05/31/96	\$2.78	1,367	\$3,800.26	\$3,230.22	\$570.04	1	\$570.04	11	\$6,270.43
ANCHORAGE	1517/A/B (06/07)	06/30/96	\$1.20	5,100	\$6,120.00	\$5,202.00	\$918.00	0	\$0.00	12	\$11,016.00
KETCHIKAN	2136/A (07)	08/31/96	\$1.92	6,100	\$11,705.29	\$9,949.50	\$1,755.79	0	\$0.00	12	\$21,069.52
ANCHORAGE	2352/A-C (02)	12/14/96	\$1.41	23,159	\$32,593.98	\$27,704.88	\$4,889.10	0	\$0.00	12	\$58,669.16
JUNEAU	2153/A/B (11)	08/31/97	\$1.87	8,175	\$15,248.83	\$12,961.50	\$2,287.32	0	\$0.00	12	\$27,447.89
ANCHORAGE	2360 (21)	12/31/98	\$1.43	26,515	\$37,916.45	\$32,228.98	\$5,687.47	0	\$0.00	10	\$56,874.68
PALMER	2365 (12)	07/09/96	\$1.90	2,381	\$4,523.90	\$3,845.32	\$678.59	12	\$8,143.02	0	\$0.00
ANCHORAGE	2338 (12)	04/14/97	\$1.23	1,720	\$2,121.96	\$1,803.67	\$318.29	2.5	\$795.74	9.5	\$3,023.80
HOMER	2342 (12)	04/24/97	\$1.59	752	\$1,192.67	\$1,013.77	\$178.90	2	\$357.80	10	\$1,789.01
SOLDOTNA	2356 (12)	11/07/96	\$0.92	5,300	\$4,876.00	\$4,144.60	\$731.40	6	\$4,388.40	6	\$4,388.40
EAGLE RIVER	2364 (07)	03/26/97	\$0.63	2,760	\$1,725.00	\$1,466.25	\$258.75	0	\$0.00	12	\$3,105.00
HOMER	2054 (11)	04/30/97	\$0.52	23,460	\$12,100.67	\$10,285.57	\$1,815.10	0	\$0.00	6	\$10,890.60
HOMER	2357 (10)	12/08/99	\$1.30	572	\$746.12	\$634.20	\$111.92	6	\$0.00	6	\$671.51
									\$55,968.15		
										\$269,558.77	

BASED ON A MAXIMUM SAVINGS OF 40%, FY TOTALS ARE FY 97 MAX **\$22,387.26** FY 98 MAX **\$107,823.57**

4/25/96 pm.

Adopted / NO OBJ

PROPOSED AMENDMENT

by Dept. of Admin.
Div. of General Services

Amendment No. 4

To: CSHB 482(STA), VERSION "F" DATED 4/15/96

22 ~~after~~ ^{delete} "made"

Page 15, following line ~~21~~ before "~~in accordance~~":

Insert "from persons located in the state":

Senator Pence

4/25/96 PM

9-GH2020\F.3 ✓

Bannister

4/24/96

adopted 5 amended pg 2
AMENDMENT
79 1

OFFERED IN THE HOUSE

TO: CSHB 482(STA)

1 Page 1, line 1, following "relating to": lobbying ~~DELETE~~
2 Insert "contracts of state-related entities [including entities owned and operated
3 by the Alaska Industrial Development and Export Authority,] and involving lobbying
4 contracts and" ^{of state related entities}

5 Page 15, following line 27:

6 Insert a new bill section to read:

7 **** Sec. 42.** AS 44.99 is amended by adding a new section to article 1 to read:

8 **Sec. 44.99.030. LOBBYING CONTRACTS PROHIBITED. (a)**

9 Notwithstanding other provisions of law, the following entities may not contract with
10 a person to pay the person money or other thing of value to lobby the state, a
11 municipality of the state, or an agency of the state or municipality:

12 (1) Alaska Aerospace Development Corporation;

13 (2) Alaska Commercial Fishing and Agriculture Bank;

14 (3) Alaska Energy Authority;

15 (4) Alaska Housing Finance Corporation;

16 (5) Alaska Industrial Development and Export Authority; [;] [including
17 corporations and other entities owned and operated by the Alaska Industrial
18 Development and Export Authority;] ~~DELETE~~

19 (6) Alaska Medical Facility Authority;

20 (7) Alaska Mental Health Trust Authority;

21 (8) Alaska Municipal Bond Bank Authority;

22 (9) Alaska Permanent Fund Corporation;

23 (10) Alaska Railroad Corporation;

24 (11) Alaska Science and Technology Foundation;

- 1 (12) Alaska Seafood Marketing Institute;
2 (13) Alaska Student Loan Corporation;
3 (14) Alaska Tourism Marketing Council.

4 (b) In this section,

- 5 [(1) "contract with" includes hiring as an employee;]
6 ~~(1)~~ "lobby" means to communicate directly or through agents with a
7 public official for the purpose of influencing legislative or administrative action if a
8 substantial or regular portion of the activities for which the communicating person
9 receives payment is performed for the purpose of influencing legislative or
10 administrative action."

11 Renumber the following bill sections accordingly.

12 Page 16, line 24:

13 Delete "secs. 49 - 51"

14 Insert "secs. 50 - 52"

15 Page 16, line 27, following "by":

16 Insert "secs. 1 - 41 and 43 - 52 of"

17 Page 16, line 28, following "in law":

18 Insert "under secs. 1 - 41 and 43 - 52 of"

19 Page 16, line 29, following "made by":

20 Insert "secs. 1 - 41 and 43 - 52 of"

21 Page 17, line 1, following "enacted by":

22 Insert "secs. 1 - 41 and 43 - 52 of"

23 Page 17, line 2, following "of":

24 Insert "secs. 1 - 41 and 43 - 52 of"

1 Page 17, line 6:

2 Delete "43(a), and 44 - 47"

3 Insert "44(a), and 45 - 48"

4 Page 17, line 8:

5 Delete "43(b)"

6 Insert "44(b)"

7 Page 17, line 11:

8 Delete "Section 42"

9 Insert "Section 43"

4/25/96 pm

NO OBJ adopt

AMENDMENT 6

To CS HB 482 (STA)

By Representative Parnell

Page 10, Line 30.

After "EMPLOYMENT"

Insert:

"AND YOUTH JOB TRAINING"

Page 11, Line 1.

After "state"

Insert:

" or an accredited youth education and employment program"

4/25/96 pm

NO OBJ - adopted

PROPOSED AMENDMENT

by Dept of Admin.
Division of General
Services

Amendment No. 2

TO: CSHB 482(STA), VERSION "F" DATED 4/15/96

Page 5, line 19:

Delete section 10 and replace with:

Sec. 10. AS 36.30.170 is amended by adding a new subsection to read:

(k) in order to qualify for a preference under (c), (e), or (f) of this section, a bidder must add value by actually performing, controlling, managing, and supervising the services provided, or a bidder must have sold supplies of the general nature solicited to other state agencies, governments or to the general public.

comma
comma

STATE OF ALASKA BILL NO. _____
 1996 LEGISLATIVE SESSION

Calculation:

4 protests x 20 hours = 80 hours

80 hours x \$26.46 (PAII) = (\$2,117.00)

FISCAL IMPACT: **DECREASED STAFF COST** (0) Staffing reduced in the FY 97 Governor's Budget

FISCAL IMPACT SUMMARY

TOTAL NET FISCAL IMPACT BY SECTION FOR FY 97:

Section	INCREASE	DECREASE
4		(\$17,460.00)
5	\$18,010.00	
8		(\$138.00)
9	\$1,128.00	
10		(\$454.00)
15		(\$4,944.00)
16		(\$1,097.00)
18	\$1,898.00	
22		(0)
27	\$259.00	
28		(0)
	TOTAL FISCAL IMPACT	(\$2,798.00)

FISCAL NOTE

HB 482.

STATE OF ALASKA BILL NO. _____
1996 LEGISLATIVE SESSION

10 innovative procurements x \$189.82 = \$1,898.00

FISCAL IMPACT: INCREASED STAFF COST \$1,898.00

Section 22 extends small procurement procedures to purchases of goods, services, and professional services up to \$50,000.00. Procurement officers may reduce time and complexity in purchases by using a quote process rather than formal Invitation to Bid.

Assumptions:

- From FY 92 through FY 95, an average of 16.7 bids were issued per year for services and supplies costing under \$50,000.00.
- Average cost to prepare a bid for goods or services, \$14.5 staff hours x 26.46 (PAII) = \$385.00.
- Decrement made in the FY 97 budget of 1 full-time position was based on the return of single-agency Invitations to Bid to the agencies. 100% of the transactions covered under this section will be single-agency procurements.

Calculation:

- 16.7 bids x 14.5 staff hours = 242 hours
- 242 hours x 26.46 (PAII) = \$6,403.00

FISCAL IMPACT: DECREASE STAFF COST (0) Staffing reduced in FY 97 budget decrement

Section 27 requires records of Innovative Procurements to be kept for review purposes, and for applications if the Innovative Procurement could result in greater savings and effectiveness.

Assumptions:

- Ten (10) Innovative Procurements will be entered into each year.
- Recordkeeping approximately .5 hours per procurement of clerical time = .5 x Clerk III @ \$21.60 = \$10.80 per procurement
- Data processing--approximately .5 hours per procurement = .5 x Data Processing Analyst @ 30.19 = \$15.10 per .5 hour

Calculation: 10 x [Clerk III \$10.80 + Data Processing Analyst \$15.10] = \$259.00

FISCAL IMPACT: INCREASED STAFF COST \$259.00

Section 28 permits the development of simplified protest procedures for procurements entered into under small procurement procedures (up to \$50,000.00 per Section 22).

Assumptions:

- Estimated average number of protests received per year are 4.
- Average number of hours required to complete a protest--20 hours
- Estimated efficiency of simplified protest procedure--50%.
- Protests will be responded to by agency procurement specialist.
- Decrement in the FY 97 Governor's Budget was based on return of single-agency procurements to agencies. 100% of these small procurement transactions were anticipated in the FY 97 Governor's Budget.

STATE OF ALASKA BILL NO. _____
1996 LEGISLATIVE SESSION

Assumption:

- On average, 123 sole source determination requests are submitted each year.
- The average cost for receipt, review, and completion of a determination is estimated to be \$111.94.
- Average staff time needed to review and complete determinations is estimated to be 3.3 hours.
- Approximately 25% of the determinations by type will be delegated.
- Approximately 30 minutes, or \$17.62, staff time will be saved in determination process.

Calculations:

Current	120 determinations x \$111.94 =	\$13,433.00
Proposed	90 determinations x \$94.32 =	<u>\$8,489.00</u>
		\$4,944.00

FISCAL IMPACT DECREASED STAFF COSTS (\$4,944.00)

Section 16 provides discretion to the Chief Procurement Officer to delegate this determination and permits the Attorney General to make a Limited Competitive Determination for services of legal counsel.

Assumptions:

- On average 20.6 Limited Competition determinations were made over the past 3 years.
- On average, the Department of Law submits 6.3 Limited Competition determinations per year.
- The average cost for receipt, review, and completion of a Limited Competition determination is estimated to be \$111.94.
- Average staff time needed to review and complete the determination is 3.3 hours.
- Approximately 25% of the determinations by type will be delegated.
- Approximately 6.3 delegations will be made by the Department of Law in place of the division staff.

Calculations:

Current	20.6 determinations x \$111.94 =	\$2,306.00
Proposed	10.8 determinations x \$111.94 =	<u>\$1,209.00</u>
	Savings	\$1,097.00

FISCAL IMPACT: DECREASED STAFF COSTS (\$1,097.00)

Section 18 permits innovative procurements under circumstances when advantageous to the state to procure new, unique, requirements; new technologies; or to achieve best value. This should result in better and more economical contracts for state agencies. The Chief Procurement Officer must review and determine in writing that the use of an innovative approach is advantageous to the state.

Assumptions:

- Ten (10) innovative procurements will be initiated per year.
- The average cost to review, provide guidance, and prepare determinations for innovative procurements is \$189.82.
- Average staff time needed to review, prepare determinations and provide guidance for the innovative procurement is 5.32 hours.

Calculations:

FISCAL NOTE

HB 482

STATE OF ALASKA BILL NO. _____
1996 LEGISLATIVE SESSION

Assumptions:

- On average 5 requests for reduced circulations occur per year.
- The average cost for receipt, review, and completion of determinations is estimated to be \$27.55.
- Average staff time needed to review and complete determinations is just under 1 hour.

Calculation: 5 determinations x \$27.55 cost per determination = \$138.00 estimated savings.

FISCAL IMPACT: DECREASED STAFF COSTS (\$138.00)

SECTION 9 requires a bidder to be in the line of business solicited in the Invitation to Bid or Competitive Sealed Proposal for at least 6 months prior to the date the bid was issued.

Assumption:

Over the past years, 4 bids were awarded where a preference was brokered by assigning award to another bidder or vendor after award. Agencies were required to pay an additional \$21,372.00 to purchase what was offered by the second low bidder. Two awards are pending. We assume approximately 4 bids would require investigation and determination of whether the bidder qualifies.

Calculation:

- Determination of qualification--8 hours x PAIII hourly rate \$35.24 = \$282.00
COST OF EACH DETERMINATION \$282.00 x 4 determinations
TOTAL ESTIMATED COST \$1,128.00.

FISCAL IMPACT: INCREASED STAFF COST \$1,128.00

SECTION 10 provides discretion to the procurement officer to decide when to use a competitive sealed proposal rather than a competitive sealed bid. Law currently requires the determination to be made by the Chief Procurement Officer, resulting in several reviews and written determinations that are eliminated in this section.

Assumptions:

- On average, 6.3 requests for use of Competitive Sealed Proposal in lieu of a Competitive Sealed Bid are processed.
- The average cost for receipt, review, and completion of determination to use a Competitive Sealed Proposal is estimated at \$72.00.
- Average staff time needed to review and complete determination--2 staff hours

Calculation: 6.3 determinations x \$72.00 cost per determinations = \$453.60

FISCAL IMPACT: DECREASED STAFF COSTS (\$453.60)

Section 15 permits contracts to be entered into with a single source when it is not practical to award under competitive bidding or competitive proposals and when in the best interest of the state. Delegations are permitted, which can reduce staff effort within the division. Agency efforts to compile clear and convincing evidence, often resulting in predeterminations, newspaper advertisements, and solicitation, would be reduced.

FISCAL NOTE

148482

STATE OF ALASKA BILL NO. _____
1996 LEGISLATIVE SESSION

ANALYSIS: (continued)

SECTION 4 permits the use of simplified small procurement procedures for the acquisition of office space leases that do not exceed 5000 S.F.

Assumptions:

- A typical lease replacement through a competitive sealed bid requires approximately 45 staff hours and costs approximately \$1,575.00 for preparation, solicitation, and award.
- Use of simplified acquisition for leases would permit solicitation of 3 informal proposals from different lessors. Simplification is expected to result in more efficient acquisition that would take 60% of the existing Invitation to Bid acquisition.
- In FY 97, approximately 28 leases would be subject to small procurement procedures. These acquisitions are expected to take an average of 27 staff hours. 28 small procurement leases x [27 staff hours x \$35.24 hourly rate PAII = \$26,640.00]. A savings of approximately 4 staff months or \$17,460.00 in staff resources is achieved.

FISCAL IMPACT : DECREASED STAFF COSTS (\$17,460)

Section 5 permits the extension of existing leases for up to 10 years if concessions of at least 10% of the amount that would be paid for rent can be achieved. Five 5% concessions could be agreed to with ADA compliance.

In FY 95, lease savings of approximately \$1,745,000.00 were achieved by negotiating lease concessions in return for extensions. Approximately 3,300 staff hours were necessary to achieve savings. If savings are to be achieved, staff resources will be needed to negotiate leases.

Assumptions:

- Based on 38 leases renegotiated during 1994, average staff hours per lease is prorated at 22 hours total.

Purchasing Agent III: 20 hours at \$35.24 per hour =	\$705.00
Purchasing Agent IV: 2 hours at \$38.94 per hour =	<u>\$78.00</u>
Total staff: 22 hours	\$783.00

- Estimate number of lease extension negotiations: 23

Calculation: 23 negotiation attempts x \$783.00 staff cost per each negotiation = \$18,009.00

FISCAL IMPACT: INCREASED STAFF COSTS \$18,010.00

Section 8 permits the procurement officer to reduce the circulation period for bids and proposals when there is adequate competition.

FISCAL NOTE

No. 2

Bill Version: HB 482

(H) Publish Date: 2/9/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to state procurement practices and procedures and providing for ...
Sponsor: Rules
Requestor: Governor

Department Affected: Administration
BRU: General Services
Component: Central Purchasing
COMPONENT SERIAL NO. 60

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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 EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill seeks to streamline procurement practices used throughout the executive branch of state government and seeks to simplify and improve the efficiencies for various aspects of procurement in state government. Total net fiscal year 97 savings are projected to be \$2,798.00. The savings are spread over a variety of positions within Central Purchasing. The positive benefits on staffing will be used to achieve improved administrative efficiencies.

The fiscal impacts within this component are anticipated in nine sections of the bill.

(see attached)

Prepared by: Dugan Petty *[Signature]*
Division: General Services

Phone: 465-2250
Date: _____

Approved by Commissioner: Mark Boyer *[Signature]*
Agency: Administration

Date: 2/7/96

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CANDIDATE LEASES FOR EXTENSION UNDER HB 288

LOCATION	LEASE NO.	EXPIRE DATE	CURRENT RATE	SQ FT	MONTHLY RATE	NEW MONTHLY REDUCED 15%	DIFFERENCE PER MONTH	MONTHS FY 97	MAXIMUM FY 97 SAVINGS	MONTHS FY 98	MAXIMUM FY 98 SAVINGS
ANCHORAGE	2318/A (10)	MON-TO-MON	\$0.80	14,926	\$11,940.80	\$10,149.68	\$1,791.12	11	\$19,702.32	1	\$1,791.12
ANCHORAGE	1328 (08)	01/31/96	\$1.03	7,200	\$7,386.48	\$6,278.51	\$1,107.97	5	\$5,539.86	7	\$7,755.80
BARROW	1940 (03)	01/31/96	\$6.07	1,202	\$7,296.62	\$6,202.13	\$1,094.49	5	\$5,472.47	7	\$7,661.45
FAIRBANKS	2086 (20)	01/31/96	\$1.34	4,720	\$6,345.57	\$5,393.73	\$951.84	5	\$4,759.18	7	\$6,662.85
JUNEAU	2179 A (07)	04/30/96	\$1.66	7,207	\$11,970.11	\$10,174.59	\$1,795.52	2	\$3,591.03	10	\$17,955.16
GLENNALLEN	2343 (12)	04/30/96	\$1.95	1,884	\$3,674.93	\$3,123.69	\$551.24	2	\$1,102.48	10	\$5,512.40
SOLDOTNA	2090 (06)	05/21/96	\$1.22	8,425	\$10,305.46	\$8,759.64	\$1,545.82	1	\$1,545.82	11	\$17,004.01
KOTZEBUE	2182/A (12)	05/31/96	\$2.78	1,367	\$3,800.26	\$3,230.22	\$570.04	1	\$570.04	11	\$6,270.43
ANCHORAGE	1517/A/B (06/07)	06/30/96	\$1.20	5,100	\$6,120.00	\$5,202.00	\$918.00	0	\$0.00	12	\$11,016.00
KETCHIKAN	2136/A (07)	08/31/96	\$1.92	6,100	\$11,705.29	\$9,949.50	\$1,755.79	0	\$0.00	12	\$21,069.52
ANCHORAGE	2352/A-C (02)	12/14/96	\$1.41	23,159	\$32,593.98	\$27,704.88	\$4,889.10	0	\$0.00	12	\$58,669.16
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BASED ON A MAXIMUM SAVINGS OF 40%. FY TOTALS ARE FY 97 MAX **\$22,387.26** FY 98 MAX **\$107,823.51**

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

CANDIDATE LEASES FOR EXTENSION UNDER HB 288

LOCATION	LEASE NO.	EXPIRE DATE	CURRENT RATE	SQ FT	MONTHLY RATE	NEW MONTHLY REDUCED 15%	DIFFERENCE PER MONTH	MONTHS FY 97	MAXIMUM FY 97 SAVINGS	MONTHS FY 98	MAXIMUM FY 98 SAVINGS
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KETCHIKAN	2136/A (07)	08/31/96	\$1.92	6,100	\$11,705.29	\$9,949.50	\$1,755.79	0	\$0.00	12	\$21,069.52
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HOMER	2342 (12)	04/24/97	\$1.59	752	\$1,192.67	\$1,013.77	\$178.90	2	\$357.80	10	\$1,789.01
SOLDOTNA	2356 (12)	11/07/96	\$0.92	5,300	\$4,876.00	\$4,144.60	\$731.40	6	\$4,388.40	6	\$4,388.40
EAGLE RIVER	2364 (07)	03/26/97	\$0.63	2,760	\$1,725.00	\$1,466.25	\$258.75	0	\$0.00	12	\$3,105.00
HOMER	2054 (11)	04/30/97	\$0.52	23,460	\$12,100.67	\$10,285.57	\$1,815.10	0	\$0.00	6	\$10,890.60
HOMER	2357 (10)	12/08/99	\$1.30	572	\$746.12	\$634.20	\$111.92	6	\$0.00	6	\$671.51
									\$55,968.15		\$269,558.77

BASED ON A MAXIMUM SAVINGS OF 40%. FY TOTALS ARE FY 97 MAX **\$22,387.26** FY 98 MAX **\$107,823.51**

FISCAL NOTE

STATE OF ALASKA BILL NO. CSHB 482(STA)
1996 LEGISLATIVE SESSION

ANALYSIS: (continued)

Twenty leases are anticipated to have the greatest potential for cost savings resulting from negotiations under this bill. Maximum savings anticipated under this bill are projected at the minimum 15% rate reduction. While we have not included them in this list, we anticipate some leases extended in 1994 under similar provisions of SB 129 may also be candidates for negotiated concessions.

We have used 15% as a rent concession factor because most leases now include ADA compliance language, are in buildings upgraded as a result of negotiations, or have had compliance issues addressed through programmatic changes.

Actual fiscal impacts depend on whether an extension is in the state's best interest, and the lessor's willingness to grant rent concessions. If we successfully negotiate 40% of the maximum potential for savings in FY 97 and FY 98, savings can be achieved in excess of \$50,000.00 in FY 97 and \$100,000.00 in FY 98.

Our FY 97 leasing budget set a goal of reducing FY 97 operating lease costs by an additional \$417,700.00. This bill provides opportunity to achieve a portion of our goal through reductions in lease payments in return for lease extensions. Since our budget is based on reductions to be accomplished, zero fiscal impact is shown for FY 97.

Assumptions:

- 13 leases are renegotiated for FY 97
- 7 leases were renegotiated for FY 98
- 40% of the leases result in 15% savings reduction
 - FY 97 \$ 55,968.15 Maximum potential savings x 40% = \$22,387.00
 - FY 98 \$269,558.77 Maximum potential savings x 40% = \$107,824.00

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 482(STA)

Revision Date: _____
 Title: "An Act relating to state procurement practices and procedures; and providing for an effective date."
 Sponsor: _____
 Requestor: (H) Finance

Department Affected: Administration
 BRU: General Services
 Component: Leasing
 COMPONENT SERIAL NO. 81

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL	0	(107.8)	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING	0	(107.8)	0	0	0	0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL		(107.8)*	0	0	0	0

Estimate of any current year (FY 96) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill permits the extension of existing leases for up to 10 years if concessions of at least 15% of the amount that would be paid for rent can be achieved. Concessions of at least 10% could be agreed to if ADA improvements are made.

*The mix of funding sources for leases between General Fund and Interagency Receipts does not permit an accurate assessment of the fund source at this time.

(see attached)

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

Phone: 465-2250
 Date: _____

Approved by Commissioner: Mark Boyer *Mark Boyer*
 Agency: Administration

Date: 4/24/96

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Section 45 permits adoption of regulations to implement revisions to statute, but the regulation may not be effective before the effective date of the law.

Section 46 permits continuation of existing procurement actions begun under the law prior to the effective date of revisions.

Section 47 establishes that the first lease report is due on August 31, 1997.

Sections 48 through 51 provide for effective dates.