

ALASKA LEGISLATURE

2103

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

SB

129

SFIN

FILE

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

SENATE FINANCE COMMITTEE REPORT

DATE 4/9/99

FURTHER

DATE TURNED IN TO OFFICE 20 April 99

Finance Committee considered

SENATE BILL NO. 129

"An Act relating to the Alaska marine highway system vessel, M/V Malaspina; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 129 (FIN)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill: same title
- new title
- House Bill: same title
- technical title
- new: SCR# _____

SIGNING DP RASH	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<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

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
DOT & PF	4/8/99	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

No. 1 80 4/19/99
 Bill Version: SB 129
 (S) Publish Date: 4-9-99

Revision Date/Time (Note if correction) _____ Dept. Affected DOT:PF
 Title "An Act relating to the Alaska marine highway BRU Kennicott / Malaspina Vessel Ops.
system vessel, M/V Malaspina..... Component Kennicott / Malaspina Operations
 Sponsor Senate Finance Committee
 Requester Senate Transportation Component Serial No. 2324

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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 -AK marine hwy. system fund	*	*	*	*	*	*
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

* This proposal would create a separate account within the Alaska marine highway system fund consisting of the revenues and expenditures associated with the M/V Malaspina. There would therefore be no financial impact as a result of this bill, only a change in accounting. For FY00 we estimate \$3,057.0 in operating revenues from the Malaspina. Expenditures would include \$3,090.0 in operations costs, \$180.0 in operating overhaul, and \$340.0 in state CIP overhaul funds. Inclusion of CIP projects in this proposal would be problematic for accounting purposes, especially when federal funds are involved. This change in procedure from the normal separation of operating and capital expenses would create additional accounting reconciliation and reporting requirements. An additional concern would be the prohibition of using other funds to cover unanticipated or emergency expenditures for the Malaspina. Note: this analysis assumes overhead expenses such as management, reservations, and leave are not included in the new account.

Prepared by Dennis Pognard, Legislative Liaison Phone 465-3904
 Division Office of the Commissioner Date/Time 4/7/99 3:29 PM
 Approved by Commissioner Date 4/8/99
 Agency Department of Transportation and Public Facilities

Amend #1
Adopted

1-LS0739AD

conceptual
for technical
incorporation

Sen.
Targerson
no objection

SENATE BILL NO. 129

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced: 3/31/99
Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska marine highway system vessel, M/V Malaspina;
2 and providing for an effective date."

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

4 * Section 1. AS 19.65 is amended by adding a new section to read:

5 Sec. 19.65.065. M/V Malaspina account. (a) There is created in the Alaska
6 marine highway system fund the M/V Malaspina account. Notwithstanding
7 AS 19.65.060(a) and 19.65.070(a), the account consists of the gross revenue generated
8 by the operation of the Alaska marine highway system vessel M/V Malaspina that is
9 appropriated to the account and other money appropriated to the account by the
10 legislature. Gross revenue generated by the operation of the Alaska marine highway
11 system vessel M/V Malaspina and other money that is appropriated to the account may
12 be expended only for the operation of, maintenance of, ~~and capital improvements~~ to
13 the M/V Malaspina in the fiscal year for which the money is appropriated. Money in
14 the account must be separately accounted for and may not be commingled with other



1 money in the Alaska marine highway system fund. The balance of the account on
2 June 30 of each year, excluding federal funds and the required match of state funds,
3 shall be transferred to the Alaska marine highway system fund at the end of each fiscal
4 year.

Amend
#1

5 (b) Notwithstanding a contrary provision of AS 19.65.050 - 19.65.100 or other
6 provisions of law, the department may spend no money for the operation of,
7 maintenance of, ~~or capital improvements~~ to the M/V Malaspina except that money
8 appropriated by the legislature to the M/V Malaspina account.

9 (c) The gross revenue generated by the operation of the Alaska marine
10 highway system vessel M/V Malaspina shall be accounted for separately. An
11 appropriation of the gross revenue as program receipts is not made from the
12 unrestricted general fund.

13 (d) Nothing in this section creates a dedicated fund.

14 * Sec. 2. This Act takes effect July 1, 1999.

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number:	SB 129
Amendment:	
Motion:	Move from Committee
<u>Motion by</u>	Parnell
<u>Objection</u>	
<u>Objection by</u>	Adams
<u>Removed</u>	
<u>Secor-1 Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Pete Kelly	Y
Senator Lyda Green	Y
Senator Randy Phillips	
Senator Dave Donley	Y
Senator Loren Leman	Y
Senator Al Adams	N
Senator Gary Wilken	Y
Co-Chair Sean Parnell	Y
Co-Chair John Torgerson	Y
<u>Tally</u>	
Yea	7
Nay	0
Absent	1
<u>MOTION</u>	Passed

CORRECTION

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



Rev. 6/98

Central Microfilm Services
Department of Education & Early Development
State of Alaska

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 129
Amendment	
Motion	Move from Committee
<u>Motion by</u>	Parnell
Objection	
<u>Objection by</u>	Adams
Removed	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Pete Kelly	Y
Senator Lyda Green	Y
Senator Randy Phillips	N
Senator Dave Donley	Y
Senator Loren Leman	Y
Senator Al Adams	N
Senator Gary Wilken	Y
Co-Chair Sean Parnell	Y
Co-Chair John Torgerson	Y
<u>Tally</u>	
Yea	0 7
Nay	0 1
Absent	0 1
<u>MOTION</u>	Passed

CS FOR SENATE BILL NO. 129(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to the Alaska marine highway system vessel, M/V Malaspina;
2 and providing for an effective date."**

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

4 * Section 1. AS 19.65 is amended by adding a new section to read:

**5 Sec. 19.65.065. M/V Malaspina account. (a) There is created in the Alaska
6 marine highway system fund the M/V Malaspina account. Notwithstanding
7 AS 19.65.060(a) and 19.65.070(a), the account consists of the gross revenue generated
8 by the operation of the Alaska marine highway system vessel M/V Malaspina that is
9 appropriated to the account and other money appropriated to the account by the
10 legislature. Gross revenue generated by the operation of the Alaska marine highway
11 system vessel M/V Malaspina and other money that is appropriated to the account may
12 be expended only for the operation or maintenance of the M/V Malaspina in the fiscal
13 year for which the money is appropriated. Money in the account must be separately
14 accounted for and may not be commingled with other money in the Alaska marine**

1 highway system fund. The balance of the account on June 30 of each year, excluding
2 federal funds and the required match of state funds, shall be transferred to the Alaska
3 marine highway system fund at the end of each fiscal year.

4 (b) Notwithstanding a contrary provision of AS 19.65.050 - 19.65.100 or other
5 provisions of law, the department may spend no money for the operation or
6 maintenance of the M/V Malaspina ^{deleted language} except that money appropriated by the legislature
7 to the M/V Malaspina account.

8 (c) The gross revenue generated by the operation of the Alaska marine
9 highway system vessel M/V Malaspina shall be accounted for separately. An
10 appropriation of the gross revenue as program receipts is not made from the
11 unrestricted general fund.

12 (d) Nothing in this section creates a dedicated fund.

13 * Sec. 2. This Act takes effect July 1, 1999.



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

Sponsor Statement Senate Bill 129 "The M/V Malaspina Act"

Senate Bill 129 creates a sub-account in the Alaska marine highway system to separately track revenues and expenditures related to the day boat operation of the M/V Malaspina.

SB 129 limits expenditures for the operation, maintenance and capital improvements of the Malaspina to the gross revenues generated by the vessel and to other funds that the legislature may appropriate to the account.

The Department of Transportation plans to operate the Malaspina as a day boat in the Northern Lynn Canal only during the summer months. This is the second year that the vessel will be used for day boat passenger and vehicle service between Juneau, Haines and Skagway. During the 1998 session, the Legislature allowed the Department an initial subsidy and directed the Department to then limit the cost of operating the vessel within the program receipts generated from the service by seeking union concessions and targeting high volume seasonal runs.

One basic premise of the recently released Southeast Alaska Transportation Plan is the development of sub-area or regional transportation services and facilities. Substantial savings in operations and maintenance costs are expected to be realized as more high speed "day boats" are put into operate in the region's four zones over the next five years.

By limiting the State's first day boat operation to the actual revenues generated, we are sending a strong message that the Legislature does not intend to subsidize the operation of day boats. The economic viability of the day boat concept is proven by its self-sufficiency.

FY 00 Projected Expenditures & Revenues for Malaspina

3/29/99 15:10

Expenditures:

	<u>Operating Wks</u>	<u>Cost per Week</u>	<u>Total Cost</u>
Operating	14.9	135,000	2,011,500
Layup	28.5	8,000	228,000
Overhaul (personal svcs. only)	8.6	57,700	496,220
			<u>2,735,720</u>
Risk Management (allocated amount)			254,857
Vessel Overhead (allocated commissions, drug tests, etc)			<u>100,000</u>
			<u>3,090,577</u>
			Total Projected Expenditures

<u>Revenues:</u>	<u>Operating Wks</u>	<u>Revenue per Week</u>	<u>Total Revenue</u>
FY99 revenue per week adjusted to reflect Mal providing 70% of service in North Lynn Canal in FY00 versus 64% in FY99	14.9	205,204	3,057,540

Difference between Expenditures and Revenues: **(33,037)**

SENATE FINANCE COMMITTEE

SIGN-IN

SB 129-M/V MALASPINA ACCOUNT

NAME: Brian Braley Subject/Bill No: SB129

Co./Dept./Title: DOLPE / SE Region Admin Mgr. Phone: 465-3954

Address: 3235 Chancel Dr., Jones Zip: 99801

Do you wish to testify? Yes No Respond To Questions

NAME: Bob Doll Subject/Bill No: 129

Co./Dept./Title: DOT/AMHS, G.M. Phone: 465-3959

Address: DOT, JUNEAU 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

SB

130

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/6/99

FURTHER: REPORTED ON
5/6/99

DATE TURNED
IN TO OFFICE: 5/06/99

Finance Committee considered

SENATE BILL NO. 130

"An Act relating to immunity for sale or transfer of a firearm; relating to administrative functions performed by and fees charged by the Department of Public Safety for transfer of a firearm."

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>Pete Kelly</i>	✓	<i>John E. Kelly</i>	✓		
<i>William D. Donnelly</i>	✓	<i>Lynne Green</i>			possible ✓
<i>Bruce D. Roman</i>	✓	<i>Al Cohen</i>		X	
		<i>Gary Kelly</i>	✓		
Co-Chair: <i>[Signature]</i>	✓	Co-Chair: _____			
Co-Chair: _____		Co-Chair: <i>[Signature]</i>	X		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
Pub. Safety / AST detach	5/6/99	d	
Law/Crim Div.	5/5/99	c	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

5/6/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SB 130

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title	BRU	Criminal Division/Civil Division
a firearm; ... administrative functions ... fees charged ...	Component	Criminal Justice Litigation
Sponsor		Special Litigation
Requester	Component Serial No.	2202; 2213
Senator Pete Kelly		
Senate Finance Committee		

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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 (FY99) cost: _____

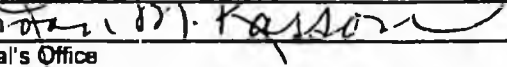
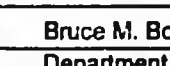
POSITIONS

Full-time						
Part-time						
Temporary						

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

26 USC 5801-5872 (National Firearms Act) provides authority for a chief law enforcement officer (CLEO) of a state or local law enforcement agency to concur with the sale or transfer of an otherwise prohibited weapon, such as an automatic weapon. SB 130 would provide immunity from civil liability to such an officer for concurring in the sale or transfer if the person who receives the weapon causes damage or harm.

SB 130 will have no fiscal impact on the Department of Law.

Prepared by Joan M. Kasson 
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho 
 Agency Department of Law

Phone 465-5370
 Date/Time 5/5/99, 11:03 AM
 Date 5/5/99

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FISCAL NOTE

5/6/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 130

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Public Safety</u>
Title <u>An Act relating to immunity for sale or transfer</u>	BRU <u>AST Detachments</u>
of a firearm; relating to administrative functions...(etc)...	Component <u>n/a</u>
Sponsor <u>Senators Kelly</u>	
Requester <u>S. Finance</u>	Component Serial No. <u>2325</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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 (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by <u>F/Sgt. David Hudson</u>	Phone <u>269-5655</u>
Division <u>Alaska State Troopers</u>	Date/Time <u>5/6/99 8:20 AM</u>
Approved by Commissioner <u>Ronald L. Otte</u>	Date <u>5/6/99</u>
Agency <u>Department of Public Safety</u>	

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Alaska State Legislature

SENATOR

PETER KELLY

Mailing Address:

119 N. Cushman, Suite 201

Fairbanks, Alaska 99701

Senator_Pete_Kelly@legis.state.ak.us

(907) 456-8161



Senate

While in Session

State Capitol

Juneau, Alaska

99801-1182

(907) 465-2327

Senate District P

Sponsor Statement

Senate Bill 130

**“An Act relating to immunity for sale or transfer of
A firearm; relating to administrative functions performed by
And fees charged by the Department of Public Safety for transfer
Of a firearm.”**

The transfer of firearms regulated by Section 5812 of the National Firearms Act requires a certification from a Chief Law Enforcement Officer (CLEO) on Federal Tax Forms 1, 4 or 5 which states, “I have no information indicating that the transferee will use the firearm or device described on this application for other than lawful purposes. I have no information that the receipt and/ or possession of the firearm described . . . would place the transferee in violation of State or local law.”

Some legal opinions have caused officials to consider that signing forms 1, 4 or 5 might make them liable if the transferee were to commit a crime with the firearm or device. Additionally, officials have refused to sign citing an unfunded federal mandate.

This bill would remove the liability of public officials who sign federal forms, 1, 4 or 5 for damage or harm caused by the individual for whom the form was executed. Further, this bill would provide for a reasonable fee to perform any background checks deemed necessary by the Alaska Department of Public Safety. This would address the unfunded mandate question.

There is no known instance where an Alaskan citizen legally possessing firearms regulated by the National Firearms Act has committed a crime. Indeed, these same individuals undergo stringent background and fingerprint checks before approval, and pay a tax of up to \$200.00 for each transfer. The Bureau of Alcohol, Tobacco and Firearms is very diligent in the enforcement of violations of NFA regulations.

Date: Tue, 06 Apr 1999 16:56:46 -0800
From: Darwin_Peterson@legis.state.ak.us
Organization: Alaska State Legislature
X-Mailer: Mozilla 4.5 [en] (Win95; I)
X-Accept-Language: en
MIME-Version: 1.0
To: Shari Kochman <Shari_Kochman@gov.state.ak.us>
Subject: SB 130
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit

Shari,

The Senate Finance Committee requests a fiscal note for SB 130, "An Act relating to immunity for sale or transfer of a firearm; relating to administrative functions performed by and fees charged by the Department of Public Safety for transfer of a firearm." SB 130 was waived from the Judiciary committee, therefore the Senate Finance Committee is the first committee of referral. SB 130 is sponsored by Senator Pete Kelly and has not yet been scheduled for a hearing in the Senate Finance Committee.

Thanks,
Darwin

5/06/99

DEPARTMENT OF THE TREASURY - BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
APPLICATION FOR TAX PAID TRANSFER AND REGISTRATION OF FIREARM

SEE INSTRUCTIONS ATTACHED.
TO BE SUBMITTED IN DUPLICATE
TO: National Firearms Act Branch
Bureau of Alcohol, Tobacco and
Firearms
P.O. Box 73201
Chicago, IL 60673-7201

2a. TRANSFEREE'S NAME AND ADDRESS (If transferee is a Special (Occupational) Taxpayer who is acquiring firearm for personal use, rather than as part of his business inventory, show personal name below and check here:)

2b. TRADE NAME (See instruction 2e)

2c. COUNTY

3a. TRANSFEROR'S NAME AND MAILING ADDRESS (If the firearm is registered under your trade name, enter your trade name. EXECUTORS: See instruction 2f.)

1. TYPE OF TRANSFER (Check one)
(See instructions 1 and 6)
 \$6 \$200

Submit with your application a check or money order for the appropriate amount made payable to the Department of the Treasury. Upon approval of this application, this office will acquire, affix and cancel the required "National Firearms Act" stamp for you. (See instruction 6)

3b. NUMBER, STREET, CITY, STATE AND ZIP CODE IF DIFFERENT FROM ITEM 3a.

3c. IF APPLICABLE: DECEDENT'S NAME, ADDRESS, AND DATE OF DEATH

The above-named and undersigned transferor hereby makes application as required by Section 5812 of the National Firearms Act to transfer and register the firearm described below to the transferee.

4. DESCRIPTION OF FIREARM (Complete items a through h)

a. NAME AND ADDRESS OF MANUFACTURER AND/OR IMPORTER OF FIREARM

b. TYPE OF FIREARM (Short-barreled rifle, machine gun, destructive device, any other weapon, etc.)

c. CALIBER, GAUGE OR SIZE (Specify)

d. MODEL

LENGTH e. OF BARREL f. OVERALL: (Inches)

g. SERIAL NUMBER

h. ADDITIONAL DESCRIPTION OR DATA APPEARING ON FIREARM (Attach additional sheet if necessary)

5. TRANSFEREE'S FEDERAL FIREARMS LICENSE (If any)

(Give complete 15-digit number)

First 6 digits | 2 digits | 2 digits | 5 digits

6. TRANSFEREE'S SPECIAL (OCCUPATIONAL) TAX STATUS

a. ATF IDENTIFICATION NUMBER

b. CLASS

7. TRANSFEROR'S FEDERAL FIREARMS LICENSE (If any)

(Give complete 15-digit number)

First 6 digits | 2 digits | 2 digits | 5 digits

8. TRANSFEROR'S SPECIAL (OCCUPATIONAL) TAX STATUS

a. ATF IDENTIFICATION NUMBER

b. CLASS

3

UNDER PENALTIES OF PERJURY, I DECLARE that I have examined this application, and to the best of my knowledge and belief it is true, correct and complete, and that the transfer of the described firearm to the transferee and receipt and possession of it by the transferee are not prohibited by the provisions of Chapter 44, Title 18, United States Code; Chapter 53, Title 26, United States Code; or Title VII of the Omnibus Crime Control and Safe Streets Act, as amended; or any provisions of State or local law.

9. SIGNATURE OF TRANSFEROR (Or authorized official)

10. NAME AND TITLE OF AUTHORIZED OFFICIAL (Print or type)

11. DATE

THE SPACE BELOW IS FOR THE USE OF THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

BY AUTHORITY OF THE DIRECTOR, THIS APPLICATION HAS BEEN EXAMINED, AND THE TRANSFER AND REGISTRATION OF THE FIREARM DESCRIBED HEREIN AND THE INTERSTATE MOVEMENT OF THAT FIREARM, WHEN APPLICABLE, TO THE TRANSFEREE ARE:

STAMP NUMBER

APPROVED (With the following conditions, if any)

DISAPPROVED (For the following reasons)

SIGNATURE OF DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

DATE

CERTIFICATIONS

1. F1

If the transferor of a destructive device, machinegun, short-barreled shotgun or short-barreled rifle is a Federal firearms licensee, and the transferee is anyone other than a licensee qualified to deal in the firearm to be transferred, the transferee must sign the Applicant Certification (item 2 below) in the presence of the law enforcement officer signing item 3 below. The Law Enforcement Certification (item 3 below) must be completed for the transfer of any registered firearm to an individual other than a licensee qualified to deal in the firearm to be transferred. In addition, the individual transferee must affix a recent photograph (taken within the past year) in item 1 and submit, in duplicate (to the transferor) two completed copies of FBI Form FD-258, Fingerprint Card. (See Important note below.)

2. APPLICANT CERTIFICATION

I, _____, have a reasonable necessity to possess the device or
(Name of Transferee)
weapon described on this application for the following reason(s) _____

and my possession of the device or weapon would be consistent with public safety (18 U.S.C. 922(b) (4) and 27 CFR 178.96).

UNDER PENALTIES OF PERJURY, I declare that I have examined this application, and to the best of my knowledge and belief it is true, correct and complete, and that receipt and possession of the firearm described on this form will not place me in violation of the provisions of Chapter 44, Title 18, U.S.C.; Chapter 53, Title 26, U.S.C.; or Title VII of the Omnibus Crime Control and Safe Streets Act, as amended, or any provisions of State or local law.

(Signature of Transferee or official authorized to sign for firm)

Date

3. LAW ENFORCEMENT CERTIFICATION (See IMPORTANT note below)

I certify that I am the chief law enforcement officer of the organization named below having jurisdiction in the area
of residence of _____ . I have no information indicating that the transferee will use the fire-
(Name of Transferee)
arm or device described on this application for other than lawful purposes. I have no information that the receipt and/or possession of the firearm described
in item 4 of this form would place the transferee in violation of State or local law.

(Signature and Title of Chief Law Enforcement Officer - See IMPORTANT note below)

(Date)

(Organization and Street Address)

(County)

(Phone - include area code)

IMPORTANT: The chief law enforcement officer is considered to be the Chief of Police for the transferee's city or town of residence, the Sheriff for the transferee's county of residence; the Head of the State Police for the transferee's State of residence; a State or local district attorney or prosecutor having jurisdiction in the transferee's area of residence; or another person whose certification is acceptable to the Director, Bureau of Alcohol, Tobacco and Firearms. If someone has specific delegated authority to sign on behalf of the Chief of Police, Sheriff, etc., this fact must be noted by printing the Chief's, Sheriff's, or other authorized official's name and title, followed by the word "by" and the full signature and title of the delegated person.

SENATE FINANCE COMMITTEE

SIGN-IN

SB 130-FEES/IMMUNITY SALE/TRANSFER OF FIREARMS

NAME: Del SMITH Sub./Bill No: SB130

Co./Dept./Title: DPS DEP COMM. Phone: 4322

Address: 450 WHITTIER Zip: 99801

Do you wish to testify? Yes No Respond to Questions

NAME: _____ Sub./Bill No: _____

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

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

NAME: _____ Sub./Bill No: _____

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

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

NAME: _____ Sub./Bill No: _____

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

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond to Questions

S B

1 3 2

SFIN

FILE

SB 132

was referred to the
Senate Finance
Committee

No hearing was held
on this bill

AMENDMENT

By: Phillips

OFFERED IN THE SENATE

TO: CSSB 132(), Draft Version "H"

1 Page 4, line 28, through page 5, line 31:

2 Delete all material.

3 Renumber the following bill sections accordingly.

4 Page 6, lines 22 - 27:

5 Delete all material and insert:

6 **"* Sec. 12.** AS 17.20.075 is amended to read:

7 **Sec. 17.20.075. Definitions.** In AS 17.20.005 - 17.20.075,

8 (1) "commissioner" means

9 (A) as to seafood products, seafood processing, fish,
10 shellfish, and aquatic farm products, the commissioner of environmental
11 conservation; and

12 (B) except as provided in (A) of this paragraph, the
13 commissioner of natural resources;

14 (2) "department" means

15 (A) as to seafood products, seafood processing, fish,
16 shellfish, and aquatic farm products, the Department of Environmental
17 Conservation; and

18 (B) except as provided in (A) of this paragraph, the
19 Department of Natural Resources."

20 Page 7, line 30, following "section.":

21 Insert "The commissioner of environmental conservation has the same power and

1 duties with respect to seafood products, seafood processing, fish, shellfish, and aquatic
2 farm products as the commissioner of natural resources has with respect to food under
3 (a) and (b) of this section."

4 Page 8, line 2:

5 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

6 Insert "environmental conservation, the commissioner of natural resources,"

7 Page 8, line 16, following "section.":

8 Insert "The commissioner of environmental conservation has the same power and
9 duties with respect to seafood products, seafood processing, fish, shellfish, and aquatic
10 farm products as the commissioner of natural resources has with respect to food under
11 (a) and (b) of this section."

12 Page 8, line 31, following "section.":

13 Insert "The commissioner of environmental conservation has the same power and
14 duties with respect to seafood products, seafood processing, fish, shellfish, and aquatic
15 farm products as the commissioner of natural resources has with respect to food under
16 (a) of this section."

17 Page 9, line 4:

18 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

19 Insert "environmental conservation, the commissioner of natural resources,"

20 Page 9, lines 14 - 15:

21 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

22 Insert "environmental conservation, the commissioner of natural resources,"

23 Page 9, lines 24 - 25:

24 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

25 Insert "environmental conservation, the commissioner of natural resources,"

1 Page 10, line 5:

2 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

3 Insert "environmental conservation as to seafood, fish, shellfish, or an aquatic farm
4 product, or the commissioner of natural resources as to another perishable article."

5 Page 10, lines 9 - 10:

6 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

7 Insert "environmental conservation, the commissioner of natural resources."

8 Page 10, following line 13:

9 Insert a new bill section to read:

10 **** Sec. 24.** AS 17.20.290(b) is amended to read:

11 (b) The commissioner of environmental conservation or a designee of the
12 commissioner is responsible for enforcing (a)(1) - (4) and (6) - (10) [THE
13 PROVISIONS OF PARAGRAPHS (a)(1), (2), (3), (4), (6), (7), (8), (9), AND (10)]
14 of this section [,] if the subject of the prohibited act involves seafood, fish, shellfish,
15 or an aquatic farm product [FOOD OR COSMETICS, AND THE PROVISIONS
16 OF PARAGRAPH (a)(12) OF THIS SECTION]. This subsection does not limit the
17 authority of peace officers."

18 Renumber the following bill sections accordingly.

19 Page 10, line 17, following "food":

20 Insert ", other than seafood, fish, shellfish, or an aquatic farm product,"

21 Page 10, lines 23 - 24:

22 Delete "Department of Natural Resources [ENVIRONMENTAL CONSERVATION]"

23 Insert "appropriate department [DEPARTMENT OF ENVIRONMENTAL
24 CONSERVATION]"

25 Page 10, line 28:

26 Delete "either"

1 Insert "[EITHER]"

2 Page 10, lines 28 - 29:

3 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

4 Insert "environmental conservation, the commissioner of natural resources."

5 Page 11, lines 5 - 6:

6 Delete "natural resources [ENVIRONMENTAL CONSERVATION]"

7 Insert "environmental conservation, the commissioner of natural resources."

8 Page 13, line 12, following "(1)":

9 Insert "seafood products, seafood processing, and fish, shellfish, and aquatic farm
10 product regulation"

11 Page 13, line 13:

12 Delete "COSMETICS UNDER AS 17.20; AND]"

13 Insert "COSMETICS] under AS 17.20, [;] and"

14 Page 14, line 6:

15 Following "AS 03.25.250;"

16 Insert "and"

17 Following "AS 03.58.070(1)"

18 Delete "; and AS 17.20.290(b)"



ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS
SENATE DISTRICT L

Session (Jan-May)
State Capitol, Room 103
Juneau, Alaska 99801
1 (907) 465-4949
1 (907) 465-4979 Fax
Toll Free Anchorage Area
1-800-478-4950
Interim
P.O. Box 142
Eagle River, Alaska 99577
1 (907) 694-4949
1 (907) 694-4948 Fax

Sponsor Statement

CSSB 132

SB 132 investigates efficiencies in State Government between similar services performed by the Department of Environmental Conservation and the Division of Agriculture in the Department of Natural Resources.

SB 132 proposes to combine the animal industries, food, seafood, and related inspection services from ADEC and into the Division of Agriculture. It is merging activities regulated by the U.S. Department of Agriculture, Food and Drug Administration into the Alaska Division of Agriculture, leaving activities regulated by the U.S. EPA in the Department of Environmental Conservation.

SB 132 does not make any structural changes to policy. It does include a Land exchange with the Matanuska-Susitna Borough to enable the development of a Hatcher Pass Ski Resort, this is supported by the Department of Natural Resources and the Borough.



ALASKA STATE LEGISLATURE

SENATOR RANDY PHILLIPS SENATE DISTRICT L

Session (Jan-May)
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1 (907) 694-4948 Fax

Sectional

CSSB 132IH

"An Act relating to the powers and duties of the Department of Natural Resources, transferring some of the functions of the Department of Environmental Conservation to the Department of Natural Resources, and modifying the Department of Natural Resources' power to control and manage land within the Hatcher Pass Public use Area and authorizing municipal selection of that land."

Sect. 1. Transfers to DNR responsibility to regulate premises, pests, quarantine, fur farming, and elk.

Sect. 2, 3, 4, 5, and 6. Transfer responsibility for farm animals with infectious disease, including destruction and quarantine thereof.

Sect. 7. Transfer responsibility for elk to the DNR.

Sect. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28. Transfer responsibility to DNR for food, seafood, and related inspections and regulations.

Section 29 and 33. Enable the Matanuska-Susitna Borough to fulfill its general land grant entitlement with a sliver of land now in the Hatcher Pass Public Use Area. The Borough is seeking to create and lease a recreational facility in this area.

Sections 30 and 31. Transfer regulatory fee authority for agriculture and animals to DNR.

Section 32. Repeals repetitive language regarding the Department of Environmental Conservation's responsibility for animals and their inspection.

Section 34. Provides transitional authority for existing regulations.

Section 35. Transfer from ADEC to ADNR takes effect July 1, 1999.

Section 36. Effective date at the time of the municipal conveyance for Hatcher Pass.

CS FOR SENATE BILL NO. 132()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the powers and duties of the Department of Natural
2 Resources, transferring some of the functions of the Department of Environmental
3 Conservation to the Department of Natural Resources, and modifying the
4 Department of Natural Resources' power to control and manage land within the
5 Hatcher Pass Public Use Area and authorizing municipal selection of that land;
6 and providing for an effective date."

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

8 * Section 1. AS 03.05.011 is amended to read:

9 Sec. 03.05.011. Powers and duties of commissioner of natural resources
10 [ENVIRONMENTAL CONSERVATION]. (a) To carry out the requirements of
11 this title, the commissioner of natural resources [ENVIRONMENTAL
12 CONSERVATION] may issue orders, regulations, permits, quarantines, and embargoes
13 relating to

1 (1) examination and inspection of premises containing products,
2 articles, and commodities carrying pests;

3 (2) establishment of quarantines for eradication of pests and diseases
4 in livestock;

5 (3) tests and analyses that may be made and hearings that may be held
6 to determine whether the commissioner will issue a stop order or quarantine;

7 (4) cooperation with federal and other state agencies;

8 (5) regulation of fur farming; for purposes of this paragraph, "fur
9 farming" means the raising of and caring for animals for the purpose of marketing
10 their fur, or the animals themselves for breeding stock.

11 (b) The commissioner [OF ENVIRONMENTAL CONSERVATION] shall
12 regulate the farming of elk in a manner similar to the manner in which the
13 commissioner regulates domestic animals and livestock, to the extent that is
14 appropriate.

15 * Sec. 2. AS 03.45.050 is amended to read:

16 **Sec. 03.45.050. Inspection, quarantine, or destruction of livestock.**

17 Domestic animals and poultry in the state are subject to inspection and test for all
18 diseases [,] and to quarantine, slaughter, or destruction when found to be infected with
19 or suffering from any contagious disease by an inspector of the Animal Disease
20 Eradication Branch, United States Department of Agriculture, or by a qualified
21 inspector authorized by the commissioner [OF ENVIRONMENTAL
22 CONSERVATION] to make inspections and tests of anima's. Inspections and tests
23 of animals kept for dairy purposes by dairies that offer their products to the public in
24 the state [,] and inspection and tests of animals kept for private dairy purposes if [,
25 PROVIDED] they are readily accessible [,] shall be made at least once every year, if
26 possible, and all animals not readily accessible for inspection shall be inspected before
27 they are brought into a community where other animals used for dairy purposes are
28 kept. The commissioner may make arrangements with the Animal Disease Eradication
29 Branch, United States Department of Agriculture, for these inspections and tests. In
30 the event that arrangements cannot be made with the Animal Disease Eradication
31 Branch, the commissioner may employ inspectors. Inspections shall be carried on in

1 cooperation with the Animal Disease Eradication Branch and in accordance with its
2 regulations.

3 * Sec. 3. AS 03.45.060(c) is amended to read:

4 (c) If the inspector determines that the animal should be slaughtered or
5 destroyed, the inspector may condemn and have the animal slaughtered or destroyed
6 in the manner the inspector determines. Reimbursement may be allowed for the
7 slaughter or destruction of dairy cattle only. In such case, the inspector and the owner
8 shall appraise the dairy cattle at a fair valuation without regard to the disease. Where
9 they cannot agree as to the value of the animal, the owner and inspector may select
10 a disinterested third party to aid in the appraisal. Where they cannot agree on the
11 selection of a third party, a peace officer in the judicial district where the inspection
12 is made may designate a third disinterested party to act with the inspector and owner
13 to determine the value of the animal. The amount realized from the sale of the carcass
14 of the slaughtered animal shall be paid to the owner of the animal, and the inspector
15 shall certify to the commissioner [OF ENVIRONMENTAL CONSERVATION] the
16 name and address of the owner, the date the animal was condemned, the appraised
17 value of the animal, together with the net sum realized from the salvage of the animal
18 [THEREOF,] or that [WHICH] could have been realized.

19 * Sec. 4. AS 03.45.070 is amended to read:

20 **Sec. 03.45.070. Compensation to owners of dairy cattle destroyed; records**
21 **to be kept.** The commissioner [OF ENVIRONMENTAL CONSERVATION] may
22 enter into cooperative agreements with the United States Department of Agriculture for
23 controlling diseases among dairy cattle and may match federal indemnity payments for
24 livestock slaughtered thereunder [,] from any funds available. The commissioner shall
25 keep a record of all payments made, with a copy of the inspector's certification of
26 appraised value and salvage value.

27 * Sec. 5. AS 03.45.080 is amended to read:

28 **Sec. 03.45.080. Record and payment of value of destroyed dairy cattle.**
29 The Department of Administration shall keep a record of the appraised value of all
30 dairy cattle slaughtered or destroyed and of the salvage value of the dairv cattle
31 [THEREOF], stating the date when the animal was slaughtered or destroyed and the

1 name of the inspector who ordered the animal slaughtered or destroyed. The
 2 Department of Administration, with the approval of the department [DEPARTMENT
 3 OF ENVIRONMENTAL CONSERVATION], shall pay the owner of the animal
 4 slaughtered or destroyed two-thirds of the difference between the appraised value and
 5 the salvage value of the animal slaughtered or destroyed. The appraised valuation of
 6 each slaughtered animal may not exceed \$175 in the first judicial district and not more
 7 than \$200 in the second and third judicial districts and not more than \$250 in the
 8 fourth judicial district. Payment may not be made if at the time of inspection, test, or
 9 destruction, the animal was upon the premises of any person to which it had been sold,
 10 shipped, or delivered for the purpose of being slaughtered. Payment may not be made
 11 unless the owner has complied with all lawful quarantine regulations.

12 * Sec. 6. AS 03.53.010(b) is amended to read:

13 (b) The following persons are authorized to enforce the provisions of this
 14 section:

- 15 (1) the commissioner [OF ENVIRONMENTAL CONSERVATION];
- 16 (2) a state employee authorized by the commissioner [OF
 17 ENVIRONMENTAL CONSERVATION].

18 * Sec. 7. AS 16.40.050(d) is amended to read:

19 (d) Elk imported, exported, or possessed for the purpose of elk farming are
 20 subject to the provisions of AS 03 and regulations adopted under AS 03 by the
 21 commissioner of natural resources [OR THE COMMISSIONER OF
 22 ENVIRONMENTAL CONSERVATION] for domestic animals and livestock [,] to the
 23 extent they are made applicable to elk by the commissioner of natural resources
 24 [COMMISSIONERS].

25 * Sec. 8. AS 17.06.070(1) is amended to read:

26 (1) "department" means the Department of Natural Resources
 27 [ENVIRONMENTAL CONSERVATION];

28 * Sec. 9. AS 17.20.005 is amended to read:

29 **Sec. 17.20.005. Powers and duties of commissioner of natural resources.**
 30 To carry out the requirements of this chapter that are within the jurisdiction of the
 31 Department of Natural Resources, the commissioner of natural resources may issue

1 orders, regulations, permits, quarantines, and embargoes relating to

2 (1) food offered to the public or sold, including

3 (A) inspection of meat, fish, poultry, and other food products;

4 (B) standards of sanitation and handling methods for all phases
5 of slaughtering, processing, storing, transporting, displaying, and selling; and

6 (C) labeling;

7 (2) control and eradication of pests;

8 (3) enforcement of hazard analysis critical control point programs for
9 seafood processing that are developed in cooperation with appropriate industry
10 representatives or, to the extent not inconsistent with this chapter or regulations
11 adopted under the authority of this chapter, that are established by regulations of the
12 United States Food and Drug Administration as they may periodically be revised;

13 (4) labeling and grading of milk and milk products and standards of
14 sanitation for dairies offering to the public or selling milk or milk products to at least
15 the minimum of current recommendations of the United States Public Health Service
16 pasteurized milk ordinance as it may periodically be revised;

17 (5) standards and conditions for the operation and siting of aquatic
18 farms and related hatcheries, including

19 (A) restrictions on the use of chemicals; and

20 (B) requirements to protect the public from contaminated
21 aquatic farm products that pose a risk to health;

22 (6) monitoring aquatic farms and aquatic farm products to ensure
23 compliance with this chapter and, to the extent not inconsistent with this chapter or
24 regulations adopted under the authority of this chapter, with the requirements of the
25 national shellfish sanitation program manual of operations published by the United
26 States Food and Drug Administration as it may periodically be revised;

27 (7) tests and analyses that may be made and hearings that may be held
28 to determine whether the commissioner will issue a stop order or quarantine;

29 (8) transportation of, use of, disposal of, recalls of, or warnings
30 concerning quarantined or embargoed items;

31 (9) cooperation with federal and other state agencies.

1 * **Sec. 10.** AS 17.20.066(c) is amended to read:

2 (c) The commissioner shall authorize the use of an "inspection" seal for
3 display on seafood products processed by a person who, at the time the products are
4 processed, holds a permit to operate issued under AS 17.20.065 and who complies with
5 regulations adopted by the commissioner under this chapter.

6 * **Sec. 11.** AS 17.20.066(d) is amended to read:

7 (d) The commissioner, after consultation with the Alaska Seafood Marketing
8 Institute, shall develop product specifications and standards for the use of the
9 "premium quality" seal on Alaska seafood products. The commissioner shall authorize
10 a seafood processor to display a "premium quality" seal on products that qualify for
11 the seal if the processor meets the requirements of regulations adopted by the
12 commissioner under this chapter and has been issued a permit to operate under
13 AS 17.20.065.

14 * **Sec. 12.** AS 17.20.067 is amended to read:

15 **Sec. 17.20.067. Seafood processing research.** The commissioner may
16 conduct studies, research, experiments, and demonstrations, directly or through grants
17 to or contracts with public or private agencies, organizations, or individuals to

18 (1) improve sanitation practices in the processing of fish and fisheries
19 products; and

20 (2) develop improved techniques for surveillance and inspection
21 activities of the department under this chapter.

22 * **Sec. 13.** AS 17.20.075 is amended to read:

23 **Sec. 17.20.075. Definitions.** In AS 17.20.005 - 17.20.075,

24 (1) "commissioner" means the commissioner of natural resources
25 [ENVIRONMENTAL CONSERVATION];

26 (2) "department" means the Department of Natural Resources
27 [ENVIRONMENTAL CONSERVATION].

28 * **Sec. 14.** AS 17.20.152 is amended to read:

29 **Sec. 17.20.152. Enforcement authority.** The commissioner of natural
30 resources [ENVIRONMENTAL CONSERVATION] is responsible for enforcing
31 AS 17.20.140 - 17.20.155, and may delegate that authority as appropriate. This section

1 does not limit the authority of peace officers.

2 * Sec. 15. AS 17.20.155 is amended to read:

3 **Sec. 17.20.155. Definition.** In AS 17.20.140 - 17.20.155, "department" means
4 the Department of Natural Resources [ENVIRONMENTAL CONSERVATION].

5 * Sec. 16. AS 17.20.180 is amended to read:

6 **Sec. 17.20.180. Regulations.** The Department of Natural Resources
7 [ENVIRONMENTAL CONSERVATION] and the Department of Health and Social
8 Services may adopt regulations for the efficient enforcement of their respective
9 portions of this chapter. Each department may make the regulations conform, in so
10 far as practicable, with those adopted under the federal act.

11 * Sec. 17. AS 17.20.200 is amended to read:

12 **Sec. 17.20.200. Inspections and examinations.** (a) The commissioner of
13 natural resources [ENVIRONMENTAL CONSERVATION] or an agent shall have
14 free access at reasonable hours to a factory, warehouse, or establishment in which
15 foods or cosmetics are manufactured, processed, packed, or held for introduction into
16 commerce, to enter a vehicle being used to transport or hold these foods or cosmetics
17 in commerce, or to an aquatic farm in order to

18 (1) inspect a factory, warehouse, establishment, vehicle, or aquatic farm
19 to determine if the provisions of the commissioner's respective portions of this chapter
20 are being violated; and

21 (2) secure samples or specimens of a food, aquatic farm product, or
22 cosmetic.

23 (b) The commissioner of natural resources [ENVIRONMENTAL
24 CONSERVATION] shall make or have made examinations of samples secured under
25 this section to determine whether or not a provision of the commissioner's respective
26 portions of this chapter is being violated.

27 (c) The commissioner of health and social services has the same powers and
28 duties with respect to drugs and devices as the commissioner of natural resources
29 [ENVIRONMENTAL CONSERVATION] has with respect to food and cosmetics
30 under (a) and (b) of this section.

31 * Sec. 18. AS 17.20.220 is amended to read:

1 **Sec. 17.20.220. Publication of reports and information.** (a) The
2 commissioner of natural resources [ENVIRONMENTAL CONSERVATION] and the
3 commissioner of health and social services may have published from time to time
4 reports summarizing judgments, decrees, and court orders which have been rendered
5 under their respective portions of this chapter, including the nature of the charge and
6 the disposition of it.

7 (b) The commissioner of natural resources [ENVIRONMENTAL
8 CONSERVATION] may have disseminated information regarding food and cosmetics
9 that [WHICH] the commissioner considers necessary in the interest of public health
10 and the protection of the consumer against fraud. This section does not prohibit the
11 commissioner from collecting, reporting, and illustrating the results of the
12 commissioner's investigations.

13 (c) The commissioner of health and social services has the same power with
14 respect to drugs and devices as the commissioner of natural resources
15 [ENVIRONMENTAL CONSERVATION] has with respect to food and cosmetics
16 under (b) of this section.

17 * **Sec. 19.** AS 17.20.230 is amended to read:

18 **Sec. 17.20.230. Detention or embargo of goods.** (a) Whenever the
19 commissioner of natural resources [ENVIRONMENTAL CONSERVATION] finds
20 or has probable cause to believe that a food or cosmetic is adulterated [,] or so
21 misbranded as to be dangerous or fraudulent within the meaning of this chapter, the
22 commissioner shall affix to it a tag or other appropriate marking [,] giving notice that
23 it is or is suspected of being adulterated or misbranded and has been detained or
24 embargoed, and warning all persons not to remove or dispose of it by sale or otherwise
25 until permission for removal or disposal is given by the commissioner or the court.
26 A person may not remove or dispose of a detained or embargoed article by sale or
27 otherwise without this permission.

28 (b) The commissioner of health and social services has the same duty with
29 respect to drugs and devices as the commissioner of natural resources
30 [ENVIRONMENTAL CONSERVATION] has with respect to food and cosmetics
31 under (a) of this section.

1 * **Sec. 20.** AS 17.20.240 is amended to read:

2 **Sec. 17.20.240. Petition for libel for condemnation.** When an article
3 detained or embargoed under AS 17.20.230 has been found by the commissioner of
4 natural resources [ENVIRONMENTAL CONSERVATION] or the commissioner of
5 health and social services, as the case may be, to be adulterated or misbranded, the
6 appropriate commissioner shall petition the superior court for a libel for condemnation
7 of the article. When that commissioner finds that a detained or embargoed article is
8 not adulterated or misbranded, the commissioner shall remove the tag or other
9 marking.

10 * **Sec. 21.** AS 17.20.250 is amended to read:

11 **Sec. 17.20.250. Destruction of adulterated or misbranded goods.** If the
12 superior court finds that a detained or embargoed article is adulterated or misbranded,
13 it shall, after entry of the decree, be destroyed at the expense of the claimant [,] under
14 the supervision of the commissioner of natural resources [ENVIRONMENTAL
15 CONSERVATION] or the commissioner of health and social services, as the case may
16 be. Court costs and fees and storage and other proper expenses shall be taxed against
17 the claimant of the article.

18 * **Sec. 22.** AS 17.20.260 is amended to read:

19 **Sec. 17.20.260. Exemption from destruction.** When the adulteration or
20 misbranding can be corrected by proper labeling or processing of the article, and after
21 entry of the decree and after costs, fees, and expenses have been paid and a good and
22 sufficient bond, conditioned that the article will be properly labeled or processed has
23 been executed, the court may order that the article be delivered to the claimant for
24 labeling or processing under the supervision of the commissioner of natural resources
25 [ENVIRONMENTAL CONSERVATION] or the commissioner of health and social
26 services, as the case may be. The claimant shall pay the expense of supervision. The
27 bond shall be returned to the claimant of the article on representation to the court by
28 the appropriate commissioner that the article is no longer in violation of this chapter
29 [,] and that the expenses of supervision have been paid.

30 * **Sec. 23.** AS 17.20.270 is amended to read:

31 **Sec. 17.20.270. Immediate destruction of contaminated food.** Meat,

1 seafood, poultry, vegetable, fruit, or other perishable article in any room, building,
2 vehicle of transportation, or other structure that [WHICH] is unsound, or contains
3 filthy, decomposed, or putrid substance, or a substance that may be poisonous or
4 deleterious to health or otherwise unsafe, is a nuisance. Whenever the commissioner
5 of natural resources [ENVIRONMENTAL CONSERVATION] finds such an article,
6 the commissioner shall immediately condemn or destroy it or in any other manner
7 render it unsalable as human food.

8 * Sec. 24. AS 17.20.280 is amended to read:

9 **Sec. 17.20.280. Injunction proceedings.** The commissioner of natural
10 resources [ENVIRONMENTAL CONSERVATION] and the commissioner of health
11 and social services may apply to the superior court for, and the court has jurisdiction
12 to grant, a temporary or permanent injunction restraining a person from violating their
13 respective portions of this chapter.

14 * Sec. 25. AS 17.20.290 is amended by adding a new subsection to read:

15 (d) The commissioner of natural resources or a designee of the commissioner
16 is responsible for enforcing (a)(1) - (4) and (6) - (10) of this section if the subject of
17 the prohibited act involves food or cosmetics and for enforcing (a)(12) of this section.
18 This subsection does not limit the authority of peace officers.

19 * Sec. 26. AS 17.20.345(c) is amended to read:

20 (c) A person who donates to a food bank salmon from a hatchery that operates
21 under a permit issued under AS 16.10.400 - 16.10.470 is immune from liability as
22 provided in this section if the salmon is apparently fit for human consumption at the
23 time of its donation, even if the hatchery does not have a permit issued by the
24 Department of Natural Resources [ENVIRONMENTAL CONSERVATION] under
25 this chapter or other statute to process fisheries products for human consumption.

26 * Sec. 27. AS 17.20.350 is amended to read:

27 **Sec. 17.20.350. Report of minor violations.** Nothing in this chapter requires
28 either the commissioner of natural resources [ENVIRONMENTAL
29 CONSERVATION] or the commissioner of health and social services, as the case may
30 be, to report minor violations of their respective portions of this chapter for
31 prosecution, or for the institution of libel or injunction proceedings, when that

1 commissioner believes that the public interest will be adequately served by a suitable
2 written notice or warning.

3 * Sec. 28. AS 17.20.360 is amended to read:

4 **Sec. 17.20.360. Attorney general to prosecute; hearing before report of**
5 **criminal violation.** The attorney general, to whom the commissioner of natural
6 resources [ENVIRONMENTAL CONSERVATION] or the commissioner of health
7 and social services, as the case may be, reports a violation of this chapter, shall
8 institute appropriate proceedings in the superior court without delay and prosecute
9 them in the manner required by law. Before a violation of this chapter is reported to
10 the attorney general, the person against whom the proceeding is contemplated shall be
11 given appropriate notice and an opportunity to respond to the appropriate
12 commissioner, orally or in writing, in person or by attorney, with regard to the
13 contemplated proceeding.

14 * Sec. 29. AS 41.23.130 is amended to read:

15 **Sec. 41.23.130. Hatcher Pass Public Use Area.** The vacant and
16 unappropriated state-owned land and water and the state land and water acquired in the
17 future that lie within the boundaries described in this section are designated as the
18 Hatcher Pass Public Use Area, are reserved for all uses compatible with their primary
19 function as public use land, and are assigned to the department for control and
20 management:

21 Township 19 North, Range 1 East, Seward Meridian

22 Section 1: NW1/4NW1/4, NW1/4NE1/4NW1/4, W1/2SW1/4NW1/4,
23 NE1/4SW1/4NW1/4

24 Section 2: NE1/4, SE1/4NW1/4, SE1/4NE1/4NW1/4,
25 SE1/4SW1/4NW1/4, SW1/4 exclusive of S1/2SW1/4SW1/4,
26 NW1/4SE1/4, SW1/4SE1/4, NW1/4SE1/4SE1/4,
27 W1/2NE1/4SE1/4, NE1/4NE1/4SE1/4

28 [SECTION 10: E1/2E1/2]

29 Section 11: W1/2, NW1/4NE1/4, exclusive of Tract A

30 Section 14: W1/2, exclusive of Tract A

31 [SECTION 15: E1/2E1/2]

- 1 [SECTION 22: E1/2E1/2]
 2 Section 23: W1/2
 3 Section 26: W1/2SW1/4, SW1/4NW1/4
 4 [SECTION 27: E1/2E1/2]
 5 Township 20 North, Range 1 East, Seward Meridian
 6 Section 25: S1/2S1/2SE1/4
 7 Section 35: SE1/4, SE1/4SE1/4NE1/4
 8 Section 36: NE1/4, SW1/4, E1/2NW1/4, SW1/4NW1/4,
 9 SE1/4NW1/4NW1/4, NW1/4SE1/4, NW1/4NE1/4SE1/4,
 10 NW1/4SW1/4SE1/4
 11 Township 20 North, Range 2 East, Seward Meridian
 12 Section 9: E1/2SE1/4, E1/2SW1/4SE1/4, SE1/4SE1/4NE1/4
 13 Section 10: W1/2SW1/4, E1/2NW1/4, SW1/4NW1/4,
 14 E1/2NW1/4NW1/4, W1/2NE1/4SW1/4, NW1/4NE1/4,
 15 NW1/4SW1/4NE1/4
 16 Section 15: W1/2W1/2NW1/4
 17 Section 16: SE1/4, E1/2NE1/4, E1/2W1/2NE1/4
 18 Section 21: E1/2SW1/4, E1/2SW1/4SW1/4, SW1/4SW1/4SW1/4,
 19 SE1/4NW1/4SW1/4, NW1/4SE1/4, W1/2SW1/4SE1/4,
 20 NE1/4SW1/4SE1/4, W1/2NE1/4, W1/2NE1/4NE1/4,
 21 NW1/4SE1/4NE1/4, SE1/4NW1/4, E1/2NE1/4NW1/4,
 22 SW1/4NE1/4NW1/4
 23 Section 28: NW1/4, W1/2NW1/4NE1/4, NW1/4SW1/4,
 24 NW1/4SW1/4SW1/4, NW1/4NE1/4SW1/4
 25 Section 29: E1/2SE1/4, SE1/4NE1/4, SW1/4SE1/4, S1/2 NW1/4SE1/4,
 26 NE1/4NW1/4SE1/4, S1/2SW1/4, S1/2NE1/4SW1/4
 27 Section 30: S1/2S1/2S1/2, S1/2SE1/4
 28 Section 31: NW1/4, N1/2NE1/4, N1/2S1/2NE1/4
 29 Section 32: N1/2NW1/4, N1/2SW1/4NW1/4, NW1/4NW1/4NE1/4.
 30 * Sec. 30. AS 44.37 is amended by adding a new section to read:
 31 Sec. 44.37.032. Fees for certain services. The Department of Natural

1 Resources may adopt regulations that prescribe reasonable fees, and establish
2 procedures for the collection of the fees, to cover the applicable direct costs, not
3 including travel, of inspections, permit preparation and administration, plan review and
4 approval, and other services provided by the department relating to agriculture and
5 animals under AS 03.05.

6 * Sec. 31. AS 44.46.025(a) is amended to read:

7 (a) The Department of Environmental Conservation may adopt regulations that
8 prescribe reasonable fees, and establish procedures for the collection of the fees, to
9 cover the applicable direct costs, not including travel, of inspections, permit
10 preparation and administration, plan review and approval, and other services provided
11 by the department relating to

12 (1) [AGRICULTURE AND ANIMALS UNDER AS 03.05; FOOD,
13 DRUGS, AND COSMETICS UNDER AS 17.20; AND] public accommodations and
14 facilities under AS 18.35;

15 (2) certificates of inspection for motor vehicles under AS 46.14.400 or
16 46.14.510;

17 (3) sewerage system and treatment works and wastewater disposal
18 systems, and drinking water systems, under AS 46.03.720;

19 (4) [REPEALED

20 (5) REPEALED

21 (6)] water and wastewater operator training under AS 46.30;

22 (5) [(7)] control of solid waste facilities under AS 46.03.020(10) and
23 46.03.100;

24 (6) [(8)] certification of laboratories conducting environmental analyses
25 of public drinking water systems or of oil or hazardous substances [,] or conducting
26 other analyses required by the department;

27 (7) [(9)] certification of federal permits or authorizations under 33
28 U.S.C. 1341 (sec. 401, Clean Water Act).

29 * Sec. 32. AS 44.46.025(d) is amended to read:

30 (d) Notwithstanding (a) of this section, the department may not charge a fee
31 for inspection, permit preparation and administration, plan review and approval, or

1 other services provided by the department under [AS 03.05 OR] AS 44.46.020(5) to
 2 a school. In this subsection, "school" means a public school or private school for
 3 children of school age, as defined in AS 14.03.070, or a head start center that receives
 4 federal financial assistance under 42 U.S.C. 9835.

5 * Sec. 33. AS 03.05.020(b), 03.05.040(b), 03.05.050(b), 03.05.060(b), 03.05.080(b);
 6 AS 03.25.250; AS 03.58.070(1); and AS 17.20.290(b) are repealed.

7 * Sec. 34. AVAILABILITY OF HATCHER PASS PUBLIC USE AREA LAND FOR
 8 GENERAL GRANT LAND ENTITLEMENT OF THE MATANUSKA-SUSITNA
 9 BOROUGH. Notwithstanding the reservation of land, designation of the reserved land as the
 10 Hatcher Pass Public Use Area, and assignment of control and management of the land to the
 11 Department of Natural Resources made by AS 41.23.130, and notwithstanding selection
 12 procedures applicable to municipal general grant land entitlements under AS 29.65.010 -
 13 29.65.140, the following land within Township 19 North, Range 1 East, Seward Meridian, that
 14 is part of the Hatcher Pass Public Use Area is available for selection and conveyance to the
 15 Matanuska-Susitna Borough to fulfill the borough's general grant land entitlement under
 16 AS 29.65.010 - 29.65.140:

- 17 Section 2: S1/2SW1/4SW1/4
- 18 Section 10: E1/2E1/2
- 19 Section 11: Tract A
- 20 Section 14: Tract A
- 21 Section 15: E1/2E1/2
- 22 Section 22: E1/2E1/2
- 23 Section 27: E1/2E1/2

24 * Sec. 35. TRANSITION. (a) All litigation, hearings, investigations, and other
 25 proceedings pending under a law amended or repealed by this Act, or in connection with
 26 functions transferred by this Act, continue in effect and may be continued and completed
 27 notwithstanding an amendment or a repeal provided for in this Act.

28 (b) Certificates and orders issued under authority of a law amended or repealed by this
 29 Act remain in effect for the term issued, or until revoked, vacated, or otherwise modified
 30 under the provisions of this Act.

31 (c) Regulations in effect on June 30, 1999, that were adopted to implement a function

1 that is transferred by this Act remain in effect and shall be enforced by the agency to which
2 the function is transferred under this Act until amended by the agency to which the function
3 is transferred.

4 (d) Wherever in Alaska Statutes affected by this Act there is a reference to regulations
5 adopted under a section of law and there are no regulations adopted under that section because
6 previous regulations adopted under another section are being enforced under (c) of this
7 section, the reference shall be construed to refer to the previously adopted regulations until
8 they are amended by the new agency.

9 (e) All contracts, rights, liabilities, and obligations created by or under a law amended
10 or repealed by this Act, and in effect on July 1, 1999, remain in effect notwithstanding this
11 Act's taking effect.

12 (f) Records, equipment, appropriations, and other property of agencies of the state
13 whose functions are transferred under this Act shall be transferred commensurate with the
14 provisions of this Act.

15 * Sec. 36. Sections 1 - 28 and 30 - 35 of this Act take effect July 1, 1999.

16 * Sec. 37. Section 29 of this Act takes effect on the date of conveyance by the Department
17 of Natural Resources to the Matanuska-Susitna Borough of all land described in sec. 34 of this
18 Act. The commissioner of natural resources shall promptly notify the revisor of statutes of
19 the conveyance made by the Department of Natural Resources to the Matanuska-Susitna
20 Borough of land described in sec. 34 of this Act.

SB

133

HFIN

FILE

Failed

#6

Amendment

CSSB 133 (FIN)

Representative John Davies

Page 2, line 14

Insert after "degree."

"At least one commissioner shall be appointed to represent the interests of the consumer."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mall Stop 3101

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

MEMORANDUM

May 13, 1999

SUBJECT: HCS CSSB 133(FIN) (Creating the RCA and repealing the APUC)

TO: Representative Gene Therriault, Co-chair
House Finance Committee

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

Enclosed is the House Committee Substitute you requested. When the committee amended the sunset provision in the bill (sec. 21) to extend the RCA only until 2002, sec. 31 of the draft HCS became unnecessary: the bill no longer extends the sunset for five years. Therefore, I have removed sec. 31 from the HCS.

In sec. 7 of the bill, amending AS 42.05.171, page 8, line 12, the intent of the addition of "or an appeal of" is unclear. Is the appeal referred to an administrative appeal to which a party is entitled as of right, a discretionary administrative appeal, or an appeal to the courts? It is clear that the petition for reconsideration is administrative, to be decided by the full commission.

TC:pl
99-080.plm

Enclosure

HOUSE FINANCE COMMITTEE
LETTER OF INTENT

SB 133 repeals the Alaska Public Utilities Commission and creates the Regulatory Commission of Alaska. In making this change to public utility regulation, it is the intent of the Legislature to respond to recommendations in legislative audits conducted in 1979, 1985 and 1989, and an audit performed by the National Regulatory Research Institute (NRRI) in 1998. The task of regulating public utilities has changed dramatically as the utility industry has moved from total regulator to regulated competition. The 21st Alaska Legislature is creating the Regulatory Commission of Alaska to address these changes in the utility industry on behalf of the people of the state of Alaska.

The Regulatory Commission of Alaska is better equipped than the APUC to respond to industry proposals for changes in utility services, and to protect the interests of ratepayers in the wake of these changes. SB 133 gives the chair authority over administrative matters, leaving the other commissioners free to resolve substantive issues. To address the problem of the APUC's case backlog and time-consuming decision-making process, SB 133 allows panels of three commissioners, hearing officers or arbitrators to resolve cases where appropriate. It also requires the RCA to adopt regulations setting procedural timelines. To address the problems created by changing APUC staff's role between advocate and advisor, it establishes a separate public advocacy section within the RCA.

SB 133 will improve this agency's accountability to the public. The RCA is required to establish a Management Information System, similar to the Legislature's BASIS system so that the public and industry can be better informed about the RCA's proceedings. It requires the RCA to implement a time management system to record the amount of time spent on filings from different industries, so that the Regulatory Cost Charge can be more fairly assessed.

This year is an opportune time to make these changes. The Alaska Public Utilities Commission would begin winding down on June 30, 1999 under the sunset law. SB 133 requires the governor to appoint, and the Legislature to confirm, five commissioners who will represent the interests of the public.

SB 133 provides for a study of the possibility of combining the functions of the Regulatory Commission of Alaska and the Alaska Oil and Gas Conservation Commission. The results of a study by the Legislative Budget and Audit Committee will be presented to the next session of this Legislature. If the Legislature decides to combine the two agencies' functions, the challenge of making that transition will be significantly eased by the creation and operating experience of the RCA under SB 133.

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Juneau, Alaska 99801-2105

MEMORANDUM

May 11, 1999

SUBJECT: Amendment Y.13 to HCS CSSB 133(L&C))
TO: Representative Gene Therriault
FROM: Jack Chenoweth
Assistant Revisor of Statutes

The amendment draws on the language of the material that was provided by your office. I altered the placement of the second provision and made it a new subsection, subsection (r), within AS 31.05.110, the unitization section.

In its bill section 2, I questioned whether the standard "greater recovery of oil and gas" is correct. The current test, as set out in AS 31.05.030(d)(9) and 31.05.110(a), speaks of "greater *ultimate* recovery of oil and gas," so that is what I substituted. Even so, the current test under which the commission may act to require unitization arguably has three purposes, all as set out in AS 31.05.030(d)(9):

(d) The commission may require

...
(9) the filing and approval of a plan of development and operation for a field or pool *in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected.*

You may want to substitute the full language of the current standard.

Because of the time constraint, I did not have the opportunity to work through each subsection within AS 31.05.110 to satisfy myself that every provision lends itself to commission regulation under the expansion of the provisions in the section to "voluntary cooperative or unit plans or operations" that is made by the amendment to subsection (q).

JBC:glc
99-259.glc

Enclosure

ATT

ASHBURN AND MASON


LAWYERS

A PROFESSIONAL CORPORATION

1130 WEST SIXTH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-5914MARK E. ASHBURN
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KIRSTEN TINGLUMTELEPHONE
(907) 276-4331TELECOPIER
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MEMORANDUM

TO: Ray Gillespie

FROM: A. William Saupé 

DATE: May 11, 1999

SUBJECT: Amendments to SB 133
Our File No. 5667.160

Further to his May 10 memo to you on the same subject, Mark Vasconi and I have discussed and agreed upon the desirability of the following amendments to SB 133:

1. **Section 42.04.020(a).** The following draft provision would preserve the concept of minimum qualifications for commissioners but eliminate some of the rigidity of current law, which creates specific seats requiring particular degrees:

The commission consists of five commissioners appointed by the governor and confirmed by the legislature in joint session. To qualify for appointment as a commissioner a person must be a member in good standing of the Alaska Bar Association or have a degree from an accredited college or university in engineering, finance, economics, accounting, business administration, or public administration. Actual experience for a period of five years in the practice of law or in the field of engineering, finance, economics, accounting, business administration, or public administration is equivalent to a degree.

2. **Section 42.04.020(e).** After reflection, we have decided not to offer an alternative to the provision allowing the governor to remove a commissioner for cause, which

ASHBURN AND MASON

Memorandum to Ray Gillespie

May 11, 1999

Page 2-

may be necessary in some circumstances. However, we still have concern that it is so broadly drafted in its current form as to risk political interference and to undermine the independence of the commission.

- 3. Section 42.04.080(b). AT&T Alascom continues to believe that the appeal procedure is unnecessary for the reasons stated in AT&T Alascom's testimony to the House Labor and Commerce Committee on Friday, May 7, 1999.
- 4. Section 42.04.080(c). If the appeal subsection is deleted, corresponding changes must be made in the letter designations of the other subsections.
- 5. Section 42.04.150. AT&T Alascom prefers the current system of designating a staff advocacy team on a case-by-case basis. If, however, a separate public advocacy section is going to be created, AT&T Alascom suggests the following fix to harmonize this section with Section 42.04.070(c) and to ensure adequate staffing:

Public advocacy section. There is established within the commission a public advocacy section. The section shall participate as a party in matters that come before the commission to represent the public interest when the chairman determines pursuant to AS 42.04.070(c) that it is in the public interest to do so. The public advocacy section shall include sufficient personnel with expertise to represent the public interest. The public advocacy section shall operate separately from the rest of the commission.

form public interest to chairman - pub Pol. inf. - financial info interest is at stake

(New text is underlined.) NOTE: AT&T Alascom still has serious concerns that, once set in motion, there is no immediate control over the staff's concept of the public interest and the specific direction that its advocacy may take. Ultimately, however, the commission itself has the final word and can rein in any excesses on the part of the public advocacy staff.

- 6. Section 42.04.010(b). As mentioned in AT&T Alascom's oral testimony to the House Labor and Commerce Committee, there is an ambiguity as to whether a new governor could appoint a new chairman prior to the expiration of the chair's four-year term. To balance the "for cause" removal provision, to reduce politicization, and to enhance the commission's independence, the better position would be that a new

ASHBURN AND MASON

Memorandum to Ray Gillespie
May 11, 1999
Page 3-

governor would have to wait for the four-year term of the chairman to expire before appointing a new one. To make this clear, the section could be rewritten as follows:

(b) The commission may nominate one of its members to serve as chair. The governor shall designate the chair of the commission whenever the position becomes vacant, either by selecting the member nominated by the commission or another member. The term as chair is four years. The chair may not be appointed to successive terms as chair.

N:\SJW\5667\101



CHUGACH ELECTRIC ASSOCIATION, INC.

EUGENE N. BJORNSTAD, P.E.
General Manager

April 13, 1999

Senator Drue Pearce
Twentieth Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Senator Pearce:

Re: SB 133 as an essential vehicle for regulatory re-invention

Chugach Electric Association, Inc. strongly favors SB 133. This bill will facilitate development of a new regulatory structure to oversee the increasing competition among utility services. The new structure can achieve savings over time through streamlining and through carefully re-defining regulatory functions. Combining functions as provided in SB 133 will allow the new commission to adapt in ways which the old structure is unlikely to achieve.

The existing structure is struggling with the following problems:

The public is not provided much protection by the Commission. The Commission appears to function, but little useful regulatory work is actually being performed. The public suffers the costs and constraints of regulation with little corresponding benefit.

The interests of regulated utilities which support the status quo are protected by the Commission's devotion to anachronistic regulatory approaches.

Regulatory inertia continues unneeded regulation where competition would work better. The APUC is overwhelmed with work in part because it persists in performing unneeded regulation. Essential transition work is not being done.

SB 133 will allow the new Energy Conservation Commission to take a "zero based regulation" approach to examining what regulatory functions are essential. The objective must be to reduce regulatory functions and corresponding public burdens to those which provide sufficiently high benefits to justify the burdens. Over several years, it is reasonable to demand that the transition to greater competition reduce the regulatory effort needed.

As a first step, the Legislature must clearly announce the policy of this state to promote competition among sellers of utility service wherever possible. The reverse policy is followed by the existing regulatory body. A clear policy directive favoring competition as the rule with exceptions only by special decision will allow the new Energy Conservation Commission begin immediately to increase customer choice and reduce regulation. The mission should be to maximize use of competition and minimize use of regulation to promote the welfare of the citizens of the State and their economic well-being.

Sincerely,

Eugene N. Bjornstad
General Manager

RECEIVED

APR 16 1999

Alaska State Legislature

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Drue Pearce
President of the Senate

Sponsor Statement **5/5/99** **Senate Bill 133**

SB 133 will accomplish several goals regarding the Alaska Oil & Gas Conservation Commission (AOGCC) and Alaska Public Utilities Commission (APUC). The APUC will be re-pealed and re-structured under the new title of the Regulatory Commission of Alaska (RCA). This new structure will be more capable of addressing the current expanding workload of the commission. The AOGCC will be strengthened by relocating to the same physical location as the APUC. Long term efficiencies will be gained by utilizing a common building, sharing clerical staff and record keeping facilities. In addition, Legislative Budget & Audit (LB&A) will write a report during the interim, which will consider the functions of the two commissions and what structure would best serve the states interests.

SB 133 makes the following changes to the APUC:

1. Repeals the APUC and creates the Regulatory Commission of Alaska (RCA), effective July 1, 1999. All commissioners shall be either re-appointed or replaced. All staff shall remain. All regulations and pending matters before the commission shall be carried forward to the new commission.
2. The new commission will be composed of five commissioners. The five commissioners shall be members of the general public with no requirement for areas of specific expertise. I feel that requiring specific expertise is limiting and that the public interest would best be served by having maximum flexibility in acquiring qualified individuals from the general public.
3. SB 133 strengthens the position of the Chairman.

The Chairman:

- a) Shall have limited authority over the other commissioners.
- b) Shall have oversight of all commission staff.
- c) Shall assign the work of the commission and staff.
- d) Shall set timelines by which a matter shall be resolved.
- e) Shall determine when advocacy staff is required given certain standards.

4. Streamlines the hearing process.

- a) The chair shall empanel three or more commissioners to a hearing panel to decide the case. This allows the Chairman to assign the applicable number of commissioners depending on the size of the case.
- b) Limited the appeals process to only be considered when a decision taken is contrary to commission precedent.
- c) Mandated that the commission promulgates timeliness standards, depending on the complexity of the docket, for the types of cases that come before the commission. These regulations shall be adopted by December 31, 1999.
- d) Provided for formal hearings to be held before an arbitrator in appropriate cases.
- e) Established within the commission a separate advocacy section to represent the public interest when necessary.

- 5. SB 133 instructs the commission to adopt a time management system to ensure accurate accounting for time billed to each aspect of the commission's functions. LB&A has been recommending a time management system for the APUC in every audit since 1979. To date, the APUC does not use industry or utility codes on payroll time sheets and therefore workloads are approximated using rough estimates. A time management system will provide improved accuracy when assessing regulatory cost charges to individual sectors of the utility industry. This will assist in assuring that the cost causer is the cost payer.**

SB 133 makes the following changes to the AOGCC:

- 1. The AOGCC will physically move to the same location as the RCA (APUC) as soon as possible, but not later than July 1, 2006. The two commissions will share record keeping facilities and clerical staff after that time.**
- 2. The AOGCC shall have access to hearing officers at the RCA (APUC) following the effective date, July 1, 1999.**

SB 133 authorizes LB&A to prepare a transition report to be delivered to the governor and the Legislature on the first day of the second session of the 21st Legislature. The Governor shall appoint one commissioner from each commission to work with LB&A on the transition report. The report will address both commissions and their functions and shall make recommendations on changes that would serve the best interests of the state.

SB 133 will improve our ability to protect the long-term public interest through increased functional efficiencies of both commissions.

SB 133 does NOT:

- 1. Does NOT combine the two commissions into one.**
- 2. Does NOT de-regulate garbage.**
- 3. Does NOT transfer pipeline regulation to the AOGCC.**
- 4. Does NOT make any policy changes to either commission.**
- 5. Does NOT transfer any function from one to commission to the other.**
- 6. Does NOT alter the number of commissioners on either commission.**

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

ALASKA PUBLIC UTILITIES COMMISSION

1010 WEST SIXTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501-1963
PHONE: (907) 276-4222
FAX: (907) 276-0160
TTY: (907) 276-4333

April 28, 1999

The Honorable Tony Knowles
Governor of Alaska
P.O.Box 110001
Juneau, Alaska 99811

Dear Governor Knowles:

After much deliberation, I find myself compelled to share with you a most unfortunate incident. One I believe that could, and should, have been avoided.

On January 25, 1999, one of our employees, Mr. Ed Schubert, the Commission's Accounting Clerk, returned to the Commission on work release from Akeela House. Within one hour and fifteen minutes, he was arrested, handcuffed, and taken to jail, resulting in a great deal of turmoil, confusion, and embarrassment at the Commission.

Mr. Schubert had been arrested in July 1998 for sexual and physical assault while under the influence of alcohol and cocaine. He served two months in jail and four months in Akeela House before his scheduled sentencing. During this time, he was on authorized leave from the Commission and received psychiatric and other counseling. He did so well during his time at Akeela House that he earned an opportunity for work release under the terms of that treatment facility's rules. In conversations with Ms. Diane Hunt, the Commission's Administrative Manager, who was Mr. Schubert's supervisor, Mr. Schubert mentioned several times that he would eventually earn a work release privilege. Many of Mr. Schubert's friends at the Commission kept in touch with him and told me and fellow Commissioners how glad they were that he was getting treatment and that they were looking forward to working with him again.

On January 15, 1999, Mr. Bob Lohr, the Commission's Executive Director, sent a letter to Mr. Schubert stating, "You are **expected and directed to return to work** at 8:00 a.m. Wednesday, January 27. If you do not report to work..., it will be necessary for me to proceed with separating you from your employment."

On Friday, January 22, 1999, Mr. Schubert called from Akeela House and spoke with Ms. Hunt and told her that he had been given permission by Akeela House and would return to work on Monday, January 25. During this conversation, Ms. Hunt confirmed

that his work hours would be 8:00 a.m., to 4:30 p.m.

As we learned later, this conversation initiated a series of calls from the Commission's offices to Mr. Schubert's probation officer, the Department of Law, Department of Commerce's Human Resource Manager, the Commission Chairman, and a few others to have Mr. Schubert arrested when he returned to work.¹ However, no one involved in these numerous calls contacted Akeela House to determine why and how Mr. Schubert was authorized to return to work. Nor did anyone call Mr. Schubert's attorney or his wife, who is also an attorney, to inform them that Mr. Schubert would be arrested if he returned to work.

During this rather bizarre set of events, only one Commissioner, the Chairman, had any knowledge that Mr. Schubert's work release was in question and could lead to his arrest. Four Commissioners were totally unaware of any problem with Mr. Schubert's pending return. That return and immediate arrest ultimately involved two police officers, two judges, the Court System, a district attorney, a probation officer, and Mr. Schubert's attorney. One phone call to Akeela House or to Mr. Schubert's attorney expressing a concern could have prevented this significant consumption of state resources and resultant chaos and embarrassment to the Commission.

The most tragic result, however, was the embarrassment and humiliation of Mr. Schubert who had excelled in his treatment program. Mr. Schubert had been a very competent state employee. He was removed from the Commission in handcuffs, and later that day appeared in court handcuffed between two other prisoners. His crime: He reported to work as he was directed to do and as had been authorized by his correctional treatment program. Akeela House had no knowledge of any concerns about Mr. Schubert's return to the Commission. Mr. Schubert was indeed the victim of a system that failed because individuals failed to communicate.

Even though I am about to retire, I feel compelled to inform you of this matter because it exemplifies the manner in which the Commission's Executive Director operates. He communicates with only one Commissioner, the Chairman. While in some situations this is appropriate, in a case of this magnitude that involved so many state resources, inside and outside the Commission, all Commissioners should have been apprised of the concerns associated with Mr. Schubert's return. Had that been done, I have no doubt that the arrest would never have occurred.

It was only after Mr. Schubert's arrest that I learned there were some employees at the Commission who had been concerned about Mr. Schubert's work return in view of his

¹ We learned later that in a call Ms. Hunt made in October 1998 to Mr. Schubert's probation officer, she had been told Mr. Schubert would not be released for work. It was this statement that apparently led to the belief that Mr. Schubert would be violating the terms of his parole to Akeela House if he was allowed to go on work release. As it turned out, there was a huge misunderstanding between the several state agencies as to what Akeela House's authority was in matters such as these. No one from any of the state agencies involved called Akeela House for its interpretation of the matter. Ultimately, Mr. Schubert's arrest for the alleged violation of parole was dropped.

offenses. If anyone had informed me of those concerns, I would have suggested a meeting with representatives from Akeela House to obtain answers and assurances about the screening that is required before work release. Instead rumors were allowed to metastasize, and employees allowed to believe that the other four Commissioners were indifferent to their concerns and willing to expose them to harm by allowing and encouraging an assailant to return to work. Such turmoil is clearly counterproductive to conducting the State's business and, blatantly unfair to those of us at whom such allegations were made. We had no opportunity to address the problem as we were unaware that it existed.

Mr. Lohr has many assets. However, his interpersonal skills at the Commission are deplorable. Besides the Schubert matter, there are numerous other personnel incidents involving Mr. Lohr's lack of appropriate managerial behavior.

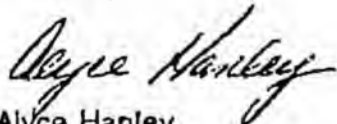
Specifically, one of our most professional and respected employees retired early because of Mr. Lohr's manipulation of the promotion procedures. She was head of the tariff department at the time of her retirement. The former head of the finance department, Joe Franco, interrupted Mr. Lohr in the middle of an evaluation and returned with his written resignation. Mr. Franco was not eligible to retire, but was unwilling to work any longer under Mr. Lohr's inept supervision. Two paralegals came to me personally because they felt physically threatened by Mr. Lohr. Both have left the APUC.

I have listened to Mr. Lohr's explanations and apologies. Recognizing there was nothing I could change, I tolerated Mr. Lohr's management. Since the Schubert incident, however, I have lost my tolerance and any respect I had for Mr. Lohr.

There are perhaps positions in state government in which Mr. Lohr has the potential to succeed. I believe, however, the public interest would be better served with a different individual in the position of executive director.

Thank you for your attention.

Sincerely,



Alyce Hanley,
Commissioner

cc: Mr. Robert Lohr
Rep. Joe Green
Rep. Norman Fiokeberg

FISCAL NOTE

No: 3

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Version: HCS CS5B 133(L&C)
(H) Publish Date: 5/8/99

Revision Date: _____
Title: Combine APUC and AOGCC
Sponsor: Senator Pearce
Requestor: (H) L&C

Department Affected: Administration
BRU: AOGCC
Component: AOGCC
COMPONENT SERIAL NO. 2010

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	147.0	147.0	147.0	147.0	147.0	147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	147.0	147.0	147.0	147.0	147.0	147.0
CAPITAL EXPENDITURES	321.9	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 CF Match						
1004 GF	147.0	147.0	147.0	147.0	147.0	147.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	147.0	147.0	147.0	147.0	147.0	147.0

Estimate of any current year (FY 99) cost: \$ _____

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

Operating Budget

This bill combines the AOGCC and APUC offices and will relocate the AOGCC offices to the current APUC office location. \$147.0 of additional operating funds are necessary for AOGCC lease costs at the APUC building. (8,000 x \$2.00/sq. ft. less \$45,000 available from current facility maintenance budget).

Capital Budget

Relocating the AOGCC offices will require a capital expenditure of \$281.9 in FY 2000 to cover moving costs and new office furniture for 23 employees. AOGCC will also need to invest in a new computer network system to be compatible with APUC. The cost for an updated network is estimated to be \$40.0 and is also included in the capital request.

Prepared by: Robert Christenson, PE
Division: Alaska Oil and Gas Conservation Commission

Phone: 279-1433
Date: _____

Approved by Commissioner: Robert Poe
Agency: Department of Administration

Date: 5/6/99

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July 3, 1996

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ORIGINAL

The Hon. John T. Shively
Commissioner
Department of Natural Resources
400 Willoughby Avenue
Juneau, AK 99801-1724

David Johnston, Chair
Alaska Oil & Gas Conservation Commission
3001 Porcupine Drive
Anchorage, AK 99501-3120

Re: AOGCC/DNR Unitization Jurisdiction
Our file: 663-96-0121

Dear Commissioner Shively and Mr. Johnston:

You have asked for an opinion regarding the respective jurisdictions of the Alaska Oil and Gas Conservation Commission ("AOGCC") and the Department of Natural Resources ("DNR") over the unitization of production interests in state oil and gas leases. Specifically, you have asked whether the AOGCC has the power to unilaterally change the terms of the Prudhoe Bay Unit Agreement ("PBUA"), by forcing the parties to combine their interests in the two Initial Participating Areas established under that Agreement, where those terms were entered into and approved by DNR under AS 38.05.180(p).

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SUMMARY

A review of the facts, pertinent case law and the statutes establishing the respective jurisdictions, authorities and powers of the AOGCC and the DNR shows that the AOGCC cannot use its compulsory unitization powers to force holders of interests in state oil and gas leases to alter the terms of a voluntary unitization agreement that has been entered into and approved by DNR under AS 38.05.180(p). In this context the AOGCC fulfills whatever statutory obligations it has, not by reworking the parties' contractual allocation of the costs and benefits of Prudhoe Bay production, but by issuing orders that implement specific oil field practices necessary to prevent waste, protect correlative rights, or ensure the greater ultimate recovery of oil and gas.

INTRODUCTION AND BACKGROUND

A. Unitization Generally

There is general agreement among courts that persons holding interests in land overlying a common supply of oil and gas have "correlative rights" with others similarly situated as well as a duty to the public not to waste the oil and gas:

The term "correlative rights" is merely a convenient method of indicating that each owner of land in a common source of supply of oil and gas has legal privileges as against other owners of land therein to take oil and gas therefrom by lawful operations conducted on his own land limited, however, by duties to other owners not to injure the source of supply and by duties not to take an undue proportion of the oil and gas. In addition, of course, to this aggregate of legal relations, each landowner has duties to the public not to waste the oil and gas.

1 W.L. Summers, *The Law of Oil and Gas* § 63 at 180-81 (footnote omitted).

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The standards of performance under those correlative rights and the public duty not to waste oil and gas have not been developed by courts. Instead, they are generally reflected in state conservation statutes that give administrative agencies the power to regulate the production of oil and gas to prevent waste:

While litigation, apart from statute, has not often arisen in which the courts have had the opportunity to determine a standard of performance of the duty not to injure a source of supply of oil and gas, conservation statutes, defining and prohibiting waste and giving administrative agencies authority to make and enforce rules for its prevention, do determine such a standard of performance. An injury to the source of supply which violates the rights of the public also violates the rights of adjacent owners.

Id. at 184-186.

To prevent waste and to protect the public interest in maximizing the production of oil and gas, many conservation statutes include provisions like those in Alaska that provide for the development and production of an oil and gas deposit through "unitization" of the ownership interests in the common source of supply.¹ Unitization "refers to the combination of most, if not all, of the separate tracts in the field into one tract" so that the reservoir or field can be developed as "a single entity, without regard to surface boundary lines." 6 H.R. Williams and C.J. Meyers, *Oil and*

¹ Conservation statutes generally provide two methods for combining ownership interests to prevent waste: unitization, and pooling. "Although the terms 'pooling' and 'unitization' are frequently used interchangeably, more properly 'pooling' means the bringing together of small tracts sufficient for the granting of a well permit under applicable spacing rules whereas 'unitization,' or, as it is sometimes described, 'unit operation,' means the joint operation of all or some part of a producing reservoir." 6 H.R. Williams and C.J. Meyers, *Oil and Gas Law* § 901 at 2-3 (1995). We are concerned here with unitization, which is provided for in Alaska under AS 31.05.110 and AS 38.05.180(p)-(q). We are not concerned with pooling, which is addressed in AS 31.05.100 and AS 38.05.180(s).

Gas Law § 901 at 3-4 (1995) (footnote omitted). Unitization is necessary for certain oil field practices to be effective, and generally results in greater overall recovery:

Both economics and property rights require the integration of a field in order for such operations as gas cycling, pressure maintenance, and secondary recovery to be conducted. Moreover, . . . greater recovery at less cost can be achieved when the field is treated as an entity and wells [are] so located that they maximize the use of reservoir energy. . . .

Williams and Meyers, § 901 at 3-4 (1995).

Although unitization thus provides comprehensive overall benefits to both the public and those with interests in the field, it frequently is difficult to accomplish voluntarily:

It has long been urged that efficiency in the development and operation of oil and gas reservoirs and the prevention of waste of recoverable hydrocarbons require that such reservoirs be developed and operated as a unit without regard to surface boundaries. To achieve the maximum objectives of such a unitization program it is necessary that all persons having an interest in the program area become subject to the agreement. Without statutory compulsion, however, unanimity is frequently impossible to obtain. *The principal obstacle to full, voluntary agreement is the problem of dividing the proceeds of production.*

Id. § 910 at 85 (emphasis added; footnotes omitted). More particularly, "there is frequent acrimony as to the respective shares of production to be given owners of interests in favorable parts of the structure and owners of interests in less favorable areas, for example, persons with interests overlying the gas-cap of a gas-drive pool."² Because voluntary unitization is so difficult to

² Williams and Meyers, § 910 at 86. As discussed in more detail *infra*, the problem of placing a value on the leasehold interests overlying the gas cap of the Prudhoe Bay reservoir was particularly acute given the lack of an available transportation system and market for Prudhoe Bay gas, and the uncertainty regarding when (or whether) a viable transportation system and market for that gas would be developed.

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accomplish, at least 33 states (including Alaska) and three Canadian provinces have enacted statutes providing for compulsory unitization under certain circumstances. *Id.*, § 912 at 96-98.

B. Unitization in Alaska

1. Pre-statehood

Alaska's statutes relating to conservation of oil and gas are now codified in AS 31.05.

Many of them, however, were first enacted during territorial days in ch. 40, SLA 1955. The waste of oil and gas was prohibited in sec. 1, now AS 31.05.095. Section 2 defined waste in terms virtually identical to those now appearing in AS 31.05.170(14). Section 3 created an Alaska Oil and Gas Conservation Commission, "to be composed of the Governor, the Territorial Highway Engineer and the Commissioner of the Alaska Department of Mines," who were to serve without compensation. The Commission was given many of the powers and duties now found in AS 31.05.030 (discussed below), including the power to prevent waste. Section 7.1 provided for both voluntary unitization and, in the absence of voluntary unitization, compulsory unitization:

To prevent, or to assist in preventing waste, as prohibited by this Act, to insure a greater ultimate recovery of oil and gas, and to protect the correlative rights of persons owning interests in the tracts of land affected, such persons may validly integrate their interests to provide for the unitized management, development, and operation of such tracts of land as a unit. Where, however, such persons have not agreed to so integrate their interests, the Commission, upon proper petition, after notice and hearing, as hereinafter provided, shall be vested with jurisdiction, power and authority, and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of this section.

Id. (This language now appears in AS 31.05.110(a) with only minor textual changes.)

The territorial commission's power to compel unitization was limited by section 7.4, however, in that no compulsory unitization order would be effective unless it was approved by "the lessees of record of not less than 62.5 percent of the unit area affected thereby and by the owners of record of not less than 62.5 percent . . . of the normal one-eighth landowners' royalty interest . . ."³ This mirrored the practice in other states: "In general, under these [conservation] statutes a regulatory agency is authorized to require unitization of a pool or some part thereof despite the objection of minority interests therein if a proposed plan has been approved by a requisite majority of the owners of interests in the premises to be unitized." Williams and Meyers, § 912 at 98.1-99 (1995).

2. Statehood to 1978

Following statehood, the First Alaska Legislature transferred the territorial commission's functions and authority to DNR. Ch. 64, § 16, SLA 1959. It also enacted the Alaska Lands Act, ch. 169, SLA 1959, now codified at AS 38.05, to provide for the management of the huge land grant given the new state.⁴ One subsection of that Act, now codified as amended at AS 38.05.180, authorized the commissioner of natural resources to lease state lands for oil and gas purposes. See ch. 169, art. VIII, § 3(7), SLA 1959.

³ Following statehood, this provision was codified as AS 31.05.110(d). It was repealed by ch. 160, § 17, SLA 1978.

⁴ Under section 6 of the Alaska Statehood Act, the new State of Alaska became entitled to select 103,350,000 acres of federal land (subsections (a) and (b)), was granted the school, university, and mental health land grants previously made to the Territory of Alaska (subsection 6(k)), and succeeded to the United States' title to tide and submerged lands underlying navigable waters within its boundaries (subsection 6(m)). Alaska Statehood Act, Pub. L. 85-508, § 6, 72 Stat. 339 (1958).

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In addition to authorizing leasing of the lands, a proprietary function, that subsection also included specific provisions relating to the unitization of state lands leased for oil and gas purposes, a conservation function. For conservation purposes, lessees with interests in a common source of supply of oil or gas were authorized to enter into a cooperative or unit plan of development or operation "whenever determined and certified by the Commissioner to be necessary or advisable in the public interest." The commissioner was given the discretion "with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements" of the leases and, again with the consent of the lessees, to adopt regulations with respect to the leases and an approved cooperative or unit plan determined "necessary or proper to secure the proper protection of the public interest." Ch. 169, art. VIII, § 3(7), SLA 1959. The commissioner was given the power to include in state leases a provision "requiring the lessee to operate under such a reasonable or cooperative or unit plan" and to "prescribe such a plan under which such a lessee shall operate, which shall adequately protect all parties in interest, including Alaska." *Id.* An approved plan could include, in the commissioner's discretion, a provision vesting the commissioner or another person or a state agency with the authority "to alter or modify from time to time the rate of prospecting and the quantity and rate of production under such plan." *Id.* Finally, these provisions were stated to be "in addition to, and shall in no way repeal, diminish, change or abrogate the provisions of" the 1955 conservation legislation that, under ch. 64, SLA 1959, also was the DNR's responsibility to administer.⁵

⁵ Most of the provisions of section 3(7) of chapter 169, art. VIII, SLA 1959, now appear, with only minor changes, in AS 38.05.180(p). The last two provisions referenced in the text are now found in
(continued...)

3. Post-1978

In 1978, the legislature enacted three measures of significance here. First, ch. 155, SLA 1978, repealed and reenacted the statute authorizing the commissioner of natural resources to lease state lands for oil and gas purposes, AS 38.05.180. The reenacted statute retained the prior provisions relating to unitization, including the provisions authorizing state lessees to unitize with others and authorizing the commissioner to prescribe a "reasonable cooperative or unit plan . . . [which] must adequately protect all parties in interest, including the state." AS 38.05.180(p). It also retained the prior language that the provisions of AS 38.05.180 concerning cooperative or unit plans are in addition to and do not affect AS 31.05.

The second significant 1978 Act was ch. 158, SLA 1978, which transferred the authority and responsibility for administration of the state's oil and gas conservation statutes from DNR to a newly created "independent quasi-judicial agency of the state," the AOGCC. AS 31.05.005(a). DNR was given "the same standing (no more nor less) before the Commission as granted by law to any other proprietary interest." AS 31.05.026(e). The AOGCC's authority was made applicable to "all land in the state lawfully subject to its police powers," expressly including "all land included in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)." AS 31.05.027. And, under sec. 5 of ch. 158, "[u]ll references in AS 31.05 to department or Department of Natural Resources except in AS 31.05.026 shall be read as [the AOGCC] in order to implement this Act." As a result, the AOGCC was given "jurisdiction

³(...continued)

AS 38.05.180(q). Section 3(7) also included authorization for state lands to be pooled with other lands, a provision that is now codified at AS 38.05.180(s).

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and authority over all persons and property, public and private, necessary to carry out the purposes and intent of this chapter." AS 31.05.030(a). It was directed to "investigate to determine whether or not waste exists or is imminent, or whether or not other facts exist which justify or require action by it." AS 31.05.030(b). And it was directed to "adopt rules, regulations and orders and take other appropriate action to carry out the purposes of this chapter." AS 31.05.030(c).

The third significant 1978 Act was ch. 160, SLA 1978. So far as relevant here, that Act added "the filing and approval of a plan of development and operation for a field or pool in order to prevent waste, insure a greater ultimate recovery of oil and gas, and protect the correlative rights of persons owning interests in the tracts of land affected" to the list of things the AOGCC was authorized to require. Ch. 160, § 1, SLA 1978 (adding AS 31.05.030(d)(9)). It added "the quantity and rate of the production of oil and gas from a well or property," to the list of things the AOGCC was authorized to regulate "for conservation purposes," and provided that "this authority shall also apply to a well or property in a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180(p)." Ch. 160, § 2, SLA 1978 (adding AS 31.05.030(e)(6)). The act also repealed AS 31.05.110(d), which had provided that no compulsory unitization order would be effective unless ratified by the lessees of at least 62.5 percent of the unit area and at least 62.5 percent of the owners of the landowners' royalty interest in the unit. Ch. 160, § 17, SLA 1978. Of particular significance here, this act also added a new subsection to the unitization section, AS 31.05.110, which provided:

This section applies to all involuntary units formed in the state. Subsections (a) and (g) - (p) of this section apply to all voluntary units formed in the state

and to a voluntary cooperative or unit plan of development or operation entered into in accordance with AS 38.05.180[p].

Ch. 160, § 2, SLA 1978, codified at AS 31.05.110(q).⁶

C. The PBUA

On March 29, 1977, Atlantic Richfield Company, BP Alaska, Inc., and Exxon Corporation filed an application with the commissioner of DNR pursuant to AS 38.05.180 and 11 AAC 83.355 "for approval and certification of a voluntary unit agreement for the Prudhoe Bay Unit."⁷ The Oil and Gas Conservation Committee in the Division of Oil and Gas Conservation ("DOGC"), which had assumed the powers and duties of the territorial Conservation Commission, concluded that a plan of operations subsequently submitted by the applicants was "consistent with sound conservation practices based on currently available data."⁸ The DOGC director approved the application for the PBUA and the accompanying plan of operations and forwarded his decision to the commissioner on May 19, 1977.⁹ The commissioner approved the director's decision on June 2, 1977.¹⁰ The commissioner also signed the Unit Agreement, approving it as "a unit plan of

⁶ Originally this subsection referred to AS 38.05.180(m), which, prior to its 1978 repeal and reenactment, was the provision now codified at AS 38.05.180(p). AS 31.05.110(q) now correctly refers to AS 38.05.180(p).

⁷ Decision and Findings of the Director, Division of Minerals and Energy Management ["DMEM"] with Respect to Application for Approval of Unit Agreement, Prudhoe Bay (May 25, 1977) ("DMEM Decision") at 1.

⁸ May 19, 1977 memorandum from Hoyle H. Hamilton, Director, DOGC, to O.K. Gilbreath, Jr., Director, DMEM.

⁹ DMEM Decision at 6.

¹⁰ Approval of Prudhoe Bay Unit Agreement by the Commissioner of the Department of Natural Resources (June 2, 1977) at 2.

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development or operation on behalf of the State of Alaska," as authorized by Chapter 38.05 of the Alaska Statutes. PBUA at 1, 36. Under Article 3 of the Unit Agreement, all of the oil and gas rights in the leases executed by the State "are hereby unitized so that Unit Operations may be conducted as if the Unit Area had been included in a single lease executed by the State of Alaska . . ." PBUA, Art. 3.1 at 7.

The primary oil and gas reservoir subject to the Unit Agreement is referred to as the Prudhoe Bay (*Permo-Triassic*) Reservoir. The Unit Agreement identifies two portions of the reservoir, the Oil Rim and the Gas Cap.¹¹ The existence of these two distinct portions of the

¹¹ The "Prudhoe Bay (Permo-Triassic) Oil Rim" is "that portion of the Prudhoe Bay (Permo-Triassic) Reservoir which originally contained Oil and Solution Gas and which was not originally occupied by Gas Cap Gas." PBUA, art. 5, § 5.1(d), p. 17. The Prudhoe Bay (Permo-Triassic) Gas Cap is "that portion of the Prudhoe Bay (Permo-Triassic) Reservoir which originally contained Gas Cap Gas and which is distinguished from the Prudhoe Bay (Permo-Triassic) Oil Rim as being that portion of the Permo-Triassic Reservoir which originally existed above the gas-oil contact or contacts as determined by the Working Interest Owners." PBUA, art. 5, § 5.1(b), p. 16. Article 1 of the Unit Agreement provides the following other relevant definitions:

1.3 *Gas Cap Gas* is natural gas (with all of its constituent elements, including condensate and gas plant liquids, derived or extracted from it after it leaves the Reservoir) which originally occurred in a Reservoir in gaseous form and not in solution with Oil.

1.4 *Gas Cap* is that portion of a Reservoir occupied by Gas Cap Gas originally in place and not by Oil or Solution Gas.

* * *

1.7 *Oil* is any hydrocarbon produced in liquid form at the wellhead and originally existing in liquid form in the Reservoir.

* * *

1.9 *Oil Rim* is that portion of a Reservoir occupied by Oil and Solution Gas originally in place and not by Gas Can Gas.

* * *

(continued...)

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reservoir means that oil and gas do not exist in the same proportion everywhere in the Prudhoe Bay field, and that each lease of each working interest owner overlies a different amount of oil and gas. Due in substantial measure to difficulties associated with placing a value on the Gas Cap Gas in the absence of an available transportation system and market for that gas, the working interest owners could not agree on a single equity ownership interest in Prudhoe Bay hydrocarbons. The working interest owners therefore divided the Prudhoe Bay Unit into two, largely overlapping, Initial Participating Areas: the Oil Rim Participating Area ("ORPA") and the Gas Cap Participating Area ("GCPA").¹² Each working interest owner is assigned a "tract participation percentage" for each

¹¹(...continued)

1.20 *Solution Gas* for the purposes of distinguishing it from Gas Cap Gas, is any gaseous hydrocarbon which originally occurred in a Reservoir in solution with Oil. *Solution Gas* for purposes of distinguishing it from Oil, is any hydrocarbon which originally occurred in a Reservoir in solution with Oil and which was converted to a gaseous form by changes in pressure or temperature effected by ordinary production methods. In either case, the term *Solution Gas* includes all constituent elements including gas plant liquids derived or extracted therefrom after it leaves the Reservoir.

PBUA, art. 1, pp. 2-4.

¹² Article 5.2 of the Unit Agreement establishes the two Initial Participating Areas and sets forth, in accordance with Exhibit C to the Agreement, the tract participation percentages for each working interest owner:

5.2 Participation for Prudhoe Bay (Permo-Triassic) Reservoir Participating Areas. The Oil Rim Participating Area shown on Exhibit D-1 and the Gas Cap Participating Area shown on Exhibit D-2 are hereby established as the initial Participating Areas. The Tract Participations initially agreed to by the Working Interest Owners for the Oil Rim and Gas Cap Participating Areas are shown in Exhibit C. Tract Participations have been assigned to the Tracts within the Oil Rim Participating Area primarily on the basis of Oil and Solution Gas originally in place and to the Gas Cap Participating Area primarily on the basis of Gas Cap Gas originally in place, as determined by agreement of the Working Interest Owners. Because development of the Tracts and the available information concerning Unitized Substances is not complete enough to allow final determination of Tract Participations as of the

(continued...)

lease (or tract) it holds in each participating area.¹³ Production from the Unit is allocated to each participating area "in accordance with methods, formulas and procedures as provided in the Unit Operating Agreement."¹⁴ The stated goal of these "methods, formulas and procedures" is to allocate Gas Cap Gas to the Gas Cap Participating Area, and to allocate Oil and Solution Gas to the Oil Rim Participating Area.¹⁵ Production that has been allocated to a particular participating area is then

¹²(...continued)

Effective Date, the Working Interest Owners agree that the initial Tract Participations shall be subject to adjustments or corrections as provided in the Unit Operating Agreement.

PBUA, art. 5, p. 17.

¹³ Because the Oil Rim Participating Area and the Gas Cap Participating Area overlap considerably, most of the leases received tract participation percentages in both areas. *Compare* Unit Agreement, Exh. C, Part I at C-1 through C-4, *with* Unit Agreement, Exh. C, Part II at C-5 through C-7.

¹⁴ Unit Agreement, Art. 6.1. The Unit Operating Agreement is a separate agreement among the working interest owners to which the State is not a party. The Operating Agreement deals in detail with, among other things, voting rights (Arts. 5, 35), tract operations (Art. 8), taxes (Art. 12), insurance (Art. 13), production allocation (Arts. 27-29), and Unit expense allocation and adjustments (Arts. 30-34). However, "[i]nsofar as the respective rights and obligations of Working Interest Owners on the one hand and the State of Alaska on the other hand are concerned, this [Unit] agreement shall control in case of any conflict between it and the Unit Operating Agreement." PBUA, art. 18, p.34.

¹⁵ Unit Agreement, Article 6.1. The definitions of Gas Cap Gas, Oil, and Solution Gas are set forth in note 11. above. Article 6.1 provides as follows:

Allocation of Unitized Substances Produced from Participating Areas. All Unitized Substances produced and saved from the Unit Area shall be allocated to the Participating Area established for such Reservoir and to the Working Interest Owners therein; except that where there are separate Oil Rim and Gas Cap Participating Areas within a Reservoir, production therefrom of Gas Cap Gas shall be allocated to the Gas Cap Participating Area of such Reservoir, and to the Working Interest Owners therein, and production therefrom of Oil and Solution Gas shall be allocated to the Oil Rim Participating Area of such Reservoir and to the Working Interest Owners therein. Such allocations shall be in accordance with methods, formulas and procedures as provided in the Unit Operating Agreement.

(continued...)

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further allocated to each working interest owner based upon the sum total of that owner's tract participation percentages in that area.¹⁶ See AOGCC Conservation Order No. 360, August 9, 1995 (revised November 3, 1995) ("C.O. 360") at 13, ¶¶ 102, 103. For example, BPXA receives 50.68 percent of production allocated to the Oil Rim Participating Area but only 13.84 percent of production allocated to the Gas Cap Participating Area. *Id.* ARCO and Exxon Co. USA ("Exxon"), on the other hand, each receive 21.78 percent of production allocated to the Oil Rim Participating Area and 42.56 percent of production allocated to the Gas Cap Participating Area.¹⁷

¹³(...continued)

Unitized Substances allocated to each Working Interest Owner in a Participating Area shall be allocated to the several Tracts in such Participating Area in which such Working Interest Owner owns a Working Interest in the proportion that the product of such Working Interest Owner's Working Interest in each such Tract multiplied by the current Tract Participation for such Tract bears to the sum of all such products for that Working Interest Owner. The amount of Unitized Substances allocated to each Tract, regardless of whether the amount is more or less than the actual production of Unitized Substances from the well or wells, if any, on such Tract, shall be deemed for all purposes to have been produced from such Tract.

¹⁶ *Ibid.*

¹⁷ Other owners and their respective interests are:

	<u>ORPA</u>	<u>GCPA</u>
Mobil Oil Co.	1.89%	0.28%
Phillips Petroleum Co.	1.88%	0.26%
Chevron USA Production Co.	0.67%	0.48%
Amerada Hess Corp.	0.54%	0.00%
Texaco Exploration and Prod. Co.	0.55%	0.00%
Louisiana Land and Exploration Co.	0.04%	0.00%
Marathon Oil Co.	0.05%	0.00%
Shell Land and Energy Co.	0.14%	0.00%

C.O. 360 at 13, ¶ 103.