

**ALASKA LEGISLATURE**

**1825**

**HOUSE and SENATE FINANCE COMMITTEE FILES, © 1997-1998**

**SB**

**274**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/19/98

FURTHER: SFC 4/17/98

DATE TURNED  
IN TO OFFICE: 21 April 98

Finance Committee considered

SENATE BILL NO. 274

"An Act relating to fees for probation and parole."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 274 (FIN)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR\* \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul E. Hill</i>	→	<i>Sean Parnell</i>	x		
<i>4 attorneys</i>	✓	<i>Al Adams</i>		X	
Co-Chair: <i>Deanna</i>	✓	Co-Chair:			
Co-Chair: <i>Bob May</i>	✓	Co-Chair:			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

Fiscal note			
forth coming			
Dept. of			
Corrections			

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

Admin Public Defender's Office	2/17/98		*

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

REPORTED OUT OF  
SFC 4/17/98

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. CS SB 274 (FIN)**

Revision Date (Note if correction) 4/20/98 Dept. Affected Corrections  
 Title An Act relating to fees for probation and parole BRU Administration and Operations  
 Component ALL  
 Sponsor Senator Ward  
 Requester Senate Finance Component Serial No. #0694

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	158.9	94.4	94.4	94.4	94.4	94.4
Travel						
Contractual	151.0	150.5	150.5	150.5	150.5	150.5
Supplies	5.0					
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	246.7	246.7	246.7	246.7	246.7	246.7
<b>TOTAL OPERATING</b>	<b>561.6</b>	<b>491.6</b>	<b>491.6</b>	<b>491.6</b>	<b>491.6</b>	<b>491.6</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>305.9</b>	<b>305.9</b>	<b>305.9</b>	<b>305.9</b>	<b>305.9</b>	<b>305.9</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	561.6	491.6	491.6	491.6	491.6	491.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>561.6</b>	<b>491.6</b>	<b>491.6</b>	<b>491.6</b>	<b>491.6</b>	<b>491.6</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary	1					

**ANALYSIS:** (Attach a separate page if necessary)

Please see attached analysis.

Prepared by Bruce Richards Phone 465-3307  
 Division Commissioner's Office Date 4/20/98  
 Approved by Commissioner Margaret M. Pugh Margaret M. Pugh Date 4/20/98  
 Agency Department of Corrections

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FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION  
DEPARTMENT OF CORRECTIONS

BILL NO. CS SB 274 (FIN)  
PAGE 2 of 3  
DATE 4/20/98

**Assumptions**

Section one and two of this legislation adds probation fees to AS 12.55.051 **Enforcement of fines and restitution**. This statute allows for the incarceration of people who do not pay their fines or restitution. If the probationer is found by the court to be in violation, the court may order the defendant imprisoned until the court order is satisfied. This could result in incarceration of one day for every \$50 owed. The Dept. of Corrections assumes that few if any of the over 4000 probationers/parolees will pay this fee. Under a previous law, the fee was only half of that proposed in SB 274 and approximately \$260.4 was collected over a two and a half year period; projected receipts were \$5,500,000 during the same period. The result was a collection rate of less than five percent. Research of the previous law indicates few probationers if any were put in jail for failure to pay. The Dept. assumes that approximately 146 probationers will be brought before the court for non-payment, and ten will be incarcerated.

**Cost for Section 1= \$14,544 for CRC time (10 people 24dys), \$26,280 for PO time = \$40,854**  
**Revenue for Section 1= \$0**

Section 3 amends AS 12.55.100 **Conditions of probation**. The proposed language adds the probation fee that is required in AS 12.55.144.

**Cost for Section 3= \$0**  
**Revenue for Section 3= \$0**

Section 4 adds a new section, AS 12.55.104 **Probation fee**. This section establishes a mandatory probation fee of \$3.30 per day. In addition, this section requires the probationer to assign his or her permanent fund dividend check to make probation fee payments. It further requires the Dept. of Corrections to attach the dividend check of a probationer who is in arrears. If the dividend check exceeds the total of the probation fee payments the DOC is required to refund the difference to the probationer. The DOC does not anticipate much if any revenue from PFD checks, since they are not eligible for at least one year after incarceration, and because probationers have many other requirements that are higher in priority to the probation fee, such as: victim restitution, child support, and court-ordered fines.

**Cost for Section 4= \$0**  
**Revenue for Section 4= \$269,808 (7% of population paying 224 people) PFD Revenue=\$0**

Section 5 amends AS 33.16.150 **Conditions of Parole**. The proposed language adds a mandatory parole fee as a condition of parole, as provided in AS 33.16.155.

**Cost for Section 5= \$0**  
**Revenue for Section 5= \$0**

Section 6 amends AS 33.16.155 **Parole fee**. This section adds a new subsection that requires the Board of Parole to assess a fee of \$3.30 per day. In addition, this section requires the parolee to assign his or her permanent fund dividend check to make fee payments. It further requires the Dept. of Corrections to attach the dividend check of a parolee who is in arrears. If the dividend check exceeds the total of the fee payments the DOC is required to refund the difference. The DOC does not anticipate much if any revenue from PFD checks for the reasons cited in section 4 above.

**Cost for Section 6= \$0**  
**Revenue for Section 6= \$36,135 (2% of population paying = 30 people)**  
(continued on page 3)

FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION  
DEPARTMENT OF CORRECTIONS

BILL NO. CS SB 274 (FIN)  
PAGE 3 of 3  
DATE 4/20/98

Section 7 amends AS 33.16.220, **Revocation of Parole**. This new subsection will require the Board of Parole to revoke parole if a parolee defaults in the payment of the fee, unless the parolee shows by a preponderance of evidence that he or she is unable to pay despite having made continuing good faith efforts. The requirement will have a significant cost since the Board will have no choice but to revoke parole for those who refuse to pay the fee. A hearing will be required to determine the parolee's ability and effort to pay. It is anticipated this will require 11 days of additional hearings per year at a cost of \$28,600. It is estimated that 140 parolees will be found in violation of AS 33.16.150(a)(12), resulting in a revocation of parole. It is estimated the amount of parole revoked will be one day in a CRC for each \$50 owed in fees.

**Cost for Section 7= \$203,616 (140 parolees revoked for 24 days each at \$60.60 per, \$28,600 for Board Costs (11 hearing days @ \$2600 per), \$25,200 for PO Time. Total = \$257,416  
Revenue for Section 7= \$0**

Section 9 amends AS 43.23.005(d) which makes all inmates who have been convicted of a felony or a three time misdemeanor ineligible for a PFD the first year they are released. The Dept. of Corrections will now have to program our computer system to generate a third list to send to the PFD division and deal with an increased number of appeals. The Dept. of Corrections has only received a fraction of the funding requested when the felony and third time misdemeanor provisions were passed. The workload for our data processing programmers is increasingly being taken up by the provisions under AS 43.23.005(d). Without additional support, our Data Processing section will be unable to carry out its day to day functions. The Department of Corrections is requesting one temporary Analyst Programmer IV to reprogram the DOC database for the amendment in section 9. In addition, a statistical technician will be needed to respond to and research appeals. The Dept. of Corrections has asked for this position each time AS 43.23.005(d) was amended and has been continually denied.

**Cost for Section 9= Analyst Programmer IV 64.5; Statistical Technician I 43.0; Contractual 1.0, Supplies 1.0, Equipment (one time) 5.0 Total =\$114,500**

Section 10 amends AS 43.23.065(b) **Exemption of an levy on PFD's**. The proposed language adds to the order of debts that are not available for an exemption and places the proposed probation and parole fees last in line for collection.

**Cost for Section 10= \$0  
Revenue for Section 8= \$0**

Section 11 amends AS 44.28 by adding a new section requiring the Dept. of Corrections to contract with a collection agency or other entity for administration and collection of probation and parole fees. The Dept. has contacted collection agencies and was told that they would not bid on such a contract. They made it clear that they are only in the business of collecting on bad debt and would not be interested in administration and accounting functions that would be required under SB 274. The Dept. would be required to put out an RFP for the services required under this legislation and has estimated the cost.

**Cost for Section 11= \$150,000  
Revenue for Section 9= \$0**

The Dept. of Corrections is unable to estimate the revenues collected from attached permanent fund dividend checks.

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CS SB 274 (JUD)

Revision Date (Note if correction) 3/23/98 Dept. Affected Corrections  
 Title An Act relating to fees for probation and parole BRU Administration and Operations  
 Component ALL  
 Sponsor Senator Ward  
 Requester Senate Finance Component Serial No. #0694

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	51.4	51.4	51.4	51.4	51.4	51.4
Travel						
Contractual	150.0	150.0	150.0	150.0	150.0	150.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	246.7	246.7	246.7	246.7	246.7	246.7
<b>TOTAL OPERATING</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )	305.9	305.9	305.9	305.9	305.9	305.9
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	419.5	419.5	419.5	419.5	419.5	419.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>	<b>448.1</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Please see attached analysis.

Prepared by Bruce Richards  
 Division Commissioner's Office  
 Approved by Commissioner Margaret M. Pugh BY BILL PARKER  
 Agency Department of Corrections

Phone 465-3307  
 Date 3/23/98  
 Date 3/23/98

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## FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION  
DEPARTMENT OF CORRECTIONS

BILL NO. CS SB 274 (JUD)  
PAGE 2 of 3  
DATE 3/23/98

### Assumptions

Section one and two of this legislation adds probation fees to AS 12.55.051 **Enforcement of fines and restitution**. This statute allows for the incarceration of people who do not pay their fines or restitution. If the probationer is found by the court to be in violation, the court may order the defendant imprisoned until the court order is satisfied. This could result in incarceration of one day for every \$50 owed. The Dept. of Corrections assumes that few if any of the over 4000 probationers/parolees will pay this fee. Under a previous law, the fee was only half of that proposed in SB 274 and approximately \$260.4 was collected over a two and a half year period; projected receipts were \$5,500,000 during the same period. The result was a collection rate of less than five percent. Research of the previous law indicates few probationers if any were put in jail for failure to pay. The Dept. assumes that approximately 146 probationers will be brought before the court for non-payment, and ten will be incarcerated.

**Cost for Section 1= \$14,544 for CRC time (10 people 24dys), \$26,280 for PO time = \$40,854**  
**Revenue for Section 1= \$0**

Section 3 amends AS 12.55.100 **Conditions of probation**. The proposed language adds the probation fee that is required in AS 12.55.144.

**Cost for Section 3= \$0**  
**Revenue for Section 3= \$0**

Section 4 adds a new section, AS 12.55.104 **Probation fee**. This section establishes a mandatory probation fee of \$3.30 per day. In addition, this section requires the probationer to assign his or her permanent fund dividend check to make probation fee payments. It further requires the Dept. of Corrections to attach the dividend check of a probationer who is in arrears. If the dividend check exceeds the total of the probation fee payments the DOC is required to refund the difference to the probationer. The DOC does not anticipate much if any revenue from PFD checks, since they are not eligible for at least one year after incarceration, and because probationers have many other requirements that are higher in priority to the probation fee, such as: victim restitution, child support, and court-ordered fines.

**Cost for Section 4= \$0**  
**Revenue for Section 4= \$269,808 (7% of population paying 224 people) PFD Revenue=\$0**

Section 5 amends AS 33.16.150 **Conditions of Parole**. The proposed language adds a mandatory parole fee as a condition of parole, as provided in AS 33.16.155.

**Cost for Section 5= \$0**  
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**Cost for Section 6= \$0**  
**Revenue for Section 6= \$36,135 (2% of population paying = 30 people)**

FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION  
DEPARTMENT OF CORRECTIONS

BILL NO. CS SB 274 (JUD)  
PAGE 3 of 3  
DATE 3/23/98

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**Cost for Section 7= \$203,616 (140 parolees revoked for 24 days each at \$60.60 per, \$28,600 for Board Costs (11 hearing days @ \$2600 per), \$25,200 for PO Time. Total = \$257,416  
Revenue for Section 7= \$0**

Section 8 amends AS 43.23.065(b) **Exemption of an levy on PFD's**. The proposed language adds to the order of debts that are not available for an exemption and places the proposed probation and parole fees last in line for collection.

**Cost for Section 8= \$0  
Revenue for Section 8= \$0**

Section nine amends AS 44.28 by adding a new section requiring the Dept. of Corrections to contract with a collection agency or other entity for administration and collection of probation and parole fees. The Dept. has contacted collection agencies and was told that they would not bid on such a contract. They made it clear that they are only in the business of collecting on bad debt and would not be interested in administration and accounting functions that would be required under SB 274. The Dept. would be required to put out an RFP for the services required under this legislation and has estimated the cost.

**Cost for Section 9= \$150,000  
Revenue for Section 9= \$0**

The Dept. of Corrections is unable to estimate the revenues collected from attached permanent fund dividend checks.

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB 274 (JUD)

Revision Date: \_\_\_\_\_  
Title: Probation & Parole Fees

Dept. Affected: Alaska Court System  
BRU: Trial Courts

Sponsor: Sen. Werd  
Requestor: Senate Finance

Component: \_\_\_\_\_  
COMPONENT SERIAL NO. 788

Expenditures/Revenues		(Thousands of Dollars)				
OPERATING EXPENDITURES	FY 98	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	10.2	10.2	10.2	10.2	10.2	10.2
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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Fund Source		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1007 GF	10.2	10.2	10.2	10.2	10.2	10.2
1008 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>	<b>10.2</b>

Estimate of any current year (FY 00) cost: None

Positions						
Full-Time						
Part-Time	2.0	2.0	2.0	2.0	2.0	2.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Doug Wooliver, Administrative Attorney  
Agency: Alaska Court System

Phone: 264-8265  
Date: 03/23/98

Approved by: Stephanie J. Cole, Administrative Director  
Agency: Alaska Court System

Date: 03/23/98

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**Alaska Court System**  
**Fiscal Analysis**  
**CSSB 274 (JUD)**

The Department of Corrections estimates that CSSB 274 (JUD) will result in an additional 148 probation revocation hearings a year. Because of the limited scope of these hearings, judicial time spent per case is estimated to be only one hour, including time spent in court.

**Personal Services**

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem District Court Judge, Anchorage, PPT, 1 month	\$ 4,875	\$ 2,376	\$ 7,251
In-Court Clerk, range 12A, Anchorage, PPT, 1 month	2,411	523	<u>2,934</u>
Total Personal Services			<u>\$ 10,185</u>

**FISCAL NOTE**

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB 274 (JUD)

Revision Date: \_\_\_\_\_  
Title: "An Act relating to fees for probation and parole"  
Sponsor: Senator Ward  
Requestor: (S) FIN

Department Affected: Administration  
BRU: Legal and Advocacy Services  
Component: Public Defender Agency  
COMPONENT SERIAL NO. 1631

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	104.0	104.0	104.0	104.0	104.0	104.0
TRAVEL	5.5	5.5	5.5	5.5	5.5	5.5
CONTRACTUAL	23.2	23.2	23.2	23.2	23.2	23.2
SUPPLIES	2.9	2.9	2.9	2.9	2.9	2.9
EQUIPMENT	13.0	1.3	1.3	1.3	1.3	1.3
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>148.6</b>	<b>136.9</b>	<b>136.9</b>	<b>136.9</b>	<b>136.9</b>	<b>136.9</b>

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	148.6	136.9	136.9	136.9	136.9	136.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>148.6</b>	<b>136.9</b>	<b>136.9</b>	<b>136.9</b>	<b>136.9</b>	<b>136.9</b>

Estimate of any current year (FY 98) cost: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	2	2	2	2	2	2
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara K. Brink, Director  
Division: Public Defender Agency

Phone: (907) 264-4400  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 3/23/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 274

1998 LEGISLATIVE SESSION

ANALYSIS: (continued)

Sec. 4 of this bill requires courts to impose a probation fee of not less than \$3.30 per day when it sets probation in a criminal case. This fee must be made a condition of probation. Sec. 6 of the bill requires that the parole board impose the \$3.30 fee as a condition of parole. These fees must be imposed whether or not the parole board or court believes the probationer or parolee is capable of paying the fee. The purpose of the fees is to offset some of the costs of supervising probationers and parolees. (It is not clear whether misdemeanants who are unsupervised would have to pay a fee.)

If probationers do not pay the fee, the court can, but is not required to, revoke probation. The statute provides that probationers have an affirmative defense if they are not able to pay. Apparently, the parole board must actually start a revocation proceeding, but the board does not have to revoke parole if the parolee can establish inability to pay by a preponderance of the evidence. Both sections also require a showing of continuing good faith efforts to pay.

The Public Defender Agency (PDA) anticipates a significant fiscal impact as a result of this bill. PDA is requesting an additional Attorney II and a Paralegal I to be based in Anchorage to handle the increased appointments that will result from this bill.

PDA is appointed to represent both parolees and probationers in revocation hearings if the parolees or probationers are unable to hire their own attorney. In FY97 PDA was appointed in 1267 felony probation revocation cases, 2386 misdemeanor probation revocations, and 103 parole revocations. Our parole revocation caseload is increasing rapidly. In the first half of FY98 we had 110 appointments. Dept. of Corrections (DOC) figures show that, on average, 3202 people are on probation and 434 people are on parole in the state. DOC estimates that it is likely that revocations based on failure to pay a fee will result in 10 % of the probation cases (320) and half of the parole cases (217), for an additional 537 cases. (PDA estimates it will be appointed in all these cases.) After PDA is appointed, the attorney will have to investigate and try to prove the affirmative defense of inability to pay despite continuing good faith efforts. An attorney and a paralegal will be needed to handle the additional 537 cases per year.

FISCAL NOTE

4/17/98

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 1  
Bill Version: CSB 274 / JUD  
(S) Publish Date: 2-19-98

Revision Date: \_\_\_\_\_  
Title: "An Act relating to fees for probation and parole"  
Sponsor: Senator Ward  
Requestor: (S) JUD

Department Affected: Administration  
BRU: Legal and Advocacy Services  
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

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	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would require a court or the parole board to impose a fee on probationers and parolees. Payment of the fees could be a condition of probation or parole. There would undoubtedly be a fiscal impact on the Public Defender Agency (PDA) as a result of this bill. Probationers and parolees would have to pay a minimum of \$3.30 per day, or about \$100 per month. Probationers and parolees facing revocation for non-payment would have a right to court-appointed counsel. It is expected that a lot of probationers and parolees, especially those newly released from jail, would have difficulty making these payments. However, it is difficult to determine the fiscal impact without an estimate of the number of new probation or parole revocation cases anticipated.

Prepared by: Barbara K. Brink, Director  
Division: Public Defender Agency

Phone: (907) 264-4414  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Bover  
Agency: Department of Administration

Date: 2/17/98

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## FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 274

## 1998 LEGISLATIVE SESSION

## ANALYSIS: (continued)

There may also be an additional impact resulting from litigation on this bill. In State v. Albert, 899 P.2d 103 (Alaska Supreme Ct. 1995), the court said that fees to recoup the cost of court-appointed attorneys were constitutional. One of the main factors that persuaded the court was that payment of attorneys' fees could not be a condition of probation. Thus, jail was not an enforcement mechanism for non-payment. It may be that probationers or parolees jailed for non-payment would challenge the bill based on the Albert case, and the Public Defender Agency would have the expense of representing them.

Another aspect of the bill that may cause difficulties is that it is not restricted to felony probation. Probation is routinely imposed in misdemeanor cases, but misdemeanor probation is unsupervised in the vast majority of cases. There are few, if any, costs associated with unsupervised misdemeanor probation. Therefore, a fee of about \$100 per month would be difficult to justify.

SENATE FINANCE  
COMMITTEE

SENATE AMENDMENT

Amendmer Number: #5  
Bill Numb: EB 274  
Sponsor: JMS Date: 4/17/88  
Logged In By: Mindy

By Adams

To: 274 SENATE BILL No. \_\_\_\_\_

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

PAGE: 4 LINE: 24, 31

CHANGE SHALL to "MAY"

SENATE FINANCE  
COMMITTEE

Amendment Number: 4

Bill Number: SS 274

Sponsor: Donley Date: 4/17/98

Logged In By: J. Mindy

0-LS1252\F.3  
Luckhaupt  
4/16/98

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSB 274(JUD)

1 Page 1, line 1, following "parole":

2 Insert ": and relating to eligibility for a permanent fund dividend for persons  
3 convicted of and incarcerated for certain offenses"

4 Page 4, following line 31:

5 Insert a new bill section to read:

6 "**\* Sec. 8.** AS 43.23.(X)5(d) is amended to read:

7 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual  
8 is not eligible for a permanent fund dividend for a dividend year when

9 (1) during the calendar year immediately preceding that dividend year,  
10 the individual was sentenced as a result of conviction in this state of a felony;

11 (2) during all or part of either of the two calendar years [YEAR]  
12 immediately preceding that dividend year, the individual was incarcerated as a result  
13 of the conviction in this state of a

14 (A) felony; or

15 (B) misdemeanor if the individual has been convicted of two  
16 or more prior crimes as defined in AS 11.81.900."

17 Renumber the following bill sections accordingly.

SENATE FINANCE  
COMMITTEE

Amendment Number: 3  
Bill Number: CSSB 274 (JUD) (0-1.S1252\F.4  
Sponsor: Donley Date: 4/16/98 Luckhaupt  
Logged In By: Judicial 4/16/98

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSB 274(JUD)

1 Page 1, line 1, following "parole":  
2 Insert "; and relating to notice requirements relating to appropriations from the  
3 permanent fund dividend fund to the office of crime victims' rights"

4 Page 4, following line 31:

5 Insert a new bill section to read:

6 **\*\* Sec. 8. AS 43.23.028(b) is amended to read:**

7 (b) To the extent that amounts appropriated for a fiscal year do not exceed  
8 the total amount that would have been paid during the previous fiscal year to  
9 individuals who were ineligible to receive dividends under AS 43.23.005(d) if they  
10 had been eligible, the notice requirements of (a)(3) of this section do not apply to  
11 appropriations from the dividend fund to the

12 (1) crime victim compensation fund established under AS 18.67.162  
13 for payments to crime victims;

14 (2) council on domestic violence and sexual assault established under  
15 AS 18.66.010 for grants for the operation of domestic violence and sexual assault  
16 programs; [OR]

17 (3) Department of Corrections for incarceration and probation  
18 programs; or

19 **(4) office of crime victims' rights.**

20 Renumber the following bill sections accordingly.

21 Page 5, following line 27:

22 Insert a new bill section to read:

0-LS1252\F.4

- 1       **\* Sec. 11.** Section 8 of this Act takes effect only if a version of SB 219 passes the
- 2       Twentieth Alaska State Legislature and becomes law."

REQUESTED BY SPONSOR, Sen. Ward

SENATE FINANCE COMMITTEE Luckhaupt  
0-LS1252VF.1

Amendment Number: 2 2/23/98

Bill Number: CSSB 274 (JUD)

Sponsor: \_\_\_\_\_ Date: 3/24/98

Logged In By: jseltane

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR

TO: CSSB 274(JUD)

1 Page 1, line 1, following "parole":

2 Insert "; and relating to the ineligibility to receive a permanent fund dividend of  
3 persons convicted of or incarcerated for a misdemeanor"

4 Page 4, following line 31:

5 Insert new bill sections to read:

6 **\*\* Sec. 8.** AS 43.23.005(d) is amended to read:

7 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual  
8 is not eligible for a permanent fund dividend for a dividend year when

9 (1) during the calendar year immediately preceding that dividend year,  
10 the individual was sentenced as a result of conviction in this state of a felony or a  
11 misdemeanor;

12 (2) during all or part of the calendar year immediately preceding that  
13 dividend year, the individual was incarcerated as a result of the conviction in this state  
14 of a

15 [(A)] felony [;] or a

16 [(B)] misdemeanor [IF THE INDIVIDUAL HAS BEEN  
17 CONVICTED OF TWO OR MORE PRIOR CRIMES AS DEFINED IN  
18 AS 11.81.900.]

19 **\* Sec. 9.** AS 43.23.005(g) is amended to read:

20 (g) For purposes of applying (d)(1) of this section, the date the court imposes  
21 a sentence or suspends the imposition of sentence shall be treated as the date of  
22 conviction. [FOR PURPOSES OF APPLYING (d)(2)(B) OF THIS SECTION,  
23 MULTIPLE CONVICTIONS ARISING OUT OF A SINGLE CRIMINAL EPISODE  
24 SHALL BE TREATED AS A SINGLE CONVICTION.]

1 \* Sec. 10. AS 43.23.028(a) is amended to read:

2 (a) By October 1 of each year, the commissioner shall give public notice of  
3 the value of each permanent fund dividend for that year and notice of the information  
4 required to be disclosed under (3) of this subsection. In addition, the stub attached  
5 to each individual dividend check and direct deposit advice must

6 (1) disclose the amount of each dividend attributable to income earned  
7 by the permanent fund from deposits to that fund required under art. IX, sec. 15,  
8 Constitution of the State of Alaska;

9 (2) disclose the amount of each dividend attributable to income earned  
10 by the permanent fund from appropriations to that fund and from amounts added to  
11 that fund to offset the effects of inflation;

12 (3) disclose the amount by which each dividend has been reduced due  
13 to each appropriation from the dividend fund, including amounts to pay the costs of  
14 administering the dividend program and the hold harmless provisions of  
15 AS 43.23.075;

16 (4) include a statement that an individual is not eligible for a dividend  
17 when

18 (A) during the calendar year immediately preceding that  
19 dividend year the individual was convicted of a felony or a misdemeanor;

20 (B) during all or part of the calendar year immediately  
21 preceding that dividend year, the individual was incarcerated as a result of the  
22 conviction of a

23 [(i)] felony [;] or a

24 [(ii)] misdemeanor [IF THE INDIVIDUAL HAS BEEN  
25 CONVICTED OF TWO OR MORE PRIOR CRIMES];

26 (5) include a statement that the legislative purpose for making  
27 individuals listed under (4) of this subsection ineligible is to

28 (A) obtain reimbursement for some of the costs imposed on the  
29 state criminal justice system related to incarceration or probation of those  
30 individuals;

31 (B) provide funds for payments to crime victims and for grants  
32 for the operation of domestic violence and sexual assault programs;

1                   (6) disclose the total amount that would have been paid during the  
2 previous fiscal year to individuals who were ineligible to receive dividends under  
3 AS 43.23.005(d) if they had been eligible;

4                   (7) disclose the total amount appropriated for the current fiscal year  
5 under (b) of this section for each of the funds and agencies listed in (b) of this  
6 section."

7    Renumber the following bill sections accordingly.

8    Page 5, following line 27:

9           Insert new bill sections to read:

10       "\* Sec. 13. The amendments made by secs. 8 and 9 of this Act apply only to individuals  
11 convicted of crimes committed after December 31, 1998.

12       \* Sec. 14. The amendments made by sec. 10 of this Act apply after December 31, 1998.  
13 Before January 1, 1999, AS 43.23.028 shall apply as it read before the effective date of this  
14 Act."

REQUESTED BY SPONSOR, Sen. Ward

SENATE FINANCE COMMITTEE  
Amendment Number: 2/22/98  
Bill Number: CSSB 274(JUD)  
Sponsor: \_\_\_\_\_ Date: 3/24/98  
Logged In By: Boltane

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR

TC. CSSB 274(JUD)

- 1 Page 5, line 15, following "debt":
- 2       Insert "other than for a fee under (8) of this subsection."
  
- 3 Page 5, line 17, following "expired":
- 4       Delete all material.
- 5       Insert ";

**SB**

**278**

SFIN

FILE



OFFICIAL BUSINESS

# Alaska State Legislature Senate

## Office of the Secretary

**FOR YOUR IMMEDIATE ATTENTION**

STATE CAPITOL, ROOM 213  
JUNEAU, ALASKA 99801-1182  
(907) 465-3701  
FAX: 465-2832

EMAIL: senate\_secretary@Legis.state.ak.us

DATE: April 22, 1998

TO: Finance Committee  
(JerryLee/Mindy - Room 520)

FROM: Office of the Senate Secretary

A Sponsor Substitute has been introduced on the following bill/resolution pending in your Committee:

**RETRIEVE**

**SENATE BILL NO. 278**

"An Act making a special appropriation to the principal of the permanent fund; and providing for an effective date."

Please pull this bill/resolution folder from your files and give to the page. The bill/resolution will be returned to you with the Sponsor Substitute.

Thank you.

**SB**

**281**

**HFIN**

**FILE**

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 28, 1998

FURTHER REFERRALS:

Date of Committee Action: 5/5/98

The FINANCE Committee considered:

CSSB 281(RES)

CS FOR SENATE BILL NO. 281(RES)

YAKUTAT GENERAL GRANT LAND ENTITLEMENT

"An Act relating to general grant land entitlements for the City and Borough of Yakutat; and providing for an effective date."

recommends it be replaced with the following committee substitute HCS ESSB 281 (CRA)  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) \_\_\_\_\_

fiscal note(s) Senate DNR, 4/17/98

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Guy Therriault</i>	Therriault			X	
<i>Eden Mulder</i>	Mulder	X			
<i>Terry Martin</i>	Martin			X	
<i>Lisa Kahring</i>	Kahring	X			
<i>John Davis</i>	J. Davis	X			
<i>David Davis</i>	Davis	X			
<i>John Kelly</i>	Kelly	✓			

CHAIR'S SIGNATURE

*Guy Therriault*

# FISCAL NOTE

No. 2

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

BILL Bill Version: SSB281(RES)  
(S) Publish Date: 4/17/98

Revision Date: <u>16-Apr-98</u>	Dept Affected: <u>Natural Resources</u>
Title: <u>Yakutat General Grant Land Entitlement</u>	BRU: <u>Resource Development</u>
Sponsor: <u>Sen. MACKIE</u>	Component: <u>Land Development</u>
Requestor: <u>SRES</u>	Component Serial No. <u>431</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	5.0	57.0	47.0	5.0	18.0	1.0
TRAVEL	1.0	2.0	2.0			0.5
CONTRACTUAL		3.0	5.0	1.0	1.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>6.0</b>	<b>62.0</b>	<b>54.0</b>	<b>10.0</b>	<b>19.0</b>	<b>1.5</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (fund code)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					1.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 State Prog. Receipts		62.0	54.0	10.0	19.0	
<b>TOTAL</b>	<b>6.0</b>	<b>62.0</b>	<b>54.0</b>	<b>10.0</b>	<b>19.0</b>	<b>1.5</b>

Estimate cost by current year (FY98) cost: \$ none

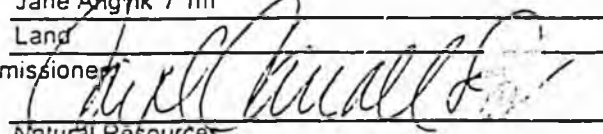
**POSITIONS**

FULL-TIME	0	1	1	0	1	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

CSSB281(res) establishes entitlement at 8552 acres, assumes that the borough files selections in early FY 00 (deadline is 10/1/99). Assumes that borough selects areas identified in letters to DNR, 5,000 acres will require amending Yakataga Area Plan. Fiscal Note assumes that borough will pay processing costs, otherwise DNR will process CBY's selections after processing other outstanding obligations, which will delay most conveyances up to 20 years.

FY 99 tasks - assist borough to file selections  
 FY 00 tasks - receive applications, agency review, draft decisions and plan amendments  
 FY 01 tasks - public notice, review, meetings, final decisions, final plan amendments  
 FY 02 tasks - issue survey instructions to borough  
 FY 03 tasks - assumes borough surveys land - review/approve surveys, issue title documents  
 FY 04 tasks - monitor/enforce covenants

Prepared by: <u>Jane Angvik / rm</u>	Phone: <u>907-269-3503</u>
Division: <u>Land</u>	Date: <u>16-Apr-98</u>
Approved by Commissioner: 	Date: <u>4/16/98</u>
Agency: <u>Natural Resources</u>	

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112 MILL BAY ROAD  
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(907) 486-5264 (FAX)

STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
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(907) 465-3517 (FAX)

# SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

## SPONSOR STATEMENT

### SB 281, Yakutat Municipal Land Grant.

SB 281 is introduced to complete the formation of the Yakutat Borough and the land entitlements that the state grants to support local government. Initially, the petition of the people of Yakutat to incorporate as a borough in 1992 was considerably reduced in size by the Local Boundary Commission. The land entitlement for the new borough by the formula of 10 % of "vacant, unappropriated, and unreserved" (vuu) state lands was a mere 138 acres.

The City and Borough of Yakutat subsequently petitioned the Local Boundary Commission to reclaim much of the area on its Northern border. In a reversal of its earlier decision, the Local Boundary Commission approved the annexation which contains a substantial amount of state "vuu" lands. It is estimated that if the annexed area had been included for the original borough formation, the municipal land entitlement would amount to 33,000 acres.

It has been a long established policy for the state to assist the formation and operation of local governments with generous grants of state land. SB 281 corrects the defects in the borough formation process that resulted in such a small land entitlement for the City and Borough of Yakutat by increasing its entitlement to 21,500 acres. The bill also gives additional authority to the Director of the Division of Lands in the Department of Natural Resources to condition and restrict any of the municipality's selections made under this increased grant.

STATUTORY AWARD OF MUNICIPAL ENTITLEMENT LANDS  
TO CITY AND BOROUGH OF YAKUTAT

A.S. 29.65.129 states that it is the policy of the State of Alaska to provide newly formed municipalities, including boroughs, with a general grant land entitlement of no less than ten percent (10%) of vacant, unappropriated, unreserved ("VUU") land located within their boundaries. This land grant is seen as both an incentive to borough formation and as an asset base to further the ongoing viability of the new municipal government. All Alaskan boroughs have received substantial entitlement acreages, either via a statutory grant of a specified number of acres under A.S. 29.65.010, or by a grant of ten percent (10%) of the total VUU land within the borough boundaries, under A.S. 29.65.030.

Unlike all other Alaskan boroughs<sup>1</sup>, the City and Borough of Yakutat ("CBY") has been nearly completely denied municipal entitlement land following its 1992 incorporation; it received only 138 acres. This is because the boundaries of the CBY initially approved by the Local Boundary Commission excluded the western area sought by Yakutat, resulting in almost complete exclusion of a VUU land base upon which the ten percent (10%) entitlement is calculated. This error was corrected by the Local Boundary Commission when it approved a 1996 annexation of the western area. However, because of technical language in the entitlement statutes, the ten percent (10%) entitlement calculation could only be made at the time of the initial incorporation of the CBY, when the boundaries included virtually no VUU land.

The current bill would correct this mistake, and grant the CBY nearly as much acreage as it would have received had its present boundaries been approved at initial incorporation in 1992. At that time, the ten percent (10%) calculation would have resulted in approximately 33,000 acres in entitlement grants to the Borough. The CBY now seeks a statutory award of 30,000 acres of entitlement land. Specific statutory entitlement awards have been made to twelve other boroughs, most recently the Lake and Peninsula Borough, which was granted 125,000 in the 1994 session. The amount of acreage per capita granted to the Lake and Peninsula Borough is substantially greater than that now sought by the Yakutat Borough.

The proposed legislation addresses one other matter. Because much of the state land in the area has been reclassified under the Yakataga Area Plan since 1992, it will be necessary for DNR to locate and reclassify acreage available for conveyance to the Borough. While DNR is generally supportive of a statutory award of entitlement lands to the borough, it is concerned that it may not be able to fulfill the requested acreage without the ability to

---

<sup>1</sup>Examples are: Northwest Arctic Borough - 285,438 acres; Kenai Peninsula Borough - 135,780 acres; Matanuska-Susitna Borough - 355,210 acres; Lake and Peninsula Borough - 125,000 acres; and Denali Borough - 49,789 acres.

← 21,500  
8,552

place conditions upon certain acreages being conveyed. The general municipal entitlement statutes provide for unconditional conveyance, which, because of concerns of the Department of Fish & Game and others, limits the ability of DNR to convey much of the acreage sought. If the Borough had the ability to agree to such conditions in order to obtain conveyance of particular parcels, this would facilitate DNR's ability to grant the total acreage sought. Because of the lack of present surveying, smaller areas of Department of Fish & Game habitat concerns affect and jeopardize the ability of DNR to convey much larger areas which do not feature such concerns. The language of the bill which authorizes DNR to attach conditions agreed upon the CBY will facilitate DNR's ability to convey the total acreages requested by the CBY.

Concerns of various parties regarding any specific parcel would be addressed by DNR in determining whether it is in the State's best interest to grant a particular conveyance requested by the Borough, after the legislation becomes law.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into between the Mental Health Trust Land Office (hereinafter "TLO") and the City and Borough of Yakutat (hereinafter "CBY") to summarize understandings reached by the parties' authorized representatives concerning Senate Bill No. 281, which would grant 21,500 acres of state lands to the CBY as municipal entitlements, and concerning the potential conveyance of certain state lands at West Icy Bay to the CBY in the event such or similar legislation is enacted.

In consideration of the mutual commitments and understandings stated herein, the TLO and CBY agree as follows:

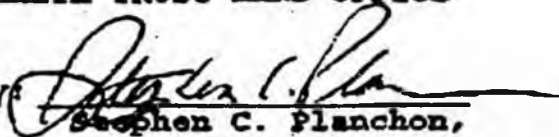
1. Neither the City and Borough of Yakutat ("CBY") or the Trust Land Office ("TLO") will relinquish their present or future rights to select and/or to take title to all or a portion of available State of Alaska ("State") land at West Icy Bay (the "State Tract"). The TLO has selected Sections 19, 20, 29 and 30, T. 22 S., R. 91 E, C.M. The CBY intends to select Sections 19, 20, 21, 22, 29, 30 and 31, T. 22, S., R. 91 E, C.M.
2. The TLO will support the current version of SB 281 or an amended version of the bill if the amendments do not unreasonably affect the Alaska Mental Health Trust (the "Trust").
3. In the event that all or a portion of the State Tract is conveyed to the CBY, the deed(s) will be subject to: (a) valid existing rights; (b) a perpetual public right-of-way reserved to the State, allowing for public access to the bay; (c) use restrictions that are consistent with the CBY zoning designation of "commercial waterfront"; (d) a covenant to not allow uses, or use terms and conditions, that unreasonably interfere with the

management and development of Trust lands in the area; and (e) a covenant to limit use fees chargeable to Trust-related activities to a reasonable fee of no less than the CBY's administrative fees and no greater than ten percent (10%) of the appraised value of the area being used, where a higher fee would unreasonably interfere with the management and development of Trust lands in the area.

4. The CBY will not object to expansion of the state-permitted TLO timber related activities on and across the State Tract prior to the time that the CBY may take title to all or a portion of the State Tract.
5. This MOU has been drafted through the efforts of both parties hereto. Accordingly, the rule of construction that ambiguities in an agreement are to be construed against the drafter has no application to this MOU.

Dated: March 27, 1998

STATE OF ALASKA, DEPARTMENT  
OF NATURAL RESOURCES MENTAL  
HEALTH TRUST LAND OFFICE

By:   
Stephen C. Planchon,  
Executive Director

Dated: 8 April, 1998

CITY AND BOROUGH OF YAKUTAT

By:   
Daryl R. James  
Mayor

(g:\1000.5\moa0327)

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

8-  
TONY KNOWLES, GOVERNOR

P.O. BOX 25526  
JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4100  
FACSIMILE: (907) 465-2332

March 12, 1998

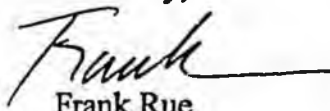
The Honorable Jerry Mackie  
Alaska State Legislature  
State Capitol, Room 427  
Juneau, AK 99801-1182

Dear Senator  Mackie:

The Alaska Department of Fish and Game worked with the community of Yakutat over the past three months regarding their interest in obtaining statutory municipal entitlements in lieu of the entitlements that were not available to the Borough upon its initial incorporation in 1992. The enclosed letter of February 24 from Mr. James Brennan documents the progress made to date and the commitments made by the City and Borough of Yakutat regarding their management intent for certain potential entitlement parcels.

I am pleased to endorse SB 281 given the enclosed letter of commitment from the City and Borough of Yakutat and the provision in the bill which empowers the Department of Natural Resources to prescribe land use stipulations, conditions or covenants to certain parcels.

Sincerely,



Frank Rue  
Commissioner

cc: Janet Kowalski, ADF&G, Habitat & Restoration  
Lana Shea Flanders, ADF&G, Habitat & Restoration, Douglas  
Bob Clasby, ADF&G, Commercial Fisheries  
Kevin Delaney, ADF&G, Sport Fish  
Wayne Regelin, ADF&G, Wildlife Conservation  
Mary Pete, ADF&G, Subsistence  
Geron Bruce, ADF&G, CO

Enclosure

LAW OFFICES

HEDLAND, BRENNAN, HEIDEMAN & COOKE  
A PROFESSIONAL CORPORATION

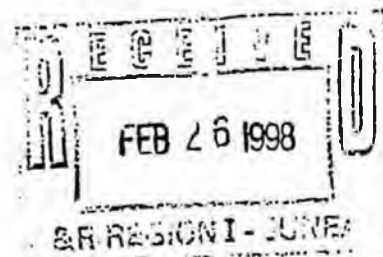
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BETHEL, ALASKA 99559  
(907) 543-2744

BETHEL:  
CHRISTOPHER R. COOKE  
JIM J. VALCARCE

February 24, 1998



Via Facsimile (907) 465-2332  
Frank Rue, Commissioner  
Department of Fish & Game  
P.O. Box 25526  
Juneau, AK 99811-5526

Re: SB 281; City and Borough of Yakutat Municipal  
Entitlements Bill

Dear Commissioner Rue:

I have been assisting the City and Borough of Yakutat (CBY) in obtaining statutory municipal entitlements in lieu of those which were not available to the Borough upon its initial incorporation in 1992. As you are probably aware, the CBY received almost no land entitlements upon incorporation, because nearly all the state VUU land in the region was located between Icy Bay and Cape Suckling, which only became a part of the Borough upon its annexation in 1996.

Borough representatives, including myself, have had discussions and exchanged correspondence with Lana Shea Flanders and Bill Hanson, of the Southeast Regional Habitat and Restoration Office. As a result of these discussions, we were able to insert into the language of the Bill a provision that empowers DNR to prescribe stipulations, conditions, or covenants, agreeable to the CBY, which could accompany approval of conveyance and patent to a specific parcel to be conveyed as an entitlement. This addition to the law will permit DNR to address habitat concerns through conditions or covenants, which concerns might otherwise foreclose conveyance of sensitive areas and the areas around them. As you know, CBY has demonstrated a commitment to habitat concerns in this region, and has generally been supportive of protective measures.

In discussing habitat protection concerns in the context of the pending SB 281, Yakutat has made the following commitments to ADF&G Habitat Division, and Bill Hanson asked that we reiterate these in a letter to yourself. Some of these are of lesser importance now because, since the time we made the commitments on behalf of the CBY, the Borough has agreed to reduce the SB 281

entitlement from 30,000 acres to 21,500 acres, which reduction occurred by amendment in the Senate C&RA Committee hearing on February 23. The purpose of this reduction was to remove Cape Suckling areas classified as forestry from the areas Yakutat intends to seek. The only area currently classified as forestry which will be sought by CBY is the area surrounding the sort yard in west Icy Bay, subunit 4a1 and a small part of subunit 4a2 under the Yakataga Area Plan designations. Despite the reduction in forestry lands sought, the commitments relating to them are reiterated herein.

CBY commits to the following, with regard to entitlement lands conveyed as a result of SB 281:

- (1) Any timberland conveyed to the CBY which lies west of the Duktoth River would be subject to the same riparian standards as would be applicable to forests on State land, under AS 14.17.118 and regulations thereunder.
- (2) Conveyance to the Borough of any lands between the Duktoth River and Cape Suckling would be subject to a moratorium on any timber harvest which will be identical with the remainder of the 20-year moratorium on state timber harvests in the region, as set forth in the December 2, 1994 Memorandum of Agreement (University settlement).
- (3) In sub-units 3a1, 3a2, and 3a3 (Tsiu to Duktoth coastal strip), habitat protection stipulations or conditions would attach to conveyance of the approximately 500-foot wide coastal fringe of timber discussed in the Area Plan, and of any associated ponds or marshlands identified by ADF&G as particularly important habitat.
- (4) Areas conveyed to the City and Borough of Yakutat in the Cape Sucking area should be managed to maintain fish and wildlife resources and uses as specified in the University settlement and the Yagataga Area Plan, as well as for recreational purposes. If, as was discussed with Ms. Flanders, offshore or onshore oil development on federal or state property were to occur in this region, it is conceivable that onshore support facilities might be sited on coastal selection lands in this area. In such eventuality, the Borough would seek to minimize impacts to fish and wildlife resources.
- (5) With regard to Ophir Creek, near the town of Yakutat, the CBY has engaged in cooperative stream restoration work as part of its salmon enhancement program. The CBY would be

Letter to Frank Rue, Commissioner  
re: SB281/City and Borough of Yakutat  
Page 3

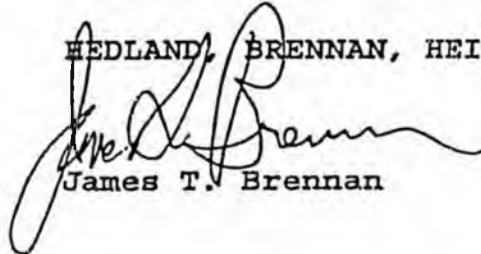
agreeable to a covenant attaching to Ophir Creek watershed parcels that specifies the following:

Both the active channel and 100-year floodplain of Ophir Creek require protection to retain functions and values of a permanent non-disturbed riparian buffer. A no-development greenbelt should extend from the edge of the floodplain the distance of the height of one site-potential tree. This greenbelt should be surveyed, platted, and recorded as a covenant on the deed.

The CBY again appreciates the attention and resources the Department has committed to habitat restoration in the Yakutat Borough region, and makes the foregoing commitments to further the mutual goals of the CBY and ADF&G.

Sincerely,

HEDLAND, BRENNAN, HEIDEMAN & COOKE



James T. Brennan

JTB/djl

cc: Jane Angvik, Director, Division of Lands (via fax and hard copy)  
Lana Shea Flanders, Regional Supervisor, SE Habitat and Restoration Division (via fax and hard copy  
465-4272)  
Tom Armour, Borough Manager (Via fax and hard copy)  
(g:\3000.5\rue0224.ltr)

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF FISH AND GAME

### HABITAT AND RESTORATION DIVISION

ISLAND CENTER BUILDING  
P.O. BOX 240020  
DOUGLAS, AK 99824-0020  
PHONE: (907) 465-4290  
FAX: (907) 465-4272

TO: Geron Bruce <sup>465-2332</sup>  
Legislative Liason  
Department of Fish & Game  
Juneau

DATE: February 23, 1998

FROM: Bill Hanson   
Habitat Biologist IV  
Douglas

SUBJECT: Yakutat Entitlement

I met with Paul Fuhs (lobbyist), Tom Armour (City Manager), Daryl James (Mayor) and Jim Brennan (attorney) for the City of Yakutat today.

They will prepare a new letter by tomorrow which reconfirms the commitments made in Mr. Brennan's letter of December 12, 1997 (see attached copy). They will add two additional commitments requested by Lana Shea Flanders in her memo of December 12, 1997 (see attached copy). The two additional commitments include a provision for protection of Ophir Creek and a commitment to honor the protections given to Fish and Wildlife resources under the University settlement and the Yakutaga Area Plan.

They indicated that they have significantly reduced their intent to select lands in the Cape Suckling Area. They do not intend to conduct timber harvest operations. They will manage for recreational development. They emphasized that ADF&G will have the opportunity to review specific land selections under DNR's review processes.

We specifically discussed possible selection of Unit 1a5 and other lands within the Kiklukh River corridor. I explained that I could not make any commitment regarding these lands, which have especially high values. I explained that ADF&G might or might not oppose selection of this area depending on specific values and their intent for development activities.

These discussions and commitments, which I have also discussed with Phil Mooney and Lana Shea Flanders, meet the concerns and conditions that we have previously expressed. This should clear the way for us to support the language and entitlement proposed in SB281 (copy attached). We do not have any position regarding the quantity of the entitlement.

**SB**

**281**

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# SENATE FINANCE COMMITTEE REPORT

DATE: 4/17/98

FURTHER: 4/21/98

DATE TURNED IN TO OFFICE: 21 April 98

Finance Committee considered

SENATE BILL NO. 281

"An Act relating to general grant land entitlements for the City and Borough of Yakutat; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS SB 281 (RES)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Al Adams</i>	X	<i>Reel &amp; Co.</i>	✓		
<i>John Jensen</i>	✓	<i>Sean Farrell</i>	X		
		<i>James Doherty</i>	X		
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
DNR; Land Developm	4/16/98		6.0

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

No. 1  
 Bill Version: CS5B281(CRA)  
 (S) Publish Date: 2/24/98

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO.**

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: Yakutat General Grant Land Entitlement BRU: Resource Development  
 Component: Land Development  
 Sponsor: Sen. MACKIE  
 Requestor: SRES Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	9.4	120.0	130.0	18.2	39.8	5.0
TRAVEL	1.0	3.0	3.0			1.0
CONTRACTUAL		5.0	10.0	1.0	2.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>10.4</b>	<b>128.0</b>	<b>143.0</b>	<b>19.2</b>	<b>41.8</b>	<b>6.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (fund code)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.4					
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Stat. Des. Prog. Receipts		128.0	143.0	19.2	41.8	6.0
<b>TOTAL</b>	<b>10.4</b>	<b>128.0</b>	<b>143.0</b>	<b>19.2</b>	<b>41.8</b>	<b>6.0</b>

Estimate of any current year (FY98) cost: \$ \_\_\_\_\_

**POSITIONS**

FULL-TIME	0	2	3	0	1	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:**

(Attach a separate page if necessary)

Assumes that acreage is reduced to 21,500 acres, borough files selections in early FY 00 (deadline is 10/1/99).  
 Assumes that borough selects areas identified in letters to DNR, 18,000 acres will require amending Yakataga Area Plan.  
 Fiscal Note assumes that borough will pay processing costs, otherwise DNR will process CBY's selections after processing other outstanding obligations, which will delay most conveyances up to 20 years.  
 FY 99 tasks - assist borough to file selections  
 FY 00 tasks - receive applications, agency review, draft decisions and plan amendments  
 FY 01 tasks - public notice, review, meetings, final decisions, final plan amendments  
 FY 02 tasks - issue survey instructions to borough  
 FY 03 tasks - assumes borough surveys land - review/approve surveys, issue title documents  
 FY 04 tasks - monitor/enforce covenants

Prepared by: Jane Angvik / rm Phone: 907-269-8503  
 Division: Land Date: 23-Feb-98  
 Approved by Commissioner: [Signature] Date: 2-23-98  
 Agency: Natural Resources

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 2  
BILL Bill Version: CSSB281(RES)  
(S) Publish Date: 4/17/98

Revision Date: 16-Apr-98 Dept Affected: Natural Resources  
Title: Yakutat General Grant Land Entitlement BRU: Resource Development  
Sponsor: Sen. MACKIE Component: Land Development  
Requestor: SRES Component Serial No. 431

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	5.0	57.0	47.0	9.0	18.0	1.0
TRAVEL	1.0	2.0	2.0			0.5
CONTRACTUAL		3.0	5.0	1.0	1.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>6.0</b>	<b>62.0</b>	<b>54.0</b>	<b>10.0</b>	<b>19.0</b>	<b>1.5</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (fund code)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	6.0					1.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Stat. Des. Prog. Receipts		62.0	54.0	10.0	19.0	
<b>TOTAL</b>	<b>6.0</b>	<b>62.0</b>	<b>54.0</b>	<b>10.0</b>	<b>19.0</b>	<b>1.5</b>

Estimate of any current year (FY98) cost: \$ none

POSITIONS

FULL-TIME	0	1	1	0	1	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)  
 CSSB281(res) establishes entitlement at 8552 acres, assumes that the borough files selections in early FY 00 (deadline is 10/1/99)  
 Assumes that borough selects areas identified in letters to DNR, 5,000 acres will require amending Yakataga Area Plan  
 Fiscal Note assumes that borough will pay processing costs, otherwise DNR will process CBY's selections after processing other outstanding obligations, which will delay most conveyances up to 20 years.  
 FY 99 tasks - assist borough to file selections  
 FY 00 tasks - receive applications, agency review, draft decisions and plan amendments  
 FY 01 tasks - public notice, review, meetings, final decisions, final plan amendments  
 FY 02 tasks - issue survey instructions to borough  
 FY 03 tasks - assumes borough surveys land - review/approve surveys, issue title documents  
 FY 04 tasks - monitor/enforce covenants

Prepared by: Jane Angvik / rm Phone: 907-269-8503  
 Division: Land Date: 16-Apr-98  
 Approved by Commissioner: [Signature] Date: 4/16/98  
 Agency: Natural Resources

**SB**

**285**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 4, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/30/98

The FINANCE Committee considered:

SB 35

SENATE BILL NO. 285

STATE PROCUREMENT

“An Act relating to state procurement practices.”

recommends it be replaced with the following committee substitute HCS CS SB 285 (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) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) DOTPF 2/26/98

DCED 2/26/98

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Gene Thernault</i> Thernault	x			
<i>Glen Mulder</i> MULDER				x
<i>Terry Martin</i> Martin	x			
<i>Vic Kohring</i> Kohring				x
<i>Carl J. Davies</i> J. Davies		x		
<i>Charles E. Moses</i> MOSES	x			
<i>Pat Kelly</i> Kelly	x			

CHAIR'S SIGNATURE *Gene Thernault*  
Thernault

# FISCAL NOTE

No. 1

Bill Version: SB285

BILL NO. (S) Publish Date: 2/26/98

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affects: Commerce and Economic Development  
 Title An Act relating to state procurement practices BRU AK Railroad Corporation  
 Component AK Railroad Corporation  
 Sponsor Senate Finance Committee  
 Requestor Senate Finance Committee Component Serial No. (none)

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by Tom Lawson, Director  
 Division Administrative Services  
 Approved by Commissioner Deborah B. Sedwick  
 Agency Commerce and Economic Development

Phone (07)465-2505  
 Date 2/17/98  
 Date 2/17/98

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# FISCAL NOTE

No. 2  
 Bill Version: SB28  
 (S) Publish Date: 2/26/98

STATE OF ALASKA  
 1998 LEGISLATIVE SESSION

BILL NO.

Revision Date _____	Dept. Affected <u>DOT&amp;PF</u>	
Title <u>State Procurement</u>	BRU <u>Commissioners Office</u>	
Sponsor <u>Finance</u>	Component <u>Office of the Commissioner</u>	
Requester <u>Senate Finance</u>	Component Senal No. <u>530</u>	

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) 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)

Prepared by	<u>Dennis Poshard, Legislative Liaison</u>	Phone <u>465-3900</u>
Division	<u>Office of the Commissioner</u>	Date <u>2/13/98</u>
Approved by	<u><i>Joseph L. Dubino</i></u> Commissioner	Date <u>2/13/98</u>
Agency	<u>Department of Transportation and Public Facilities</u>	

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0-LS1473K  
Bannister  
4/30/98

R/O NO OBJ  
adopted as VUSUM 4/30/98

HOUSE CS FOR SENATE BILL NO. 285( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state procurement practices."

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

3 \* Section 1. AS 36.30.015(e) is amended to read:

4 (e) The board of directors of the Alaska Railroad Corporation and the board  
5 of directors of the Alaska Aerospace Development Corporation shall adopt procedures  
6 to govern the procurement of supplies, services, professional services, and construction.  
7 The procedures must be substantially equivalent to the procedures prescribed in this  
8 chapter and in regulations adopted under this chapter. Notwithstanding the other  
9 provisions of this subsection, the Alaska Railroad Corporation and the Alaska  
10 Aerospace Development Corporation shall comply with AS 36.30.170(b), and, when  
11 the Department of Transportation and Public Facilities authorizes the Alaska  
12 Railroad Corporation to perform construction work instead of the Department  
13 of Transportation and Public Facilities, the Alaska Railroad Corporation shall use  
14 competitive sealed bidding or competitive sealed proposals under AS 36.30.100 -  
15 36.30.270 to procure the supplies, services, professional services, and construction

1 services necessary for the work and to ensure the state obtains the lowest cost for  
2 the project, may submit a bid or proposal for the work.

3 \* Sec. 2. AS 36.30.015 is amended by adding a new subsection to read:

4 (i) Notwithstanding (e) of this section and the authority to delegate under (a)  
5 of this section, the Alaska Railroad Corporation, rather than the Department of  
6 Transportation and Public Facilities, shall perform signalization work, may perform the  
7 signalization work by itself or by using contractors, and, if it decides to use contractors  
8 for the work, it shall obtain the contractors by using its procurement procedures  
9 adopted under (e) of this section.

10 \* Sec. 3. AS 36.30.015(a), as amended by sec. 1 of this Act, and AS 36.30.015(i), enacted  
11 by sec. 2 of this Act, only apply to a procurement that is begun on or after the effective date  
12 of this Act.

4/29/98 PM

AMENDMENT

I

OFFERED IN THE HOUSE  
HCSSB285( )  
LS1473B

Delete Section 1 and replace with:

Section 1. 36.30.015(a) is amended to read:

The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, **except that the Department of Transportation and Public Facilities may not authorize the Alaska Railroad Corporation to perform construction work instead of the Department of Transportation and Public Facilities unless the Alaska Railroad Corporation uses contractors to provide the supplies, services, professional services, and construction services necessary for the work and uses competitive sealed bidding or competitive sealed proposals under AS 36.30.100 – 36.30.270 to procure the contractors.** Before delegating authority to an agency under this subsection, the commissioner of transportation and public facilities shall make a written determination that the agency is capable of implementing the delegated authority. Notwithstanding delegation of authority under this subsection, contracts for construction are governed by this chapter and regulations adopted by the commissioner of administration under this chapter.

A M E N D M E N T

#2

OFFERED IN THE HOUSE

BY

DANIELS

TO: HCSSB 285 (B)

Following (e) insert new section to read:

“(f) Notwithstanding the provisions of (e) the Alaska Railroad Corporation is authorized to perform any work that it can accomplish at a lower cost than would be realized using an outside source.”

Page 2, delete lines 3 and 4:

Insert “This Act takes effect July 1, 1999.”

A M E N D M E N T

#3

OFFERED IN THE HOUSE

BY

DAVIES

TO: HCSSB 285 (B)

Following (e) insert new section to read:

“(f) Notwithstanding the provisions of (e) the Alaska Railroad Corporation is authorized to participate in the competitive bid process under AS 36.30.100 - 36.30.270 to ensure the state realizes the lowest project cost.”

Page 2, delete lines 3 and 4:

Insert “This Act takes effect July 1, 1999.”

A M E N D M E N T #4

OFFERED IN THE HOUSE

BY

DAVIES

TO: HCSSB 285 (B)

Page 2, following "AS 36.30.100 - 36.30.270"

Insert "for track relocation or highway crossing civil construction projects  
required by DOT"

Page 2, delete lines 3 and 4:

Insert "This Act takes effect July 1, 1999."

AMENDMENT

#5

OFFERED IN THE HOUSE

BY

DAVIES

TO: HCSSB 285 (B)

Page 2, delete lines 3 and 4:

Insert "This Act takes effect July 1, 1999."



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### SPONSOR STATEMENT

#### **SB 285: Procurement Practices for the Alaska Railroad**

When Alaska highway improvements are needed, a project is designed, a request for bids is advertised, and a construction contract is competitively awarded for the job by the Department of Transportation. When the highway that is being improved involves the Alaska Railroad, such as a highway railroad crossing or overpass, the work that involves railroad property is not included in the bid. When this situation occurs, the Department of Transportation negotiates a force account contract with the Alaska Railroad. This arrangement reduces the amount of work private industry has the opportunity to perform and removes DOT public fund expenditures from a competitive bid arrangement.

SB 285 will reintroduce competition for construction of DOT highway projects that involve the Alaska Railroad, resulting in a reduction of cost for the project. SB 285 will establish a fair and effective manner to award construction contracts for these projects by requiring the Alaska Railroad Corporation to utilize a competitive bidding process that is openly advertised when DOT asks the Corporation to manage the project.

**Christopher Jim Birch, P.E.**

10005 Main Tree Drive Anchorage, Alaska 99516-6730  
907-348-3265 (home) 907-348-3265 (fax) cjbirch@alaska.net (email)

February 22, 1998

Senator Drue Pearce  
Co-Chair Senate Finance Committee  
State Capitol, Room 518  
Juneau, AK 99801-1182  
Attention: Ms. Kristy Tibbles

**VIA FAX ONLY**

**FAX: 907-465-3872**

Subject: SB 285 "An Act relating to state procurement practices."

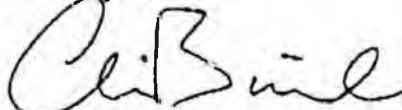
Dear Senator Pearce;

I understand a question has been raised regarding whether Chugach Electric Association (CEA) competitively bids Alaska Department of Transportation and Public Facilities (DOT&PF) reimbursement work on highway right-of-way or accomplishes this work on a force account basis.

It has been my experience that Chugach Electric Association competitively bids work reimbursed by DOT&PF. A recent example would be the \$878,889 Bird Point to Girdwood transmission line relocation project that was awarded by the CEA board on February 4 to City Electric.

Full and open competitive bidding of Chugach construction work has been approved by our membership and strongly supported by our board. Enclosed are two Chugach Outlet articles addressing this subject (2/96 and 3/97) as well a Summer, 1996 article in The Alaska Contractor by Ray Kreig, past President, Chugach Electric Association Board of Directors relating to competition.

Sincerely,



Chris Birch, P.E.  
Secretary \*  
Chugach Electric Association

Enclosures: Chugach Outlet and Alaska Contractor Articles (3 pages)

Copies to: Gene Bjornstad, General Manager, Chugach Electric Association  
Pat Jasper, Board President, Chugach Electric Association

\* Position for identification only. Not a formal action of the Chugach Board.



# GHEMM COMPANY, INC., General Contractors

P. O. Box 70507 • Fairbanks, Alaska 99707 • (907) 452-5191 • Fax (907) 451-7797 • Contractor's License No. AA116

April 22, 1998

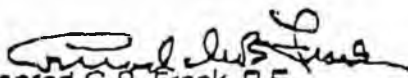
Dear Representative Gene Therriault,

I believe that Senate Bill 285 should be approved by the House Finance Committee and taken to a vote of the house.

In the one case where our company was given an opportunity to bid against the Alaska Railroad for construction of a bridge pier repair, our bid (we were told) was approximately 50% of that submitted by the ARRC. We completed the project on time and under budget to the complete satisfaction of the Usibelli Coal Mine and the ARRC who were sharing the cost. We are a union contractor and as Mr. Sheffield says about the ARRC Employees, ours are all Alaskans and very capable also. I believe this applies to most General Contractors in Alaska especially those affiliated with the Associated General Contractors of Alaska

Thank you,

GHEMM COMPANY, INC.

  
Conrad G.B. Frank, P.E.  
Chairman

cc: Finance Committee  
Health Education and Social Services Committee  
Judiciary Committee

MR. JOHN ENG - CORNERSTONE

4-22-98

DEAR JOHN

THIS WAS FAXED AND E MAILED TO  
REP. GENE THERRIAULT.

HOPE IT HELPS

REGARDS



Post-It® Fax Note	7671	Date	# of pages
To	JOHN ENG	From	CON FRANK
Co/Dept	CORNERSTONE	Co.	GHEMM C
Phone #	561-1993	Phone #	452-5191
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# CORNERSTONE

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ANCHORAGE, ALASKA

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FACSIMILE (907) 561-7899

April 22, 1998

The Honorable Mark Hanley  
Co-chair House Finance Committee  
Alaska State Legislature  
State Capital  
Room 519  
Juneau, Alaska 99801

RE: Senate Bill 285  
Procurement practices

Dear Mr. Hanley,

Senate Bill 285 is intended to reintroduce competition to the spending of tax funds on projects that involve the Alaska Department of Transportation (DOT) and railroad work. If you believe that competition will provide a cost effective manner to spend tax funds, you would probably favor the bill. If you believe that negotiated sole source arrangements are cost effective, then you will probably not be in favor of this bill. A letter from the Alaska Railroad Corporation (ARRC) dated March 9, 1998 indicates that utility companies are dealt with in a similar manner as the ARRC proposes. Mr. Chris Birch, a member of the Board of Directors of Chugach Electric Association, has written a letter of support for Senate Bill 285 and has indicated that utilities are presently encouraging competition in several aspects of their business. Negotiated sole source arrangements have increased, rather than decreased, the cost to Chugach Electric Association, while competition has reduced their costs.

We believe that the legislation will result in a reduction of cost of performing railroad construction work, on projects that are paid for with tax funds. This legislation does not affect any internal funds that are generated by the ARRC in the performance of their track maintenance or construction. The bill only addresses projects that are publicly funded with tax dollars.

Track signalization work can also be handled in an interface between the railroad and construction contractors. The U.S. Army contracted with a private contractor, The Railroad Company, for track inspection, track maintenance, signal inspection, and snow removal at Fort Wainwright, Alaska. The contract arrangement has worked well for the track owner (U.S. Army), the contractor, and the ARRC.

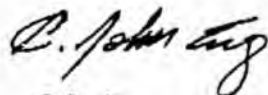
The DOT is working on the development of a project called Ocean Dock Crossing at the Port of Anchorage. The project would be available to bid in the last half of 1998, with work to be performed in 1999. I believe competitive bids will provide DOT with the lowest cost for the work that is being defined by bid documents. The cost proposed by the ARRC for this project, exceeds the available funds, and appears to exceed the normal cost of performing this type of work. This project is an opportunity to evaluate the effects of competition on rail work.

The March 9, 1998 letter from the ARRC argues for the position that there should be no competition for construction work that is publicly funded rail work. In the closing page of the letter, Mr. Sheffield proposes that ARRC should not be excluded from competing for work, if competition is forced upon the DOT by this legislation. It is a bit difficult to have things both ways.

I hope that you will pass the bill and allow the competitive bid process to work. It will provide a fair method of spending tax dollars without impacting the ability of the ARRC to perform maintenance and construction on its main line with funds that the ARRC generates from its profits. Since the ARRC has indicated in the March 9, 1998 letter that it does not make a profit of the type of work affected by Senate Bill 285, the profits of the ARRC will not be affected. The State of Alaska will be able to continue collecting corporate income tax on rail line construction work, since companies such as ours make a profit and pay corporate income taxes, while costing our customers less than the ARRC had been charging in the past.

I encourage you to pass this bill, and look forward to the saving that the State of Alaska can receive.

Sincerely,



C. John Eng

copy- file

# RAILROAD COMPANY

P.O. Box 241525, Anchorage, AK 99524-1525  
(907) 561-1996 FAX(907) 561-7645X 7899

March 16, 1998

House Finance Committee

RE: Procurement  
Senate bill 285

Prior to October of 1996, the U. S. Army at Fort Wainwright conducted maintenance on railroad facilities on the fort on a force account basis with the Alaska Railroad Corporation. The arrangement resulted from negotiations between the U.S. Army and the Alaska Railroad Corporation. During the summer of 1996, the army advertised for bids for monthly inspection, maintenance, and snow removal for all rail lines that are owned by the federal government on Fort Wainwright. Bid documents for the work, advertised a contract that involved one (1) year of service, with options to extend the contract for several one (1) year extensions. The Railroad Company, a privately owned, Alaska construction company that specializes in the construction and maintenance of railroad appurtenances, was the successful bidder. A contract was awarded for a one year period. The U.S. Army has expressed satisfaction with performance, and demonstrated their satisfaction by exercising their first option and extended the contract for an additional year.

The U. S. Army has utilized both negotiated force account agreements and competitive bid agreements. The army expresses that they are satisfied with competitively bid agreements, and has made comments regarding intentions to continue bidding this work competitively. The army does not write letters of support for legislation, such as Senate Bill 285, but they will answer questions that you may have. The army contact is Barbara Shaw, and her telephone number at work is (907) 353-7852. Her supervisor, Carol Hodgeson, has indicated that she will respond to questions that you may have. (Telephone number for Carol Hodgeson is (907) 353-7411)

The Alaska Railroad Corporation has indicated that they do not make a profit on force account work. Our firm does make a profit on our competitively bid work. Profits are taxed and corporate taxes paid to the State of Alaska.

I believe that we have demonstrated the following:

- Railroad work can be performed by a privately owned company
- The State of Alaska benefits in the form of tax revenue on profits of a privately owned company.
- The cost of the work can be less if competitive contracting methods are used, as opposed to force account agreements. The U. S. Army is paying 25 to 35 percent less under a competitively bid agreement than they were under a previously utilized force account arrangement. Costs paid to

the Alaska Railroad Corporation during the last month of a force account arrangement at Fort Wainwright, were 26 % higher than those paid to The Railroad Company during its first month of similar services on a competitively bid contract.

I support Senate Bill 285, and encourage your involvement and desire to inject competitive bidding into a process that has resulted in public funds being spent on a "sole source" negotiated force account basis. This will allow competitive bids to be used as they are in other locations.

Please feel free to call me if you have questions.

Sincerely,



Jayson E. Mathiesen

copy- file


**ASSOCIATED GENERAL CONTRACTORS of ALASKA**

4041 B STREET • ANCHORAGE, ALASKA 99503  
 P.O. BOX 240609 • ANCHORAGE, ALASKA 99524-0609  
 TELEPHONE (907) 561-5354 • FAX (907) 562-6118

*Theresa Shaul*  
 463-5128 ←

*Kristy* 465-3872 ←

23. April 1998

To  
 House Finance Committee  
 Alaska State Legislature  
 Juneau, AK 99801

*Fax 465-6813*

Subject: CS Senate Bill 285, Procurement practices

Dear committee members:

AGC of Alaska supports CS SB 285.

This CS would address the principle of competitive bidding for capital works financed with public funds within the right-of-ways of the Alaska Railroad.

We have also reviewed the letter from the ARR Corporation dated 3/9/98. Our comments are as follows:

The ARR would not be treated any different than the majority of utility companies in the State. Most of them have realized substantial savings through competitive bidding processes. A letter from Chuglak Electric Co. to that effect was sent to the Legislature on this bill.

It is also not factual that the ARR alone is capable of doing some of the specified work. Given accurate specifications the construction industry is capable to perform any work, regardless how difficult and demanding it may be. This is proven daily on complex projects with the Federal- and State governments.

Since it only pertains to work funded by DOT/PF and is not work initially covered by ARR funds, their collective bargaining provisions do not apply. In short, this bill is in the spirit of the State procurement code and represents good public policy. We urge adoption and passage.

Sincerely,

*Henry Springer*

Henry Springer, Exec. Director



SHELBY L. NUENKE-DAVISON  
BRUCE E. DAVISON, P.E.  
ERLING T. JOHANSEN  
JOSEPH A. POLLOCK

MEMBER OF  
ALASKA BAR AND  
WASHINGTON STATE  
BAR

<sup>2</sup> MEMBER OF  
ALASKA BAR,  
HAWAII BAR AND  
WASHINGTON, D.C.  
BAR

February 23, 1998

Ms. Drue Pearce, Senator  
ALASKA STATE LEGISLATURE  
Juneau, AK 99801

Attn: Kristy Tibbles

Dear Senator Pearce:

As your constituent, I support Senate Bill 285 which expands competitive bidding for state funded procurement. The passage of this bill would ensure that when the Alaska Railroad Corporation (ARRC) utilizes state funding for projects which are a part of state highway projects, ARRC will use competitive bidding procedures for procuring supplies or professional services for construction contracts. Open competition for state funds will result in lower costs and more efficient use of state money. I urge you to vote in favor of Senate Bill 285.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

DAVISON & DAVISON, INC.

Bruce F. Davison  
Attorney At Law

BEIDjke.0092

SENT BY FACSIMILE - 907-465-3872



## ASSOCIATED GENERAL CONTRACTORS of ALASKA

4041 B STREET • ANCHORAGE, ALASKA 99503  
P.O. BOX 240609 • ANCHORAGE, ALASKA 99524-0609  
TELEPHONE (907) 561-5354 • FAX (907) 562-6118

19. Febr. 1998

To  
Senate Finance Committee  
Alaska Legislature  
Juneau

Subject: SB 285 "An Act relating to state procurement practices"

AGC of Alaska, a 600+ member organization serving and representing the construction industry in Alaska supports SB 285.

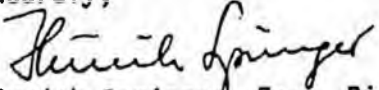
Unrestricted, open, competitive bidding is the only proven method to insure that the public receives the best deal for capital works. Market forces based on competition will reveal what the best deal is. The industry is capable to construct any desired project and has proven that even the most complex and difficult undertaking can be successfully handled. This includes any technically and operationally difficult challenges connected with highway and railroad construction.

The present arrangement between the Department of Transportation/PF and the Alaska Railroad (ARR) makes it easy for DOT/PF to administer such a project, however, it is not in the best public interest because the best deal cannot be determined without participation by the industry.

It is our opinion that "contracting/privatization" clauses in the ARR's collective bargaining agreement are no hinderance to this bill. They pertain only to the ARR's own work. Work funded and controlled by DOT/PF is not governed by these provisions. Even if they would the State law would supersede such agreements.

We recommend that this bill be approved and passed into law because it is in the public's best interest.

Sincerely,

  
Heinrich Springer, Exec. Director

# ALASKA RAILROAD CORPORATION



Corporate Address: P.O. Box 107500, Anchorage, Alaska 99510  
327 W. Ship Creek Avenue, Anchorage, Alaska 99501

Executive Office  
(907) 265-2414  
Fax (907) 265-2312

March 9, 1998

The Honorable Drue Pearce  
Co-Chair Senate Finance Committee  
Alaska State Legislature  
State Capitol  
Room 518  
Juneau, Alaska 99801

RE: SB - 285, "An Act relating to state  
procurement practices."

Dear Senator Pearce:

It seems to me that after reviewing Senate Bill 285 several times that the bill does not accomplish what I think you may have intended it to do.

I suspect that your intention was to require the Department of Transportation (DOT) to go out for competitive bid to private construction companies to do Railroad crossing and relocation work. Normally DOT gives this work to the Railroad because the Railroad operates the right-of-way and already has their own qualified engineers and construction employees. DOT reimburses us for cost, and an overhead rate. DOT determines the overhead rate which does not include a profit. Utility companies like Chugach Electric Association, Municipal Light and Power, Golden Valley Electric Association, and ENSTAR are now handled the same as the Railroad

In its present form, your proposed bill requires the Railroad to go out to competitive bid for the DOT jobs it does not do itself. This would rarely occur, since we have qualified trained employees on our payroll, and their union agreement generally mandates that we have them perform this work.

We think you intend that the ARRC's rights as a DOT recognized utility be limited, such that all DOT projects be competitively bid, thus denying our employees the opportunity to do the work. We obviously disagree, for the following reasons:

Our track construction employees are all Alaskans, and they tend to come from

Senate Bill No. 285  
March 9, 1998  
Page 2

the smaller railbelt communities like Wasilla, Talkeetna, Moose Pass, Nenana, and Cantwell. We are a local employer that pays a fair wage provided through a collective bargain process.

We are specialists in railroad construction. We have the know how, equipment, and materials. Larger jobs will require a contractor and equipment from Outside. Smaller jobs might be done with less equipment, but not as efficiently or effectively. In short, it will cost more. Most DOT jobs are done from our standard plans, we generally don't charge DOT for engineering or site inspection, our qualified people are already on the job.

We work safely. Work on railroad tracks requires that trains pass safely through work zones. This can be done safely with a contractor, but only if a railroad inspector is present, and then not as efficiently or as expeditiously.

The above reasons are why the Alaska Railroad is such a successful, self-sustaining enterprise. All of our performance measures are improving, productivity, customer satisfaction, and our ability to be self-sustaining as measured by our financial performance.

We suspect that you will not agree that SB - 285 is a bad idea. With that in mind we would like to offer suggestions to make the bill practicable for DOT, the contractors, and the ARRC. First, we suggest the bill be limited to "track relocation or highway crossing civil construction required by DOT". This will remove crossing signal mechanisms and electronics, a highly specialized field, from the bill. We have the only people qualified for this work in Alaska. This limitation would also allow DOT to compensate the ARRC for railroad inspection costs, since we must be present to protect our trains, our passengers and our customers freight. On occasion the Alaska Railroad receives certain Federal funding for specific safety related projects that are passed through the State DOT. In many cases these specific safety related projects are often matched by ARRC generated funds and we would recommend that these projects not be included in the proposed legislative bill.

Second, we would suggest the bill become effective in 1999. The ARRC is currently involved with DOT in several safety related projects. These jobs have been planned and engineered and includes Ocean Dock Road crossing. If these projects were delayed it would have a serious impact of correcting a serious safety hazard, in addition to an unanticipated cost increase.

Third, we would like authority to bid for the work along with the contractors. We really

Senate Bill No. 285

March 9, 1998

Page 3

do believe we are the lowest cost of accomplishing the work. Let DOT bid the work and allow the ARRC access to "unrestricted, open, competitive bidding".

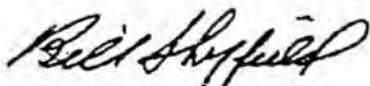
There are several other issues which need additional emphasis. Safety of course is the number one issue. Any construction company would have to conform to the Federal regulatory requirements for railroad train protection, engineering, and construction on the track and signal installation. For the safety of our trains, our trained inspectors would have to certify all work to determine that the construction met the Federal Railroad Standards.

However, I would have to emphasize that construction for this work by a private contractor would add, at a minimum, about 10% to the existing cost. In addition, there is the cost of materials. A private company would pay a premium for materials that we purchase in bulk quantities.

DOT sets the rate that we can charge them for performing this work. The ARRC is prohibited from adding a profit margin for this type of work. As a result, DOT audits the ARRC cost figures to ensure that all costs are reimbursed without any profit margin.

Your assistance in helping us bring this issue to a mutual resolution would certainly be appreciated. Please feel free to call upon me if you have additional questions or need other information.

Sincerely,



Governor Bill Sheffield  
President and Chief Executive Officer

HOUSE CS FOR SENATE BILL NO. 285( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state procurement practices."

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

3 \* Section 1. AS 36.30.015(e) is amended to read:

4 (e) The board of directors of the Alaska Railroad Corporation and the board  
5 of directors of the Alaska Aerospace Development Corporation shall adopt procedures  
6 to govern the procurement of supplies, services, professional services, and construction.  
7 The procedures must be substantially equivalent to the procedures prescribed in this  
8 chapter and in regulations adopted under this chapter. Notwithstanding the other  
9 provisions of this subsection, the Alaska Railroad Corporation and the Alaska  
10 Aerospace Development Corporation shall comply with AS 36.30.170(b), and, when  
11 the Department of Transportation and Public Facilities authorizes the Alaska  
12 Railroad Corporation to perform construction work instead of the Department  
13 of Transportation and Public Facilities, the Alaska Railroad Corporation shall use  
14 contractors to provide the supplies, services, professional services, and  
15 construction services necessary for the work and shall use competitive sealed

1            bidding or competitive sealed proposals under AS 36.30.100 - 36.30.270 to procure  
2            the contractors.

3            \* Sec. 2. The amendments to AS 36.30.015(e) made by sec. 1 of this Act only apply to  
4 a procurement that is begun on or after the effective date of this Act.

**HOUSE CS FOR SENATE BILL NO. 285(FIN)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATE FINANCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

3 **\* Section 1.** AS 36.30.015 is amended by adding a new subsection to read:

4 (i) Notwithstanding the authority to delegate under (a) of this section, the  
5 Department of Transportation and Public Facilities may not delegate civil construction  
6 work related to the railroad facilities of the Alaska Railroad Corporation, but shall (1)  
7 use contractors to provide the supplies, services, professional services, and construction  
8 services necessary for the work, (2) use competitive sealed bidding or competitive  
9 sealed proposals under AS 36.30.100 - 36.30.270 to obtain the contractors, and (3)  
10 allow the Alaska Railroad Corporation to submit a bid or proposal for the work.  
11 However, if the construction work is signalling or flagging work, or a signalling  
12 project with roadwork that is incidental, when compared to the total cost of the  
13 signalling project, to the signalling project, the Alaska Railroad Corporation shall  
14 perform the work either itself or by using contractors, and, if the Alaska Railroad  
15 Corporation uses contractors for the work, it shall obtain the contractors by using its

1 procurement procedures established under (e) of this section.

2 \* Sec. 2. The amendments to AS 36.30.015(a) made by sec. 1 of this Act only apply to  
3 a procurement that is begun on or after the effective date of this Act.

## **VEI** Consultants

*Civil Engineering and Surveying Consultants  
Serving All of Alaska*

1345 Rudakov Circle, Suite 201  
Anchorage, Alaska 99508  
FAX: (907) 338-5386  
Phone: (907) 337-3330

April 22, 1998

Re: Senate Bill 285

Representative Gene Therriault,  
State House  
Juneau, Alaska

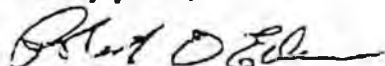
Dear Rep Therriault,

I am the design engineer on the Ocean Dock Road project that includes building 5000 feet of railroad spurs at the Port of Anchorage. I support SB 285 because I believe that there should be more competition when a project like this goes to bid.

We have received an estimate from the Alaska Railroad to construct these spurs and their estimate is approximately \$300 per foot for the 5000 feet of railroad spurs. The national average for constructing these spurs is about \$100 per foot. Higher than usual costs almost always occur whenever a contractor is given the sole right to bid on a project. This is the current case with the Alaska Railroad regarding constructing railroad spurs and mainline.

I would amend the bill slightly and allow the Alaska Railroad to competitively bid on railroad construction that is funded by the ADOT&PF. I firmly believe that more competition will result in a better product at a lower cost. As an example, look at how the phone service has improved with items like caller ID and the audio clarity of the fiber optic system after GCI began competing against ATU in Anchorage.

Sincerely yours,



Robert O Eder  
President  
VEI Consultants Inc.

**DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES**  
OFFICE OF THE COMMISSIONER

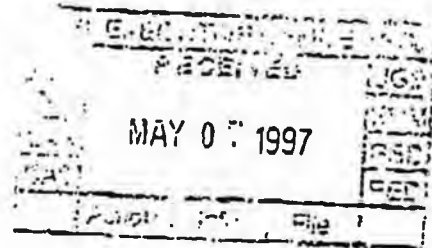
**TONY KNOWLES, GOVERNOR**

3132 CHANNEL DRIVE  
JUNEAU, ALASKA 99801-7898

TEXT: (907) 465-3652  
FAX: (907) 586-8365  
PHONE: (907) 465-3900

April 22, 1997

The Honorable John J. Cowdery  
Alaska State Legislature  
State Capitol, Room 416  
Juneau, Alaska 99801-1182



Dear Representative Cowdery:

Thank you for your inquiry regarding the contracting policies involving the Alaska Railroad Corporation ("ARRC") on certain Department of Transportation and Public Facilities ("DOT&PF") projects. We have read the letter from Cornerstone Construction on this subject and offer the following information in regard to their concerns:

First, Cornerstone appears to have a fundamental misunderstanding concerning the ownership of ARRC's right-of-way ("ROW") and the nature of the DOT&PF related work ARRC actually performs. As you are aware, the ROW for the Alaska Railroad is owned by ARRC, not DOT&PF. Accordingly, DOT&PF does not have the legal authority to issue any contracts for work on ARRC's ROW without first obtaining ARRC's consent for such work. ARRC routinely consents to DOT&PF projects that affect its ROW on the condition that DOT&PF meets all of its concerns related to public safety, liability, maintaining the integrity of ARRC's track structure and requirements to minimize the impact on ARRC's freight and passenger operations. For DOT&PF projects that involve changing or moving the track structure, ARRC usually requires that this work be done by its own employees. This is typically a small portion of a grade crossing project. The majority of the work e.g. constructing bridges, earthwork, etc. is competitively bid.

ARRC insists upon performing work that involves its track structure because it has experienced and well-trained employees who perform this unique type of work on a daily basis. Unlike most contractors, ARRC's crews are familiar with its track specifications and Federal Railroad Administration track requirements. ARRC's crews are experienced in working under "live track" conditions and they are familiar with ARRC's train operations. ARRC also has all of the specialized equipment necessary to perform such work and ARRC maintains inventories of the necessary rail, crossties, ballast and other supplies required to perform the work. In short, ARRC crews perform such work in a manner that is safer, faster, less disruptive, and more cost efficient than could be obtained from a contractor. More importantly, the work is performed in a manner that is completely satisfactory to ARRC, the owner of the track structure.

Representative Coffey

Page 2

April 22, 1997

Second, Alaska law specifically grants ARRC or any other utility owner the right to perform DOT&PF required relocation work with their own forces. (See 17 AAC 15.310-.461 and 17 AAC 15.471-.551). Additionally, the State Procurement Code specifically allows one government entity, such as DOT&PF, to contract with another such as ARRC on a sole source basis. (See AS 36.30.850(c); AS 36.30.710 and AS 36.30.730).

Third, we believe that contracting directly with the owner of a utility or railroad for relocation work is cost-effective. When ARRC or any other utility performs relocation work with their own forces, the work is paid by force account. That is a method of payment whereby the actual labor, materials and equipment costs required to perform the work are paid. No profit is allowed, but overhead is paid based on a rate determined by audit. With regard to railroad relocation work, ARRC is reimbursed for its costs in accordance with guidelines established by FHWA. ARRC is not paid any amount for profit. Prior to commencing a project, ARRC submits a detailed cost proposal to DOT&PF which is analyzed for reasonableness by DOT&PF engineers. Once a project is complete, DOT&PF routinely audits the payments made to ARRC to ensure that ARRC did not receive any payment for work that was not performed or costs that were not incurred.

Overall, it has been DOT&PF's experience that force account work offers advantages when the work is intermittent, favoring maintenance type crews versus production crews and when specialized knowledge of the facility is required, usually for safety or access. There is a savings on preliminary engineering costs since detailed construction plans, specifications and contract documents do not have to be produced. Force account work also eliminates a layer of inspection and project management by the agency not being required to administer a contractor.

In summary, DOT&PF actively encourages competitively bidding public projects. Cost effective construction allows us to build more for our limited funds. We recognize however, that in some circumstances, utilities such as ARRC have the right to control and perform the work on their own facilities which they must operate and maintain when the project is complete. In that instance, if the work is not contracted out, payment is by strict force account. The current statutes and policies of the State of Alaska recognize and allow this flexibility. ARRC has demonstrated that it has sufficient equipment and expertise to perform the railroad relocations as required and our experience has been that it has done so in a cost-effective manner.

If we can provide additional information or if you wish to discuss the issue further, please do not hesitate to contact me.

Sincerely,



Joseph L. Perkins, P.E.  
Commissioner

Representative Co( y

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April 22, 1997

cc: **Senator Drue Pearce**  
**Senator Sean Parnell**  
Bill Sheffield, Chairman, ARRC