

ALASKA LEGISLATURE

1988

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

HB

289

SFIN

FILE

REPORTED OUT OF
SFC 4/6/00

SENATE FINANCE COMMITTEE REPORT

DATE: 3/20/00

FURTHER:

DATE TURNED
IN TO OFFICE: 4/06/00

Finance Committee considered HOUSE BILL NO. 289

"An Act relating to transportation of members of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Defense Force by the Alaska marine highway system and the Alaska Railroad; and relating to the Alaska State Defense Force."

and recommends:

- be replaced with _____ CS _____ (_____)
- 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>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
ARCC	2/5/00	✓	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DCED	2/5/00	✓	
DOT & PF	2/5/00	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

HB 289 "An Act relating to transportation of members of the Alaska National Guard,"
Department of Transportation and Public Facilities

This bill would provide free transportation, on a space available basis, aboard Alaska Marine Highway System (AMHS) vessels to members of the state militia while en route to or from drills, training, or other official activities.

Expenditure Impact

There would be some additional work at AMHS terminals for terminal staff to verify the military orders of those seeking free passage. Since the volume of travel is not anticipated to be that great, this additional workload is assumed not to be significant.

Revenue Impact

State militia travel aboard AMHS vessels currently generates approximately \$5,000 per year. The financial impact, therefore, would be a reduction in revenue of \$5,000 to the AMHS. With free travel, it is possible even more militia members would choose to travel on the ferry system. This could result in some lost revenue opportunities in the future.

Assumptions

1. Free travel is for militia members and vehicles only. This does not include cabins, food, or family member passage.
2. Passage is on a space available basis on the day of travel only. If the passage is through multiple ports, paying passengers/vehicles could "bump" the free passengers/vehicles.
3. Specific procedures for the free passage will be developed and incorporated into the AMHS traffic manual.

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date: 2/11/00
Title: Military Transport

Sponsor: Representative John Harris
Requester: (H) Special Committee on Military and Veterans' Affairs

Dept. Affected Community & Economic I
BRU _____
Component _____
Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES []						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS


Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 289 provides for space available travel for designated military and para military personnel. Applying the transportation industry common practice of not displacing revenue passengers with space available passengers as provided for within the legislation, HB 289 will have a zero dollar impact on the Alaska Railroad Corporation.

Prepared by Casey Sullivan - Legislative Aide

Phone 465-5031


HOUSE SP. CMTE. ON MILITARY & VETERAN'S AFFAIRS

Phone _____

Date 2/9/00

REPORTED OUT OF
SFC 4/6/00

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 289

Revision Date/Time (Note if correction) _____ Dept. Affected ARRC
 Title Military Transport BRU _____
 Component _____
 Sponsor Representative John Harris
 Requester (H) Spec Cmte Military/Vet Affs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time					
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

HB 289 provides for space available travel for designated military and para military personnel. Applying the transportation industry common practice of not displacing revenue passengers with space available passengers as provided for within the legislation, HB 289 will have a zero dollar impact on the Alaska Railroad Corporation.

Prepared by: Jerry Anderson Phone 265-2518
 Division _____ Date/Time 2/9/00 5:33 PM
 Approved by Commissioner [Signature] Date 02/09/2000
 Agency _____

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ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sponsor Statement

HB 289

"An Act relating to transportation of members of the Alaska National Guard, the Alaska Naval Militia, and the Alaska State Defense Force by the Alaska marine highway system and the Alaska Railroad; and relating to the Alaska State Defense Force."

The purpose of HB 289 is to provide a vehicle to get members of our volunteer defense forces to and from military training. In the current climate of downsizing and defense budget cuts, funding for transportation of members of some units is tight.

The State of Alaska, as the owner and operator of a passenger railroad and marine ferry system, is in the position to offer transportation for these military personnel, who are involved in training to defend our state and our freedoms.

House Bill 289 would simply mandate that the ferry system and the railroad provide free transportation, on a space available basis, for members of the above-referenced state defense organizations who are en route to or from drill, training, or other official militia activities.

The bill also changes "Alaska State Militia" to "Alaska State Defense Force" in several occurrences in the statutes. This change was made operationally several years ago, so as to distinguish the state's volunteer defense force from citizens' militias that are frequently in the news. The changes in HB 289 simply bring the statutes up-to-date.

HB 289 is a simple, straightforward initiative to help our volunteer, citizen soldiers get to and from their training.

SENATE FINANCE COMMITTEE

SIGN-IN

HB 289-AK DEFENSE FORCE/NATL GUARD:TRANSPORT

NAME: MAJOR MATTHEW MAGSINO Subject/Bill No: 289

Co./Dept./Title: ARMY NATIONAL GUARD Phone: 465 4557

Address: ~~214~~ ~~CA~~ 355 WHITTIER JNU Zip: 99001

Do you wish to testify? Yes No Respond To Questions

NAME: DON MEZLER (CAPTAIN) Subject/Bill No: 289

Co./Dept./Title: ARMY NATL GUARD Phone: 465-1351

Address: 355 WHITTIER Zip: 99801

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

⁶**HB**

290

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 3, 2000

FURTHER REFERRALS:

Date of Committee Action: 3/28/00

The FINANCE Committee considered:

HB 290

HOUSE BILL NO. 290

STRANDED GAS PIPELINE CARRIERS

"An Act relating to stranded gas pipeline carriers and to the intrastate regulation by the Regulatory Commission of Alaska of pipelines and pipeline facilities of stranded gas pipeline carriers."

recommends it be replaced with the following committee substitute CS HB 290 (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) DCRA 2/21/00

zero fiscal note(s) DND; REV 2/21/00 zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Tom Merritt</i>	Merritt	X			
<i>W. L. ...</i>	Austinman			X	
<i>J. L. Davies</i>	J. Davies	X			
<i>Grussendorf</i>	Grussendorf	X			
<i>Moses</i>	Moses			X	
<i>G. Davis</i>	G. Davis			X	
<i>W. K. Williams</i>	Williams			X	
<i>S. Phillips</i>	Phillips				X
<i>Foster</i>	Foster				X

(3) (4) (2)

CHAIR'S SIGNATURE *Tom Merritt*

FISCAL NOTE

Bill Version: CSHB 290 (O&G)
 (H) Publish Date: 2/21/00

STATE OF ALASKA
 2000 LEGISLATIVE SESSION

Revision Date/ 2/7/00 2:25 PM Dept. Affected DCED
 Title Intrastate Regulation of Stranded Gas BRU RCA
 Pipeline Carriers Component
 Sponsor House Resources RCA
 Requester Oil & Gas Committee Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	33.8	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	33.8	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0					
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
Other (Regulatory Cost Charge)	0.0	33.8	0.0	0.0	0.0	0.0
TOTAL	0.0	33.8	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time		0.5				
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 290 is not expected to cause any increase to the agency's FY01 budget. One-half of one Utility Engineering Analyst III position (approximately \$33,800) will be necessary in the FY02 budget to process and analyze the increase in workload due to stranded gas pipeline certification applications. In subsequent fiscal years, these applications will be part of the Commission's ongoing certification workload and are not expected to generate additional costs.

Prepared by: G. Nanette Thompson, Chair Phone 276-6222
 Division Regulatory Commission of Alaska Date/Time 2/7/00 2:25 PM
 Approved by Commissioner Deborah B. Sedwick Date 02/07/00
 Agency Dept. of Community & Regional Affairs

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Page 1 of 1

3/28
adopted 5-4

1-LS1269K.1
Chenoweth
3/23/00

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 290(RES)

- 1 Page 5, line 7:
- 2 Delete "The"
- 3 Insert "Except as provided by AS 42.06.370(c), the"

- 4 Page 8, following line 17:
- 5 Insert a new bill section to read:
- 6 **"* Sec. 7.** AS 42.06.370 is amended by adding a new subsection to read:
- 7 (c) Rates demanded, observed, charged, or collected by a North Slope natural
- 8 gas pipeline carrier for intrastate service shall be designed as if that portion of the
- 9 North Slope natural gas pipeline were a public utility regulated under the provisions
- 10 of AS 42.05."

- 11 Renumber the following bill section accordingly.

Barrett Hatches

From: Daniel M. Dieckgraeff <dmdieckg@alaska.net>
To: <Representative_Eldon_Mulder@legis.state.ak.us>
Cc: Julian Mason <margle-mac@worldnet.att.net>; Barrett Hatches
<Barrett.Hatches@semcoenergy.com>
Sent: Thursday, March 23, 2000 10:35 PM
Subject: HB 290 - Correct

Representative Eldon Mulder:

My earlier email had a few important words missing. I'm sorry if it causes any inconvenience. It should have read as follows:

ENSTAR Natural Gas Company understands the purpose of HB 290 and we do not object to the overall concept. We are very supportive of efforts to bring North Slope gas near the State's population centers.

There may be some confusion concerning our position. While we understand the concerns of the sponsor group, ENSTAR believes that it would be in the best interests of the instate utility users, and their customers,

for the portion of the pipeline allocated for instate use to be regulated as a public utility by the Regulatory Commission of Alaska. We understand the Sponsor Group's need to guarantee space for its project and therefore do not want to see the whole pipeline regulated as a utility.

I would be glad to discuss our position with you at your convenience.

Daniel M. Dieckgraeff
Vice President, Finance and Rates
ENSTAR Natural Gas Company
Anchorage, Alaska

FISCAL NOTE

No. 2

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Version: CSHB 290 (O&G)
BIL(H) Publish Date: 2/21/00

Revision Date/Time: _____ Dept Affected: Natural Resources
Title: Stranded Gas Pipeline Carriers BRU: Oil & Gas Development
Sponsor: House Resources Committee Component: Pipeline Coordinator
Requestor: (H)O&G Component No. 1191

Expenditures/Revenues (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: \$ none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the Pipeline Coordinator's Office associated with implementation of this legislation.

Prepared by: Bill Britt *[Signature]* Phone: 271-4412
Division: State Pipeline Coordinators Office Date: 01-Feb-00
Approved by Commissioner: John Shively *[Signature]* Date: 2-1-2000
Agency: Natural Resources

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3/28

withdraw

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 290(RES)

1 Page 1, line 1, following "relating to":

2 Insert "oil and gas, to the sale and disposition of state royalty oil and gas, to"

3 Page 1, line 2, following "Alaska":

4 Insert ", "

5 Page 1, following line 4:

6 Insert new bill sections to read:

7 **** Section 1.** AS 38.05.183(e) is amended to read:

8 (e) When a sale, exchange, or other disposal of oil or gas taken in kind by the
9 state as its royalty share, or a sale, exchange, or other disposal in whole or in part of
10 a right to receive future royalty oil or gas, under a state lease under this chapter is
11 made other than by competitive bid, the sale, exchange, or other disposal shall be
12 awarded by the commissioner to the prospective buyer whose proposal offers the
13 maximum benefits to citizens of the state. The commissioner shall consider

14 (1) the cash value offered;

15 (2) the projected effects of the sale, exchange, or other disposal on the
16 economy of the state;

17 (3) the projected benefits of refining or processing the oil or gas in the
18 state;

19 (4) the ability of the prospective buyer to provide refined products or
20 by-products for distribution and sale in the state with price or supply benefits to the
21 citizens of the state; and

22 (5) the criteria listed in AS 38.06.070(a) in the order of priority
23 required by that subsection.

1 * Sec. 2. AS 38.06.070(a) is amended to read:

2 (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050, the
3 board shall consider **each of the factors in order of priority set out as follows:**

4 (1) [THE REVENUE NEEDS AND PROJECTED FISCAL
5 CONDITION OF THE STATE;

6 (2)] the existence and extent of present and projected local and
7 regional **domestic and industrial** needs for oil and gas products and by-products, the
8 effect of state or federal commodity allocation requirements **that** [WHICH] might be
9 applicable to those products and by-products, and the priorities among competing
10 needs;

11 **(2) the existence and extent of present and projected local or**
12 **regional consumption markets that should be met by the transaction;**

13 (3) the desirability of localized capital investment, increased payroll,
14 secondary development, and other possible effects of the sale, exchange, or other
15 disposition of oil and gas or both;

16 (4) the projected **positive and negative environmental effects related**
17 **to the transaction** [SOCIAL IMPACTS OF THE TRANSACTION];

18 (5) **the revenue needs and projected fiscal condition of the state;**

19 (6) **the projected effects of the proposed transaction upon existing**
20 **private commercial enterprise and patterns of investments;**

21 (7) the projected additional costs and responsibilities **that** [WHICH]
22 could be imposed upon the state and affected political subdivisions by development
23 related to the transaction; **and**

24 (8) [(6)] the **potential effects on** [EXISTENCE OF] specific local or
25 regional labor [OR CONSUMPTION] markets **that** [OR BOTH WHICH] should be
26 met by the transaction [;

27 (7) THE PROJECTED POSITIVE AND NEGATIVE
28 ENVIRONMENTAL EFFECTS RELATED TO THE TRANSACTION; AND

29 (8) THE PROJECTED EFFECTS OF THE PROPOSED
30 TRANSACTION UPON EXISTING PRIVATE COMMERCIAL ENTERPRISE AND
31 PATTERNS OF INVESTMENTS]."

- 1 Page 1, line 5:
- 2 Delete "Section 1."
- 3 Insert "Sec. 3."

- 4 Renumber the following bill sections accordingly.

3/28
withdrawn

1-LS1269K.4
Chenoweth
3/24/00

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 290(RES)

1 Page 1, line 1, following "relating to":

2 Insert "the sale and disposition of state royalty oil and gas, to"

3 Page 1, line 2, following "Alaska":

4 Insert ","

5 Page 1, following line 4:

6 Insert new bill sections to read:

7 **** Section 1.** AS 38.05.183(e) is amended to read:

8 (e) When a sale, exchange, or other disposal of oil or gas taken in kind by the
9 state as its royalty share, or a sale, exchange, or other disposal in whole or in part of
10 a right to receive future royalty oil or gas, under a state lease under this chapter is
11 made other than by competitive bid, the sale, exchange, or other disposal shall be
12 awarded by the commissioner to the prospective buyer whose proposal offers the
13 maximum benefits to citizens of the state. The commissioner shall consider

14 (1) the cash value offered;

15 (2) the projected effects of the sale, exchange, or other disposal on the
16 economy of the state;

17 (3) the projected benefits of refining or processing the oil or gas in the
18 state;

19 (4) the ability of the prospective buyer to provide refined products or
20 by-products for distribution and sale in the state with price or supply benefits to the
21 citizens of the state; and

22 (5) the criteria listed in AS 38.06.070(a) in the order of priority
23 required by that subsection.

1 * Sec. 2. AS 38.06.070(a) is amended to read:

2 (a) In the exercise of its powers under AS 38.06.040(a) and 38.06.050, the
3 board shall consider **each of the factors in order of priority set out as follows:**

4 (1) [THE REVENUE NEEDS AND PROJECTED FISCAL
5 CONDITION OF THE STATE;

6 (2)] the existence and extent of present and projected **domestic and**
7 **industrial** [LOCAL AND REGIONAL] needs for oil and gas products and by-
8 products, the effect of state or federal commodity allocation requirements **that**
9 **[WHICH]** might be applicable to those products and by-products, and the priorities
10 among competing needs;

11 (2) **the existence and extent of present and projected consumption**
12 **markets that should be met by the transaction;**

13 (3) the desirability of localized capital investment, increased payroll,
14 secondary development, and other possible effects of the sale, exchange, or other
15 disposition of oil and gas or both;

16 (4) the projected **positive and negative environmental effects related**
17 **to the transaction** [SOCIAL IMPACTS OF THE TRANSACTION];

18 (5) **the revenue needs and projected fiscal condition of the state;**

19 (6) **the projected effects of the proposed transaction upon existing**
20 **private commercial enterprise and patterns of investments;**

21 (7) the projected additional costs and responsibilities **that** [WHICH]
22 could be imposed upon the state and affected political subdivisions by development
23 related to the transaction; **and**

24 (8) [(6)] the **potential effects on** [EXISTENCE OF] specific local or
25 regional labor [OR CONSUMPTION] markets **that** [OR BOTH WHICH] should be
26 met by the transaction [;

27 (7) THE PROJECTED POSITIVE AND NEGATIVE
28 ENVIRONMENTAL EFFECTS RELATED TO THE TRANSACTION; AND

29 (8) THE PROJECTED EFFECTS OF THE PROPOSED
30 TRANSACTION UPON EXISTING PRIVATE COMMERCIAL ENTERPRISE AND
31 PATTERNS OF INVESTMENTS]."

- 1 Page 1, line 5:
- 2 Delete "Section 1."
- 3 Insert "Sec. 3."

- 4 Renumber the following bill sections accordingly.

FISCAL NOTE

Bill Version: CSHB 290 (O&G)
 (H) Publish Date: 2/21/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) Jan. 26, 2000 Dept. Affected Revenue
 Title Stranded gas pipeline carriers regulation BRU Revenue Operations
 Component Oil and Gas Audit
 Sponsor House Resources
 Requester House Oil & Gas Component No. 115

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) 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)

This bill clarifies the regulatory environment for a potential North Slope natural gas pipeline, and would not impose any additional costs beyond those necessary for regulation currently. It would not create any revenues either.

Prepared by: Roger Marks Phone: 269-0082
 Division: Oil and Gas Audit Date/Time: 26-Jan-00
 Approved by Commissioner: Wilson Condon Date: 1/26/00
 Agency: Department of Revenue

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FISCAL NOTE #3 TO CSHB 290(O&G)

#3 FISCAL NOTE WAS PUBLISHED WITH THE WRONG DATE.
PLEASE REPLACE WITH THIS ATTACHED
CORRECTED NOTE.

FISCAL NOTE

No: 3

Bill Version: CSHB 290 (O&G)

(H) Publish Date: 2/21/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/ 2/7/00 2:25 PM	Dept. Affected	DCED
Title	Intrastate Regulation of Stranded Gas	BRU
	Pipeline Carriers	Component
Sponsor	House Resources	RCA
Requester	Oil & Gas Committee	Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	33.8	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	33.8	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0					
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
Other (Regulatory Cost Charge)	0.0	33.8	0.0	0.0	0.0	0.0
TOTAL	0.0	33.8	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time		0.5			
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

HB 290 is not expected to cause any increase to the agency's FY01 budget. One-half of one Utility Engineering Analyst III position (approximately \$33,800) will be necessary in the FY02 budget to process and analyze the increase in workload due to stranded gas pipeline certification applications. In subsequent fiscal years, these applications will be part of the Commission's ongoing certification workload and are not expected to generate additional costs.

Prepared by: <u>G. Nanette Thompson, Chair</u>	Phone <u>276-6222</u>
Division <u>Regulatory Commission of Alaska</u>	Date/Time <u>2/7/00 2:25 PM</u>
Approved by: <u>Commissioner Deborah B. Sedwick</u>	Date <u>02/07/00</u>
Agency <u>Dept. of Community & Regional Affairs</u>	

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FISCAL NOTE

No: 2

STATE OF ALASKA 2000 LEGISLATIVE SESSION

Version: CSHB 290(O&G)
BIL(H) Publish Date: 2/21/00

Revision Date/Time: _____ Dept Affected: Natural Resources
Title: Stranded Gas Pipeline Carriers BRU: Oil & Gas Development
Component: Pipeline Coordinator
Sponsor: House Resources Committee
Requestor: (H)O&G Component No. 1191

Expenditures/Revenues (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: \$ none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the Pipeline Coordinator's Office associated with implementation of this legislation.

Prepared by: Bill Britt *[Signature]* Phone: 271-4412
Division: State Pipeline Coordinators Office Date: 01-Feb-00
Approved by Commissioner: John Shively *[Signature]* Date: 2-1-2000
Agency: Natural Resources

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FISCAL NOTE

Bill Version: CSHB 290 (O&G)
 (H) Publish Date: 2/21/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) Jan. 26, 2000 Dept. Affected Revenue
 Title Stranded gas pipeline carriers BRU Revenue Operations
regulation Component Oil and Gas Audit
 Sponsor House Resources
 Requester House Oil & Gas Component No. 115

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) 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)

This bill clarifies the regulatory environment for a potential North Slope natural gas pipeline, and would not impose any additional costs beyond those necessary for regulation currently. It would not create any revenues either.

Prepared by: Roger Marks Phone 269-0082
 Division Oil and Gas Audit Date/Time 26-Jan-00
 Approved by Commissioner Wilson Condon Date 1/26/00
 Agency Department of Revenue

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FISCAL NOTE #3 TO CSHB 290(O&G)

#3 FISCAL NOTE WAS PUBLISHED WITH THE WRONG DATE.
PLEASE REPLACE WITH THIS ATTACHED
CORRECTED NOTE.

FISCAL NOTE

Bill Version: CSHB 290 (O&G)

(H) Publish Date: 2/21/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/ 2/7/00 2:25 PM Dept. Affected DCED
 Title Intrastate Regulation of Stranded Gas BRU RCA
 Pipeline Carriers Component
 Sponsor House Resources RCA
 Requester Oil & Gas Committee Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	33.8	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	33.8	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0					
----------------------	-----	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
Other (Regulatory Cost Charge)	0.0	33.8	0.0	0.0	0.0	0.0
TOTAL	0.0	33.8	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0.5				
Part-time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

HB 290 is not expected to cause any increase to the agency's FY01 budget. One-half of one Utility Engineering Analyst III position (approximately \$33,800) will be necessary in the FY02 budget to process and analyze the increase in workload due to stranded gas pipeline certification applications. In subsequent fiscal years, these applications will be part of the Commission's ongoing certification workload and are not expected to generate additional costs.

Prepared by: G. Nanette Thompson, Chair Phone 276-6222
 Division Regulatory Commission of Alaska Date/Time 2/7/00 2:25 PM
 Approved by Commissioner Deborah B. Sedwick Date 02/07/00
 Agency Dept. of Community & Regional Affairs

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FISCAL NOTE

No. 2

Version: CSHB 290 (O&G)

BIL(H) Publish Date: 2/21/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time: _____ Dept Affected: Natural Resources
 Title: Stranded Gas Pipeline Carriers BRU: Oil & Gas Development
 Sponsor: House Resources Committee Component: Pipeline Coordinator
 Requestor: (H)O&G Component No. 1191

Expenditures/Revenues (Thousands of Dollars)
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: \$ none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the Pipeline Coordinator's Office associated with implementation of this legislation.

Prepared by: Bill Britt *[Signature]* Phone: 271-4412
 Division: State Pipeline Coordinators Office Date: 01-Feb-00
 Approved by Commissioner: John Shively *[Signature]* Date: 2-1-2000
 Agency: Natural Resources

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FISCAL NOTE

Bill Version: CSHB 290 (O&G)
 (H) Publish Date: 2/21/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) Jan. 26, 2000 Dept. Affected Revenue
 Title Stranded gas pipeline carriers BRU Revenue Operations
regulation Component Oil and Gas Audit
 Sponsor House Resources
 Requester House Oil & Gas Component No. 115

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) 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)

This bill clarifies the regulatory environment for a potential North Slope natural gas pipeline, and would not impose any additional costs beyond those necessary for regulation currently. It would not create any revenues either.

Prepared by: Roger Marks
 Division Oil and Gas Audit
 Approved by Commissioner Wilson Condon
 Agency Department of Revenue

Phone 269-0082
 Date/Time 26-Jan-00
 Date 1/26/00

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MEMORANDUM

TO: REPRESENTATIVES MULDER AND THERRIAULT
FROM: NAN THOMPSON, REGULATORY COMMISSION OF ALASKA
SUBJECT: HB 290-TARIFF PROVISION
DATE: 03/23/00
CC: HOUSE FINANCE COMMITTEE MEMBERS

You asked for a list of items that would be excluded from a utility pipeline tariff that a pipeline carrier could argue should be included in their tariff. There are APUC decisions excluding the following types of expenses from utility rates, but no comparable decision excluding them from pipeline rates:

- Public relations costs
- Lobbying expenses
- Charitable contributions
- Association dues
- Extraordinary management compensation
- Research and development costs
- Acquisition adjustments
- Pensions and employee benefits

Only imagination and conscience limit the types of expenses that a pipeline owner could ask be included in their tariff. The sponsor group correctly noted that the RCA would have the authority to exclude the expenses when they are presented to us for review. However, the RCA could not exclude them with the assurance that the pipeline owner would not appeal. An appeal means time delay and uncertainty in the business environment, and additional legal expenses for the RCA and carriers. The carriers would be entitled to argue that those legal expenses should be included in their rates.

How the difference between the utility and pipeline tariff methodology affects the RCA's decision-making process was well-articulated in a 1992 pipeline decision, Re Kenai Pipeline Company, 12 APUC 425 on page 434:

The methodology the Commission uses to determine the value of the property of public utilities is set by statute. A.S. 42.05.441(b) reads as follows: "In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by the acquisition cost, or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required." There is no similar provision under AS 42.06. Thus, the Commission is free to determine the appropriate way to value pipeline property for the purposes of ratemaking.

The APUC went on, in that forty-page opinion, to discuss the options and arguments of the parties and make a decision. The RCA can determine what is just and reasonable, but the lack of case law in this area to guide the RCA and the pipeline owners creates room for arguments. Arguments mean delay; litigation expenses and a less predictable environment for in-state shippers. The RCA would generally follow its utility tariff decisions, except where the Federal Energy Regulatory Commission (FERC, the federal agency with pipeline jurisdiction) has a different rule. Thus, a prospective in-state shipper would have to reference federal caselaw to predict the likely outcome of a pipeline tariff case.

The APUC has set rates for only two oil pipelines in this state. The Kenai Pipeline case cited above was one, and Cook Inlet Pipeline was the other. Both cases were extensively litigated. The APUC has set tariffs for all other oil pipelines in the based on settlements between the affected parties.

The APUC has set rates for only one gas pipeline under the pipeline statute. The affected parties agreed to those rates as part of a comprehensive settlement package that has no precedential value. All other gas pipeline tariffs have been set using a utility tariff methodology.

**ANS LNG Sponsor Group's Position on the
Regulatory Commission of Alaska's Proposal
to Amend HB 290 to Require the Use of a
Utility Ratemaking Methodology**

The Regulatory Commission of Alaska (RCA) has proposed that HB 290 be amended to specify that a utility ratemaking methodology be required in developing the intrastate tariffs applicable to a North Slope natural gas pipeline. The ANS LNG Sponsor Group disagrees, and believes that it is inappropriate to specify the use of a utility ratemaking methodology for a pipeline that is not to be operated as a utility.

First, we believe that specifying any tariff methodology in this bill is premature. The bill, as originally drafted, was purposely simple and focused. Its sole purpose to make only those changes to existing statutes which are needed to remove existing commercial and regulatory impediments to the successful marketing of LNG in Asian markets. The bill was not intended to address the many detailed and technical issues which ultimately will have to be addressed when, and if, a viable export project can be defined. We continue to believe that the appropriate time to address the detailed concerns of what should or should not be allowed in an intrastate tariff is when proposed tariffs are filed with the RCA for its consideration and approval. Regardless of whether those tariffs are calculated under the Public Utilities Act, or under the Pipeline Act, the RCA will have the authority to disallow any costs which it determines not to be "just and reasonable"—the operative standards under both statutory schemes.

Secondly, we believe that specifying the use of a utility ratemaking methodology creates a regulatory hybrid, something that both we and the RCA have tried hard to avoid. The initial language of HB 290 contained several phrases which the RCA suggested created ambiguity regarding whether regulation would occur under the Pipeline Act or the Public Utilities Act. While that was not our intent, we agreed with the RCA that the language could be construed to produce such a result, and the original language was amended to clarify that the intrastate portion of an export project would be regulated under the Pipeline Act. Having provided that needed clarity, amending the bill now to require a new hybrid—a pipeline regulated under the Pipeline Act, but with a tariff established under the Public Utilities Act—seems a step backwards to us. No other pipeline in the state would be similarly situated.

Finally, we believe that a utility ratemaking methodology is set up, by design, for companies selling directly to the consuming public. It may be an appropriate methodology for companies like Enstar, Fairbanks Natural Gas, GVEA and others that are, or that want to be in the retail business of distributing gas to local consumers. However, that is not the business in which an export LNG project such as ours will be engaged. While any such project, including ours, will be required by the RCA to provide sufficient capacity to meet intrastate needs, they will not necessarily be marketers of gas for intrastate use. That business will be left to those who do it best, the existing local utilities, as well as new utilities which may develop following the completion of an export pipeline project. That is why we continue to believe that a ratemaking methodology under the Pipeline Act, and not under the Public Utilities Act, is appropriate for an LNG export project.

Alaska State Legislature

House Resources Committee

Co-Chair Beverly Masek
(907) 465-3715
FAX (907) 465-4822
Capitol Building, Room 124
Juneau, Alaska 99801



Co-Chair Bill Hudson
(907) 465-6890
FAX (907) 465-2273
Committee Meetings
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, John Cowdery, Reggie Joule, and Mary Kapsner

SPONSOR STATEMENT

CSHB 290(RES)

"An Act relating to pipeline carriers of natural gas produced from the North Slope of Alaska and to the intrastate regulation by the Regulatory Commission of Alaska of pipelines and pipeline facilities of that natural gas."

Before a North Slope natural gas pipeline project can proceed, certain amendments to existing state statutes are required. These changes are intended: 1) to apply to all potential North Slope natural gas pipeline projects, 2) to clarify respective state and federal jurisdictions in regulating such projects, 3) to be complementary to a non-discriminatory federal process which will apply to any export volumes of North Slope natural gas, 4) to provide for local (in state) gas transportation and sales, and 5) to provide needed exemption from public utility designation for a North Slope natural gas pipeline project.

CSHB 290(RES) will amend the Pipeline Act (AS 42.06) to define a North Slope natural gas pipeline, will clarify that the Regulatory Commission of Alaska's (RCA's) authority in regulating a North Slope natural gas pipeline extends only to the intrastate transportation of gas through such a system, to define a fair, predictable and timely process to identify and dedicate sufficient initial intrastate capacity in a North Slope natural gas pipeline and to establish the criteria for needed pipeline system expansions over the life of a North Slope natural gas pipeline system to accommodate increased demand for in state gas supplies.

CSHB 290(RES) will amend the Public Utilities Act (AS 42.05) to clarify that North Slope natural gas pipeline systems are exempt from the requirement of operating as a public utility, and will amend the Right-of-Way Leasing Act (AS 38.35) to limit the requirement of common carriage for North Slope natural gas pipeline systems to the transportation of intrastate gas volumes only.

CSHB 290(RES) also defines the types of intrastate transportation services that will be available in a North Slope natural gas pipeline system, provides that in its tariff filed with the RCA a North Slope natural gas pipeline carrier may charge separate rates for those services, and may also charge a reservation fee for reserving capacity in a North Slope natural gas pipeline system.

Collectively, these changes are intended to provide greater certainty and predictability in the regulation of North Slope natural gas pipeline systems. This increased certainty will enhance the ability of gas export project sponsors to market Alaska's North Slope natural gas reserves, to compete more effectively with alternative export projects and to attract the large investments required to construct and operate the pipeline and related facilities necessary to condition, transport and export North Slope natural gas reserves.

Alaska State Legislature

House Resources Committee

Co-Chair Beverly Masek
(907) 465-3715
FAX (907) 465-4822
Capitol Building, Room 124
Juneau, Alaska 99801



Co-Chair Bill Hudson
(907) 465-6890
FAX (907) 465-2273
Committee Meetings
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, John Cowdery, Reggie Joule, and Mary Kapsner

SECTIONAL ANALYSIS CSHB 290(RES)

Section 1:

Amends AS 38.35.120(a) by adding a new paragraph (a)(1)(B)(i) that provides that a right-of-way lessee that owns or operates a North Slope natural gas pipeline as a North Slope natural gas pipeline carrier is required to operate as a common carrier only with respect to the intrastate transportation of stranded gas.

(a)(1)(B)(ii) removes the requirement for the LNG plant and marine terminal to be in common carriage under the Right-of-Way Leasing Act, without affecting the State Pipeline Coordinator's Office delegated authority under the Act.

Section 2:

Amends AS 42.05.711 by adding a new subsection (n) that exempts the owners or operators of a North Slope natural gas pipeline system from operating as a public utility.

Section 3:

Amends AS 42.06.230(b) to clarify that, with respect to a North Slope natural gas pipeline, the Regulatory Commission of Alaska's (RCA's) jurisdiction and authority extend only to the intrastate transportation of such gas.

Section 4:

Amends AS 42.06.240 by adding a new subsection, (f)(1)-(4), within which:

(f)(1) provides that persons making application for a certificate of public convenience and necessity for a North Slope natural gas pipeline must dedicate a portion of the pipeline's initial capacity sufficient to transport the total volume of North Slope natural gas that has been committed to tendering for firm intrastate transportation services at the time pipeline operations commence;

(f)(2) provides that, upon receipt of an application, the RCA shall issue public notice inviting requests for service by prospective intrastate shippers, and specifies the criteria for a request of service;

(f)(3) defines the criteria by which the RCA will determine the total volume of intrastate transportation of North Slope natural gas required for initial transportation by a North Slope natural gas pipeline and provides the RCA authority to consider peak volumes in its determinations. The provisions of (f)(3) also require the RCA to define in its orders the total volume of intrastate North Slope natural gas that a North Slope natural gas pipeline carrier must accept for intrastate transportation and limits those volumes to volumes substantiated by written commitments and contracts which comply with the requirements of the chapter; and

(f)(4) provides that, upon application by a North Slope natural gas carrier for authority to transport North Slope natural gas within the state in excess of the volume required by the RCA under (3)(B) of this subsection, the RCA shall grant the authority if the transportation of the increased volume is determined to be consistent with public convenience and necessity.

Section 5:

Amends AS 42.06.310 by adding a new subsection which limits the applicability of AS 42.06.310 (c), to the extent a North Slope natural gas pipeline carrier's pipeline does not allow for expanded capacity, and defines the standards which must be met for the RCA to require expansion, enlargement or extension of a North Slope natural gas pipeline system. Those standards include requirements that the person making a request for such expansion, enlargement or extension has made a firm contractual commitment to the North Slope natural gas pipeline carrier to transport the gas, and that the expansion, enlargement or extension will not result in substantial injury, including economic injury, to the North Slope natural gas pipeline facility or its customers; substantial detriment to the services furnished by the North Slope natural gas pipeline facility; or the creation of safety hazards.

Section 6:

Amends AS 42.06.350 by adding a new subsection (c) establishing the right of a North Slope natural gas pipeline carrier to charge separate rates for "firm transportation service" and "interruptible transportation service" under its tariff, providing for the carrier's imposition of a reservation fee for capacity in a North Slope natural gas pipeline as a condition of providing firm transportation, setting limits on the types of costs that may be included in a reservation fee and prohibiting the imposition of reservation fees for interruptible transportation service.

Section 7:

Amends AS 42.06.630 by adding new paragraphs (11)-(17), which define certain terms, introduced in CSHB 290(RES), including:

- "capacity"
- "firm transportation service"
- "interruptible transportation service"
- "intrastate"
- "North Slope natural gas"
- "North Slope natural gas pipeline"; and
- "North Slope natural gas pipeline carrier"

MEMORANDUM

TO: REPRESENTATIVES MULDER AND THERRIAULT
FROM: NAN THOMPSON, REGULATORY COMMISSION OF ALASKA *ANT*
SUBJECT: HB 290-DELETED TARIFF PROVISION
DATE: 03/20/00
CC: HOUSE FINANCE COMMITTEE MEMBERS

Section 8 of the House Oil and Gas Committee CS for HB 290 protected the interests of prospective in-state users by requiring the RCA to use utility ratemaking methodology. The House Oil and Gas committee deleted this section. The rates derived under a utility ratemaking methodology are less subject to legal challenge and more closely related to the actual costs of delivering the gas through the pipeline. I recommend that the bill include a provision requiring the RCA to set tariff rates using utility ratemaking methodology.

The statutes controlling utility (AS 42.05.361-.441) and pipeline (AS 42.06.350-.420) ratemaking methodology both require just and reasonable rates and allow the pipeline owners to recover a rate of return on their investments. There are, however, important differences between these two ratemaking methodologies that affect the rates in-state users will pay to transport gas through the pipeline.

There is substantially less case law to guide the RCA on what is just and reasonable to include in a pipeline tariff. In Alaska, and the lower 48, the trend has been for the pipeline owners and shippers (who are often affiliated) to negotiate the tariff and present it to the FERC and/or state regulatory commission as a settlement. In the absence of disagreement over the terms of the tariff by the affected parties, the regulatory agencies generally approve the agreed upon tariff terms. The dearth of case law makes any decision by the RCA more subject to legal challenges and resulting delay.

The issue of public relations costs is a good example of the difference between utility and pipeline tariffing methodologies. Public relations costs are excluded from utility tariffs under AS 42.05 381. The pipeline tariff statute is silent on this issue and the carriers cite this difference in the statutes in support of their requests to charge public relations costs to their ratepayers. For example, the TAPS carriers included the public relations costs incurred by Alyeska Pipeline Service Company after the Exxon Valdez Oil Spill in their intrastate tariff rates. The parties are still litigating the issue of whether those public relations costs should be part of their tariffed rates before the RCA and the FERC.

HB

290

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/11/00

FURTHER:

REPORTED OUT OF
SFC 4/15/00

DATE TURNED
IN TO OFFICE:

15 April 00

Finance Committee considered

CS FOR HOUSE BILL NO. 290(FIN)

"An Act relating to pipeline carriers of natural gas produced from the North Slope of Alaska and to the intrastate regulation by the Regulatory Commission of Alaska of pipelines and pipeline facilities of that natural gas."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS HB 290 (FIN)

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>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
Co-Chair: <i>[Signature]</i>	<input checked="" type="checkbox"/>	Co-Chair:			
Co-Chair: <i>[Signature]</i>	<input checked="" type="checkbox"/>	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
Revenue	1/26/00	<input checked="" type="checkbox"/>	
DNR	2/1/00	<input checked="" type="checkbox"/>	
DCED	2/7/00	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE
 REPORTED OUT OF
 SFC 4/15/00

Bill Version: CSHB 290 (O&G)
 (H) Publish Date: 2/21/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) Jan. 26, 2000 Dept. Affected Revenue
 Title Stranded gas pipeline carriers BRU Revenue Operations
regulation Component Oil and Gas Audit
 Sponsor House Resources
 Requester House Oil & Gas Component No. 115

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) 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)

This bill clarifies the regulatory environment for a potential North Slope natural gas pipeline, and would not impose any additional costs beyond those necessary for regulation currently. It would not create any revenues either.

Prepared by: Roger Marks Phone 269-0082
 Division Oil and Gas Audit Date/Time 26-Jan-00
 Approved by Commissioner Wilson Condon Date 1/26/00
 Agency Department of Revenue

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FISCAL NOTE

No. 2

STATE OF ALASKA
2000 LEGISLATIVE SESSION

REPORTED OUT OF
SFC 4/15/00

Version: CSHB 290 (O&G)
Bill(H) Publish Date: 2/21/00

Revision Date/Time: _____ Dept Affected: Natural Resources
Title: Stranded Gas Pipeline Carriers BRU: Oil & Gas Development
Component: Pipeline Coordinator
Sponsor: House Resources Committee
Requestor: (H)O&G Component No. 1191

Expenditures/Revenues (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: \$ none

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the Pipeline Coordinator's Office associated with implementation of this legislation.

Prepared by: Bill Britt *[Signature]* Phone: 271-4412
 Division: State Pipeline Coordinators Office Date: 01-Feb-00
 Approved by Commissioner: John Shively *[Signature]* Date: 2-1-2000
 Agency: Natural Resources

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FISCAL NOTE

Bill Version: CSHB 290 (O&G)

STATE OF ALASKA
2000 LEGISLATIVE SESSION

REPORTED OUT OF
SFC 4/15/00

(H) Publish Date: 2/21/00

Revision Date: 2/21/00 2:25 PM Dept. Affected: DCED
 Title: Intrastate Regulation of Stranded Gas BRU: RCA
Pipeline Carriers Component: _____
 Sponsor: House Resources RCA
 Requester: Oil & Gas Committee Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	0.0	33.8	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	33.8	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0					
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
Other (Regulatory Cost Charge)	0.0	33.8	0.0	0.0	0.0	0.0
TOTAL	0.0	33.8	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time		0.5				
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 290 is not expected to cause any increase to the agency's FY01 budget. One-half of one Utility Engineering Analyst III position (approximately \$33,800) will be necessary in the FY02 budget to process and analyze the increase in workload due to stranded gas pipeline certification applications. In subsequent fiscal years, these applications will be part of the Commission's ongoing certification workload and are not expected to generate additional costs.

Prepared by: G. Nanette Thompson, Chair Phone: 276-6222
 Division: Regulatory Commission of Alaska Date/Time: 2/7/00 2:25 PM
 Approved by: Commissioner Deborah B. Sedwick Date: 02/07/00
 Agency: Dept. of Community & Regional Affairs

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Alaska State Legislature

House Resources Committee

Co-Chair Beverly Masek
(907) 465-3715
FAX (907) 465-4822
Capitol Building, Room 124
Juneau, Alaska 99801



Co-Chair Bill Hudson
(907) 465-6890
FAX (907) 465-2273
Committee Meetings
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, Reggie Joule, and Mary Kapsner

SPONSOR STATEMENT

CSHB 290(FIN)

"An Act relating to pipeline carriers of natural gas produced from the North Slope of Alaska and to the intrastate regulation by the Regulatory Commission of Alaska of pipelines and pipeline facilities of that natural gas."

Before a North Slope natural gas pipeline project can proceed, certain amendments to existing state statutes are required. These changes are intended: 1) to apply to all potential North Slope natural gas pipeline projects, 2) to clarify respective state and federal jurisdictions in regulating such projects, 3) to be complementary to a non-discriminatory federal process which will apply to any export volumes of North Slope natural gas, 4) to provide for local (in state) gas transportation and sales, and 5) to provide needed exemption from public utility designation for a North Slope natural gas pipeline project.

CSHB 290(FIN) will amend the Pipeline Act (AS 42.06) to define a North Slope natural gas pipeline, will clarify that the Regulatory Commission of Alaska's (RCA's) authority in regulating a North Slope natural gas pipeline extends only to the intrastate transportation of gas through such a system, to define a fair, predictable and timely process to identify and dedicate sufficient initial intrastate capacity in a North Slope natural gas pipeline and to establish the criteria for needed pipeline system expansions over the life of a North Slope natural gas pipeline system to accommodate increased demand for in state gas supplies.

CSHB 290(FIN) will amend the Public Utilities Act (AS 42.05) to clarify that North Slope natural gas pipeline systems are exempt from the requirement of operating as a public utility, and will amend the Right-of-Way Leasing Act (AS 38.35) to limit the requirement of common carriage for North Slope natural gas pipeline systems to the transportation of intrastate gas volumes only. Although not required to operate under the Public Utilities Act, a North Slope natural gas pipeline system must design and collect its tariff for intrastate transportation as if that portion of its pipeline was a public utility regulated under the provisions of AS 42.05.

CSHB 290(FIN) also defines the types of intrastate transportation services that will be available in a North Slope natural gas pipeline system, provides that in its tariff filed with the RCA a North Slope natural gas pipeline carrier may charge separate rates for those services, and may also charge a reservation fee for reserving capacity in a North Slope natural gas pipeline system.

Collectively, these changes are intended to provide greater certainty and predictability in the regulation of North Slope natural gas pipeline systems. This increased certainty will enhance the ability of gas export project sponsors to market Alaska's North Slope natural gas reserves, to compete more effectively with alternative export projects and to attract the large investments required to construct and operate the pipeline and related facilities necessary to condition, transport and export North Slope natural gas reserves.

Alaska State Legislature

House Resources Committee

Co-Chair Beverly Masek
(907) 465-3715
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Capitol Building, Room 124
Juneau, Alaska 99801



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FAX (907) 465-2273
Committee Meetings
M/W/F 1 - 3 p.m.

Members: Vice Chair John Cowdery, Representatives: Ramona Barnes, John Harris, Carl Morgan, Jim Whitaker, John Cowdery, Reggie Joule, and Mary Kapsner

SECTIONAL ANALYSIS CSHB 290(FIN)

Section 1:

Amends AS 38.35.120(a) by adding a new paragraph (a)(1)(B)(i) that provides that a right-of-way lessee that owns or operates a North Slope natural gas pipeline as a North Slope natural gas pipeline carrier is required to operate as a common carrier only with respect to the intrastate transportation of stranded gas.

(a)(1)(B)(ii) removes the requirement for the LNG plant and marine terminal to be in common carriage under the Right-of-Way Leasing Act, without affecting the State Pipeline Coordinator's Office delegated authority under the Act.

Section 2:

Amends AS 42.05.711 by adding a new subsection (n) that exempts the owners or operators of a North Slope natural gas pipeline system from operating as a public utility.

Section 3:

Amends AS 42.06.230(b) to clarify that, with respect to a North Slope natural gas pipeline, the Regulatory Commission of Alaska's (RCA's) jurisdiction and authority extend only to the intrastate transportation of such gas.

Section 4:

Amends AS 42.06.240 by adding a new subsection, (f)(1)-(4), within which:

(f)(1) provides that persons making application for a certificate of public convenience and necessity for a North Slope natural gas pipeline must dedicate a portion of the pipeline's initial capacity sufficient to transport the total volume of North Slope natural gas that has been committed to tendering for firm intrastate transportation services at the time pipeline operations commence;

(f)(2) provides that, upon receipt of an application, the RCA shall issue public notice inviting requests for service by prospective intrastate shippers, and specifies the criteria for a request of service;

(f)(3) defines the criteria by which the RCA will determine the total volume of intrastate transportation of North Slope natural gas required for initial transportation by a North Slope natural gas pipeline and provides the RCA authority to consider peak volumes in its determinations. The provisions of (f)(3) also require the RCA to define in its orders the total volume of intrastate North Slope natural gas that a North Slope natural gas pipeline carrier must accept for intrastate transportation and limits those volumes to volumes substantiated by written commitments and contracts which comply with the requirements of the chapter; and

(f)(4) provides that, upon application by a North Slope natural gas carrier for authority to transport North Slope natural gas within the state in excess of the volume required by the RCA under (3)(B) of this subsection, the RCA shall grant the authority if the transportation of the increased volume is determined to be consistent with public convenience and necessity.

Section 5:

Amends AS 42.06.310 by adding a new subsection which limits the applicability of AS 42.06.310 (c), to the extent a North Slope natural gas pipeline carrier's pipeline does not allow for expanded capacity, and defines the standards which must be met for the RCA to require expansion, enlargement or extension of a North Slope natural gas pipeline system. Those standards include requirements that the person making a request for such expansion, enlargement or extension has made a firm contractual commitment to the North Slope natural gas pipeline carrier to transport the gas, and that the expansion, enlargement or extension will not result in substantial injury, including economic injury, to the North Slope natural gas pipeline facility or its customers; substantial detriment to the services furnished by the North Slope natural gas pipeline facility; or the creation of safety hazards.

Section 6:

Amends AS 42.06.350 by adding a new subsection (c) establishing the right of a North Slope natural gas pipeline carrier to charge separate rates for "firm transportation service" and "interruptible transportation service" under its tariff, providing for the carrier's imposition of a reservation fee for capacity in a North Slope natural gas pipeline as a condition of providing firm transportation, setting limits on the types of costs that may be included in a reservation fee and prohibiting the imposition of reservation fees for interruptible transportation service.

Section 7:

Amends AS 42.06.370 by adding a new subsection (c) specifying that the "rates demanded, observed, charged or collected by a North Slope natural gas pipeline carrier for intrastate service shall be designed as if that portion of the North Slope natural gas pipeline were a public utility regulated under the provisions of AS 42.05", instead of 38.35

Section 8:

Amends AS 42.06.630 by adding new paragraphs (11)-(17), which define certain terms, introduced in CSHB 290(FIN), including:

"capacity"

"firm transportation service"

"interruptible transportation service"

"intrastate"

"North Slope natural gas"

"North Slope natural gas pipeline"; and

"North Slope natural gas pipeline carrier"

SENATE FINANCE COMMITTEE

SIGN-IN

HB 290-STRANDED GAS PIPELINE CARRIERS

NAME: MICHAEL HURLEY Subject/Bill No: HB 290

Co./Dept./Title: ANS LNG SPONSOR GROUP Phone: 907 265 6313

Address: 700 G STREET ANCHORAGE, AK Zip: 99501

Do you wish to testify? Yes No Respond To Questions

NAME: Loralie Meier Subject/Bill No: HB290

Co./Dept./Title: Leg. Aide, Rep. Masek Phone: X3715

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions
present bill

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

HB

301

HFIN

FILE

Amendment

To: HB 301

Page 4, add a new Sec. 9

From Rep Davies

Sec. 9. AS14.30.315 is repealed and reenacted to read:

Sec.14.30.315. Programs for gifted children. (a) Every school district shall establish educational services for gifted children that provide for student identification, student eligibility, student learning plans and parental and student participation including an appropriate review process, consistent with regulations adopted by the department. (b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children.

These regulations shall include provision for the child study team, IEP, Grievance procedure, due process hearing & Associated officers.

4-14-00

Amendment

To: HB 301

Page 4, add a new Sec. 9

Sec. 9. AS14.30.315 is repealed and reenacted to read:

Sec.14.30.315. Programs for gifted children. (a) Every school district shall establish educational services for gifted children that provide for student identification, student eligibility, student learning plans and parental and student participation including an appropriate review process, consistent with regulations adopted by the department. (b) Nothing in this section prohibits the department from requiring approval of programs of special education and related services for other categories of exceptional children.

FISCAL NOTE

Bill Version: HB 301

(H) Publish Date: 1/21/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Education & Early Dev.
 Title Education of Exceptional Children BRU Teaching and Learning Support
 Component Special & Supplemental Services
 Sponsor Rules Committee
 Requester Governor Knowles Component No. 166

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill proposes statute changes that would bring Alaska law into compliance with federal laws and regulations regarding special education services. There are no expected fiscal impacts to the Department as a result of this bill.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727
 Division Commissioner's Office Date/Time 12/20/99 4:14 PM
 Approved by Commissioner Richard S. Cross Date 1-6-2000
 Agency Education & Early Development

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FISCAL NOTE

Bill Version: HB 301

(H) Publish Date: 1/21/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Education & Early Dev.
 Title Education of Exceptional Children BRU Teaching and Learning Support
 Component Special & Supplemental Services
 Sponsor Rules Committee
 Requester Governor Knowles Component No. 166

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill proposes statute changes that would bring Alaska law into compliance with federal laws and regulations regarding special education services. There are no expected fiscal impacts to the Department as a result of this bill.

Prepared by: Barbara Thompson, Deputy Director Phone 465-8727
 Division Commissioner's Office Date/Time 12/20/99 4:14 PM
 Approved by Commissioner Richard S. Cross Date 1-6-2000
 Agency Education & Early Development

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Subject: HB301

Date: Fri, 14 Apr 2000 12:51:03 -0800


From: Marc Grober <marc@interak.com>

To: Representative_Eldon_Mulder@lrgis.state.ak.us

Attached you will find testimony prepared for the Senate HESS committee. I would appreciate it if you would a) circulate this testimony to all the Finance Committee members; b) advise all the members that, thanks to the intervention of our federal Congressional delegation there is no need to pass this bill out this session; c) this is poor legislation as the House HESS committee recognized in unanimously refusing to recommend the bill pass. The only way the public is going to get the opportunity to ensure that appropriate legislation is adopted is for this bill to die. On behalf of the hundreds of people who have tried to tell the legislature how really bad this bill is I ask that you let the bill die in committee.

Marc Grober

p.s. please confirm by return e-mail that you were able to open and print the attached testimony

 sb205testimony.wpd	Name: sb205testimony.wpd Type: WordPerfect Document (application/wordperfect5.1) Encoding: base64 Download Status: Not downloaded with message
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LAW OFFICES OF MARC GROBER
104 MULDOON RD., BOX 409
ANCHORAGE, ALASKA 99504
(907) 337-5687 VOICE AND FAX
MARC@INTERAK.COM

April 14, 2000

Senate HESS Committee
Via E-mail

Re: SB205/HB301

Dear Senators,

You now have before you SB205/HB301 ("bill"). This bill suffers from a variety of simple mechanical flaws as well as from a number of policy problems that have wide ranging impact. After months of review, lengthy hearings and broad consultation with bill proponents (all of which resulted in an extensive file which the Chair has and which I have requested be shared with the members of the committee) your colleagues in the House HESS committee refused to recommend that this bill pass. The bill initially survived only because of the original claims that failure to ensure passage of the bill would result in a loss of fourteen million dollars in federal funding, claims that are now acknowledged to be untrue, and I believe the bill continues to survive only out of intra-branch comity. I will present below my testimony regarding some of the more blatant defects in the legislation. My full analysis, in the form of my comment upon a sectional analysis of the current bill updated as of today (i.e. if you have looked at this information previously it has now changed to address recently developments) is available on the web at <http://akcept.interak.com/akceptionalities/govs.html> and I do hope you take the opportunity to review the material there, which I'd like to incorporate in my testimony by reference.

Before I proceed to that testimony I want to advise the committee that I have provided a copy of my resume which by now I hope you all have so you understand my background and expertise in these matters. I have been testifying before HESS committees on special education since 1992, have proposed the only omnibus rewrite of these statutes to serve as a focal point for discussion of the issues relating to special education. I am one of a very few attorneys who have litigated special education matters and may be the only attorney to have litigated gifted education issues. I have been appointed by the Courts through the Public Advocate to represent persons involved in special education litigation before our

state courts because of my expertise in this area and to my knowledge am the only attorney to be so appointed. I was first qualified as a DOE hearing officer in 1994, and though state law makes it clear that there are no currently qualified hearing officers, let me just say that I continue to be as qualified to serve as a DOE hearing officer as anyone else in the state. I have obtained in the past Secretarial Review of special education practices in this state (Secretarial Review was the process by which the Secretary acknowledged that the state was not complying with the terms of the federal grant and mandated corrective action, a process which was eliminated in the 1997 IDEA amendments leaving AKDEED without any real oversight.) I am past Chair of the Education Law Section of the Alaska Bar Association as well as past CLE Chair. I have been professionally involved with the issues before this committee longer than anyone you are ever likely to hear from and have been litigating these issues for almost 20 years. I am not speaking in any formal representational capacity today though I can tell you that as word of this bill spreads throughout the state (and it is difficult because of the confidential nature of the subject) hundreds and hundreds of parents are becoming outraged that the legislature is looking at letting the fox into the henhouse. Now I'd like to address the bill.

The bill proposes major but inconsistent changes to AS 14.30.180 et seq (also identified as "Article 3 Educational for Exceptional Children" and sometimes referred to below as the "Article"). It repeals most of the substantive provisions relating to due process rights and transfers responsibility for formulating pertinent law to the Alaska Department of Education and Early Development (AKDEED). The bill requires, whether one agrees or not with the apparent policy statement it makes (that Alaska shall do the least humanly possible for our children that will still allow us to use them to collect federal revenues), the following adjustments to address its stated purpose (as enunciated by the Governor in his transmittal letter.) Though I have continued to search for any kind of sectional analysis prepared by AkDEED that addresses this bill I have been unable to locate such a document and it is difficult to address the contents of a bill when the proponent has been unable or unwilling to substantively and publicly support the bill.

1. The current bill was presented to you as necessary to bring state law in compliance with federal regulations. Yet the bill does not address the fact that AS 14.30.350(2) IS NOT consistent with 34 CFR 300.7(a)(1) defining child with disability. You should know that one district has already been called on the carpet by AkDEED for complying with the language of AS 14.30.350(2)! If AKDEED is unable to address even this most insignificant drafting issue, can you really rely on much else they present to you?
2. The bill repeals AS 14.30.350(9) and (11) defining "related services" and "special education", but the bill repeals and re-enacts AS 14.30.186 which employs both terms.
3. The bill amends AS 14.30.180 but fails to include the complete term of art "free appropriate public education" or FAPE (the word "free" is missing) and repeals AS

14.30.350(11) which was the only portion of the statutes that mandated compliance with the federal mandate that states provide FAPE (by requiring that such benefits be provided at "no cost"). On the other hand AS 14.30.193(a) does include the entire phrase. The statute is clearly inconsistent and fails to mandate the very kernel of the IDEA, FAPE.

4. I have previously provided suggested replacement language for AS 14.30.180, drawn from the laws of the State of Missouri, which states an appropriate state policy regarding exceptional children. This proposal is appended to the end of my testimony as well. It assumes that there are also statutory definitions of special education and related services that make it clear that these benefits are offered at no cost.

5. AS 14.30.180(2) has been grossly misinterpreted by AkDEED and needs to be repealed so as to avoid further misadventure. AkDEED has been advising that this section mandates that Alaska comply with federal IDEA regulation no matter how the IDEA itself or federal regulation is amended from time to time. This is false under state law (in fact there is a specific regulation addressing this point at 4 AAC 52.900) and the Department has apparently acknowledged this before the House HESS committee (which in part was the basis for the extensive amendments restating the legislature's authority in this matter). In as much as the language is superfluous (as a number of persons testified on April 12th) there is no reason not to delete the language. If the committee feels that it must retain the language, there should be additional language included to ensure that AkDEED does not engage in such misdirection in future.

6. The bill (Section 2, amending AS 14.30.182) authorizes AkDEED to take action necessary to qualify for federal funds. While this provision amounts to moving AS 14.30.335 to Section 182, the language is still superfluous as noted above and leaves too much room for misinterpretation by AkDEED.

7. The bill makes a variety of amendments to AS 14.30.193 and 195 but fails to address underlying systemic problems:

a) First of all, while Section 195 affords the subpoena power in tier two or state hearings (in which it is rare to even take testimony as these are supposed to be largely review hearings), Section 193 which references tier one hearings or district hearings which is where most evidence is adduced, does not afford such hearing officers that power. This has been a gross violation of the IDEA mandate for 30 years and has been recognized by every expert who has looked at the issue (even the experts retained to train due process hearing officers). The subpoena power must be specified with respect to both tiers.

b) Lawyers practicing in this area of the law appear to agree that a two tiered system is inappropriate and a waste of resources. Many states use a single tier system. In response to my colleagues' concerns I contacted the federal Office of Special Education Programs and obtained the names of states that had gone from a two tier to a single tier system and then discussed this change with staff in those states. I was very impressed with the provisions of the Missouri statutes and spent a considerable amount of time with Missouri state special education staff reviewing these provisions and how they have operated in that

state. In a nutshell the Missouri system employs a single tier with a three person panel (panels are employed by quite a number of states). One panel member is a state contracted attorney responsible for administration of the program. One additional panel member is then appointed by each of the district and the parents. This results in a system where everyone believes they are being heard, a system where people believe the decisions are well reasoned thereby reducing appeals, a system that promotes well researched decisions that provide some precedential value. And, the system results in a quicker constitution of the panel. I encourage the committee to adopt a modified Missouri plan for providing due process hearings to parents in Alaska.

c) The bill essentially approves the Departments refusal to adopt regulations in compliance with the 1993 amendments to Section 193. The 1993 amendments were intended to ensure that there was an open register for hearing officers and that hearing officers would be qualified for a limited time based upon their successful completion of training. The Department has only tested hearing officers at the completion of training once since 1994. The Department has never open training to any member of the public who wanted to take that training. The training offered by the Department has been inadequate (indeed at the present time there are persons allegedly qualified as hearing officers who don't understand how to apply state statute and regulation.) The practice recommended by AkDEED and the practice and procedure embodied in the current bill are inadequate to afford due process to parents.

d) Section 193 fails to adequately address who has the burden of requesting a due process hearing and this is no small matter. Under prior federal law, if a parent did not agree to a proposed change to an IEP the proposed IEP COULD NOT be implemented (See Appendix C to 34 CFR Part 300 as applied under 4 AAC 52.900). A district which wished to override the parent's refusal had to demand a due process hearing. In practice, Alaska districts, apparently aided and abetted by AkDOE, violated these parental rights. The '97 IDEA Amendments have now gone a step further and recognized the past agency practice as acceptable (i.e. a district can arguably impose an IEP, placing the burden of requesting a due process hearing on the parent.) However, this federal policy is contradicted by Section 3 of the the bill (addressing AS 14.30.186(c)). This confusion will lead to a good deal of litigation and also presents a number of equal protection issues with regard to parents who are not home schooling their children.

8. The bill inadequately reconciles the provisions of AS 14.30.340(a) and AS 14.30.186. Section 340(a) should be repealed and the provisions rolled into Section 186. Perhaps more appropriately, more attention should be spent defining the terms employed as part of Section 350.

9. The bill attempts to use as a legal construct the residence of the child, but fails to define that construct. Again, this is not a simple matter, as drafters attempting to distinguish between residence and domicile as concerns entitlement programs have known for years. Suggestions were made in 1994 as to how to possibly address this matter but it remains

an issue. There is also concern that the current language may run afoul of the adoption of unilateral placement policy in the IDEA.

10. School districts face tremendous problems in distinguishing between that class of persons who may be qualified under the IDEA to exercise parental rights, and those persons who in fact may legally exercise those rights. By way of example, recent litigation arose over a situation in which a district allowed a parent without legal custody to approve of an IEP change while the parent with legal custody refused to approve the change. This places districts in an untenable position. Judicial officers involved suggested that they could not believe that a district would change an educational program on the basis of demand from a parent without legal custody but the district apparently claimed they had been directed to do so by the Department. While the IDEA tried to make advocacy for a child easier by requiring that a state recognize that a larger class of persons may exercise parental rights, this was not intended to wreak wholesale havoc by constituting all possible members of this class as having complete and total authority to act on behalf of the child. This defect must be resolved now.

11. The bill continues to provide for a shadow realm where parental rights are not adequately recognized. In 1993 we proposed (and AKDOE finally admitted) that the provisions of Title 47 (including the CINA statutes) could be employed to provide districts with an opportunity to override parental decisions where the district believed that such parental decisions were contrary to the child's welfare. By following the existing statutes parents would be guaranteed assistance of counsel any time a district attempted to force parents to accede to district demands with respect to special education programming or evaluation. It would also be economical by employing a single system and would avoid the situation where districts simply attempt to push parents around by subjecting such action to judicial scrutiny. The federal law DOE NOT prohibit the state from employing whatever internal process the state wishes to employ, as long as districts are afforded some opportunity to have a judicial officer review a parents refusal.

12. Section 4 of the bill only addresses the situation in which parents exercise rights. Yet under our current regulations and as authorized under federal guidelines, these rights may pass to children when they reach the age of majority. If it is the intent to maintain our current law in this respect, the amended law would be once again inconsistent with such policy. See e.g. 4 AAC 52.560, 34 CFR 300.517.

13. I have continued to recommend that this Article be amended to adopt the appropriate provisions of the Alaska Administrative Procedure Act. This would provide a wealth of precedent as well as the benefit of years of wisdom regarding administrative proceedings.

14. The IDEA amendments also require a reconstitution of the special education advisory board. AkDEED has not brought that to you because they don't want such changes to be subject to the political process. Is it reasonable to believe that AkDEED has intentionally

left a portion of the compliance mandate out of the bill in order to bypass the real intent of the IDEA and to make sure that the mandated advisory board continues to be maintained in such a manner as to only represent an interagency clearing house? I suggest that in order to avoid further public outcry regarding the unholy action of AkDEED, that the authority for appointing people to the required advisory board be transferred to the Chair of the Legislative Council or of the House or Senate HESS Committee so that the board can do what it is supposed to do.

15. The bill for the first time establishes a statute of limitations that, for no apparent reason does not apply to districts. I can tell you from extensive experience that based upon the nightmares that parents face in dealing with districts and AkDEED on these issues that 12 months is grossly inadequate. A two year statute of limitation that applies to both parties would be appropriate.

16. Section 4 of the bill represents the intent of the administration to cease using the term exceptional to generally refer to the beneficiaries of this Article (though the bill leaves the term in the purpose clause and in the definitions section of the Article). AkDEED has apparently been claiming that federal guidelines mandate such a change. This is nonsense and may stem from a gross misreading of 34 CFR 300.152 which merely requires (as SB315 recommended in 1994) that there be an audit trail so that spending of federal funds can be tracked. Much of the bickering and patching that has been engaged in before both committees stems from this apparent misreading. There is no reason whatsoever that state statute and regulation can't include a larger class as subject to federally mandated rights than that class identified under federal law. In fact the federal regulations go so far as to make it clear you need not even label a child.

The two essential requirements are a) that at least a certain minimum class of children get at least a minimum set of rights and b) the grant application for the federal funds has to be limited to those students who qualify under federal guidelines and the funds have to be tracked so that everyone can be assured the funds are being spent on something other than, say the panelling of a superintendent's office. *In sum, this body could in fact adopt statutes that provided that every child in the state was entitled to the rights and protections identified in federal regulations.* However, you would only receive federal funds for those students who qualify under the federal guidelines. I encourage the committee to retain the use of exceptional throughout the statutes and regulation (mandating that the agency employ that language.) This format has worked for this state for 30 years (yes, Senators, I said thirty years). The initial HB301 created quite a number of equal protection issues because while it removed some provisions it retained others. The current amendments, while obviously well intended, fail to provide protections necessary to ensure that our at-risk children receive services and they render the equal protection issues arguably even greater because of the continuing inconsistencies in the bill. There are a number of easy (yes, easy) solutions to the G/T problems, but I respectfully submit that

you are not going to be able to address them, together with the other problems inherent in this legislation, within the time remaining to this committee.

That concludes my overview of the most obvious issues with this legislation. I could go on for days. Let me close with some observations.

While this committee may have to co-exist and co-operate with the administration, that in no way suggests that the staff that has appeared before you is competent to testify on the issues addressed in this bill. While the nominal subject of special education is "education", the essence of special education for the past 30 years has been the law. The issues of due process and compliance, the heart and sole of special education law, are matters of legal art, not educational policy. There are only about a dozen attorneys who have ever litigated these matters and about half represent school districts, from whom you have not heard at all. Of the remaining counsel, half again are employed by agencies funded by governmental administrations. The administration has never been successful in obtaining compliance with special education law at any time during the past 30 years. The administration has spent millions and millions of dollars without any real accountability and has refused to even comply with this body's pronouncements, the law of this state (most recently AkDEED has taken to advising districts to violate state law.) The administration has given you a mistaken history of the IDEA, a mistaken view of federal requirement, and a mistaken view of federal policy. The administration has attempted to keep the public out of this discussion. This is not a pretty picture, but it is a picture that the majority of this assembly has been wrestling with for some years now. I want to see necessary educational programs properly funded so that all children get a free appropriate public education. By the same token I want to see a competent administration that understands that regulations follow statutes, not vice versa, and I want to see some accountability for the millions of dollars that have been spent WITHOUT COMPLIANCE.

Senators, I appear here before you without a client, without being on the payroll of some government funded organization, for the same reason I appeared here in 1993. I am an officer of the court and practice in this area of the law and a parent of exceptional children (both disabled and gifted), children who would have been denied all services but for the statutory rights now in place. You are being asked to abrogate those rights by the same people who have failed to protect those rights over the past 30 years (leaving it to private counsel to enforce those rights.) The paper houses that AkDEED may present are very pretty, but the realities, as always, are much less pleasant. Senators, I beg of you to protect the third of our children impacted by AS 14.30.180 et seq. I ask that you take no action on the bill, that you start from scratch with the assistance of persons like myself who have litigated these issues and are not on any payroll, and that you present to the next legislature proposed legislation that will show respect for our population.

Thank you.

Marc Grober

A Statement of Purpose for Use in Alaska

*Section 1. AS 14.30.180 is repealed and reenacted to read:

Sec. 14.30.180 Statement of policy. In order to fully implement section 1 of article 7, of the Constitution of the State of Alaska, providing for the establishment and maintenance of public schools open to all children of the State, it is hereby declared the policy of the State of Alaska to provide or to require public schools to provide to all exceptional children under the age of twenty-two, as an integral part of Alaska's system of public education, special educational and related services sufficient to meet the needs and maximize the capabilities of exceptional children. The need of such children for early recognition, diagnosis and intensive educational services leading to more successful participation in home, employment and community life is recognized. The timely implementation of this policy is declared to be an integral part of the policy of this state.

Alaska Department of
EDUCATION
& EARLY DEVELOPMENT

Highlights of SB 205/HB 301

"An Act relating to the education of exceptional children"

Purpose:

To update state special education statutes to conform with the federal Individuals with Disabilities Education Act of 1997. The bill removes unnecessary detail from state statute, thus removing conflicts and inconsistencies with state and federal law. Alaska stands to lose thirteen million dollars in federal funding if we fail to update our statutes.

State Statutes Proposed for Repeal:

14.30.191 Educational evaluation and placement.

The current state statute is inconsistent and incomplete with regard to evaluation and placement of students with disabilities. Federal statute on education evaluation and placement is comprehensive, and now includes parents in the process of determining their child's eligibility and evaluation needs. The state will rely on federal law.

14.30.272 Procedural safeguards.

The current state statute does not include all federal procedural safeguards (parents' and students' rights and protections including mediation, complaint investigation or due process hearings) for students with disabilities. The state will rely on federal law.

14.30.274 Identification of exceptional children.

Current state law does not hold statewide correspondence programs fully accountable for identifying enrolled children with disabilities (child find). The state will rely on federal law.

14.30.278 Individualized education program.

Parents, students and regular education teachers are now essential members of the Individual Education Plan (IEP) teams according to federal law. The state will rely on federal law.



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 28 2000

Honorable Richard S. Cross
Commissioner
Alaska Department of Education and
Early Development
Goldbelt Place
801 West 10th Street, Suite 200
Juneau, Alaska 99801-1894

Dear Commissioner Cross:

This is in response to your letter dated February 14, 2000, in which you set out what you refer to in your inquiry as "unique circumstances" that you indicate the Alaska Department of Education (AKDE) has faced since the reauthorization of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, (IDEA '97). You ask about the possibility of a waiver of the State's requirement to review and revise Alaska's state statutes regarding special education in light of the changed Federal requirements of IDEA '97 and its implementing regulations.

As explained below, a waiver is not possible.

Under IDEA '97, to be eligible for funds a State "must demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the conditions [set forth in section 612(a) of the Act and the implementing regulations]." Most of the provisions of IDEA '97 regarding State eligibility for formula grants for special education became effective on June 4, 1997, the date of enactment. See section 201(a) of IDEA '97. Some statutory changes, however, had a delayed effective date, until July 1, 1998. In addition, final Department regulations implementing IDEA '97 were published on March 12, 1999, and became effective on May 11, 1999.

Recognizing that States would need some time to revise State statutes and regulations consistent with new IDEA provisions, for Federal fiscal years 1997, 1998, and 1999, States were allowed -- in lieu of providing revised policies and procedures -- to submit an assurance that throughout the period of the grant award, all public agencies in the State would comply with the pertinent requirements of IDEA '97 and the provisions of the then current regulations that were not in conflict with the requirements of IDEA '97, as well as any State laws, policies, and procedures under IDEA approved by this Office that were not inconsistent with IDEA '97. This was not a waiver of State compliance responsibility but a realistic approach to allow States time to conform their policies and procedures to IDEA requirements, while operating in a manner that was consistent with those new requirements. Alaska submitted the required assurances for receipt of FFY 1997, 1998 and 1999 Part B grant awards. States were advised, however, that once the IDEA '97 regulations were final, they would be required to submit their conforming policies and procedures, including revised statutes and regulations, as appropriate, in order to establish

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Additional Information

eligibility for subsequent awards. Thus, final policies, procedures or regulations implementing IDEA 97 are to be submitted with the States' FFY 2000 applications. Subsequent to the publication of the final regulations, the Office of Special Education Programs staff worked cooperatively with States to review a State's existing policies and procedures in light of the changes made by IDEA '97 and its regulations and develop an 'Implementation Plan' to guide the State through conforming modifications to policies, procedures and practices. Alaska's 'Implementation Plan', like that of other States, identified the IDEA requirements that had changed and for which State statutes and regulations would need to be revised.

The only IDEA-specific waiver authority that would allow a State not to comply with program requirements is the authority the Secretary has to grant waivers relevant to State level nonsupplanting and maintenance of fiscal support in certain very limited circumstances. See 20 U.S.C. §1412(a)(18)(C) and 1412(a)(19)(C) and (E); 34 CFR §300.589. Other waiver authority of the Department under programs such as Goals 2000 and the Elementary and Secondary Education Act does not apply and has never applied to the IDEA.

We understand the personnel matters in Alaska that have occurred during the implementation of the new Federal requirements. However, we have an obligation to ensure that a State that participates in the IDEA special education program is operating consistent with IDEA '97 and its implementing regulations and that all children with disabilities in the State have the rights and protections afforded thereunder.

We appreciate your commitment to provide quality educational services to children and youth with disabilities. My staff and I are available to provide any necessary technical assistance to support your efforts.

Sincerely



Kenneth R. Warlick
Director
Office of Special Education
Programs



TONY KNOWLES, GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-269-8990 • Fax: 907-269-8995

March 22, 2000

Representative Fred Dyson
Alaska State Legislature
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Dyson:

Subject: HB 301

In its role as the state's Special Education Advisory Committee, the Governor's Council on Disabilities and Special Education asks for your support for HB 301 under consideration by the House Health and Social Services Committee on March 23, 2000. As we understand it, the bill revises Alaska Statute by incorporating amendments to the Individuals with Disabilities Education Act (IDEA).

With the improvements that we discuss below, the Council supports the passage of HB 301.

HB 301 will repeal conflicts and inconsistencies between state and federal law and incorporate the IDEA amendments into the state's procedures. Some of the most significant changes made to IDEA in 1997 that strengthen the role and responsibilities of parents in the education of their children in special education include:

- participation of children and youth with disabilities in state and districtwide assessment (testing) programs such as the Alaska High School Qualifying Exam;
- the way in which evaluations are conducted;
- parent participation in eligibility and placement decisions
- development and review of the Individualized Education Program (IEP) including an emphasis upon participation of students with disabilities in the general education classroom and in the general curriculum, with appropriate aids and services;
- the addition of transition planning;
- voluntary mediation as a means of resolving parent-school controversies; and
- discipline of children with disabilities.

Suggested improvements to the proposed language in HB 301:

The proposed change in Section 3 (line 11) to AS 14.30.186 clarifies a district's responsibility to provide special education when the student enrolls in a statewide correspondence program. Additionally, Section 10 (line 22) which makes changes to AS 14.30.340 (a) clarifies a district's accountability for funding special education when a student enrolls in a private school with the agreement of the district. Clarifying this accountability is helpful. However, neither of the proposed changes clarifies what type of services can be received.

Creating Change That Improves The Lives Of People With Dis

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To	RFP Fred Dyson	Fr
By	WSS Kelle	Ca
Dept.	2 pages	Pho.

Sometimes when these situations have occurred in the past, districts have had problems in resolving issues of providing transportation and related services. Many times the districts will enter Memorandums of Agreement to define their responsibilities. If the department is authorized to write regulations for this section, the regulations should identify further the services that must be funded under these sections.

We are concerned about the limitations on parents to request a due process hearing and their access to information about hearing officers. In Section 5 (line 21), AS 14.30.193, the change would only allow a 6 month period of time in which a parent may request a due process hearing to resolve a dispute with the district. Given the emphasis to explore other remedies to conflicts between parents and districts, this time limit is too short and it puts the parents in a difficult position to resolve problems with schools using other methods. As we understand it, the Committee Substitute provides at a one year time period in which to request a due process hearing and we support this amendment.

The proposed change to AS 14.30.193 in Section 7 (line 06) would allow the department to set criteria for hearing officers by regulations. Under this section, the department must provide the parents requesting a hearing with a list of qualified hearing officers. This section can be improved by adding to the list of hearing officers a statement of qualifications of each hearing officer and a disclosure of any relationship that may exist between a hearing officer and a district or conflicts of interest that may interfere with the hearing officer's objectivity.

Section 9 (line 18), AS 14.30.340 (a) would separate gifted and talented programs from services for exceptional children (students in special education). This change may better represent the nature of special education and resolve concerns about the use of federal special education funding. However, the proposed language does not assure that the current procedures available to parents of gifted students will continue under the new statute. These procedures are of great value to parents as they assure that they are partners in planning, evaluating, and directing the education of their children.

We suggest the legislature make it clear that in writing regulations to implement Section 9 current procedures available to the parents of gifted students must continue. Additionally, we request that the legislature direct the department to adopt consistent criteria for eligibility, level of service, and uniform practices in the delivery of Gifted and Talented Education curriculum across the state.

Thank you for your thoughtful consideration of these suggested amendments. If we can answer any questions regarding the Council's position or suggested improvements to HB 301, please contact me at 907 269 8991.

Sincerely,

A handwritten signature in black ink, appearing to read "David Maltman", with a long horizontal line extending to the right.

David Maltman,
Executive Director



NEA-ALASKA

Affiliated with the National Education Association

Special Services for Children April 4, 2000

NEA-Alaska offers the following considerations in response to HB 301. The positions listed below have been identified by teachers and support personnel who work with the gifted and talented and with those students with special needs.

1. It is important that an aggressive campaign be initiated to inform teachers and support personnel of the details and implications of the Individuals with Disabilities Act (ADA), Section 504 of the Rehabilitation Act and other pertinent federal law.
2. It is important for the State of Alaska through the Department of Education to fund and assist school districts in the development of local eligibility criteria for gifted and talented students.
3. Since the State of Alaska requires additional education for Special Education pre-school teachers and teachers of the gifted and talented for recertification, the Department of Education and Early Development should provide training to teachers locally using a variety of delivery systems.
4. It is important that the Department of Education and Early Development monitor and facilitate local school districts' compliance with IDEA and ADA and any other special education laws to include clear and timely guidance and assistance in program development on the local level.
5. Adequate funding and release time for the inservicing and training of all staff responsible for providing services for special education students within the least restrictive environment should be provided.
6. The integration of special education students should be monitored in order to protect the intent of PL 94-142, and IDEA to ensure that regular classes have a reasonable balance of regular and special education students.
7. A staff person should be designated by the Department of Education and Early Development to assist school districts in the development and implementation of gifted and talented programs.
8. Special education funding should be prorated so that funds will follow a transient student from one school district to another.

PARENTS, Inc. Legislative Alert

Thursday, March 23, 2000, at 3 p.m.
Hearing on Alaska Special Education Bill HB 301
House HESS Committee, Capitol 106

HB 301 and SB 205 were offered to the Alaska Legislature on January 20, 2000 by Governor Tony Knowles. The purpose of the bill as stated by the Governor is:

"In 1997 Congress reauthorized the Individuals with Disabilities Education Act (IDEA) which took effect this past July. State law and regulations contain inconsistencies that restrict our compliance with federal programs while creating confusion between the state Department of Education and Early Development (department) and individual school districts. This bill repeals those inconsistent state laws, brings the state into compliance with the intent of Congress, and offers clear guidance and assistance to school districts in delivering services to special education students."

IDEA 97 is a parent-driven law that was part of a grassroots movement that included parents of children with disabilities and special needs from every state. Through IDEA:

- Over 1 million children in the U.S. are being educated in their neighborhood schools.
- There has been over a nine percent increase in high school graduation for students with disabilities.
- Youth served under IDEA are employed twice as often as students before IDEA was enacted.
- IDEA is committed to making parents a primary participant in their child's education and an equal partner in ensuring success with schools.

FUNDING MAY BE LOST IF THIS BILL NOT PASSED

IDEA 97 provides substantial funding to Alaska for the education of our children with disabilities. If this bill is not passed into law quickly, and regulations not quickly adopted by the department, Alaska, our schools, and our children are in danger of losing federal funding. PARENTS, Inc. has received assurances from the federal government that they are very serious about delaying funding or penalizing Alaska financially if we do not come into compliance quickly with federal changes in the law. We do not want to lose what we have worked so hard to obtain in Alaska.

CONCERNS ABOUT THE LEGISLATION

Here are some of the concerns that you will hear about HB 301 and SB 205, and here are the real facts:

- *Concern:* The bill would delegate all authority to the department to adopt whatever they want through regulation.
The Truth: IDEA 97 and federal regulations clearly define what states and schools must provide for children with disabilities. Neither the Legislature or department can do anything that is less than the standard set by the federal government.
 - **Action Statement:** "Do not endanger our children's education by delaying passage of this bill."
- *Concern:* The bill does not clarify what type of service can be received for correspondence and/or private school student.
The Truth: IDEA 97 and federal regulations clearly state that public correspondence programs must provide all the same services as you would receive if enrolled in a regular public school. Federal law clearly states that private school student are not entitled to the same amount of services as public school students and discretion is left to the department or school districts to decide how much services

will be provided. Such formulas are complex and it is inappropriate to confuse this section by specifying any sort of funding formula for private schools.

- **Action Statement:** "Allow the department to set regulations allowing local control of service to student enrolled in private schools. Do not bog down this crucial bill with unnecessary details."

- **Concern:** Leaving the authority to the department to bring Alaska into compliance with IDEA 97 will ensure that we receive nothing above the minimum required by federal law.

The Truth: The State regulation process allows for considerable public comment. Agencies such as PARENTS, Inc., which is the parent training and information center authorized under IDEA 97, are specifically mandated by federal law to ensure that a maximum amount of parent participation and public comment is allowed during the process of writing the regulations. However, any sort of language added to the bill that would require Legislative approval of any regulations that differ from federal law will encourage the department to meet the minimum federal standards only. This is due primarily to the time limit set by the federal government for the regulations to be finished before Alaska will be subject to financial penalties.

- **Action Statement:** "Please do not delay this bill by adding unnecessary oversight or approval processes. The state process for regulations, and federal laws are sufficient at this time."

- **Concern:** The bill would limit parents' rights to file a due process hearing.

The Truth: Yes. The language in the bill would restrict the rights of parents to file due process hearings to be made no later than six months after the issue of disagreement. PARENTS, Inc. recommends that parents be given two years.

- **Action Statement:** "The rights of parents and children must be adequately protected. Please protect us and our children by allowing two years to file a due process hearing request."

- **Concern:** The department may enact regulations that do not allow parents to see a list of qualifications of hearing officers for due process complaints, or possible relationships that may exist between them and a district.

The Truth: IDEA 97 already requires States to maintain a list of hearing officers with full qualifications listed. Federal law and regulation also requires that these officers be impartial (in other words, they cannot have a conflict of interest relationship with the district in which they are hearing the complaint). A list of all of this information can be requested at any time through federal freedom of information law. Any such additional language in the bill would be unnecessary and confusing.

- **Action Statement:** "Please do not delay this bill by adding unnecessary language that is already covered by federal law."

- **Concern:** The bill would separate gifted and talented programs from special education services. It would be weakened. The language should be strengthened.

The Truth: This is only partially correct. IDEA does not cover gifted and talented at all. The language in this bill would bury gifted and talented programs in the wrong state law. The federal government has stated repeatedly that putting gifted and talented in Alaska's state law will endanger our federal special education funding. Strengthening the language will not solve the problem and not be very helpful to gifted and talented programs. The only real solution is to urge the Legislature to create a separate bill that recognizes gifted and talented programs as separate and unique. This bill should be tailored to fit the unique needs of Alaska's gifted students, with clear services and protections included. This can never be done by leaving it in this bill.

- **Action Statement:** "We urge the Legislature to support excellence in Alaska schools by creating a true gifted and talented program in a separate bill. Including it with this bill will only bury it and diminish it."

- **Concern:** This bill should include additional language ensuring participation of students with disabilities in state and district-wide assessments such as the Alaska High School Qualifying Exam; specify the way evaluations are conducted; parent participation in eligibility and placement decisions; participation of students in the IEP process, and additional transition planning.

The Truth: All of this is already required in detail in IDEA 97 and related federal regulations.

Including a large amount of extra language that is already required by federal law is unnecessary and may slow the passage of this bill. The new federal law already requires that students with disabilities be included in the "exit exams," "benchmark exams," and to be given an alternative assessment if the student is unable to take the exams, even with full accommodations provided.

- **Action Statement:** "Please do not delay this bill by adding unnecessary language that is already covered by federal law."
- **Concern:** Considerable language is in the bill about due process hearings, but not mediation as a means of resolving parent-school controversies.
The Truth: IDEA 97 requires that mediation be made available. This is a much better means of resolution than due process. Federal law allows states to encourage mediation by mandating the state's parent training and information (PTI) organization authorized under IDEA to provide training and information to parents and schools to encourage use of alternate means of dispute resolution.
- **Action Statement:** "Please add language to the bill to encourage alternative dispute resolution methods such as mediation. We encourage the use of Alaska's parent training and information center to encourage mediation and other alternative means of resolving disputes, as allowed in IDEA under Section 682."

What to do:

- E-mail: Representative Dyson of the House HESS committee (regarding HB 301) at Representative_Fred_Dyson@legisl.state.ak.us and call him at 907-465-2199
- E-mail: Senator Miller of the Senate HESS committee (regarding SB 205) at Senator_Mike_Miller@legis.state.ak.us and call him at 907-465-4976
- Contact the representative and senator that represents your area.
- **Note:** please let PARENTS, Inc. know what you said and what response you got by calling us at 337-7678 if you are located in Anchorage AK. Statewide please call toll-free at 1-800-478-7678 or e-mailing us at IDEA@parentsinc.org.
- Show up at your Legislative Information Office this Thursday, March 23, at 3pm to testify.

PARENTS, Inc. 1-800-478-7678

Testimony on behalf of passing HB 301

4/4/00 3pm

By: Faye Nieto, MA LMFT

Executive Director of PARENTS, Inc. – Alaska's Statewide Parent Training and Information Center

PARENTS Inc. is funded by the US Department of Education, Office of Special Education Programs to improve early intervention, educational, and transitional services and results for children with disabilities through coordinated technical assistance, support and dissemination of information activities and services.

PARENTS, Inc. to meet our mandate is required to: assist parents to understand the provisions of federal IDEA, procedural safeguards, alternative methods of dispute resolution, such as mediation, decision making processes that pertain to development of Individual Education Programs under part B and Individual Family Service Plans under part C and the services therein so ensured through education reform activities like the conformance of state and federal law through passage of HB 301.

PARENTS, Inc. is compelled to let parents and decision makers know the good things have resulted from IDEA best practice: million children are now educated in their community schools. 9% increase in graduation rates, twice the opportunity to become employed vs. those not transitioned, parents are equal partners in their child's education.

PARENTS, Inc. in an effort to ensure that minimal or better standards were set for Alaska's children with disabilities engaged in a process that compared state law to federal law, state regulation to federal regulation, proposed repeals and changes to state law as compared to federal law and regulation along with analysis of other public advocate, legal counsel and parent comments gathered during our statewide training, forum, regional advocate, e-mail and other pertinent contacts that totaled 67,000 FY00 year to date. Review of this data yielded the following recommendations:

- Protections for Surrogate Parent appointment was added back into law
- Annual review of Special Education Services by the legislature will afford continued parent input into school improvement/reform activities
- Mediation as an alternative form of dispute resolution was recommended and not included and will be added into regulations
- Extended due process hearing timeline from six months to one year which has been found acceptable by state and federal courts
- Language for gifted programs was expanded to include the types of services and protections and remain confident that once HB 301 is passed the DEED through regulation will now be able to strengthen this program and fulfill the necessity for separateness from IDEA services
- Children with disabilities have the right to receive services when enrolled in religious schools thus expanding the options for educational choice
- Parents who Home School have the right to refuse special education services, thereby protecting a parents right to privacy and right to raise their children as they see fit

PARENTS, Inc. through discussions with DEED Administration and legal counsel has been assured that the regulation process will include a complete review of Stakeholder comment that will be used to satisfactorily amend so a conceptual framework for IDEA service provision can result that will meet the needs of Alaska's special education students. We are confident that the DEED and State School Board will keep their word as we work together to bring the best of practices to our Alaskan educational system.

29 IDELR 1088**Pawlisch, Letter to (Statute of Limitations)**

Office of Special Education Programs

Dr. Juanita S. Pawlisch
 Division Learning Support
 Assistant Superintendent
 Department of Public Instruction
 125 South Webster
 P.O. Box 7841
 Madison, WI 53707-7841

Digest of Inquiry

[Date Not Provided]

- Is a one-year statute of limitations for requesting due process hearings allowable?

Digest of Response

October 22, 1997

One-Year Statute Of Limitations Permitted

Since the IDEA lacks a provision specifying a statute of limitations, courts most often borrow the most closely analogous state statute of limitations. In Wisconsin, a proposed statute required a written request for a due process hearing to be filed within one-year of the challenged action, provided the parents were made aware of the limitations period. OSEP stated a 60-day limitations period would be unreasonable, but the one-year period might be allowed. Before enacting the one-year period, the state was directed to make sure the one-year limit was similar to the most closely related state statute of limitations, and to ensure that federal education claims were not subjected to a stricter statute of limitations than state claims.

Text of Response

The Office of Special Education Programs (OSEP) has completed its review of Wisconsin's 1997 Assembly Bill 261. The Bill provides that the written request for a hearing must be filed within one year after the proposal or refusal of the school board to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement, or the provision of an appropriate special education program. The Bill also includes a proposed addition, which states that the limitation period would apply only if the parent of a child with a disability received notice of the right to appeal.

Under current Wisconsin law, there is no specific limitation as to when a parent of a child with disabilities may file a written request with the Wisconsin Department of Public Instruction for a hearing to challenge the school board's proposal or refusal to initiate or change the child's multidisciplinary team evaluation, individualized education program, educational placement, or the provision of an appropriate special education program.

The Individuals with Disabilities Education Act does not impose any time limitations. Under the Act, there is no statute of limitations for either requesting an administrative hearing or seeking judicial review. Although the Congress has created a federal statute of limitations for civil actions arising under Acts of Congress, its application is limited to laws enacted after 1990. 28 U.S.C. § 1658. However, OSEP previously indicated in a letter to Raskin, OSEP 1991, that a 60-day time limit for filing due process requests which had been proposed in New Hampshire would be an unreasonable limitation upon Federal law.

Traditionally, Courts have imposed analogous State statute of limitations on both requests for due

process hearings and judicial appeals of those hearing decisions. *Dell v. Bd. of Educ., Township High Sch. Dist. 113*, 32 F.3d 1053 (7th Cir. 1994); *Murphy v. Timberlane Regional Sch. Dist.*, 22 F.3d 1186, 1192-1194 (1st Cir., 1994); *Oak Park and River Forest High Sch. Dist. v. Ill. St. Bd. of Educ.*, 886 F.Supp. 1417, (N.D.Ill. 1995) *rev'd on other grounds*, 79 F.3d 654 (7th Cir. 1996). One of the federal interests behind the borrowing of State limitations periods is to ensure that plaintiffs filing federal claims are not subjected to more stringent limitations than are imposed upon analogous State claims. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985).

While we are not aware of any case that specifically addresses the relevant statute of limitations in Wisconsin, in reviewing this legislation, the proposed one-year limitations period should be compared to the most analogous State statute of limitations for claims arising under State law. In enacting this limitation period for IDEA due process hearings, the State should not discriminate against federal claims by making the statute of limitations more restrictive for this federally protected right than for analogous State-based claims. Further, the application of such limitations in particular cases must be decided by impartial hearing officers and the Courts.

On August 20, 1997, a member of my staff, Ms. Barbara Route, spoke with Ms. Stephanie Petska of your staff, regarding the status of the Bill. Ms. Petska stated that the Bill was being reviewed by the Legislative Reference Bureau, an adjunct to the Legislature. Ms. Petska further stated that the Bureau would be notifying the Wisconsin Department of Public Instruction in October regarding the status of the Bill.

I hope the information in this letter will be of assistance to you. If you have additional questions and/or concerns, please do not hesitate to contact Ms. Route, State contact, at (202) 205-9029.

Thomas Hehir

Director

Office of Special Education Programs

Revised 2/9

FY2000 Proposed Special Education Legislation

2/9/2000

Proposed statutory legislation	Rationale for changes from current law	Federal Citation
<p>Proposed statutory legislation</p> <p>Sec. 14.30.180. Purpose. It is the purpose of AS 14.30.180 – 14.30.350 to</p> <ul style="list-style-type: none"> (1) provide an appropriate public education for exceptional children in the state who are at least three years of age but less than 22 years of age; (2) allow procedures and actions necessary to comply with the requirements of federal law, including <u>20 U.S.C. 1400 – 1487</u> [20 U. S. C. 1400 – 1485] (Individuals with Disabilities Education Act) as amended. 	<p>Rationale for changes from current law</p> <ul style="list-style-type: none"> ✓ No change to (1). ✓ To be consistent with the change in the federal statute number (was 1400-1485). 	<p>20 USC 1400-1487 34 CFR 300</p>

The basic purpose of this bill is to update AS 14.30 to conform to the 1997 comprehensive review of federal special education law and the 1999 comprehensive revision of the implementing of federal regulation. The approach taken by this bill removes much detail and thus removes actual and potential conflicts and inconsistencies between state and federal law.