

ALASKA LEGISLATURE

2144

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

295

SENATE FINANCE
COMMITTEE
Amendment Number: #4
Bill Number: SB 281
Sponsor: Parnell Date: 3/7/00
Logged In By: Mindy

1-LS1392AD.3

Cramer

3/6/00

AMENDMENT

OFFERED IN THE SENATE

TO: SB 281

1 Page 8, line 29, following "increase":

2 Delete "the"

3 Page 8, line 30, following "international":

4 Insert "trade and"

5 Page 9, lines 30 - 31:

6 Delete all material and insert:

7 "(4) the increase in student achievement and interest in math and science as
8 a result of ASTF teacher grants."

9 Page 10, lines 14 - 18:

10 Delete all material and insert:

11 "(1) the number of unscheduled outages of hydroelectric projects owned by
12 the authority;

13 (2) the number of four dam pool project repairs and upgrades completed on
14 time and within budget;

15 (3) the amount of revenue created by projects owned by the authority."

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	SB 281
Amendment	#4
Motion	
<u>Motion by</u>	VB
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	No objection

SENATE FINANCE
COMMITTEE

Amendment Number: #5

1-LS1392VD.4

Bill Number: SB 281

Sponsor: Parnell Date: 3/7/00

Cramer
3/6/00

Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE

TO: SB 281

- 1 Page 43, line 13, following "develop":
- 2 Insert ", operate, maintain,"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	SB 281
Amendment	# 5
Motion	
<u>Motion by</u>	CEP
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	No objection

SENATE FINANCE
COMMITTEE #6
Amendment Number: #6
Bill Number: SB 281
Sponsor: Parnell Date: 3/7/00
Logged In By: Mindy

I-LS1392D.5

Cramer

3/6/00

AMENDMENT

OFFERED IN THE SENATE

TO: SB 281

- 1 Page 48, line 7:
- 2 Delete "seafood processing,"
- 3 Page 48, line 21, following "biology,":
- 4 Insert "human health,"
- 5 Page 48, line 22, following "geosciences,":
- 6 Insert "energy, cold regions engineering,"
- 7 Page 49, line 1:
- 8 Delete "score rates"
- 9 Insert "test scores or pass rates"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	13281
Amendment	#6
Motion	Withdrawn
<u>Motion by</u>	
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	

SENATE FINANCE
COMMITTEE #7 1-LS1392D.7
Amendment Number: #7
Bill Number: SB 281 Cramer
Sponsor: Parnell Date: 3/15/00
Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE

TO: SB 281

- 1 Page 2, line 9:
- 2 Delete "track"
- 3 Insert "reach"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	(B291)
Amendment	#7
Motion	
<u>Motion by</u>	CCP
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	no objection

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 281

- 1 Page 37, lines 23 - 26:
- 2 Delete all material.

- 3 Renumber the following bill sections accordingly.

- 4 Page 47, following line 4:
- 5 Insert a new bill section to read:
- 6 **"* Sec. 149. DOT/PF - Highway Safety Planning Agency.** (a) The mission of the
- 7 Highway Safety Planning Agency is to administer grant programs that promote safer
- 8 highways.
- 9 (b) The legislature intends to measure the success of the agency in achieving its
- 10 mission by considering the number of highway deaths per year."

- 11 Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	JB281
Amendment	#8
Motion	
Motion by	CCP
Objection	JA
Objection by	
Removed	JA
Second Objection by	
<u>Committee Member</u>	<u>Vote</u>
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Lemam	
Senator Al Adams	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	No objection

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 281

1 Page 1, line 7:

2 Delete "secs. 1 - 153"

3 Insert "secs. 1 - 154"

4 Page 23, following line 12:

5 Insert a new bill section to read:

6 **"* Sec. 73. DF&G - Division of Subsistence.** (a) The mission of the Division of
7 Subsistence is to

8 (1) gather, quantify, evaluate, and report data about uses, users, and methods
9 of subsistence hunting and fishing; and

10 (2) make recommendations on the impacts of federal and state laws and
11 regulations on subsistence uses and users.

12 (b) The legislature intends to measure the success of the division in achieving its
13 mission by considering the percentage of

14 (1) Alaska communities in each region for which fisheries harvest data are
15 collected and reported;

16 (2) Alaska communities in each region for which wildlife harvest data are
17 collected and reported;

18 (3) subsistence proposals at meetings of the Board of Fisheries and the Board
19 of Game for which subsistence data are assessed and recommendations are made;

20 (4) proposed statutory and regulatory changes by federal and other state
21 entities for which subsistence data are assessed and recommendations are made."

22 Renumber the following bill sections accordingly.

1-LS1392ND.9

- 1 Page 29, line 19:
- 2 Delete "secs. 94 - 97"
- 3 Insert "secs. 95 - 98"

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	<i>PB 281</i>
Amendment	<i>#9</i>
Motion	
<u>Motion by</u>	<i>CP</i>
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	<i>to object</i>

SENATE FINANCE
COMMITTEE #10
Amendment Number:
Bill Number: B281
Sponsor: Parnell Date: 3/17/00
Logged In By: Jamie

By Senator Parnell

SB 281

Amendment

Page 48 line 6-10 delete all material and insert:

percentage of students graduating with degrees in
(2) the ~~number of students enrolled in and graduated in teacher~~ education, health *teacher*
careers, process technology, transportation and logistics, information technology and
other high demand job areas;

renumber sections accordingly

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	SB 281
Amendment	# 10
Motion	
<u>Motion by</u>	CCP
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pct: Kelly	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	Unanimous

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 23, 2000

SUBJECT: Sectional Summary of SB 281. (Missions and measures for the Fiscal Year 2001 operating budget)

TO: Senator Sean Parnell, Co-Chair
Senate Finance Committee
Attn: Deborah Grundmann

FROM: Teresa B. Cramer 
Legislative Counsel

RECEIVED

FEB 23 2000

Senate Finance
Committee

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 states that sections 1 through 153 amend the uncodified law of Alaska by adding new sections to it.

Section 2 states the legislative purpose for the bill.

Article 1. Department of Administration.

Secs. 3 - 20 set out the mission of the Department of Administration and missions and measures for the Office of the Commissioner, divisions, offices, and agencies within the department.

- Sec. 3. Department of Administration.
- Sec. 4. Office of the Commissioner.
- Sec. 5. Division of Administrative Services.
- Sec. 6. Information Technology Group.
- Sec. 7. Division of Public Communications Services.
- Sec. 8. Division of Personnel.
- Sec. 9. Division of Finance.
- Sec. 10. Division of General Services.
- Sec. 11. Division of Longevity Programs.
- Sec. 12. Division of Retirement and Benefits.
- Sec. 13. Division of Risk Management.
- Sec. 14. Division of Senior Services.
- Sec. 15. Division of Motor Vehicles.

- Sec. 16. Office of Public Advocacy.
- Sec. 17. Public Defender Agency.
- Sec. 18. Office of Tax Appeals.
- Sec. 19. Alaska Public Offices Commission.
- Sec. 20. Oil and Gas Conservation Commission.

Article 2. Department of Community and Economic Development.

Sections 21 - 37 set out the mission of the Department of Community and Economic Development and missions and measures for the Office of the Commissioner, divisions, and agencies within the department.

- Sec. 21. Department of Community and Economic Development.
- Sec. 22. Office of the Commissioner.
- Sec. 23. Division of Administrative Services.
- Sec. 24. Division of Banking, Securities, and Corporations.
- Sec. 25. Division of Insurance.
- Sec. 26. Division of Investments.
- Sec. 27. Division of International Trade and Market Development.
- Sec. 28. Alaska Aerospace Development Corporation.
- Sec. 29. Alaska Seafood Marketing Institute.
- Sec. 30. Alaska Science and Technology Foundation.
- Sec. 31. Alaska Industrial Development and Export Authority.
- Sec. 32. Alaska Energy Authority.
- Sec. 33. Regulatory Commission of Alaska.
- Sec. 34. Rural Energy Programs.
- Sec. 35. Municipal Revenue Sharing.
- Sec. 36. Division of Community and Business Development.
- Sec. 37. Division of Occupational Licensing.

Article 3. Department of Corrections.

Sections 38 - 47 set out the mission of the Department of Corrections and missions and measures for the Office of the Commissioner, divisions, and agencies within the department.

- Sec. 38. Department of Corrections.
- Sec. 39. Office of the Commissioner.
- Sec. 40. Parole Board.
- Sec. 41. Division of Administrative Services.
- Sec. 42. Alaska Correctional Industries.
- Sec. 43. Division of Institutions.
- Sec. 44. Division of Institutions, Inmate Programs.
- Sec. 45. Division of Institutions, Inmate Health Care.
- Sec. 46. Division of Institutions, Electronic Monitoring.
- Sec. 47. Division of Community Corrections.

Article 4. Department of Education and Early Development.

Sections 48 - 59 set out the mission of the Department of Education and Early Development and missions and measures for the Office of the Commissioner, divisions, and agencies within the department.

- Sec. 48. Department of Education and Early Development.
- Sec. 49. Office of the Commissioner.
- Sec. 50. Division of Education Support Services.
- Sec. 51. Division of Teaching and Learning Support.
- Sec. 52. Division of Libraries, Archives, and Museums.
- Sec. 53. Alyeska Central School.
- Sec. 54. Mt. Edgecumbe High School.
- Sec. 55. Alaska Vocational Technical Center.
- Sec. 56. Alaska State Council on the Arts.
- Sec. 57. Alaska Commission on Postsecondary Education.
- Sec. 58. WWAMI.
- Sec. 59. Division of Early Development.

Article 5. Department of Environmental Conservation.

Sections 60 - 67 set out the mission of the Department of Environmental Conservation and missions and measures for the Office of the Commissioner and divisions within the department.

- Sec. 60. Department of Environmental Conservation.
- Sec. 61. Office of the Commissioner.
- Sec. 62. Division of Administrative Services.
- Sec. 63. Division of Spill Prevention and Response.
- Sec. 64. Division of Air and Water Quality.
- Sec. 65. Division of Environmental Health.
- Sec. 66. Division of Facility Construction and Operation.
- Sec. 67. Division of Statewide Public Service.

Article 6. Department of Fish and Game.

Sections 68 - 74 set out the mission of the Department of Fish and Game and missions and measures for the Office of the Commissioner, divisions, and agencies within the department.

- Sec. 68. Department of Fish and Game.
- Sec. 69. Office of the Commissioner & Division of Administrative Services.
- Sec. 70. Division of Commercial Fisheries.
- Sec. 71. Commercial Fisheries Entry Commission.
- Sec. 72. Division of Habitat and Restoration.

- Sec. 73. Division of Sport Fish.
- Sec. 74. Division of Wildlife Conservation.

Article 7. Department of Health and Social Services.

Sections 75 - 84 set out the mission of the Department of Health and Social Services, and missions and measures for the Office of the Commissioner and divisions within the department.

- Sec. 75. Department of Health and Social Services.
- Sec. 76. Office of the Commissioner.
- Sec. 77. Division of Administrative Services.
- Sec. 78. Division of Public Assistance.
- Sec. 79. Division of Public Health.
- Sec. 80. Division of Alcoholism and Drug Abuse.
- Sec. 81. Division of Medical Assistance.
- Sec. 82. Division of Family and Youth Services.
- Sec. 83. Division of Juvenile Justice.
- Sec. 84. Division of Mental Health and Developmental Disabilities.

Article 8. Department of Labor and Workforce Development.

Sections 85 - 91 set out the mission of the Department of Labor and Workforce Development and missions and measures for the Office of the Commissioner and divisions within the department.

- Sec. 85. Department of Labor and Workforce Development.
- Sec. 86. Office of the Commissioner.
- Sec. 87. Division of Administrative Services.
- Sec. 88. Division of Vocational Rehabilitation.
- Sec. 89. Division of Employment Security.
- Sec. 90. Division of Workers' Compensation.
- Sec. 91. Division of Labor Standards and Safety.

Article 9. Department of Law.

Sections 92 - 97 set out the mission of the Department of Law and missions and measures for the Office of the Attorney General, divisions, and offices within the department.

- Sec. 92. Department of Law.
- Sec. 93. Office of the Attorney General.
- Sec. 94. Division of Administrative Services.
- Sec. 95. Civil Division.
- Sec. 96. Criminal Division.
- Sec. 97. Office of Special Prosecutions and Appeals.

Article 10. Department of Military and Veterans' Affairs.

Sections 98 - 105 set out the mission of the Department of Military and Veterans' Affairs and missions and measures for the Office of the Commissioner, divisions, offices, and agencies within the department.

- Sec. 98. Department of Military and Veterans' Affairs.
- Sec. 99. Office of the Commissioner.
- Sec. 100. Division of Administrative Services.
- Sec. 101. Division of Emergency Services.
- Sec. 102. National Guard Facilities Management.
- Sec. 103. Alaska National Guard.
- Sec. 104. Alaska National Guard Youth Corps.
- Sec. 105. Office of Veterans' Affairs.

Article 11. Department of Natural Resources.

Sections 106 - 114 set out the mission of the Department of Natural Resources and missions and measures for the Office of the Commissioner and divisions within the department.

- Sec. 106. Department of Natural Resources.
- Sec. 107. Office of the Commissioner.
- Sec. 108. Administrative Services Group.
- Sec. 109. Division of Oil and Gas.
- Sec. 110. Division of Agriculture.
- Sec. 111. Division of Mining, Land, and Water.
- Sec. 112. Division of Forestry.
- Sec. 113. Division of Geological and Geophysical Surveys.
- Sec. 114. Division of Parks and Outdoor Recreation.

Article 12. Department of Public Safety.

Sections 115 - 126 set out the mission of the Department of Public Safety and missions and measures for the Office of the Commissioner, divisions, and agencies within the department.

- Sec. 115. Department of Public Safety.
- Sec. 116. Office of the Commissioner.
- Sec. 117. Division of Administrative Services.
- Sec. 118. Division of Fire Prevention.
- Sec. 119. Highway Safety Planning Agency.
- Sec. 120. Division of Alaska State Troopers.
- Sec. 121. Division of Fish and Wildlife Protection.
- Sec. 122. Alaska Police Standards Council.
- Sec. 123. Council on Domestic Violence and Sexual Assault.

- Sec. 124. Scientific Crime Detection Laboratory.
- Sec. 125. Public Safety Academy.
- Sec. 126. Violent Crimes Compensation Board.

Article 13. Department of Revenue.

Sections 127 - 139 set out the mission of the Department of Revenue and missions and measures for the Office of the Commissioner, divisions, and agencies within the department.

- Sec. 127. Department of Revenue.
- Sec. 128. Office of the Commissioner.
- Sec. 129. Division of Administrative Services.
- Sec. 130. Tax Division.
- Sec. 131. Permanent Fund Dividend Division.
- Sec. 132. Alaska Permanent Fund Corporation.
- Sec. 133. Treasury Division.
- Sec. 134. Alaska Municipal Bond Bank Authority.
- Sec. 135. State Pension Investment Board.
- Sec. 136. Child Support Enforcement Division.
- Sec. 137. Alaska Mental Health Trust Authority.
- Sec. 138. Alaska Housing Finance Corporation.
- Sec. 139. Alcoholic Beverage Control Board.

Article 14. Department of Transportation and Public Facilities.

Section 140 - 151 set out the mission of the Department of Transportation and Public Facilities, and missions and measures for the Office of the Commissioner, divisions, and agencies within the department.

- Sec. 140. Department of Transportation and Public Facilities.
- Sec. 141. Office of the Commissioner.
- Sec. 142. Aviation.
- Sec. 143. Public facilities.
- Sec. 144. Highway maintenance and operations.
- Sec. 145. Equipment fleet.
- Sec. 146. Division of Administrative Services.
- Sec. 147. Div. of Measurement Standards and Commercial Vehicle Enforcement.
- Sec. 148. Division of Statewide Design and Engineering Services.
- Sec. 149. Division of Statewide Planning.
- Sec. 150. Division of Construction and CIP Support.
- Sec. 151. Marine Highway System.

Article 15. University of Alaska.

Section 152 sets out the mission and measures for the University of Alaska.

Senator Sean Parnell

February 23, 2000

Page 7

Section 153 provides protection for the state and its agents and employees from suits based on accomplishing or failing to accomplish the missions and measures set out in the bill.

Section 154 is an effective date of July 1, 2000.

TC:jdr

00-094.jdr



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

SB 281 Sponsor Statement

**Sponsor: Senate Finance Committee
Results Based Budgeting - FY'01 Missions and Measures**

SB 281 continues legislative progress toward results based budgeting by enacting missions and measures for the FY'01 operating budget. House and Senate budget subcommittees worked with the various departments to adopt performance measures for the departments and the divisions. Existing missions and measures adopted for FY00 programs were also refined. The House and Senate subcommittees' recommendations are incorporated into SB 281.

SB 281 applies only to FY'01 appropriations, and reflects substantial compliance with the results based budgeting requirements of the Executive Budget Act, AS 37.07.050.

SENATE FINANCE COMMITTEE

SIGN-IN

SB 281-OPERATING BUDGET MISSIONS AND MEASURES

NAME: Lauree Hugonia Subject/Bill No: SB281
Co./Dept./Title: ANDVISA Phone: 586-3650
Address: 130 Seward in 209 Tincan Zip: 99801
Do you wish to testify? Yes No Respond To Questions

NAME: Jack Fargnoli Subject/Bill No: SB 281
Co./Dept./Title: GOV - OMB Phone: 465-3559
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

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

SB

283

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 15, 2000

FURTHER REFERRALS:

Date of Committee Action: 4/17/00

The FINANCE Committee considered:

CSSB 283(RES)

CS FOR SENATE BILL NO. 283(RES)

STATE LAND DISPOSAL REVENUE

"An Act establishing the shore fisheries development lease program account and the timber receipts account; relating to the accounting for and appropriation of revenue from the state land disposal program, the shore fisheries development lease program, and the state timber disposal program; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) DNR

fiscal note(s) Senate DNR 3-21-00

zero fiscal note(s)

zero fiscal note(s)

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Gene Herrault</i>			X	
<i>Edm W. Ford</i>			X	
<i>John B. Bunker</i>			X	
<i>Alvin Carter</i>	X			
<i>John L. Dwyer</i>	X			
<i>Bob Sammons</i>	✓			
<i>Frank Linn</i>	X			
<i>W.R. Williams</i>	X			
<i>Paul Phillips</i>	✓			
<i>R. Stacey</i>			X	

CHAIR'S SIGNATURE *Gene Herrault* *Edm W. Ford*

FISCAL NOTE

DRAFT

STATE OF ALASKA

BILL NO. CSSB 283(FIN)

2000 LEGISLATIVE SESSION

Effective Date/Tim 17-Apr-00
 Title: An Act establishing the shore fisheries
 development lease program account ... revenue... land disposal...
 Sponsor: S Rules
 Requestor: (H) FIN

Dept Affected: Natural Resources
 BRU: Minerals, Land & Water Development
 Component: Land Sales and Municipal Entitlements
 Component No. #2459

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

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	525.9	530.0	500.0	480.0	460.0	460.0
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	460.4	536.4	467.4	459.4	459.4	459.4
SUPPLIES	8.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	5.0	5.0	5.0	5.0	5.0	5.0
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS	150.0	150.0	150.0	150.0	150.0	150.0
TOTAL OPERATING	1,164.3	1,341.4	1,142.4	1,094.4	1,094.4	1,094.4

CAPITAL EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
CHANGE IN REVENUES	2,300.0	2,783.0	3,411.0	3,481.0	3,781.0	3,981.0

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF	(639.6)	(639.6)	(639.6)	(639.6)	(639.6)	(639.6)
1087 CIP Receipts		(70.9)	(70.9)	(70.9)	(70.9)	(70.9)
1088 Statutory Designated PR	(363.1)	(363.1)	(363.1)	(363.1)	(363.1)	(363.1)
er (Land Disp. Income Fund)	2,167.0	2,415.0	2,216.0	2,168.0	2,188.0	2,168.0
TOTAL	1,164.3	1,341.4	1,142.4	1,094.4	1,094.4	1,094.4

Estimate of any current year (FY2000) cost: \$ N/A

POSITIONS

POSITIONS	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
FULL-TIME	2	2	2	2	2	2
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS:

(Attach a separate page if necessary)

Note: The fiscal note is designed to show the fund source switches which will be done once, and the annual net increased cost to implement this legislation. For example, in FY2001 there is a fund source switch of \$789.6 GF and \$363.1 SDPR to the Land Disposal Income Fund, and an additional \$1,014.3 of Land Disposal Income Fund. The out- years on the fiscal note reflect that the one-time fund source switches remain in effect -- they are not additional fund source switches.

Costs. This fiscal note includes three cost items:

1. The Land Sales and Municipal Entitlement component from the proposed FY 01 operating budget. It includes the \$1,152.7 that would be deleted from general fund and existing SDPR sources and transferred to the new land disposal income fund, plus \$150.0 for land title costs. In year FY 02, an additional \$70.9 in CIP funds is deleted.

(Continued on next page)

Prepared by: Bob Loeffler, Director Phone: 269-8625
 Division: Mining, Land & Water Date: 17-Apr-00
 Approved by Commissioner: John Shively Date: 17-Apr-00
 Agency: Natural Resources

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2. A new land disposal program that includes offering 55,500 acres for sale in FY 02 and 03. This offering would cost 2,271.0 spread over FY 01, 02 and 03. It would include:

- Comprehensive Re-Offering of 50,000 acres (5,000 parcels) of existing subdivision lots (these are re-offerings of parcels not previously sold, sold but foreclosed upon, etc.);
- Remote offerings of 5,000 acres (500 parcels) offered under the remote recreation cabin site program (these offerings begin as leases, then convert to sales when surveyed); and
- New Subdivisions of 500 acres (100 parcels) of new subdivisions.

3. Continued Land Disposal in FY 04, 05, 06, and preparing for future years. To maintain a stable land disposal program, it will be necessary to continue offering lots to replace the remote offerings and subdivision lots sold in FY 02 and 03. These costs begin in FY 02 and continue throughout the fiscal note period, stabilizing at about \$794.0 annually.

Revenues. The "Change in Revenues" in this fiscal note combines three sources of revenue:

1. Revenues from past sales. The state expects to receive approximately \$1,600.0 each year of the fiscal note from sales made in past years.
2. Revenues from the first 55,000 acres offered. Revenues from sale of the first 55,000 acres begin in FY 02 and continue through the fiscal note.
3. Revenues from future land disposals in FY 04, 05, and 06. Taken together, these three sources of revenue over the six-year period are expected to total over \$18.8 million, but fluctuate somewhat from year to year.

Additional details (cost and revenue projections) are shown in the table on the next page. The table shows that in the first year, the costs barely cover the revenues, but that the revenues grow every year thereafter. By FY 2006, the land disposal income fund includes a balance of more than \$5 million and the excess, beginning with that year's surplus of \$535.0, is transferred to the general fund by operation of law under SB 283.

This program would require two new positions. Other staff funded in this fiscal note are either working on the project or are existing, vacant, unfunded positions.

Note: Because of the conference committee reduction in general funds of \$150.0, this miscellaneous line item is necessary to restore the program to the full funding level under this bill.

(Continued on next page)

* Figures below represented in thousands.

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
COSTS						
Existing Cost of Component (See P. 1)	\$ 1,303	\$ 1,374	\$ 1,374	\$ 1,374	\$ 1,374	\$ 1,374
Additional \$2,271 to fund first 65,000 acres to be offered in FY 02 and 03, and continued funding for sales thereafter:						
Comprehensive Re-offe	\$ 275	\$ 323	\$ 48	-	-	-
Remot	\$ 418	\$ 418	\$ 418	\$ 418	\$ 418	\$ 418
Subdivision	\$ 100	\$ 300	\$ 376	\$ 376	\$ 376	\$ 376
Total Cost:	\$ 2,096	\$ 2,415	\$ 2,216	\$ 2,168	\$ 2,168	\$ 2,168
REVENUES						
Revenues from Past Sales	\$ 1,600	\$ 1,600	\$ 1,600	\$ 1,600	\$ 1,600	\$ 1,600
Revenues from Planned FY 01 Sales	\$ 700	\$ 433	\$ 466	\$ 366	\$ 366	\$ 366
Revenues from FY 02 and Future Sales		\$ 750	\$ 1,245	\$ 1,315	\$ 1,515	\$ 1,715
Total Revenue:	\$ 2,300	\$ 2,783	\$ 3,311	\$ 3,281	\$ 3,481	\$ 3,681
FUND BALANCE						
Balance of Land Disposal Income and at year's end:	\$ 204	\$ 572	\$ 1,667	\$ 2,780	\$ 4,093	\$ 5,606
Amount Spilled Over to the General Fund	-	-	-	-	-	\$ 606

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 3
Bill Version: CSSB 283 (RES)
(S) Publish Date: 3-31-00

Revision Date/Tim 30-Mar-00 Dept Affected: Natural Resources
Title: An Act establishing the shore fisheries BRU: Minerals, Land & Water Development
development lease program account...revenue...land disposal... Component: Claims, Permits and Leases
Sponsor: S Rules
Requestor: SRES Component No #2460

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

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	161.0	161.0	161.0	161.0	161.0	161.0
TRAVEL	22.0	22.0	22.0	22.0	22.0	22.0
CONTRACTUAL	17.0	17.0	17.0	17.0	17.0	17.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	200.0	200.0	200.0	200.0	200.0	200.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	- 0.0

(Thousands of Dollars)

FUND SOURCE	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)
1037 GF/Mental Health						
1108 SDPR	300.0	300.0	300.0	300.0	300.0	300.0
TOTAL	200.0	200.0	200.0	200.0	200.0	200.0

Estimate of any current year (FY2000) cost: \$ n/a

POSITIONS

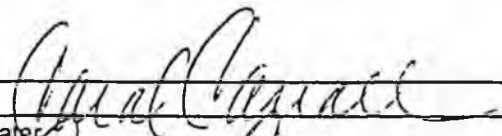
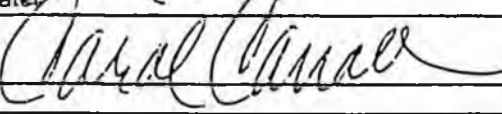
FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This fiscal note shows that in FY2001 there is a fund source switch of \$100.0 GFPR to Statutory Designated Program Receipts, and a restoration of funding in the amount of \$200.0 SDPR. The out-years reflect that the one-time fund source switch remains in effect -- there are not additional switches.

This bill restores funding for the existing shore fisheries leasing program by converting it to statutory designated program receipts. It has previously been sourced as general fund, program receipts. In the department's FY 2000 budget, funding for the program was cut to a third of its previous level. In response to this reduction, DNR proposed a

[Cont.]

Prepared by: Bob Loeffler  Phone: 269-8625
Division: Mining, Land and Water Date: 30-Mar-00
Approved by Commissioner: John Shively  Date: 30-Mar-00
Agency: Natural Resources

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SB 283
#3

Continuation of fiscal note:

self-executing registration system for commercial set net fishing sites that the department could oversee within the amount budgeted. However, commercial setnetters objected that the proposed replacement system would not give them the same security of tenure as a shore fisheries lease. It would also have eliminated DNR's role in resolving conflicts between applicants competing for the same fishing site, leaving them to settle the issue by arbitration or in court. Finally, it would no longer have required a survey plat or shore fishery lease diagram, leading to more boundary disputes.

Funding that would be restored under this bill would provide a Natural Resource Officer II (Range 16) to adjudicate leases, a Surveyor I to review shore fishery lease diagrams, and a Natural Resource Technician II (Range 12) to research land status, do data entry, and handle routine lease administration. It would also provide travel and contractual funds for on-site inspections of disputed sites. The existing lease program brings in approximately \$360.0 a year, and is expected to continue to generate that level of revenue.

Briefing Paper
SB 283: Shore Fisheries, Land Disposal, & Timber Receipts
Prepared by
Alaska Department of Natural Resources
April 14, 2000

The bill provides three statutory designed program receipt accounts.

Land Disposal Income Fund. Alaskans consider the sale of state land to private citizens to be one of the basic services that their government should provide. Today, Alaska lacks a stable land disposal program. This bill will help solve this problem. It establishes a statutory designated program receipt account to receive income from the sale of state land and from which the legislature may appropriate funds for future DNR land sales.

Fundamentally, this bill provides a separate accounting system for the land sale program. This separate system will allow the legislature and the public to review the program to determine the level of sales they wish to fund, and to see the fiscal consequences of the sales.

Land sales take money to prepare but return more in revenues than they cost. A stable, reliable land sale program will provide a return to all Alaskans. This bill assures that result by specifying if the land sale fund exceeds \$5 million at the end of any fiscal year, the excess funds will be deposited in the general fund. In this way, the bill foresees that an adequate funding source will remain for a stable land sale program, but that the program will provide a return to all Alaskans through deposits to the general fund.

The fiscal note that accompanies the bill will fund the Department to offer 55,000 acres of land by FY 03. Of that amount, 50,000 acres is the backlog of previously offered land that was not sold or has been returned to the state through foreclosure or other means. The remaining 5,000 acres is new land that will begin to satisfy Alaskans' thirst for land. The fiscal note provides funding for the Department to offer 5,000 new acres per year indefinitely into the future.

Shore Fisheries Development Lease Program. The bill provides a statutory designated program receipts fund for DNR's Shore Fisheries Development Lease Program. This program provides a secure site for limited entry holders who fish in the set-net fishery. The 1,200 leases generate approximately \$360,000 each year in revenue for the state. Today, DNR does not have the expenditure authority to adequately run the program. The fishing community is not getting the level of service they deserve and pay for. The bill and accompanying fiscal note would assure that DNR has the funds, paid by the fishing industry, to provide the level of service required by the industry for this long-established and well-used program.

Timber Receipts Account. The bill would establish a statutory designated program receipts account to receive income from the sale of timber from state land. The Department has not provided a fiscal note for this account, and funds for the FY 01 timber sale program are contained in the operating budget.



Alaska State Legislature

Please enter into the record my testimony to the H Finance
 committee name
 committee on SB 283, dated 4/17/2000
 bill/subject

*Please Pass Around, I pray your
 not taking from our people, when
 we pass on we all pay for what we
 do on this Earth, Please don't say
 I want want want, Were on this
 Earth for a purpose,*

Signed: Ellen Ring
 Testifier

Representing (Optional)
Bx 10-3212

Address
Anch. AK. 99510

Phone No.
232-3996

Alaska Native Claims Settlement Act

Quick, 000

ANCSA shareholders need help

The U.S. Constitution (Article 14) says no state shall deny any person within its jurisdiction the equal protection of laws. Alaska's Constitution (Article 1, Section 1) says all persons are equal, and entitled to equal rights and protections. Section 2(c) of ANCSA (Alaska Native Claims Settlement Act) says: "No provision of this Act shall replace or diminish any right, privilege or obligation of Natives as citizens of the U.S. or Alaska." Section 7(d) required ANCSA corporations to be incorporated under Alaska law.

Section 28 of P.L. 94-204 exempted ANCSA corporations from federal security laws. When the exemption was sought, Native leaders told Congress they would seek state legislation to give shareholders protections from corporate mismanagement, misrepresentation and omissions. That did not happen.

To make matters worse, neither the state or federal government enforce ANCSA provisions or the Corporate Code (Title 10) for ANCSA shareholders.

Alaska legislators have an obligation and duty to adopt legislation providing ANCSA shareholders with the shareholder protections they lost from federal security laws, and they have an obligation to provide Alaska Natives with equal protection under state law. I ask Alaska Natives and other Alaska citizens to contact legislators and request that they correct this inequity.

— Virginia L. Ruelle
Eagle River

4-14-2000

Follow audit guidance

In 1976 the Alaskan Native Claims Settlement Act was amended exempting ANCSA corporations from federal security laws. In addition, neither the federal nor state governments enforce ANCSA provisions or Title 10 (Alaska Corporate Code) for ANCSA shareholders.

On Jan. 4, 1999, the Division of Legislative Audit submitted audit 08-4572-99 to the members of the Legislative Budget and Audit Committee. The audit was held in committee until after the Alaska Legislature adjourned.

Audit recommendations included: more detailed disclosure of corporate officer and director compensation; more financial performance information; timely access for shareholders to accurate corporate records; and that corporate elections treat all candidates equally.

The audit recommendations are needed by ANCSA shareholders. Alaska Natives and other residents who wish to help ANCSA stockholders get some protections are urged to send in public-opinion messages to all state representatives and senators. Request they adopt the recommendations included in Alaska audit 08-4572-99.

To send in a public-opinion message, contact the Anchorage Legislative Office at 716 W. Fourth Ave., Suite 200, Anchorage 99501. The phone number is 258-8111 and the fax number is 258-1261.

— Ella King
Anchorage

Law must guard shareholders

The Alaska Native Claims Settlement Act amendments exempted shareholders from Securities and Exchange Commission protections. When SEC exemptions were sought, regional corporation leaders told Congress they would seek state legislation to provide shareholder protections for corporate mismanagement, omissions and representations.

Shareholders never got protections promised under state law. The State Securities Office says it has no jurisdiction to enforce ANCSA legislation or Title 10, which deals with rights to inspect corporate documents, dissenter rights, etc. Section 2(b) of ANCSA gives maximum participation by Natives in decisions affecting their rights and property. If the state does not enforce Title 10 and ANCSA provisions, who does?

Shareholders filing complaints in regard to their rights under ANCSA or Title 10 are told to seek legal counsel. Few shareholders can afford to sue their corporations. When they do, an amendment is inserted into federal legislation making the case moot (Dayview vs. Ahtna). If shareholders win a class action (Hanson vs. Kake Corporation), federal legislation is introduced to limit lawsuits by shareholders against their corporations. In the Kake decision, the Alaska Supreme Court said Native corporations are subject to the same laws as any other U.S. company. If that is so, why aren't Title 10 statutes provided for Native shareholders?

More than 17 amendments were made to ANCSA. Many were detrimental to shareholders' rights or property. Shareholders were not allowed to vote on the amendments. Shareholders lost their protections, participation and ownership rights to their stock.

State laws must be changed to provide protections, participation and equality to ANCSA shareholders.

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

P. O. BOX 110607
ANCHORAGE, ALASKA 99511-0607
Banking & Securities (907) 465-2521
Corporation Section (907) 465-2430
ANCHORAGE
Corporation Information (907) 280-8140
TDD: (907) 465-6437

April 6, 1998

Mr. Robert W Rude
14940 Woodlund Avenue
Eagle River, AK 99577-9221

Dear Mr. Rude:

RE: Your letters about Improper Votes and Additional Information

This will acknowledge and thank you for your correspondence dated April 1, 1998 and April 2, 1998.

As you are well aware, this Division does not have the authority to interpret or enforce ANCSA legislation or Title 10. As such, we have no jurisdiction to force CIRI to send out a mailing to correct alleged violations of ANCSA legislation. In addition, we decline to take administrative action on an advisory vote that occurred in 1990. The Division reviewed your recent complaints on land valuation, dissenter rights, the long-term management and deferred compensation plans, and donations and declined to take administrative action. Please refer to our March 20, 1998 response to you for our comments.

This office has, in AS 45.55.139, jurisdiction over the filing of certain reports disseminated to at least 30 Alaska resident shareholders of a corporation. These filings can not contain misleading statements of a material fact. Was the alleged misstatement of land value announced at the September 1998 board retreat disseminated to at least 30 Alaskan resident shareholders?

Title 10 provides a shareholder and director access to certain records of the corporation. If you feel your rights have been violated under Title 10, you may wish to proceed with a private right of action.

If you have any questions, please feel free to contact us.

Very truly yours,

Calgen Buchanan



United States Department of the Interior

OFFICE OF THE SECRETARY
1600 G Street, Suite 100
Anchorage, Alaska 99501-4151

September 2, 1998

Ms. Amy L. Lefor
1846 Columbine
Anchorage, Alaska 99508

Dear Ms. Lefor:

In your letter of August 22, 1998, you described your concerns as an ANCSA shareholder of CIRI regarding management practices of CIRI by its Board of Directors.

While I wanted to be as helpful as possible, as you know from your involvement in ANCSA shareholder matters, ANCSA did not create any permanent fiduciary relationships between the federal government and the ANCSA corporations. Rather, the ANCSA corporations are for-profit corporations governed by state law. Thus, the matters you raise are state law issues and you need to contact the appropriate state agencies. I can see from your letter that you have identified a number of important concerns.

Neither this office nor the other Interior offices I contacted have any oversight responsibilities in these matters. I hope you will be successful in finding solutions that will be satisfactory to you and the other shareholders.

Thank you for writing to us. I regret that we cannot be of greater assistance.

Sincerely,

D. Williams

SB

283

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/30/00

FURTHER: REPORTED OUT OF SFC 4/12/00

DATE TURNED IN TO OFFICE: 4-13-00

Finance Committee considered SENATE BILL NO. 283

"An Act relating to the accounting for and appropriations of state land disposal program revenue; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SB 283 (RES)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	X	<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
DNR - Minerals	3/30/00		200. #3
DNR - Land & Water	3/30/00		1,014.3 #2

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

REPORTED OUT OF
SFC 4/2/00

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 3
Bill Version: CSSB 283 (RES)
(S) Publish Date: 3-31-00

Revision Date/Tim: 30-Mar-00 Dept Affected: Natural Resources
Title: An Act establishing the shore fisheries BRU: Minerals, Land & Water Development
development lease program account...revenue...land disposal... Component: Claims, Permits and Leases
Sponsor: S Rules
Requestor: SRES Component No: #2460

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

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	161.0	161.0	161.0	161.0	161.0	161.0
TRAVEL	22.0	22.0	22.0	22.0	22.0	22.0
CONTRACTUAL	17.0	17.0	17.0	17.0	17.0	17.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	200.0	200.0	200.0	200.0	200.0	200.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	- 0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)
1037 GF/Mental Health						
1108 SDPR	300.0	300.0	300.0	300.0	300.0	300.0
TOTAL	200.0	200.0	200.0	200.0	200.0	200.0

Estimate of any current year (FY2000) cost: \$ n/a

POSITIONS

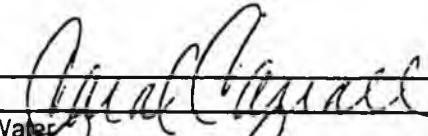
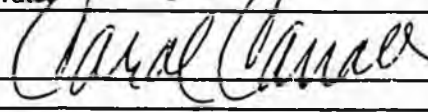
FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

This fiscal note shows that in FY2001 there is a fund source switch of \$100.0 GFPR to Statutory Designated Program Receipts, and a restoration of funding in the amount of \$200.0 SDPR. The out-years reflect that the one-time fund source switch remains in effect -- there are not additional switches.

This bill restores funding for the existing shore fisheries leasing program by converting it to statutory designated program receipts. It has previously been sourced as general fund, program receipts. In the department's FY 2000 budget, funding for the program was cut to a third of its previous level. In response to this reduction, DNR proposed a

[Cont.]

Prepared by: Bob Loeffler  Phone: 269-8625
Division: Mining, Land and Water Date: 30-Mar-00
Approved by Commissioner: John Shively  Date: 30-Mar-00
Agency: Natural Resources

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SB 283
#3

Continuation of fiscal note:

self-executing registration system for commercial set net fishing sites that the department could oversee within the amount budgeted. However, commercial setnetters objected that the proposed replacement system would not give them the same security of tenure as a shore fisheries lease. It would also have eliminated DNR's role in resolving conflicts between applicants competing for the same fishing site, leaving them to settle the issue by arbitration or in court. Finally, it would no longer have required a survey plat or shore fishery lease diagram, leading to more boundary disputes.

Funding that would be restored under this bill would provide a Natural Resource Officer II (Range 16) to adjudicate leases, a Surveyor I to review shore fishery lease diagrams, and a Natural Resource Technician II (Range 12) to research land status, do data entry, and handle routine lease administration. It would also provide travel and contractual funds for on-site inspections of disputed sites. The existing lease program brings in approximately \$360.0 a year, and is expected to continue to generate that level of revenue.

FISCAL NOTE

REPORTED OUT OF
SFC 4/12/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 2
Bill Version: CSSB 283 (RES)
(S) Publish Date: 3-31-00

Revision Date/Tim 30-Mar-00 Dept Affected: Natural Resources
Title: An Act establishing the shore fisheries BRU: Minerals, Land & Water Development
development lease program account ... revenue... land disposal... Component: Land Sales and Municipal Entitlements
Sponsor: S Rules
Requestor: SRES Component No. #2459

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

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES	525.9	530.0	500.0	460.0	460.0	450.0
TRAVEL	15.0	15.0	15.0	15.0	15.0	15.0
CONTRACTUAL	460.4	636.4	467.4	459.4	459.4	459.4
SUPPLIES	8.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	5.0	5.0	5.0	5.0	5.0	5.0
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,014.3	1,191.4	992.4	944.4	944.4	944.4

CAPITAL EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
CHANGE IN REVENUES	2,300.0	2,783.0	3,411.0	3,481.0	3,781.0	3,981.0

(Thousands of Dollars)

FUND SOURCE	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF	(789.6)	(789.6)	(789.6)	(789.6)	(789.6)	(789.6)
1061 CIP Receipts		(70.9)	(70.9)	(70.9)	(70.9)	(70.9)
1108 Statutory Designated PR	(363.1)	(363.1)	(363.1)	(363.1)	(363.1)	(363.1)
Other (Land Disp. Income Fund)	2,167.0	2,415.0	2,216.0	2,168.0	2,168.0	2,168.0
TOTAL	1,014.3	1,191.4	992.4	944.4	944.4	944.4

Estimate of any current year (FY2000) cost: \$ N/A

POSITIONS

FULL-TIME	8	9	9	8	8	8
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

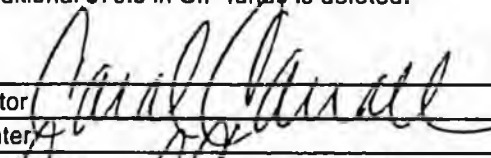
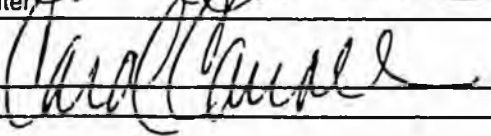
ANALYSIS: (Attach a separate page if necessary)

Note: The fiscal note is designed to show the fund source switches which will be done once, and the annual net increased cost to implement this legislation. For example, in FY2001 there is a fund source switch of \$789.6 GF and \$363.1 SDPR to the Land Disposal Income Fund, and an additional \$1,014.3 of Land Disposal Income Fund. The out- years on the fiscal note reflect that the one-time fund source switches remain in effect -- they are not additional fund source switches.

Costs. This fiscal note includes three cost items:

1. The Land Sales and Municipal Entitlement component from the proposed FY 01 operating budget. It includes the \$1,152.7K that would be deleted from general fund and existing SDPR sources and transferred to the new land disposal income fund, plus \$150K for land title costs. In year FY 02, an additional \$70.9 in CIP funds is deleted.

(Continued on next page)

Prepared by: Bob Loeffler, Director  Phone: 269-8625
Division: Mining, Land & Water Date: 30-Mar-00
Approved by Commissioner: John Shively  Date: 30-Mar-00
Agency: Natural Resources

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SB 283
#2

2. A new land disposal program that includes offering 55,500 acres for sale in FY 02 and 03. This offering would cost \$2,271K spread over FY 01, 02 and 03. It would include:

- Comprehensive Re-Offering of 50,000 acres (5,000 parcels) of existing subdivision lots (these are re-offerings of parcels not previously sold, sold but foreclosed upon, etc.);
- Remote offerings of 5,000 acres (500 parcels) offered under the remote recreation cabin site program (these offerings begin as leases, then convert to sales when surveyed); and
- New Subdivisions of 500 acres (100 parcels) of new subdivisions.

3. Continued Land Disposal in FY 04, 05, 06, and preparing for future years. To maintain a stable land disposal program, it will be necessary to continue offering lots to replace the remote offerings and subdivision lots sold in FY 02 and 03. These costs begin in FY 02 and continue throughout the fiscal note period, stabilizing at about \$794K annually.

Revenues. The "Change in Revenues" in this fiscal note combines three sources of revenue:

1. Revenues from past sales. The state expects to receive approximately \$1,600K each year of the fiscal note from sales made in past years.
2. Revenues from the first 55,000 acres offered. Revenues from sale of the first 55,000 acres begin in FY 02 and continue through the fiscal note.
3. Revenues from future land disposals in FY 04, 05, and 06. Taken together, these three sources of revenue over the six-year period are expected to total over \$18.8 million, but fluctuate somewhat from year to year.

Additional details (cost and revenue projections) are shown in the table on the next page. The table shows that in the first year, the costs barely cover the revenues, but that the revenues grow every year thereafter. By FY 2006, the land disposal income fund includes a balance of more than \$5 million and the excess, beginning with that year's surplus of \$535K, is transferred to the general fund by operation of law under SB 283.

The number of new positions in the program would be either 8 or 9, of which 3 are needed for land title work.

(Continued on next page)

SB 283
#2

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
COSTS						
Existing Cost of Component (See P. 1)	\$ 1,303	\$ 1,374	\$ 1,374	\$ 1,374	\$ 1,374	\$ 1,374
Additional \$2,271 to fund first 55,000 acres to be offered in FY 02 and 03, and continued funding for sales thereafter:						
Comprehensive Re-offe	\$ 275	\$ 323	\$ 48	-	-	-
Remot	\$ 418	\$ 418	\$ 418	\$ 418	\$ 418	\$ 418
Subdivision	\$ 100	\$ 300	\$ 376	\$ 376	\$ 376	\$ 376
Total Cost:	\$ 2,096	\$ 2,415	\$ 2,216	\$ 2,168	\$ 2,168	\$ 2,168
REVENUES						
Revenues from Past Sales	\$ 1,600	\$ 1,600	\$ 1,600	\$ 1,600	\$ 1,600	\$ 1,600
Revenues from Planned FY 01 Sales	\$ 700	\$ 433	\$ 466	\$ 366	\$ 366	\$ 366
Revenues from FY 02 and Future Sales		\$ 750	\$ 1,245	\$ 1,315	\$ 1,515	\$ 1,715
Total Revenue:	\$ 2,300	\$ 2,783	\$ 3,311	\$ 3,281	\$ 3,481	\$ 3,681
FUND BALANCE						
Balance of Land Disposal Income Fund at year's end:	\$ 204	\$ 572	\$ 1,667	\$ 2,780	\$ 4,093	\$ 5,606
Amount Spilled Over to the General Fund	-	-	-	-	-	\$ 606

SENATE FINANCE COMMITTEE

SIGN-IN

SB 283-STATE LAND DISPOSAL REVENUE

NAME: Bob Laeffler Subject/Bill No: 283
Co./Dept./Title: DNR, Division of Mining Land & Water Phone: 269-8600
Address: 550 W 7th Anchorage, AK Zip: 99501

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

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions



Teleconference Participants

TCN: 10753

Participant Lists

View List for

ALL

Testifiers

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Participants

Unidentified Testifiers: 0

Unidentified Observers: 0

HOMER (HOM)

1 ✓ Name: Mr. Dan Chalup Phone: 235-2210
 Address: RDO Red Mountain Affiliation: KBaySalPro
 City /St /Zip: Homer AK 99603 Type: Testifier
 Bill: SB 283: STATE LAND DISPOSAL REVENUE

KENAI (KEN)

1 ✓ Name: Mr. Karl Kircher Phone: 262-2492
 Address: 43961 K. Beach Rd. Affiliation: KPFA
 City /St /Zip: Soldotna AK 99669 Type: Testifier
 Bill: SB 283: STATE LAND DISPOSAL REVENUE

2 ✓ Name: Ms. Sandy Umlaut Phone:
 Address: Affiliation:
 City /St /Zip: Type: Testifier
 Bill: SB 283: STATE LAND DISPOSAL REVENUE

3 ✓ Name: Mr. Paul Shadura Phone:
 Address: Affiliation: self
 City /St /Zip: Type: Testifier
 Bill: SB 283: STATE LAND DISPOSAL REVENUE

4 ✓ Name: Mr. Patrick Hickey Phone:
 Address: Affiliation: KPBSD
 City /St /Zip: Type: Testifier
 Bill: SB 290: PUPIL TRANSPORTATION COST REIMBURSEMENT

KODIAK (KOD)

1 ✓ Name: Mr. Dave Jones Phone:
 Address: Affiliation:
 City /St /Zip: Type: Testifier
 Bill: SB 290: PUPIL TRANSPORTATION COST REIMBURSEMENT

PETERSBURG (PSG)

1 ✓ Name: Mrs. Elizabeth Bacom Phone: 772-3090
 Address: PO Box 683 Affiliation:
 City /St /Zip: Petersburg AK 99833 Type: Testifier
 Bill: SB 290: PUPIL TRANSPORTATION COST REIMBURSEMENT

SB

286

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: April 18, 2000

FURTHER REFERRALS:

Date of Committee Action: 4/20/00

The FINANCE Committee considered:

CSSB 286(JUD)

CS FOR SENATE BILL NO. 286(JUD)

DUTIES AND POWERS OF ATTORNEY GENERAL

"An Act relating to the duties and powers of the attorney general."

recommends it be replaced with the following committee substitute HCS CS SB 286(FIN) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

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

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) Law 3/23/00

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>[Signature]</i>	Therriault			X	
<i>[Signature]</i>	BUNDE	✓			
<i>[Signature]</i>	Austerman			X	
<i>[Signature]</i>	J. DAVIES			X	
<i>[Signature]</i>	Grossmardt			X	
<i>[Signature]</i>	G. Davis			X	
<i>[Signature]</i>	Mulder			X	
<i>[Signature]</i>	Foster			X	

CO

CHAIR'S SIGNATURE

[Signature]
Therriault

[Signature]
MULDER

FISCAL NOTE

No. 1

Bill Version: SB286

BILL N(S) Publish Date: 3/23/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to the duties and powers of BRU Criminal Division/Civil Division
the attorney general." Component All
 Sponsor Senate Judiciary Committee
 Requester Senate Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

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

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 286 amends AS 43.23.020, relating to the powers and duties of the attorney general. This bill may generate additional litigation over the attorney general's authority. Our opponents in litigation will use this language as another tool. Whether or not they are successful in their arguments, time must be expended to respond to the inevitable challenges. The Department of Law has no way of estimating how often the issue might arise, or how much time and expense would be necessary to respond.

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

Phone 465-5370
 Date/Time 3/8/00, 4:02 PM
 Date 3/8/00

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1-LS1512\H

House CS for CS for SB # 286 (JUD)

Amendment

1

Page 2 line 9

Delete or that generally in other states

After by law

Add that

Line 8 -10 would read

perform all other duties required by law that pertain to the office of attorney general; and

HCS FOR SENATE BILL NO. 286()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE

Offered:
Referred: Rules

Sponsor(s):

A BILL

FOR AN ACT ENTITLED

"An Act relating to the duties and powers of the attorney general."

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

*** Section 1. AS 44.23.020(b) is amended to read:**

(b) The attorney general shall

(1) defend the Constitution of the State of Alaska:

(2) [(1)] bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(3) [(2)] represent the state in all civil actions in which the state is a party;

(4) [(3)] prosecute, in the attorney general's discretion, all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(5) [(4)] administer state legal services, including the furnishing of written legal

opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(6) [(5)] draft legal instruments for the state;

(7) [(6)] make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(8) [(7)] perform all other duties required by law [OR WHICH USUALLY PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE]; and

(9) [(8)] prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law, division of consumer protection, before publication.

* Sec. 2. AS 44.23.020 is amended by adding a new subsection to read:

(d) The attorney general may,

(1) subject to the power of the legislature to enact laws and make appropriations, settle actions, cases, and offenses under (b) of this section;

(2) perform procedural duties pertaining to the office of attorney general which exist in a majority of states; and

(3) file *amicus curiae* briefs in any action in which issues regarding the Constitution or statutory laws of Alaska are raised.

HOUSE CS FOR CS FOR SENATE BILL NO. 286(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/18/00
Referred: Finance

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties and powers of the attorney general."

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

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9 party;

10 (4) [(3)] prosecute all cases involving violation of state law, and file
11 informations and prosecute all offenses against the revenue laws and other state laws
12 where there is no other provision for their prosecution;

13 (5) [(4)] administer state legal services, including the furnishing of
14 written legal opinions to the governor, the legislature, and all state officers and
15 departments as the governor directs; and give legal advice on a law, proposed law, or

1 proposed legislative measure upon request by the legislature or a member of the
2 legislature;

3 (6) [(5)] draft legal instruments for the state;

4 (7) [(6)] make available a report to the legislature, through the
5 governor, at each regular legislative session

6 (A) of the work and expenditures of the office; and

7 (B) on needed legislation or amendments to existing law;

HR - passed

8 (8) [(7)] perform all other duties required by law or that generally

BACK 119

9 [WHICH USUALLY] pertain to the office of attorney general in other states [A
10 STATE]; and

ORIGINAL

11 (9) [(8)] prepare, publish, and revise as it becomes useful or necessary

LA 09/20/12

12 to do so an information pamphlet on landlord and tenant rights and the means of
13 making complaints to appropriate public agencies concerning landlord and tenant
14 rights; the contents of the pamphlet and any revision shall be approved by the
15 Department of Law, division of consumer protection, before publication.

16 * Sec. 2. AS 44.23.020 is amended by adding a new subsection to read:

17 (d) The attorney general may, subject to the power of the legislature to enact
18 laws and make appropriations, settle actions, cases, and offenses under (b) of this
19 section.

CS FOR SENATE BILL NO. 286(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/23/00

Referred: Rules

Sponsor(s): SENATE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties and powers of the attorney general."

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9 USUALLY PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE];

10 and]

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12 to do so an information pamphlet on landlord and tenant rights and the means of
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16 * Sec. 2. AS 44.23.020 is amended by adding a new subsection to read:

17 (d) The attorney general may, subject to the power of the legislature to enact
18 laws and make appropriations, settle actions, cases, and offenses under (b) of this
19 section in which the attorney general represents the state and in which the state is a
20 party.

2
Back to original
vars.
[8] passed

FISCAL NOTE

No. 1

Bill Version: SB286

BILL N(S) Publish Date: 3/23/00

STATE OF ALASKA
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to the duties and powers of BRU Criminal Division/Civil Division
the attorney general." Component All
 Sponsor Senate Judiciary Committee
 Requester Senate Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
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TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 286 amends AS 43.23.020, relating to the powers and duties of the attorney general. This bill may generate additional litigation over the attorney general's authority. Our opponents in litigation will use this language as another tool. Whether or not they are successful in their arguments, time must be expended to respond to the inevitable challenges. The Department of Law has no way of estimating how often the issue might arise, or how much time and expense would be necessary to respond.

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

Phone 465-5370
 Date/Time 3/8/00, 4:02 PM
 Date 3/8/00

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Mark K. Johnson
13631 Windward Circle
Anchorage, Alaska 99516
907-345-3850

February 17, 2000

Senator Robin Taylor
Chairman, Judiciary Committee
Alaska State Senate
State Capitol Building
Juneau, Alaska 99811

Dear Chairman Taylor:

It is recommended that the Judiciary Committee consider adding the following language to SJR 14, in lieu of the material presently contained in the proposed Section 2S(c) of Article III (See lines 23 through 26 on page 2):

The attorney general is the legal officer of the state and shall have duties and powers provided by law.

This language is identical to language contained in the Montana Constitution. The single sentence captures the obligation to the state and citizens discussed by the Committee on February 9th and also assures appropriate Legislative control over the duties and powers of the position. The proposed language reflects a preference for simplicity in a constitutional provision.

The existing language of SJR 14 could be interpreted as setting out broader duties and powers for the attorney general than currently exist under Alaska law. Listing specific duties and powers in the constitution could lead to the conclusion that the attorney general's authority in the identified areas is broad and not subject to limitation or review. In contrast, at present the attorney general is not a constitutional officer and must base authority to act on the governor's constitutional power to execute the law or statutes such as AS 4.23.020. The proposed language would preserve Legislative control over the attorney general's powers and duties.

The Committee should understand and consider that the language providing that the attorney general "...is the legal officer of the state...", may have the effect of vesting the holder of the office with a new sense of independence in determining what may be in the best interests of the state. In this regard the Committee may want to reflect on the proposed language in connection

SJR 14

SB 286

with Article I, Section 2 of the Alaska Constitution, which provides that: "All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole." When read together, I believe that the two provisions achieve the result sought by the Committee.

Under the proposed language the attorney general may assume a different role in state government than if the constitution were to provide that "...the attorney general shall be the legal adviser of the state officers." This latter language is found in the constitutions of Utah and Washington and seems to lack the notion of obligation to the state and citizens sought by the Committee. Discussion on this point may be appropriate.

If I can provide further assistance to the Committee on this topic, please let me know.

Sincerely,

Mark K. Johnson

Mark K. Johnson
13631 Windward Circle
Anchorage, Alaska 99516
907-345-3850

RECEIVED
JAN 24 2000

Ans'd.....

January 19, 2000

The Honorable Robin Taylor
Alaska State Senate
State Capitol Building
Juneau, Alaska 99811

Dear Robin:

Enclosed is a copy of the recommendations of the subcommittee which reviewed the Department of Law for the Commission on Privatization, along with the Department's response and some of the appendices.

I do not take the Department's response very seriously for one paramount reason: The Department is unable as an institution to view itself critically and objectively. The Department consists almost entirely of career employees with a uniform political philosophy and close loyalty to Bruce Botelho. Mr. Botelho has hired a good number of these employees and has the ability to discharge any attorney at any time for pretty much any (or no) reason.

At the risk of repeating myself: The subcommittee found, and the Department reluctantly agreed that the Attorney General is NOT a constitutional officer and that Legislature, by statute, may define the role and responsibilities of the head of the Department of Law.

The subcommittee drafted a proposed amendment to AS 44.23.010 which would limit to some degree the scope of the Attorney General's powers and clarify that his obligation as a legal advisor runs to the State of Alaska, not "the governor and other state officers." The draft legislation would also put into law that the Legislative power to make appropriations constrains and limits the Attorney General's authority to settle cases.^{1 2} Finally, the draft legislation would

¹ The power to settle litigation in my view poses great danger to the State and is the source of considerable mischief by this and previous Attorney Generals. As a recent example, as I understand it an attorney with the State with knowledge of the World Plus Travel scandal brought litigation against the State in connection with her discharge but that litigation was quickly settled. Through settlement, the State has the ability to quickly close and limit the potential for embarrassment from a variety of problems.

² Please note that this legislation does not address the authority of the Attorney General to enter into settlements of Alaska's anti-trust laws under Title 45.

SB 086

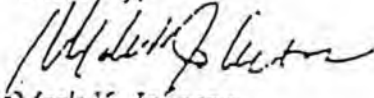
remove language which can be interpreted to vest common law powers in the Attorney General. It is my belief, and a belief shared by the subcommittee, that the Attorney General's powers should be enumerated powers – not unlimited powers.

Once it is appreciated that the Legislature can define and control the scope and powers of the Attorney General, it is interesting to consider the effect of dissolution of the office of Attorney General and the entire Department of Law. The office of State Prosecutor and Department of Prosecution could be established, which would address only criminal matters. Individual executive departments could be given authority to retain and employ counsel for needed legal services. The Governor could hire Bruce Botelho as the Governor's lawyer, which is the present situation.

Interestingly enough, under this set-up, the departmental commissioner would retain control of the legal budget of the department and the traditional relationship between client and attorney would be brought back to state government. Counsel retained in this fashion would be subject to the direction of the client – not the Attorney General. I personally believe that this arrangement would produce better results for the State of Alaska as the focus would shift to the issues presented in litigation. I would guarantee that discussions between the Governor and his department heads which touched upon legal issues would be much more substantive.

I hope this information is interesting and useful to you. Please let me know if I can answer any questions. My home phone is listed above. My work phone is 273-5290, but I am not always able to discuss non-work related matters.

Sincerely,



Mark K. Johnson

Sec. 44.23.010. Attorney general.

The principal executive officer of the Department of Law is the attorney general.

Sec. 44.23.020. Duties; and powers; waiver of immunity.

(a) The attorney general is the legal advisor of the state, including the governor and other state officers.

(b) The attorney general shall

(1) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(2) represent the state in all civil actions in which the state is a party;

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(4) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(5) draft legal instruments for the state;

(6) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(7) perform all other duties required by law (OR WHICH USUALLY PERTAIN TO THE OFFICE OF ATTORNEY GENERAL IN A STATE); and

(8) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law, division of consumer protection, before publication.

(c) The Attorney General may, subject to the power of the legislature to make appropriations, settle actions, matters and prosecutions under subsection (b) in which the Attorney General represents the state and in which the state is a party:

(d) Before January 1, 1999, the attorney general may, in a case that involves the state's title to submerged lands, or in any case in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States. The expiration on January 1, 1999, of the attorney general's authority to waive the state's Eleventh Amendment immunity does not affect existing waivers in ongoing cases.

STATE of Alaska, Appellant,

Robert A. HREEZE, Appellee.
Nos. A-1810, A-1818 and A-1819.

Court of Appeals of Alaska.

May 6, 1991.

Rehearing Denied May 25, 1991.

Indictments were dismissed by the Superior Court, Third Judicial District, Anchorage, Joan Katz, J., on ground that special prosecutor had exceeded scope of authority granted by Attorney General, and state appealed. The Court of Appeals, Wolverton, District Court Judge, held that: (1) Attorney General had authority to appoint special prosecutor; (2) special prosecutor acted within the scope of his authority; and (3) in any event, special prosecutor acted with at least de facto authority and there was no basis for dismissal of indictments absent demonstration of resulting prejudice.

Order vacated and indictments reinstated.

1. Criminal Law \S 1015

It was appropriate for Court of Appeals to resolve whether Attorney General had authority to appoint special prosecutor, though trial court chose not to reach the issue, where issue was fully briefed and argued before the trial court and on appeal.

2. Criminal Law \S 1131(3)

While Court of Appeals will reverse trial court's factual determinations only if clearly erroneous, questions that involve application of legal rules to the facts are subject to independent judgment of the Court of Appeals, which is to adopt the rule of law that is most persuasive in light of precedent, reason and policy.

3. Attorney General \S 6

Appointment of special prosecutor by Attorney General as remedy to Attorney General's perceived conflict of interest was appropriate and authorized pursuant to

statute; Attorney General is obligated under statute to investigate and prosecute law violations, and if Attorney General and Department of Law are disqualified, Attorney General is nevertheless "required by law" to ensure that investigation and prosecution are conducted by someone who is qualified, whether that person is denominated special counsel, special prosecutor, or some other title. AS 41.23.020, 41.23.020(b)(3, 7).

4. Attorney General \S 6

State Constitution and applicable statutes did not express or imply restriction on Attorney General's authority to properly delegate certain duties of the office, by appointing special prosecutor, where Attorney General maintained appropriate supervision, direction and control over special prosecutor, who was required to submit claims for services to the Department of Law and who was subject to termination by the Attorney General at any time. Const. Art. 3, \S 22; AS 41.17.010, 44.17.040, 44.23.020(b)(3, 7).

5. Attorney General \S 6

Reading of statutory authorization for Department of Law operations suggests intent to leave offices and their functions broad, general and flexible, even when circumstances do not involve disqualification of Attorney General, and demonstrate that the legislature contemplated retention of services of counsel outside the Department of Law. AS 36.30.015, 36.30.850(b)(32), 41.23.050.

6. Attorney General \S 6

Record did not show that Attorney General lacked consent of the principal so as to bar appointment of special prosecutor by Attorney General under common-law doctrine of delegatus non potest delegare.

7. Attorney General \S 6

Special prosecutor hired by Attorney General did not exceed the scope of his authority in securing indictments of target of investigation; appointment letter authorized special prosecutor to investigate other related matters and to serve as special counsel in "other matters that may arise in the course of the investigation," and Attorney General made it clear that special prosecutor had

107

875

acted within the scope of authority intended. AS 44.23.020(b)(3).

R. Attorney General \Leftarrow 6

Person who was investigated by special prosecutor and against whom indictments returned did not have the same standing as the Attorney General to challenge whether special prosecutor exceeded the scope of his appointment by the Attorney General.

9. Attorney General \Leftarrow 6

Even if special prosecutor appointed by Attorney General were found to have technically exceeded the scope of his appointment, special prosecutor was a de facto officer and indictments obtained by him remained valid pursuant to that authority, absent showing of prejudice by the person indicted; special prosecutor had at least a fair color or right of title and acted for such length of time as to afford presumption of appointment, appointment process was reported publicly, target of investigation himself urged state to get on with the investigation, and questions regarding special prosecutor's authority had no demonstrated bearing on grand jury's determination to return indictments. AS 44.23.020.

David C. Stewart, Law Office of Hickey and Stewart, Anchorage, for appellant.

Douglas Pope, Wagstaff, Pope & Katcher, Anchorage, for appellee.

Before COATS, J., ANDREWS, Superior Court Judge,* and WOLVERTON, District Court Judge.*

OPINION

WOLVERTON, District Court Judge.

The issues presented in this appeal are whether, under the circumstances of this case, the State Attorney General had the authority to appoint a special prosecutor and, if so, whether the trial court was correct in dismissing indictments on the grounds that

* Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

1. The background is essentially not in dispute and is drawn largely from an affidavit submitted by Breeze's counsel as an offer of proof, and

the Special Prosecutor had exceeded the scope of the authority granted by the Attorney General. The case presents issues of first impression in Alaska. We find that the Attorney General had the authority to appoint a special prosecutor in this instance and that the trial court erred both in finding that the Special Prosecutor had exceeded the scope of his appointment and in dismissing the indictments on that ground. We therefore vacate the trial court's order and reinstate the indictments.

Background¹

On January 25, 1990, the law firm of Boyko, Breeze and Flansburg filed a lawsuit on its own behalf against Hazama-Gumi, Ltd., a Japanese firm that had sought a contract to finance and build a major part of the Bradley Lake hydroelectric project. In that suit, JAN-90-718CI, Attorney Robert A. Breeze claimed that he had been working on a \$500,000 contingency fee basis for Hazama, which was to be paid if the firm won a no-bid contract for the project. Although Hazama dropped out of the process when the state rejected its financing plan and decided to use competitive bidding, Breeze claimed that Hazama later agreed to pay him for services, and he submitted an itemized breakdown of services and expenses in excess of \$200,000. The suit also demanded repayment of \$50,000 for various political contributions made on behalf of Hazama.

The civil suit against Hazama-Gumi attracted prosecutorial attention to potential violations of lobbying without registration and lobbying under an improper contingency fee arrangement. By November of 1990, the Chief Prosecutor for the Department of Law had commenced an inquiry into the matter.

However, in early November of 1990, Walter J. Hickey was elected Governor and shortly thereafter on December 11, 1990, he announced the appointment of Charles E. Cole as his attorney general. Edgar Paul

from the statement of facts that Breeze submitted in briefing to the trial court. Both the affidavit and statement of facts referenced several letters, newspaper articles, and contract documents.

STATE v. BREEZE

Civ. No. 873 P.2d 627 (Alaska App. 1991)

Boyko, a partner in the firm under investigation, had been involved in Hickey's gubernatorial campaign, and after the election he was named to the Governor's Department of Law transition team. It was Boyko, in fact, who recommended to Hickey that he appoint Cole as attorney general.

The relationships among Governor Hickey, Boyko, and Cole were significantly intertwined. Boyko had served as attorney general in Hickey's first administration in the 1960s. During the 1970s and 1980s, Cole and Boyko were private practitioners and had represented one another in litigation where the other had been named as a party. Further, Cole and Boyko had jointly represented several different clients, and Cole had represented Hickey while in private practice.

On December 6, 1990, Boyko apparently asked Governor Hickey to appoint a special prosecutor to expedite the criminal investigation involving his law firm. Boyko expressed his belief that the investigation was a politically motivated attempt to reduce his influence with the new administration and to deflect attention from his complaints about the prior administration's selection of a private law firm to litigate the Exxon Valdez claims on behalf of the state.

Three attempts were made to secure the services of a special prosecutor. Although Cole had tried to remove himself from the selection process to some degree by assigning the selection duties to his deputy, he

Attorney General Cole later set forth his recollection of the selection process in an affidavit, which states, in part, as follows:

1. Charles E. Cole, being first duly sworn, do hereby testify and state as follows:

1. I am currently attorney general for the State of Alaska, a position I have held since December, 1990.

2. Sometime in 1991—I believe in the spring—Edgar Paul Boyko, then a law partner with Robert Breeze, told me that he believed an investigation being conducted by the Department of Law into possible criminal actions of Mr. Breeze was motivated by criticisms of Mr. Breeze by Edgar Paul Boyko, had made against the Department of Law concerning its selection of law firms to prosecute on behalf of the State the Exxon Valdez claims.

3. I assured Mr. Boyko that that was correct and not the case so far as I knew, that former Attorney General Doug Bailey had told me

stepped in and rejected the first candidate because the candidate had been a law partner of the prior administration's attorney general.² After the second and third candidates indicated that they had conflicts that prohibited them from taking the position, Breeze himself indicated that he wanted the state to get the investigation underway.

At the outset of the special counsel selection process, the Deputy Attorney General submitted a Request for Alternate Procurement, which was marked "confidential." In that document he stated that

this case involves investigation of individuals previously represented by both the Attorney General and the law firm with which the Deputy Attorney General was associated until his employment with the Department of Law. Because of the inherent conflict of representation, the use of a special prosecutor has been deemed to be necessary. Due to the confidential nature of all criminal investigations, the department must limit its contacts with prospective outside counsel to an absolute minimum in order to protect the constitutional rights of the individuals involved in the matter under investigation. As such, the use of any form of open competitive procurement is impractical and contrary to the public interest.

The selection process ultimately resulted in the appointment of Anchorage attorney

about this investigation shortly after I was appointed Attorney General, and that so far as I was aware, the investigation had nothing to do with the criticisms of Mr. Boyko about the Department of Law.

4. On the other hand, I told Mr. Boyko that I wanted to be certain that the investigation being conducted by the Department of Law was impartial, and not motivated by Mr. Boyko's criticisms of the Department of Law, so I would appoint special counsel to conduct the investigation and to prosecute violations of criminal law which might develop from the investigation.

5. Initially I said that because of my personal and professional associations with Mr. Boyko, and to avoid possible public criticism that the selection by me of the special counsel was motivated by improper considerations, I would commit the selection of independent counsel to the Deputy Attorney General.

David Stewart as Special Counsel.¹ In his appointment letter dated April 15, 1991, Attorney General Cole advised Stewart that

This letter constitutes your appointment as Special Counsel to act on behalf of the State of Alaska to investigate whether any violations of law may have occurred in connection with the matters mentioned in the complaint filed in JAN-590-718 Civil, a civil case filed by Boyko, Breeze, & Flansburg, et al., to collect fees allegedly owed for services rendered to Hazama-Gund, Ltd., and to investigate such other related matters as may arise in the course of your investigation.

As Special Counsel, acting in an independent capacity and exercising your independent judgment, you are to direct all phases of the investigation, the filing of any charges you conclude from your investigation are warranted, and the prosecution of any such charges to their conclusion. You are also authorized, but are not required, to request the services of the Alaska State Troopers to assist you in the conduct of your investigation, and to retain such other attorneys and special services as you find warranted.

Enclosed are three copies of a State of Alaska Professional Services Contract for your signature setting forth and describing the terms and conditions embodied in this letter of appointment. Please sign and return two copies to the Department of Law.

3. In a continuing paragraph to the affidavit quoted in n. 2, *supra*, Attorney General Cole explained how the selection process finally resulted in the selection of Stewart as Special Prosecutor:

6. The initial nomination of independent counsel by the Deputy Attorney General, when it came to my attention, was—in my view—subject to possible criticism because either the independent counsel or the law firms with which he was associated had significant financial relationships with the Department of Law and therefore could be viewed as less than impartial. Another designation of special counsel was made, but the designee declined to act because of a perceived conflict of interest. Therefore, I elected to make the selection of the independent prosecutor myself and I eventually did select David Stewart because I viewed him as wholly impartial and competent to conduct the investigations and to pursue

The standard agreement form for professional services included, *inter alia*, the following provisions:

Article 5. Termination. The project director, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the State. The State is liable only for payment in accordance with the payment provisions of this contract for services rendered before the effective date of termination.

Article 7. No Additional Work or Material. No claim for additional services, not specifically provided in this contract, performed or furnished by the contractor, will be allowed, nor may the contractor do any work or furnish any material not covered by the contract unless the work or material is ordered in writing by the Project Director and approved by the Agency Head.

Article 8. Independent Contractor. The contractor and any agents and employees of the contractor act in an independent capacity and are not officers or employees or agents of the State in the performance of this contract.

Article 13. Officials Not to Benefit. Contractor must comply with all applicable federal or State laws regulating ethical conduct of public officers and employees.

Special Prosecutor Stewart directed the investigation and presented the matter to

whatever criminal prosecutions he concluded were warranted.

4. An appendix to the standard agreement form included the following typed provision:

Article 1. The Services to be performed by the Contractor

Article 1.1 The Contractor, in the person of David C. Stewart, shall serve as Special Counsel on behalf of the State of Alaska in connection with the investigation relating to the complaint in JAN-90-718 CI, a civil case filed to collect fees for services from Hazama-Gund, Ltd., and to other matters that may arise in the course of the investigation. The scope of Contractor's authority and services as Special Counsel are set out in the attached letter of appointment dated April 15, 1991, and incorporated by reference herein.

STATE v. BREEZE

Civ. 873 P.2d 637 (Alaska App. 1994)

Alaska 631

fore a grand jury, which indicted Breeze on various charges in three separate cases.¹ Breeze entered pleas of not guilty to all of the charges, and he moved to dismiss the indictments on two grounds: that the Attorney General had no authority to appoint a special prosecutor, and that the Special Prosecutor had exceeded the scope of his authority. Breeze also alleged that the Attorney General's declaration of a conflict was merely a ruse to deflect the investigation from others and limit it to Breeze only; on the other hand, Breeze argued that if the Attorney General had a conflict, the conflict should have prohibited him from selecting a special prosecutor.

Breeze moved to depose a number of government officials, and the state moved to quash the subpoenas. The trial court quashed some of the subpoenas, held the subpoenas for Governor Hickel and the Lt. Governor in abeyance, and ordered Cole, Deputy Attorney General Blankenship, and Boyko to appear for an evidentiary hearing. The trial court then stayed its order pending appellate review. After this court denied the state's petition for review, the Alaska Supreme Court granted review and stayed the evidentiary hearing.

pending a determination by the superior court of whether the attorney general has the authority to appoint a special prosecutor, and if so, the circumstances under which such authority may be exercised. If, after these questions are determined, an evidentiary hearing is necessary to facilitate the disclosure of relevant information, such a hearing should be held.

Rather than reach the issue of whether and under what circumstances the attorney general has the authority to appoint a special prosecutor, the trial court chose to resolve the question by ruling only on what it viewed as the "narrowest issue raised" and affirmed the indictments on its finding that the

Three indictments were returned by the grand jury against Attorney Robert Breeze, charging as follows. In case JAN-591-593CR, he was charged with two counts of securities violation, AS 45.55.210, two counts of theft in the first degree, AS 11.46.120, a count of scheming to defraud, AS 11.46.600(A)(2), two counts of application of property, AS 11.46.620(A), and a count of forgery in the first degree, AS 11.46.

Special Prosecutor had "exceeded the scope of the authority vested in him by the appointment letter."

Following the trial court's order, the state moved for reconsideration and submitted a letter from the Attorney General, which read as follows:

I have reviewed my letter of April 15, 1991 appointing David Stewart Special Counsel to investigate the Breeze matter. I have also reviewed the decision of Judge Katz distributed on February 1, 1993 that interpreted that appointment.

Mr. Stewart's performance under that appointment resulted in three indictments being returned against Mr. Breeze. His investigation and assistance to the grand jury in the return of those indictments is within the scope of Mr. Stewart's authority that I intended him to have when I appointed him to be Special Counsel on April 15, 1991.

The trial court denied the state's motion for reconsideration, and the state appealed.

The Attorney General's Authority to Appoint a Special Prosecutor

[1,2] Although the trial court chose not to reach the issue, we believe that it is appropriate for us to resolve whether the attorney general has the authority to appoint a special prosecutor. The issue was fully briefed and argued before the trial court and in this appeal. See *Lion Corp. v. Air Logistics of Alaska*, 787 P.2d 109, 115 (Alaska 1990); *State v. Northwestern Construction, Inc.*, 741 P.2d 235, 239 (Alaska 1987). Further, while we will reverse a trial court's factual determinations only if clearly erroneous, questions that involve application of legal rules to the facts are subject to our independent judgment. *Jones v. Jones*, 835 P.2d 1173, 1176 (Alaska 1992). As to questions of law, we are

500(A)(1). In case JAN-591-550CR, he was charged with a count of misapplication of property, AS 11.46.620(A) and a count of scheming to defraud, AS 11.46.620(A)(2). In case JAN-591-793CR, Breeze was charged with a count of theft in the first degree, AS 11.46.120, a count of scheming to defraud, AS 11.46.600(A)(2) and a count of misapplication of property, AS 11.46.620(A).

Alaska App. 1994 875

to adopt the rule of law that is most persuasive in light of precedent, reason, and policy. *Gwin v. Hu*, 591 P.2d 1251, 1251 n. 6 (Alaska 1979).

[3] Alaska Statute 11.21.020 sets forth the duties of the attorney general and states, in part, that

(a) The attorney general is the legal advisor of the governor and other state officers.

(b) The attorney general shall

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(7) perform all other duties required by law or which usually pertain to the office of attorney general in a state.

In the case before us, no claim has been made that the offenses alleged in the indictments were improperly brought or involved prohibited subjects of prosecution under AS 11.21.020(b)(3). However, the record before us demonstrates that the Attorney General reasonably believed that he was ethically restrained from prosecuting the matter because, as the Deputy Attorney General stated in his Request for Alternate Procurement, "this case involves investigation of individuals previously represented by both the Attorney General and the law firm with which the Deputy Attorney General was associated until his employment with the Department of Law. Because of the inherent conflict of representation, the use of a special prosecutor has been deemed to be necessary."

A. A contrary application of AS 44.23.020(b)(3) and (b)(7) would lead to an illogical result: if an attorney general who is disqualified from prosecuting a particular case were also unable to appoint a special prosecutor, a case that would otherwise be appropriate for investigation and possible prosecution would not be subject to any prosecution. The attorney general in such a situation would be left with the untenable choice of (1) violating the duty specifically imposed by AS 44.23.020(b)(3) by not prosecuting a violation of state law (and possibly being faulted for not pursuing prosecution because of a prior association with the accused), or (2) prosecuting the

individual with the risk of being charged with an unethical conflict of interest.

Additionally, in a confidential document captioned "AUTHORITY TO SEEK PROFESSIONAL SERVICES" the Deputy Attorney General stated that due to "the inherent conflict of representation involved in such a situation, it has been determined that the use of a special prosecutor is necessary in order to maintain public confidence in the judicial process and to assure that the conduct of any resulting prosecution is done without bias or any appearance of impropriety."

Despite the Attorney General's belief that a conflict existed, however, we find that the Attorney General had a continuing obligation to ensure that all violations of law would be prosecuted as required under AS 44.23.020(b)(3). As a result, we find that the appointment of a special prosecutor by the Attorney General as a remedy to his perceived conflict was both appropriate and authorized under AS 44.23.020(b)(7). Prosecution of the alleged violations was a duty required by law (AS 44.23.020(b)(3)), and if the Attorney General in his discretion chose to disqualify himself and the Department of Law from prosecuting the violations, it logically follows that his appointment of a special prosecutor to conduct the prosecution was also a duty required by law.⁴

[1] Breeze argues that the Attorney General did not have the authority to appoint a special prosecutor because such delegations of power are limited by the Alaska Constitution, by statute, and by the common law doctrine of *delegatus non potest delegare* (absent consent of the principal, delegated power may not be delegated further). According to Breeze, article III, section 22 of the Alaska Constitution limited "all ... respective

functions, powers and duties" of the attorney general to those "allocated by law," and that the allocation under law is confined by AS 44.17.010 and AS 44.17.010, which somehow limits or restricts the attorney general from appointing a special prosecutor. However, we do not believe that the Alaska Constitution or the applicable statutes express or imply such a restriction on the attorney general's authority to properly delegate certain duties of the office.

Alaska Statute 44.17.010 states that the attorney general "may assign the functions vested in the department to subordinate officers and employees." Alaska Statute 44.17.010 authorizes the attorney general to "establish necessary subordinate positions, make appointments to these positions, and remove persons appointed within the limitations of appropriations and subject to state personnel laws. Each person appointed to a subordinate position established by the [attorney general] is under the supervision, direction, and control of the [attorney general]."

It is apparent the key concern is, that in delegating functions and establishing staff positions, the attorney general is to maintain appropriate supervision, direction, and control over individuals serving in positions that are subordinate to the attorney general. Under the circumstances of this case, the Attorney General perceived a disqualifying interest, but he nevertheless maintained appropriate supervision, direction and control over the Special Prosecutor to whom he had appropriately delegated functions.

As previously stated, the attorney general has the power and duty under AS 44.23.020(b)(3) and (b)(7) to ensure that state law violations are investigated and prosecuted. The Attorney General fulfilled this legal obligation by appointing a special prosecutor who, while operating in an ethically required, independent capacity, nevertheless remained subordinate to the Attorney General.

Article III, section 22 of the Alaska Constitution reads as follows:

Executive Branch. All executive and administrative officers, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by

The Attorney General hired the Special Prosecutor after directing the selection process to the extent necessary to ensure that the person selected would not also be disqualified by a conflict of interest. The Attorney General directed the Special Prosecutor to act "in an independent capacity," and he directed him to exercise his "Independent Judgment" subject, of course, to the requirement that he "comply with all applicable federal or state laws regulating ethical conduct of officers and employees," (as set forth in Article 13 of the Standard Agreement form for Professional Services).

While acting independently, however, the Special Prosecutor was required to submit claims for services to the Department of Law which were subject to the approval of the Attorney General (Article 7, Professional Services Agreement), and which made his work subject to some degree of review. Additionally, the Special Prosecutor was subject to termination by the Attorney General at any time that the Attorney General perceived it to be in the best interest of the state (Article 5, Professional Services Agreement). Thus, the Special Prosecutor remained in a position subordinate to the Attorney General, as required by AS 44.17.010 and AS 44.17.010. We therefore conclude that the trial court was clearly erroneous in its factual finding that the Special Prosecutor was not under appropriate and continuing supervision of the Attorney General.

Further support for the proposition that the Alaska Constitution and statutes were not meant to serve as restrictive limits to the attorney general's authority to delegate is found in the Proceedings of the Alaska Constitutional Convention. The Chairperson of the Executive Committee commented that

In keeping with the modern thinking of a strong executive, it is certainly the policy not to establish offices by name and to narrow down their functions in the constitution. The policy is to leave [] them

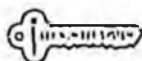
law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department

In summary, we find that the Attorney General had the authority to appoint the Special Prosecutor under the circumstances of this case. We also find that the Special Prosecutor acted within the scope of his authority.¹⁰ Finally, we hold that the Special Prosecutor acted at least with *de facto* authority and that, absent any record demonstrating resulting prejudice, there was no basis for dismissal of the indictments. The

10. In light of the Attorney General's subsequent clarification regarding the Special Prosecutor's scope of authority, it is apparent that the Special

order of the trial court is therefore VACATED, and the indictments are reinstated.

BRYNER, C.J., and MANSHEIMER, J., not participating.



Prosecutor would not now be prohibited from further prosecuting these matters in any event.

CITY OF DILLINGHAM, an Alaska
Municipal Corporation,
Petitioner,

CH2M HILL, NORTHWEST,
INC., Respondent.

No. S-5330.

Supreme Court of Alaska.

May 6, 1994.

Construction contractor brought action against city, seeking increased costs in connection with alleged differing site conditions regarding construction of sewage treatment facility. City filed third-party complaint against engineering firm retained to prepare environmental plan related to treatment system, alleging breach of contract, breach of duty of care, and breach of fiduciary duty. The Superior Court, Third Judicial District, Anchorage, Heverly W. Cutler, J., granted partial summary judgment for firm on claims for breach of contract and breach of fiduciary duty. City petitioned for review. The Supreme Court, Rabbinowitz, J., held that: (1) legislature's general goal in enacting statute generally rendering void contractual provisions purporting to indemnify promisee against liability for damages caused by promisee's civil negligence or willful misconduct was to provide remedies for all wronged persons, as opposed to only governmental indemnitees; (2) exculpatory clause that limits liability for party's "negligent acts, errors, or omissions" should be construed to limit liability for negligent acts, errors or omissions only; (3) statute generally rendering void contractual provisions purporting to "indemnify" promisee prohibits limitation of liability clauses; and (4) that statute applies to clause that is questioned under it, regardless of whether indemnification has been sought.

Reversed.

Appeal and Error \S 893(1)

Interpretation of statute and related questions of interpretation of contractual

clause presented questions of law, which Supreme Court reviewed *de novo*.

2. Municipal Corporations \S 250

While city was beneficiary of "promisee" of contract with engineering firm retained to prepare environmental plan related to sewage treatment system, city was "promisor" with regard to limitation of liability clause, as it was promising to limit firm's liability.

See publication Words and Phrases for other judicial constructions and definitions.

3. Indemnity \S 3

Legislature's general goal in enacting statute generally rendering void contractual provisions purporting to indemnify "promisee" against liability for damages caused by promisee's civil negligence or willful misconduct was to provide remedies for all wronged persons, as opposed to only governmental indemnitees. AS 45.45.900.

4. Contracts \S 206

Exculpatory clause that limits liability for party's "negligent acts, errors, or omissions" should be construed to limit liability for negligent acts, errors or omissions only, and clause therefore applies to breaches of contract and fiduciary duty only insofar as breaches are negligent.

See publication Words and Phrases for other judicial constructions and definitions.

5. Municipal Corporations \S 250

Trial court correctly ruled that limitation of liability clause in contract between city and engineering firm, limiting liability for party's "negligent acts, errors, or omissions," applied to breaches of contract and fiduciary duty, but only insofar as breaches were negligent.

6. Contracts \S 129(1)

Liability for knowing or bad faith breaches of contract can never be limited.

7. Indemnity \S 3

Statute generally rendering void contractual provisions purporting to "indemnify" promisee against liability for damages caused by promisee's sole negligence or willful misconduct prohibits limitation of liability clause.

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SPONSOR STATEMENT

SB 286

"An Act relating to the duties and powers of the attorney general."

SB 286 is an attempt to clarify the duties of the Attorney General, place into statute that the Attorney General shall defend the Constitution of the State of Alaska, and put into law that the Legislative power to make appropriations constrains and limits the Attorney General's authority to settle cases.

The Judiciary Committee worked closely with members of the Subcommittee on Privatization and considered recommendations. The subcommittee found, and the Department reluctantly agreed, that the Attorney General is NOT a constitutional officer and that the Legislature, by statute, may define the role and responsibilities of the head of the Department of Law.

It is the intent of this legislation that the Attorney General defend and uphold the Constitution of the State of Alaska, and that any settlement entered into by the Attorney General which recognizes a present or future duty or obligation on the part of the State which is not contained in statute or for which appropriations have not been provided must expressly provide that the duty or obligation is subject to appropriation by the Legislature.

Alaska State Legislature

Chairman:
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman:
Resources Committee



Senator Robin L. Taylor

Juneau, Alaska 998 01 00
907 586-7100
FAX 907 586-9121
50 Front Street
Juneau, Alaska 998 01 00
907 586-7100
FAX 907 586-7121

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District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

SB

287

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/2/00

FURTHER: ^{TEDC} 3/9/00

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 15 March 00

Finance Committee considered SENATE BILL NO. 287

"An Act making an appropriation for the state land disposal bank program; making an appropriation from the constitutional budget reserve fund under art. IX, sec. 17(c), Constitution of the State of Alaska; and providing for an effective date."

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>Lynne Green</i>	✓	<i>Pat Kelly</i>		✓	
<i>Wendy Dowley</i>	✓	<i>Al Clark</i>		X	
		<i>Gary White</i>	✓		
		<i>Harold D. Hansen</i>	✓		
Co-Chair: <i>Norman</i>	✓	Co-Chair:			
Co-Chair: <i>Alan Parnell</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE FINANCE COMMITTEE
2000 COMMITTEE ACTION

Bill Number	SB 2957
Amendment	
Motion	move from Committee
<u>Motion by</u>	P
<u>Objection</u>	
<u>Objection by</u>	A
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Lyda Green	0
Senator Randy Phillips	1
Senator Dave Donley	0
Senator Loren Leman	0
Senator Al Adams	0
Senator Gary Wilken	0
Senator Pete Kelly	0
Co-Chair Sean Parnell	0
Co-Chair John Torgerson	0
<u>Tally</u>	
Yea	0 6
Nay	0 2
Absent	0 1
<u>MOTION</u>	PASS